

CANADA / JUDGMENT

R. v. Coleman

2000 BCCA 450

COURT

British Columbia Court of Appeal

DECIDED

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2000 BCCA 450 Citation: R. v. Coleman Date: 20000721 2000 BCCA 450 Docket: CA026844 Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR JUDGMENT Before: The Honourable Mr. Justice Finch July 21, 2000 The Honourable Madam Justice Ryan The Honourable Madam Justice Newbury Vancouver, B.C. BETWEEN: R E G I N A RESPONDENT AND: JOHN FITZGERALD COLEMAN APPELLANT K.T. Christiansen appearing for the Appellant W.J.S. Bell appearing for the (Crown) Respondent

- [1] NEWBURY, J.A.: Mr. Coleman appeals from a sentence of 18 months imprisonment and three years probation which he received after pleading guilty to three counts of sexual assault. The assaults consisted of touching the private parts of three children and various acts of oral sex with them. As counsel noted, he was essentially in the position of a caregiver to two of the children and told them they would be taken away from their mother if they disclosed what had happened. He was also in a position of babysitter vis a vis the third child.
- [2] Mr. Coleman was 36 years old at the time of sentencing. He was born with some physical disabilities and had a childhood marked by severe abuse by his father and then eventually was removed from his family's home without success. He began exhibiting psychological problems while young and has spent at least six years in a psychiatric hospital.
- [3] From the age of about 18 he indulged in illegal drugs and alcohol and has several drug related convictions. He has serious health problems and reads at a level of about a grade seven student.
- [4] A pre-sentence report prepared by a psychologist, Dr. Goyeche, indicated that Mr. Coleman has a strong need for psychological therapy but also the likelihood that he would drop out of treatment at the early stages. As well, Mr. Coleman scored high on the test for anti-social behaviour, probability of relapsed drug addiction and the probability of recidivism for sex offences. Dr. Goyeche concluded that it was unlikely Mr. Coleman could receive appropriate treatment while incarcerated (at least in a provincial facility); that being strictly supervised in therapeutic probation would reduce the risk of long term recidivism; and that any probationary period should be of maximum duration in order to allow for therapeutic results and long term monitoring.

- [5] Taking this report and the other circumstances, including Mr. Coleman's expressed remorse for the assaults, into consideration the trial judge concluded that an appropriate sentence would be 18 months imprisonment followed by a term of probation of three years. In his words: It is essential, according to the doctor's report, and the circumstances of the offence would indicate, that this accused must be subject to a structured and a rigorous probationary period in order to protect the society from his type of offences, as well as achieving whatever benefit can be achieved by way of rehabilitation for him. The terms of his probationary period will be to report to a probation officer within two days of his release from any correctional facility; that he will reside where directed to reside by his supervising probation officer. He will take such counselling and appear for such assessments as he is directed by his supervising probation officer, and that will include attending at any such facility for the residential assessment or treatment of any sexual offender program or any other programs that he may be directed to attend by his supervising probation officer. He is to abstain absolutely from the consumption of alcohol or non-prescription medications. He will submit to a breath or urinalysis test on demand of a peace officer. He will not have any contact, direct or indirect, with any of the complainants mentioned in the Information or members of their family. He is not to go within one hundred metres of the -- what's the official name of Village Green part, Mr. Ruse? MR. RUSE: It was a hundred metres of -- THE COURT: The Village Green something at Westbank. MR. RUSE: Village Green Way. MS. CHRISTIANSEN: Village Green Way. MR. RUSE: I can give you the actual residential street. It's Village Green Way, but the address is 3381. THE COURT: Very well. 3381 Village Green Way. He is also to have no contact with any person under the age of sixteen years, except as authorized in writing by his supervising probation officer, and he will be subject to an order made pursuant to Section 161 of the Criminal Code that he is not to attend at any public park or public swimming area where persons under the age of fourteen years are present or can reasonably be expected to be present, or any daycare centre, school-ground, playground, or community centre. He is not to seek or obtain any continuing or any employment, remunerated or not, or act as a volunteer in any capacity that involves being in a position of trust or authority towards persons under the age of fourteen years, and this prohibition will continue for ten years from the date of his release from any correctional facility. I think those are all the conditions that I was referred to and that I will impose as part of his sentence. As well, Mr. Coleman was prohibited from possessing any firearms for life pursuant to s.110 of the Code.
- [6] On appeal, Ms. Christiansen on behalf of Mr. Coleman argues that the sentence was unreasonable both in terms of length and in terms of the probation condition regarding the consumption of alcohol. She emphasized that the appellant has during his incarceration twice completed the anger management and "Breaking Barriers" programs as well as other courses and therapy sessions at Stave Lake. He still plans to do a program on "Victim Empathy". On his release, he has plans to resume residing with a friend and to avail himself of therapy at the Sexual Behaviours Clinic at the Royal Ottawa Hospital.

- [7] Ms. Christiansen asks us to find that he should receive double credit for time spent pre-sentencing in protective custody, when he was subject to at least verbal abuse from other inmates. This time was about ten months thus the sentence of 18 months with double time would come to approximately 38 months. The sentencing judge did indicate, however, that he had considered the time spent pre-sentencing. Ms. Christiansen also argues that the length of the sentence is outside the range considering the appellant's guilty plea, his difficult personal situation, his expressed remorse, and his efforts to rehabilitate himself. She says further incarceration now is superfluous, and that he needs to get out into the community where under close supervision he can start to work towards living a normal life.
- [8] Last, Ms. Christiansen notes the condition that he abstain from alcohol is a very tough one for an alcoholic to comply with.
- [9] Ms. Christiansen has said everything that can be said in support of the appeal, but I am not persuaded that this sentence was unfit either on the authorities or on the specific facts of this case. These were serious offences and this appellant has severe psychiatric problems that must be dealt with in a closely supervised situation.
- [10] With respect to the condition regarding alcohol consumption, in view of the psychologist's strong recommendation in favour of that condition, I am not persuaded that it should be deleted. I would therefore dismiss the appeal.
- [11] FINCH, J.A.: I agree.
- [12] RYAN, J.A.: I agree.
- [13] FINCH, J.A.: Leave to appeal is granted. The appeal is dismissed. "The Honourable Madam Justice Newbury"

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