

CANADA / JUDGMENT

R. v. Collins

2021 BCSC 1038

COURT

Supreme Court of British Columbia

DECIDED

31 March 2021

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2021 BCSC 1038 R. v. Collins

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Collins,

2021 BCSC 1038

Date: 20210331

Docket: 22070-2

Registry: Rossland

Regina

v.

Anthony Alan Collins

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Before: The Honourable Madam Justice Lyster

Oral Reasons for Sentence

Counsel for the Crown:

O.J. Dudley

Counsel for the Accused

appearing via teleconference:

T.B. Doust

Place and Date of Trial/Hearing:

Rossland, B.C.

March 30, 2021

Place and Date of Judgment:

Rossland, B.C.

March 31, 2021

- [1] THE COURT: These are my reasons for judgment on the sentencing in this matter. On September 28, 2020, before Madam Justice Gropper, the accused, Anthony Alan Collins, pleaded guilty to one count of sexual interference contrary to s. 151 of the Criminal Code, R.S.C. 1985, c. C-46 [Code].
- [2] I understand that a second count of sexual assault contrary to s. 271 of the Code was stayed pursuant to the Kienapple principle.
- [3] I presided over the sentencing hearing on March 30, 2021, and am now delivering my oral reasons for sentence. As with all oral reasons, the court reserves the right to edit the reasons should the need arise for grammar, correctness, or clarity. The basis and result of the decision will not change should editing be required.
- [4] I note that on April 9, 2019, the court placed a ban on publication pursuant to s. 486.4 of the Code which prohibits the publication of any information which could identify the victim in this case. As a result, I have referred to the victim in these reasons as "T.A.," not out of any disrespect, but simply to preserve anonymity. I will also refer to other young people and persons who could identify T.A. or those other young people by their initials.

Circumstance of the Offence

- [5] I turn to the circumstances of the offence. At the time of the offence, the complainant, T.A., was 15 years old. She lived with someone she described as an "Auntie", J.R. J.R.'s two sons, D.R. and L.R., lived with them, as well, as did T.A.'s sister, R.H.J. They lived in a small community some distance from Grand Forks. Mr. Collins had previously been in a relationship with J.R. and is D.R.'s father.
- [6] On the afternoon of April 21, 2018, Mr. Collins took D.R., L.R., another male youth, and T.A. swimming at the Grand Forks Aquatic Centre. T.A. was the only female in the group.
- [7] After their swim, T.A. was in the women's changeroom changing out of her swimsuit. Mr. Collins inquired from the door if she was all right. Mr. Collins entered the women's changeroom. T.A. was undressed and struggling to get her bra on. Mr. Collins approached the stall T.A. was in. She told him she was naked and to go away. Mr. Collins put his finger to

his lips to say, "shhhh" and went into the stall to assist her with her bra. She told him to stop. He told her to, "[l]et me see," and turned her body around. She was covering herself as best she could with her hands. He removed her right hand which she was using to cover the bottom part of her body. Mr. Collins lifted T.A.'s leg from the floor, kissed her mouth, and digitally penetrated her vagina. Mr. Collins suggested to T.A. that she liked what he was doing. T.A. told Mr. Collins to stop several times. He asked her if she wanted to see his, to which she told him no. Eventually, Mr. Collins left the women's changeroom leaving T.A. distraught and crying.

- [8] T.A. then pretended everything was all right while the group got groceries and returned to her home. Once there, she went upstairs to her room and told her sister and then J.R. what had happened. J.R. questioned Mr. Collins about what had happened and he told her that he had gone into the changeroom to assist T.A. with her bra, but denied doing anything else untoward. J.R. told Mr. Collins to leave the home which he did. He was arrested later that night.

Circumstances of the Offender

- [9] I turn to the circumstances of the offender. Mr. Collins is 35 years of age. He was born in Saskatchewan in a large troubled family. Apparently, there were 12 siblings. He was removed from the home and put into foster care, I believe, when he was seven years old. I will return to the circumstances of his foster care below.
- [10] Mr. Collins works as a logger and works in a remote logging camp outside of Prince George. His employer wrote a letter of support for him that indicates he is a very hardworking and talented equipment operator with many years of experience. His position requires him to work long hours in a remote location in a demanding work environment. He is described as a valuable asset to the company. Mr. Collins' employer expressed the hope he could serve his sentence on weekends so that they could avoid terminating his employment. In his submissions, Mr. Doust indicated that he believed that if the sentence was not too lengthy Mr. Collins' employment relationship could be maintained.
- [11] As mentioned, Mr. Collins is the father of D.R. who is now nine years old and who lives with J.R. He has been in a relationship with D.S. for about three years. D.S. wrote a letter of support in which she indicated that Mr. Collins had been upfront about the charges he was facing, understands the seriousness of this matter, and is willing to accept responsibility. Mr. Collins is the main provider for their household. D.S. has two children and Mr. Doust indicated that both she and Mr. Collins hope that they will all be able to live together upon his release from imprisonment.
- [12] Dr. Paul Devlin, a psychiatrist, conducted an independent medical assessment of Mr. Collins on January 20, 2021, and his report, dated March 26, 2021, was introduced into evidence. According to Dr. Devlin, Mr. Collins reported to him that he had been through five different foster homes and was physically abused by one foster parent. Mr. Collins, together with two

of his siblings, were eventually fostered by the couple who went on to adopt him. Mr. Collins described his adoptive parents as decent people. He denies having been the victim of any sexual abuse at any time in his life.

- [13] According to Dr. Devlin's report, Mr. Collins has a grade 12 education. He has largely been employed over the last 20 years, primarily in forestry. Mr. Collins admitted to Dr. Devlin that he used to consume alcohol heavily, but only drinks casually now. He used marihuana quite frequently in the past few years, but had not been using it at the time of the offence.
- [14] Mr. Collins reported to Dr. Devlin that, immediately after the offence, he felt really depressed and suicidal and texted J.R. that he would jump off a bridge. He is not sure how close he came to actually doing so, but does not feel suicidal now.
- [15] In Dr. Devlin's opinion, Mr. Collins understands the nature of his acts, has deep remorse, and is unlikely to reoffend, particularly if he is engaged in an appropriate counselling program and he does not abuse substances.
- [16] Mr. Collins read out a letter to T.A. in court in which he expressed his regret for what he did which he described as "impulsive and selfish." He promised that he would never act towards anyone else as he had done towards T.A. He said that he accepted responsibility for his actions which had caused her so much anguish.
- [17] Mr. Collins has a single dated conviction for driving while impaired which both counsel agree is irrelevant to this offence.

Victim Impact Statement

- [18] I turn to the victim impact statement. The Crown submitted a victim impact statement from T.A. that was written with the assistance of a support worker. T.A.'s victim impact statement makes clear that she has been significantly impacted by Mr. Collins' conduct. She said that she had experienced depression, anxiety, and anger. The offence made her feel dirty and sick. She has been afraid to leave the house due to panic attacks. She has been prescribed medication for anxiety which she takes only when absolutely necessary because she is worried about the possibility of addiction. T.A. has difficulty eating due to the offence and has lost weight as a result. She has problems sleeping.
- [19] T.A. also says that as a result of the offence, her family had to move and find a new place to live. Her mother had to give up work and cancel jobs that she had lined up. They moved to another small community with a low employment rate because it was the only affordable place they could find.
- [20] T.A. says that she worries about what will happen if Mr. Collins is not convicted and if he will find her and hurt her or others.

[21] T.A. says that since the offence she is not the same as she used to be. She says she is in a very dark place and had thoughts of wanting to be dead. T.A. has felt like it was her fault that Mr. Collins' kids no longer get to see their dad. T.A. has questioned whether it would have been better if she did not tell anybody about what Mr. Collins did because then she would still be with her sister and Mr. Collins' kids would still have their dad. She says she told someone what happened because she knew it was not right and she wanted Mr. Collins' kids to be safe.

Legal Principles of Sentencing

[22] I turn to the legal principles of sentencing. Section 718 of the Code provides that the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions. These purposes are achieved by imposing sentences which have, amongst others, the following objectives:

- 1) denouncing unlawful conduct;
- 2) deterring the offender and other persons from committing offences;
- 3) separating offenders from society where necessary;
- 4) assisting in the rehabilitation of offenders;
- 5) providing reparations for harm done to the victim and to the community; and
- 6) promoting a sense of responsibility in offenders and acknowledgment of the harm done to the victim and to the community.

[23] In cases where there are no exceptional or unique circumstances, s. 718.1 of the Code stipulates that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: *R. v. L.M.*, 2008 SCC 31, at para. 22. Under s. 718.01, where the court imposes a sentence that involves the abuse of a person under the age of 18, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

[24] Section 718.2 of the Code stipulates that when imposing a sentence, the court shall taken into consideration any relevant aggravating or mitigating circumstances relating to the offence or to the offender including evidence that the offender abused a person under the age of 18 years, abused a position of trust or authority in relation to the victim, or that the offence had a significant impact on the victim considering their age and other personal circumstances including their health and financial situation.

[25] It is well established that the victimization of a vulnerable person is an aggravating factor. As was stated recently by our Court of Appeal in *R. v. D.N.*, 2018 BCCA 190, at para. 20:

Among the core values of our society is recognition of the need to care for vulnerable children and protect them from harm and suffering. Children are entitled to be nurtured, protected, and guided by their parents and stepparents, not used for their depraved pleasure. When this essential trust is broken, the offender's moral culpability is high and the harm caused to the victim is profound. In consequence, in cases involving sexual offences committed against children, the authorities are replete with statements regarding the need to give precedence to denunciation, deterrence and retributive punishment.

[26] On September 19, 2019, a new provision, s. 718.04 came into force. It provides as follows:

When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances -- including because the person is Aboriginal and female -- the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

[27] While the evidence about T.A.'s status is somewhat indirect, it appears from the evidence before the court that she is Indigenous. In this regard, Crown counsel referred to T.A.'s victim impact statement which was prepared with the assistance of her support worker at Ktunaxa Kinbasket Child and Family Services. Regardless of her status as an Aboriginal person, however, T.A. was clearly a vulnerable person in light of her age and gender.

Mr. Collins' Status and Application of Gladue

[28] I turn to a consideration of Mr. Collins' status and the potential application of Gladue. In *R. v. Gladue*, [1999] 1 S.C.R. 688, the Supreme Court of Canada noted the systemic and background factors that have affected Indigenous people in Canada. At para. 67, the court stated:

The background factors which figure prominently in the causation of crime by aboriginal offenders are by now well known. Years of dislocation and economic development have translated, for many aboriginal peoples, into low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation. These and other factors contribute to a higher incidence of crime and incarceration.

[29] The principles relating to sentencing Aboriginal offenders discussed in *Gladue* were affirmed by the Supreme Court of Canada in *R. v. Ipeelee*, 2012 SCC 13, at paras. 57-87.

[30] Mr. Collins is not an Indigenous person. As mentioned, he was born in Saskatchewan to a family with 12 siblings. His family of origin was troubled. He was put into foster care. He was eventually placed with two of his siblings with foster parents who are Métis. They ultimately adopted him. Counsel for Mr. Collins advised the court that the Government of Canada therefore considers Mr. Collins to be Métis. Crown counsel did not disagree with that assertion. However, neither counsel pressed the issue of the potential applicability of the *Gladue* principles in these circumstances and the court was provided no evidence as to

the impact, if any, of racism, intergenerational trauma, and the like on Mr. Collins. The court is mindful of the need to exercise restraint in sentencing as outlined in s. 718.2(d) and (e) of the Code and I do bear those principles in mind in fashioning the sentence I will impose today.

- [31] Even where they do apply, it is important to note that the application of Gladue principles does not mean that Aboriginal offenders will necessarily receive shorter sentences. In particular, in cases involving serious offences where there is a pressing need for denunciation and deterrence, such as sexual assaults against children committed by adults in a position of trust, it is now settled law that, absent extraordinary circumstances, both Aboriginal and non-Aboriginal offenders will generally receive sentences of imprisonment: see *R. v. Wells*, 2000 SCC 10 at paras. 34, 39-42, 44; *Gladue* at paras. 33, 54, 74, 78-79, *R. v. Kakekagamick* (2006), 211 C.C.C. (3d) 289 (O.N.C.A.) at paras. 35-36, 42-43 and 71-74; and *R. v. E.M.Q.*, 2015 BCSC 201 at paras. 48-49.

Aggravating Factors

- [32] In terms of the aggravating factors in this case, in its submissions on sentencing, the Crown points to the following aggravating factors:
- a) The victim was a vulnerable 15-year-old girl at the time of the offence;
 - b) Mr. Collins was in a position of trust; and
 - c) The offence had a very significant impact on T.A. and on her family as demonstrated by her victim impact statement.

Mitigating Factors

- [33] In terms of mitigating factors, the chief mitigating factor relied upon by Mr. Doust is the fact that Mr. Collins waived his right to a preliminary inquiry and pled guilty thereby saving T.A. from having to testify. He relies on the fact that Mr. Collins is remorseful and he also points to Mr. Collins' very difficult upbringing.

Crown's Position on Sentencing

- [34] I turn to the Crown's position on sentencing. The Crown seeks a sentence of one year's incarceration followed by a probation period of two to three years. The terms of probation I will discuss in further detail when I come to impose sentence.
- [35] The Crown relies on the following cases:

- a) *R. v. B.T.J.N.*, 2021 BCPC 44, in which a six-month sentence followed by a 24-month probation order was imposed against the offender who had pleaded guilty under s. 151. The offender in that case was Aboriginal. He had engaged in a pattern of offending against the victim, his stepdaughter, when she was seven years old. The Crown places particular reliance on Judge Frame's discussion and application in *B.T.J.N.* of the decision of the Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9 [Friesen].
- b) *R. v. Roth*, 2020 BCSC 2200, in which a 16-month sentence followed by a three-year probation order was imposed against the offender who was found guilty after trial under both s. 151 and s. 152. The offender in that case was a family friend and occasional babysitter of the victim who was found guilty of touching the victim on six occasions starting when she was six years old.

Defence's Position on Sentencing

- [36] Turning to the defence's position on sentencing, Mr. Doust submits that in the circumstances of this case which I have outlined in detail, a sentence of six months is appropriate. He does not disagree with the probation order proposed by the Crown.
- [37] Mr. Doust relies on the following cases:
- a) *R. v. D.M.*, 2021 BCSC 379, in which a 90-day sentence to be served intermittently followed by a 24-month probation period was imposed against the offender who was found guilty under s. 153(1)(a) of sexual exploitation of a young person. The convictions related to four incidents of sexual touching of the victim when she was between 16 and 18 years of age.

Analysis

- [38] Sentencing is an individualized process. However, as part of its analysis, the court consider the range of sentences imposed for similar offenders committing similar offences and the principles governing sentences that I have reviewed are those that must prevail.
- [39] In this regard, I would refer to the decision of the Supreme Court in *Friesen* where it wrote the following about the objective of the Code provisions dealing with sexual offences against children, and in providing my oral reasons, I will omit the internal citations from *Friesen*. The court wrote:
- [42] Protecting children from wrongful exploitation and harm is the overarching objective of the legislative scheme of sexual offences against children in the Criminal Code. Our society is committed to protecting children and ensuring their rights and interests are respected (*Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, at para. 67). As Otis J.A. stated in *R. v. L. (J.-J.)* (1998), 1998 CanLII 12722 (QC CA), 126 C.C.C. (3d) 235 (Que. C.A.), [translation] "the protection of children constitute[s] one of the essential and perennial values" of Canadian society (p. 250). Protecting children from becoming victims of sexual offences is thus vital in a free and democratic society (*R. v. Mills*,

2019 SCC 22, at para. 23).

- [40] The court went on to describe the interests that the Code provisions are intended to protect:
- [51] The prime interests that the legislative scheme of sexual offences against children protect are the personal autonomy, bodily integrity, sexual integrity, dignity, and equality of children. This Court recognized the importance of these interests in *Sharpe* in the context of the production of child pornography. As this Court reasoned, the production of child pornography traumatizes children and violates their autonomy and dignity by treating them as sexual objects, causing harm that may stay with them for their entire lifetime (para. 92, per McLachlin C.J., and para. 185, per L'Heureux-Dubé, Gonthier and Bastarache JJ.). Sexual violence against children is thus wrongful because it invades their personal autonomy, violates their bodily and sexual integrity, and gravely wounds their dignity (see *Sharpe*, at paras. 172, 174 and 185, per L'Heureux-Dubé, Gonthier and Bastarache JJ.).
- [55] These developments are connected to a larger shift, as society has come to understand that the focus of the sexual offences scheme is not on sexual propriety but rather on wrongful interference with sexual integrity. As Professor Elaine Craig notes, "This shift from focusing on sexual propriety to sexual integrity enables greater emphasis on violations of trust, humiliation, objectification, exploitation, shame, and loss of self-esteem rather than simply, or only, on deprivations of honour, chastity, or bodily integrity (as was more the case when the law's concern had a greater focus on sexual propriety)" (*Troubling Sex: Towards a Legal Theory of Sexual Integrity* (2012), at p. 68).
- [56] This emphasis on personal autonomy, bodily integrity, sexual integrity, dignity, and equality requires courts to focus their attention on emotional and psychological harm, not simply physical harm. Sexual violence against children can cause serious emotional and psychological harm that, as this Court held in *R. v. McCraw*, 1991 CanLII 29 (SCC), [1991] 3 S.C.R. 72, "may often be more pervasive and permanent in its effect than any physical harm" (p. 81).
- [41] The court went on to describe the need for courts in crafting sentences to take into account the gravity of sexual offences against children:
- [75] In particular, courts need to take into account the wrongfulness and harmfulness of sexual offences against children when applying the proportionality principle. Accurately understanding both factors is key to imposing a proportionate sentence (*R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773, at paras. 43-44). The wrongfulness and the harmfulness impact both the gravity of the offence and the degree of responsibility of the offender. Taking the wrongfulness and harmfulness into account will ensure that the proportionality principle serves its function of "ensur[ing] that offenders are held responsible for their actions and that the sentence properly reflects and condemns their role in the offence and the harm they caused" (*Nasogaluak*, at para. 42).

- [76] Courts must impose sentences that are commensurate with the gravity of sexual offences against children. It is not sufficient for courts to simply state that sexual offences against children are serious. The sentence imposed must reflect the normative character of the offender's actions and the consequential harm to children and their families, caregivers, and communities (see *M. (C.A.)*, at para. 80; *R. v. Morrissey*, 2000 SCC 39, [2000] 2 S.C.R. 90, at para. 35). We thus offer some guidance on how courts should give effect to the gravity of sexual offences against children. Specifically, courts must recognize and give effect to (1) the inherent wrongfulness of these offences; (2) the potential harm to children that flows from these offences; and, (3) the actual harm that children suffer as a result of these offences. We emphasize that sexual offences against children are inherently wrongful and always put children at risk of serious harm, even as the degree of wrongfulness, the extent to which potential harm materializes, and actual harm vary from case to case.
- [42] Finally, the court emphasized that conduct of the sort engaged in by Mr. Collins is inherently violent:
- [77] As this Court recognized in *L.M.*, violence is always inherent in the act of applying force of a sexual nature to a child (para. 26). Far from removing the violence, the sexual dimension instead aggravates the wrongfulness of the violence by adding interference with the child's sexual integrity to the interference with the child's bodily integrity. Physical contact of a sexual nature with a child always means that the offender has interfered with both the child's "security of the person from any non-consensual contact or threats of force" and the child's bodily integrity, which "lies at the core of human dignity and autonomy" (*R. v. Ewanchuk*, 1999 CanLII 711 (SCC), [1999] 1 S.C.R. 330, at para. 28; see also *McCraw*, at p. 83). Such physical sexual contact is also a form of psychological violence precisely because bodily and psychological integrity are closely linked (see *Ewanchuk*, at para. 28; *L.M.*, at para. 26). The degree of physical interference and the intensity of physical and psychological violence vary depending on the facts of individual cases. However, any physical contact of a sexual nature with a child always constitutes a wrongful act of physical and psychological violence even if it is not accompanied by additional physical violence and does not result in physical or psychological injury. Courts must always give effect to this inherent violence since it forms an integral component of the normative character of the offender's conduct (*M. (C.A.)*, at para. 80).
- [43] There is no question in this case that Mr. Collins took advantage of the trust vested in him by T.A. and violated her innocence and physical integrity. When this essential trust is broken, the offender's moral culpability is high and the harm caused to the victim is profound. In such circumstances, the law is clear that the need for denunciation, deterrence, and retributive punishment must take precedence: *D.N.* at para. 20, and *R. v. R.R.M.*, 2009 BCCA 578 at para. 20.
- [44] I accept that both the aggravating factors and mitigating factors that were referred to by the Crown and the defence are present in this case.

- [45] Mr. Collins has acknowledged his guilt and has expressed remorse and shame for his conduct and regret for the impact it has had on T.A. Unfortunately, none of the evidence before the court provides any real explanation for Mr. Collins' behaviour. Mr. Doust described it as a crime of opportunity rather than one that was planned, but the court is left without any explanation as to why Mr. Collins would have seized the opportunity presented and made what his counsel described as the worst decision of his life.
- [46] Sentencing of any offender for a sexual offence is an extremely difficult task.
- [47] I have given the circumstances of this case considerable thought.
- [48] Mr. Collins, I have considered that at the time of the offence, you were in a position of trust for a 15-year-old girl, that the sexual touching took place in a women's changeroom, a place where T.A. had every right to feel safe. You were the responsible adult who had been entrusted by J.R. with taking T.A. and the other young people for a swim. You betrayed that trust. Your conduct was morally blameworthy. You removed T.A.'s hand which she was attempted to use it to cover her naked body, you kissed her on the mouth, and you penetrated her vagina digitally. You persisted in this conduct despite the fact that T.A. repeatedly told you to stop. Your conduct was a wrongful act of physical and psychological violence. The effect of your wrongful conduct on T.A. has been profound. Her family has also been adversely affected.
- [49] I have also considered your extremely difficult upbringing. I have considered the fact that this is a single isolated event and your lack of any relevant criminal record. I have considered your remorse which I accept is genuine and your guilty plea. I have considered the support you have from your employer and your present partner, Dr. Devlin's opinion that you are unlikely to reoffend, and your willingness to take counselling.

The Sentence

- [50] Mr. Collins, will you please stand?
- [51] Having considered all of what I have mentioned, this is clearly a case in which a custodial sentence is necessary to further the ends of justice. A sentence of one year will reflect the seriousness of Mr. Collins' offence against T.A. and fulfill the primary sentencing objectives in this case of denunciation and deterrence.
- [52] There will follow a period of three years of probation on the following terms:
1. That you keep the peace and be of good behaviour.
 2. You must appear before the court when required to do so by the court.
 3. You must notify the court or your probation officer in advance of any change of name or address, and promptly notify the court or your probation officer of any change in employment or occupation.

4. You must have no contact or communication directly or indirectly with T.A.
 5. You must not go to or be within 250 metres of any residence, school, or workplace that you know to be that of T.A. If you see T.A., you must leave her presence immediately without any words or gestures.
 6. You must reside at an address approved in advance by your probation officer, and provide them with your phone number. You must not change your residence or phone number without written permission from your probation officer. You must advise your probation officer of the names and ages of all persons under the age of 16 living at the same residence as you.
 7. You must report in person to a probation officer in Prince George within 48 hours of your release from custody, unless you have obtained, before your release from custody, prior written permission from the probation officer to report elsewhere or within a different timeframe. After that, you must report as directed by your probation officer.
 8. You must not possess or consume alcohol or marijuana or any intoxicating substance, except as prescribed by a medical practitioner.
 9. You must attend, participate in, and complete any intake, assessment, counselling, or education program as directed by your probation officer. This may include counselling or programming for sexual offence prevention.
- [53] I must also make two ancillary mandatory orders as you have been found guilty of a primary designated offence. First, pursuant to s. 487.051(1) of the Criminal Code, there will be an order in Form 5.03 authorizing the taking of samples of bodily substances from you. The samples, which are for DNA purposes, will be taken from you while you are in custody and you must submit to the taking of the samples. Second, there will be an order in Form 52 requiring that you comply with the Sex Offender Information Registration Act for 20 years as required by s. 490.013(2) of the Criminal Code.
- [54] There will also be a 10-year firearms restriction pursuant to ss. 109(1)(a) and 109(2) of the Criminal Code.
- [55] Finally, I note that Crown counsel invited me to consider making orders under s. 161(a), (a.1), (b), and (c) of the Criminal Code. The relevant sections provide:
- 161 (1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 [which is applicable here] the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from

- (a) attending a public park or public swimming area where persons under the age of 16 are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;
 - (a.1) being within two kilometres, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or of any other place specified in the order;
 - (b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years;
 - (c) having any contact - including communicating by any means - with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate;
- [56] As I have said, sexual interference contrary to s. 151 of the Code is one of the offences referred to in that section, but a prohibition order under s. 161 is discretionary and applies only to offenders who constitute a danger to children: *R. v. Heywood*, [1994] 3 S.C.R. 761.
- [57] I have considered s. 161 and its purpose which is to serve an overarching protective function to shield children under the age of 16 from sexual violence: *R. v. K.R.J.*, 2016 SCC 31 at para. 44.
- [58] A sentencing judge has the flexibility to address the degree of risk of an individual offender reoffending in the community and to craft an order that is tailored to the circumstances of the individual offender: *K.R.J.* at para. 47. Section 161 of the Code orders can be imposed only where there is an evidentiary basis upon which to conclude that the particular offender poses a risk to children and a sentencing judge is satisfied that the terms of such an order are a reasonable attempt to minimize that risk: *K.R.J.* at para. 48.
- [59] Given where this offence occurred, I am persuaded that it is appropriate to make an order under s. 161(1)(a) to prohibit Mr. Collins for the three-year period of his probation from attending at a public park, community centre or swimming area, where persons under the age of 16 years are present or can reasonably be expected to be present. The exception is if you have the written permission of your probation officer and, in that event, you must carry the written permission when you are in a prohibited area.
- [60] I have already addressed the terms of the probation order that Mr. Collins is not to go to or be within 250 metres of any residence, school, or workplace that he knows to be that of T.A. As a result, I do not think any further order is necessary under s. 161(1)(a.1).

- [61] I have considered whether to make an order under s. 161(1)(b). I am persuaded that such an order is appropriate for the term of Mr. Collins' probation and that is subject to an exception, if you have the written permission of your probation officer and, in that event, you must carry the written permission at all times you are engaged in employment, whether paid or volunteer, that involves being in a position of trust or authority towards persons under the age of 16 years.
- [62] I have considered whether to make an order under s. 161(1)(c) and I am not prepared to make such an order in light of the fact that D.S. hopes to live with Mr. Collins together with her children upon his release as well as the fact that Mr. Collins is the father of D.R. with whom I understand he has some limited contact. I am not persuaded on the evidence before the court that Mr. Collins poses a risk of reoffending if he has contact with those children and, in the absence of such evidence, I do not wish to prevent Mr. Collins from doing so.
- [63] That concludes my reasons on sentencing. Counsel, is there anything further or anything I have missed?
- [64] MR. DOUST: No, My Lady.
- [65] MR. DUDLEY: I have nothing further, My Lady. I do not think you missed anything at all.
- [66] THE COURT: All right.
- [67] THE CLERK: How long was the 161 order, My Lady?
- [68] THE COURT: The term of Mr. Collins' probation for three years.
- [69] THE CLERK: For three years? Thank you.
- [70] MR. DUDLEY: I think that leaves me simply to direct a stay in regard to the other counts in the indictment if that has not already been done.
- [71] THE COURT: I was not sure from the record if it had or had not occurred. It has not occurred so, yes, a stay will be directed in respect of the other count.

"Lyster J."

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