

CANADA / JUDGMENT

## R. v. Cossentine

2019 BCSC 2097

COURT

Supreme Court of British Columbia

DECIDED

18 October 2019

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### IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cossentine,

2019 BCSC 2097

Date: 20191018

Docket: 89585-3;

89585-4

Registry: Kelowna

Regina

v.

Brett Cossentine

Restriction on publication: Pursuant to s. 486.4(1) of the C.C.C.

Section 16(4) Sex Offender Information and Registration Act ("SOIRA"):

This section provides that no person shall disclose any information that is collected pursuant to an order under SOIRA or the fact that information relating to a person is collected under SOIRA.

Before: The Honourable Mr. Justice G.P. Weatherill

Oral Reasons for Sentence

Counsel for the Crown:

D. Blumenkrans

Counsel for the Accused:

J. van der Walle

Place and Date of Trial/Hearing:

Kelowna, B.C.

June 17, 19 and October 7, 2019

Place and Date of Judgment:

Kelowna, B.C.

October 18, 2019

## Introduction

- [1] Mr. Cossentine is before me for sentencing having pled guilty on March 4, 2019, to one count of touching a person under the age of 16 years for a sexual purpose contrary to s. 151 of the Criminal Code. Throughout these reasons, I will be referring to the complainant person by her initials G.N.
- [2] On March 4, 2019, Mr. Cossentine also pled guilty to failing to comply with a condition of an undertaking by communicating with G.N., contrary to s. 146(5.1) of the Criminal Code.

## Circumstances

- [3] The circumstances of the offences are agreed to. I am grateful to counsel for their efforts in compiling an agreed statement of facts that was marked as Exhibit 1 on this sentencing. I do not propose to repeat what is in it. It speaks for itself, but if these reasons are ordered, the agreed statement of facts will be attached as an appendix.
- [4] For the present purposes, I plan only to give the following brief summary. The offences took place over a three-and-a-half-month period between February 13, 2018 and May 29, 2018. Mr. Cossentine, aged 27 at the time, was in a management position at the Cineplex Theatre in Kelowna ("Theatre") having been so hired in late November 2017. G.N., aged 15 at the time, also worked at the Theatre having been hired as a cast member starting in mid-November 2017 shortly before Mr. Cossentine was hired.
- [5] Commencing on February 13, 2018 and continuing until May 29, 2018, Mr. Cossentine and G.N. engaged in various forms of sexual relations including oral, anal, and vaginal intercourse on numerous occasions. Initially, Mr. Cossentine thought G.N. was 18 years of age, but soon after their first sexual encounter, found out that she was only 15. Nevertheless and despite this knowledge, their sexual encounters continued at a rate of about three times per week, a significant number of which were at the Theatre.

- [6] On May 29, 2018, another staff member of the Theatre called the RCMP to inform them of the relationship. Mr. Cossentine turned himself in to the RCMP the following day.
- [7] He was released on a promise to appear and an undertaking to a police officer that contained a condition that he "undertake to abstain from communicating directly or indirectly with G.N."
- [8] In violation of that condition, on June 10, 2018, he contacted G.N. by Instagram asking how she was doing, expressing concerns that criminal charges against him would negatively impact his life, telling G.N. he was suicidal, saying that if she was completely honest in court it would be really bad for him, asking her to deny their relationship, and inquiring if she was going to press charges against him.

### Criminal History

- [9] This is the first time Mr. Cossentine has had any involvement with the criminal justice system. He has no prior criminal record.

### Background

- [10] Mr. Cossentine was born in Ontario and moved to the Okanagan with his parents at the age of one year's old. He has three older siblings. By all accounts, he had a normal and uneventful upbringing. He completed high school in Summerland and then moved to Vancouver to further his education at the Columbia Academy in an audio engineering program. That school shut down before he completed the program so he returned to the Okanagan and obtained a certificate at the Centre of Arts and Technology in Kelowna.
- [11] From 2012 through 2017, he worked at the Pizza Hut in their management trainee program, but quit that job when Pizza Hut did not follow through with a promised management position. In November 2017, he obtained employment at the Cineplex Theatres where he met G.N.
- [12] He left the Theatre at the end of May 2018, as a result of this matter. He obtained employment at a Subway in Kelowna and then left that employment for McDonald's where he is currently employed as assistant support manager. He works at a computer and has little interaction with most other McDonald's employees. He is self-supporting and lives in an apartment with his ex-girlfriend who he dated from 2012 to early 2018.
- [13] In terms of his health, Mr. Cossentine has struggled with intermittent depressive and anxiety symptoms in the past. For example, while he was in Vancouver attending school in 2011, he felt suicidal and was taken to the Vancouver General Hospital for an assessment. He was released after a few hours. Those depressive symptoms alleviated when he returned to the Okanagan and made new friends. As a result of these charges, his anxiety, depressive symptoms, and some suicidal ideation have returned.

- [14] In his late teens, Mr. Cossentine abused alcohol and drugs as a result of being involved in the teenage party atmosphere. This behaviour returned shortly after these charges were laid. He has since reduced his consumption and now only drinks alcohol on a social basis.
- [15] He denies any attraction to children or youth.
- [16] He admits guilt for these offences and expresses remorse for his actions.

### **Psychological Assessment and Presentence Report**

- [17] Following Mr. Cossentine's guilty pleas, a presentence report and a psychological/psychiatric assessment were ordered. I have had the benefit of reviewing the following documents:
- (a) a psychological assessment report dated April 18, 2019, prepared by Dr. Kimberly Kreklewetz, a registered psychologist with the Forensic Psychiatric Services Commission, with the assistance of Marion Le, a practicum student; and
  - (b) a presentence report dated April 25, 2019, prepared by Mr. Rick Coffin, a senior probation officer with Kelowna Community Corrections.
- [18] The psychological assessment disclosed that Mr. Cossentine is in the low to moderate range of recidivism. Dr. Kreklewetz's diagnosis is that he suffers from an adjustment disorder with mixed anxiety and depressed mood and presents as a low to moderate risk of suicide or self-harm.
- [19] She made three recommendations:
- (a) that he be referred to the sex offender treatment program which is available at both provincial and federal-level institutions as well as in the community through Forensic Psychiatric Services;
  - (b) that restrictions be imposed on Mr. Cossentine that he have no contact with minors until such time as he successfully completes a sex offender treatment program and his treatment providers can reassess his level of risk; and
  - (c) that he receive individual psychological therapy to address any longstanding mental health issues.
- [20] The presentence report is mostly unremarkable. Mr. Coffin summarized his presentence report by saying that:

It would appear a level of immaturity, poor judgment/decision-making, poor coping skills and engaging in wilful blindness were contributing factors in the offences before the court.

## Victim Impact Statement

- [21] I have had the benefit of two victim impact statements that are filed in evidence. The first is from G.N. read by the Crown and the second from G.N.'s mother who read hers in court.
- [22] Both victim impact statements are compelling.
- [23] Both statements confirmed the serious and profound effects the relationship between Mr. Cossentine and G.N. had and continue to have on G.N. and her immediate family.

## Aggravating Factors

- [24] The Crown points to what it says are a number of aggravating factors in this case.
- [25] Firstly, s. 718.2(a)(ii.1) of the Code states that evidence that Mr. Cossentine in committing the offence abused a person under the age of 18 is deemed to be an aggravating factor. I agree that that is an aggravating factor.
- [26] Secondly, s. 718.2(a)(iii) states that evidence of Mr. Cossentine, in committing the offence, abused his position of authority in relation to G.N. is deemed to be an aggravating factor. As second-in-command to the general manager of the Theatre, Mr. Cossentine's duties included interviewing and hiring all staff, managing payroll and day-to-day operations of the Theatre. He had direct supervisor/manager responsibility over G.N. and had access to her personal information, control over her schedule, and access to private areas of the Theatre. He also was tasked with training G.N. That position of authority, the Crown says, is made out because of his duties and because he was G.N.'s direct supervisor. The parties met at work and the relationship between them proceeded from there. The Crown asserts that it matters not whether Mr. Cossentine used or exploited that authority. That is not as important as the fact of him being a person in a position of authority over G.N. Further, the Crown says Mr. Cossentine and G.N. engaged in sexual conduct while at work. The Crown refers to R. v. P.E.S., 2018 MBCA 124, at para. 57.
- [27] Aggravating circumstances must be proven beyond a reasonable doubt. Here, I am not satisfied beyond a reasonable doubt that in committing the offence Mr. Cossentine abused a position of authority over G.N. While it is true Mr. Cossentine was G.N.'s manager and had some degree of control over her, the evidence falls short of proving on the criminal standard that he used that position to take advantage of G.N. as the Crown alleges. If the standard of proof was the civil standard of balance of probabilities, I would have been so satisfied. However, on the material before me, I have a reasonable doubt that Mr. Cossentine abused his position as a manager at the Theatre in committing the offence against G.N. This is therefore not an aggravating factor.
- [28] Thirdly, the Crown points to the two victim impact statements that suggest a significant impact the offence has had on G.N.'s life, that s. 718.2(a)(iii.1) deems to be an aggravating factor. I agree that this is an aggravating factor.

- [29] Evidence of these points is before me in the form of the pre-sentence report and the victim impact statements, both of which are, on first blush, hard to reconcile with the statement G.N. gave to the police on May 31, 2018. In that statement, G.N. professed her love for Mr. Cossentine and that the two of them "clicked right away." She stated that he asked her to be his girlfriend on April 1, that Mr. Cossentine would not have known her age until she told him her 16th birthday was coming, that they became very close, that although he was her direct boss, there was never any pressure put on her to do anything or that he expected anything and that the fact that he was her manager had nothing to do with their relationship. She went on to state that she really loved him, that she had no regrets, and that had the charges not been laid, they would have a stronger relationship and still be together. Further, she then stated that she did not want Mr. Cossentine charged, but that her mother did and that losing his job with the Theatre was punishment enough. She said the relationship was not a fling, but rather they were planning on having a long-term relationship.
- [30] I accept that at the time G.N. provided her statement to the police, she had not processed the enormity of what had occurred and was trying to protect Mr. Cossentine. It was not until later when she fully appreciated the impact. I accept her victim impact statement as genuine.
- [31] A fourth aggravating factor is the age difference between Mr. Cossentine and G.N. of 11 years and four months. I accept this age difference as an aggravating factor in the circumstances.
- [32] A fifth aggravating factor is the nature of the sexual relations and conduct from when the relationship began at the workplace until the end of May when it ended because someone informed the police what was happening. The two engaged in sexual relations from their very first encounter together in private. Mr. Cossentine's actions were purposeful and deliberate. The sex between them was not isolated to one event. It was continuous. This is not a case where Mr. Cossentine had a momentary lapse in judgment or acted on impulse. There was a conscious decision to continue a relationship with someone he knew was 15 and it lasted over three months until the relationship came to light. I accept that as an aggravating factor.
- [33] A sixth aggravating factor is the nature of the sexual conduct as set out in the agreed statement of facts which I do not propose to repeat. In addition to the sexual component, there was a clear emotional component in the relationship involving a 15-year-old. I accept this as an aggravating factor.
- [34] A seventh aggravating factor is that Mr. Cossentine had sex with G.N. without using contraceptives despite knowing G.N. was not on any form of birth control thus exposing her to a high risk of pregnancy and a sexually transmitted infection, see *R. v. S.J.B.*, 2018 MBCA 62, at paragraph 33. I accept this as an aggravating factor.

- [35] Finally, an eighth aggravating factor is that Mr. Cossentine kept nude photos of G.N. on his phone. Despite the fact that G.N. sent the pictures to him voluntarily, he chose to keep them on his phone. I accept this as an aggravating factor.

### Mitigating Factors

- [36] Mr. Cossentine has expressed remorse and has accepted responsibility for his actions throughout. In a heartfelt statement to the court following submissions, he apologized for what he had done and stated with sincerity that it would not happen again.
- [37] Further, there was a very early guilty plea and no hearings were required that necessitated G.N. to testify. The Crown acknowledges that this is a significant mitigating factor.
- [38] I also note as a mitigating factor Mr. Cossentine's previous good character and support in the community.
- [39] Likewise, I note his lack of criminal record or a criminal history of any kind.
- [40] I also accept that he is at a low to moderate risk of reoffending and has generally good prospects of rehabilitation. I note *R. v. S.J.B.*, at para. 34.
- [41] It is important to emphasize that despite G.N.'s seemingly being a willing participant, ostensible consent is not a mitigating factor. Indeed, it is irrelevant when considering a fit and proper sentence. De facto consent does not make the sexual activity less serious, less exploitative, or reduce the moral culpability of the offender, nor does lack of violence, threats, and manipulation. Nevertheless, they are facts that are relevant to the determination of a fit sentence: *R. v. Scofield*, 2019 BCCA 3, at paras. 37 and 39.

### Letters of Support

- [42] Mr. van der Walle filed nine letters of support on Mr. Cossentine's behalf that I have had the benefit of reviewing. They are all supportive of a finding that he is a person of good character and a person who will go out of his way to help people. For example, Ms. Hodson, his prior and current girlfriend describes him as kind, thoughtful, respectful, sweet, gentle, caring, compassionate, generous, trustworthy, and reliable.
- [43] His mother and father talked about him being compassionate, kind, gentle, someone with unlimited potential, and loving towards others, and how these charges have devastated him.
- [44] Many have known him for a number of years. In short, they describe him as a good person. One of his close friends upon which he relied for support has moved to Ontario which has proven somewhat difficult for him.

## Principles of Sentencing

- [45] Mr. Cossentine, there is no doubt that in a case such as this involving a 27-year-old working with some degree of authority over a 15-year-old, G.N., involving sexual relations of this nature with her, denunciation and deterrence are the primary principles that I must consider.
- [46] In *R. v. E.S.*, 2017 BCCA 354, at paragraph 53, our Court of Appeal referred to the comments of the Ontario Court of Appeal in *R. v. Woodward*, 2011 ONCA 610. Our Court of Appeal also stated at paragraphs 58:
- [58] In *Woodward*, Moldaver J.A. noted the overriding importance of the principles of denunciation and deterrence when sentencing adult sexual predators. These principles take precedence to recognize the magnitude of their crimes in relation to the vulnerability of their innocent victims (at para. 72):
- (1) Our children are our most valued and our most vulnerable assets.
  - (2) We as a society owe it to our children to protect them from the harm caused by sexual predators.
  - (3) Throughout their formative years, children are very susceptible to being taken advantage of by adult sexual offenders and they make easy prey for such predators.
  - (4) Adult sexual predators recognize that children are particularly vulnerable and they exploit this weakness to achieve their selfish ends, heedless of the dire consequences that can and often do follow.
  - (5) Three such consequences are now well-recognized: (i) children often suffer immediate physical and psychological harm; (ii) children who have been sexually abused may never be able, as an adult, to form a loving, caring relationship with another adult; (iii) and children who have been sexually abused are prone to become abusers themselves when they reach adulthood.
  - (6) Absent exceptional circumstances, in the case of adult predators, the objectives of sentencing commonly referred to as denunciation, general and specific deterrence and the need to separate offenders from society must take precedence over the other recognized objectives of sentencing.
- ...
- [76] In so concluding, I wish to emphasize that when trial judges are sentencing adult sexual predators who have exploited innocent children, the focus of the sentencing hearing should be on the harm caused to the child by the offender's conduct and the life-altering consequences that can and often do flow from it. While the effects of a conviction on the offender and the offender's prospects for rehabilitation will always warrant consideration, the objectives of denunciation, deterrence and the need to separate sexual predators from

society for society's well-being and the well-being of our children must take precedence.

- [47] Mr. Cossentine, it goes without saying that the offence of sexual interference that you have pled guilty to is very serious. Young people such as G.N. in this case who are under age 16 are extremely vulnerable to sexual exploitation. This is particularly so when they display precocious or sexually provocative behaviour which demonstrates that they do not have the maturity or judgment to make appropriate decisions about their own sexuality: *R. v. Aimee*, 2010 BCSC 1463, at para. 68.
- [48] The fact that G.N. was a willing participant does not lessen your moral culpability. Rightly or wrongly, Parliament has drawn the line at age 16. Before that age, a person cannot consent. I note what the Manitoba Court of Appeal said in *R. v. P.E.S.*, 2018 MBCA 124, at paras. 19 to 22:
- [19] The fact that there was ostensible consent is irrelevant. Sex between a person under 18 and a person in a position of trust, authority or in a relationship of dependency or exploitation is criminal. As noted in *R v Kiska* (12 April 2016), Winnipeg (Man Prov Ct), "In these cases the power imbalance is too great and we do not accept that true consent is possible." Indeed, pursuant to section 150.1 of the Code, consent is not a defence to sexual exploitation.
- [20] Society has been aware for some time that young persons (in this case between the ages of 16 and 17) are at a vulnerable age in their development and can be easily manipulated and exploited by individuals who they trust and who are in positions of authority over them. That is why Parliament has taken the choice away from them. The consent of the complainant is not relevant in establishing the offence and it is not relevant as a mitigating factor in sentencing (see *R v Audet*, 1996 CanLII 198 (SCC), [1996] 2 SCR 171 at para 23; and *R v Norton*, 2016 MBCA 79 (CanLII) at para 42).
- [21] To suggest otherwise is not only contrary to the jurisprudence of this Court, it also fails to recognise the insidious nature of an exploitive relationship. In addition to the power imbalance inherent in the relationship, a young person is exceptionally vulnerable due to his or her developing sexual curiosity and identity, coupled with a lack of maturity and experience.
- [22] As noted in *R v Hajar*, 2016 ABCA 222 (CanLII) (at para 98):
- [O]ne of the most destructive consequences of using de facto consent in mitigation of sentence is that it implicitly, and improperly, shifts the blame to the child. It suggests the child is complicit in the act and therefore responsible for the harm suffered. The courts cannot give legitimacy to the notion that a child is capable of giving valid consent to the sexual activity between the child victim and adult offender.

- [49] The sentencing process must emphasize the necessity of protecting children, of protecting the vulnerable by imposing penalties that are in keeping with that behaviour. Section 151 of the Code is there for a reason. Parliament in its wisdom has seen fit to make it a criminal offence punishable by imprisonment of up to 14 years for touching for a sexual purpose a person under the age of 16.
- [50] The fact, Mr. Cossentine, that you had sexual relations repeatedly over some four months with a person under the age of consent, even though you knew early on that she was not the age you assumed at first her to be. When you discovered her true age, you did not cease the relationship. You knew that having sex with her was a problem, yet you continued despite that knowledge. You were over 11 years her senior. G.N. cannot be faulted for what happened. She is not to blame. You are.
- [51] I accept, Mr. Cossentine, that you are remorseful, that you now regret what happened, and that you accept full responsibility for your actions by pleading guilty. I accept that you are concerned about the complainant's long-term mental and physical health.
- [52] I also accept that the harmful impact upon G.N. may be serious and long lasting. It includes the possibility that she may have difficulties forming relationships of her own.
- [53] The psychological report suggests that you pose a low to moderate risk of reoffending. I have no quarrel with that conclusion. You are going to have to work hard to sort yourself out, to learn from what you have done and gain insight into your behaviour so that it will never be repeated.
- [54] The overall purpose of this sentencing is to impose a just and proportionate sanction that reflects the seriousness of the offence you committed and your moral culpability for having committed it. The offending here was grave and your moral responsibility is high. You chose to give into your poor judgment despite knowing it was wrong.
- [55] Another fundamental principle of sentencing is proportionality. The sentence must be proportionate to the circumstances of your offence. As Mr. van der Walle put it, an offender must be given the sentence he deserves.
- [56] This is the first time you have been involved in the criminal justice system. You have had a good upbringing. Until this very serious lapse in judgment, you were a good citizen contributing to society and headed in the right direction. By all accounts, you continue to be a self-supporting and productive member of society.
- [57] I consider the very early guilty plea eliminating the possibility that G.N. be required to testify even at a preliminary inquiry as significant. This distinguishes this case from many of the Crown cases where the victim was required to testify at a full trial. It is worthy of much weight: *R. v. Lui*, 2014 BCSC 1929, at paras. 30 to 31.
- [58] I also consider your relatively young age. This is the first time you have been in trouble with the law and, as I have already found, your prospects of rehabilitation are strong.

- [59] In such a case, a principal element for consideration in sentencing is reformation and rehabilitation. One of the first questions to ask is whether a suspended sentence with probation would be a suitable sentence for this offence. Before imposing a custodial sentence on you as a first offender, I must carefully explore other dispositions that might be available. A custodial sentence should only be imposed in cases where the circumstances are such or the gravity of the offence is such that no other sentence is appropriate: Lui at para. 26.
- [60] On August 13, 2019, our Court of Appeal released its decision in *R. v. Williams*, 2019 BCCA 295. There, the Court dealt with the appeal of a global sentence of six-and-one-half years (three-and-a-half years on one count and four years consecutive on the other, each reduced by six months on the totality principle) for a man who pleaded guilty to two counts of sexual interference with a person under the age of 16 years contrary to s. 151 of the Code. There was a significant term of probation to follow his release. Justice Smith, speaking for the Court, stated at para.71 that sentences for sexual interference in this jurisdiction generally fall within a range of one to three years' imprisonment. It will only be in rare circumstances that a sentence should fall above or below that range. Nevertheless, the sentence must be proportionate and give weight to attenuating personal circumstances and mitigating factors that may reduce the offender's moral blameworthiness.
- [61] A sentence range has been suggested to me. You heard Crown review many cases when it made its submissions on what your sentence should be. The Crown suggests that the appropriate sentence is 32 months' imprisonment for the sexual interference conviction and four months for breach of undertaking to be served consecutively. This means Crown suggests a total of 36 months' incarceration.
- [62] Mr. van der Walle suggests that the mitigating and other circumstances of this case are exceptional and take it outside the usual sentencing range of 12 to 36 months. He submitted to me that you have no prior criminal history. You are a good person and are a contributor to society and he argues your relationship with G.N. was one of genuine affection. He suggests that this is a case where you should be given a second change and suggests a two-year suspended sentence with house arrest and other conditions with a one-year probation order to follow. Alternatively, he suggests a 90-day intermittent sentence.
- [63] Citing Scofield, Mr. van der Walle suggests that but for exceptional circumstances, the normal range of sentence should be between nine and 18 months for a case of a first-time offender, but that it may be wider based on the relationship. In other words, he argues that it can be more or less than that depending on the circumstances. Scofield, however, involved an offender who had significantly impaired cognitive functioning and that played a causal role in his offending. There is no suggestion here, Mr. Cossentine, that you have any such impairment.

- [64] Mr. van der Walle asserts that the relationship you had with G.N. developed over a period of months following your employment at the Theatre. You were co-workers who got to know each other and became friends over time, that you have common interests, and shared your future aspirations. It is suggested that your relationship became one of mutual genuine affection for each other and that developed into a sexual relationship of boyfriend-girlfriend who were "dating". Indeed, he explains your first sexual encounter occurred some three months after you met and after you went for dinner at a Moxie's Restaurant.
- [65] The sentencing process is highly individualized. As is the case with any sentence, it must fit the crime. Mr. Cossentine, your personal circumstances go to the issue of proportionality of the sentence I am to impose.
- [66] Citing the recent decision of the Quebec Court of Appeal in *R. v. Caron-Barrette*, 2018 QCCA 516, Mr. van der Walle submits that the genuine affection and emotional connection you and G.N. had for each other and what he says was a genuine bond you developed can be a mitigating factor. He suggests that given the full context of the situation, what he describes as the "real relationship" you had, one that did not start out as a sexual relationship, but one that developed over the fullness of three months of getting to know each other, opens the door to this being an exceptional case and to a consideration of a suspended sentence.
- [67] *Caron-Barrette* involved an offender who was aged 23 who began a long-term sexual relationship with a 14-year-old victim with the blessings of both sets of parents. There, the Court held that although de facto consent of a young victim is not in itself a mitigating factor, that fact cannot be completely removed from the sentencing analysis and can be considered in assessing the offender's moral culpability in order to ensure the punishment fits the crime; *Caron-Barrette* at para. 56.
- [68] In effect, Mr. van der Walle is implicitly arguing de facto consent as a mitigating factor which it is not. G.N. was legally incapable of providing consent, relationship of genuine affection or not.
- [69] As I understand the point in *Caron-Barrette*, "genuine affection" between an offender and a young complainant can be considered in the overall analysis of moral culpability. In *Caron-Barrette*, not only was there de facto consent, but the offender and the young victim were together with the knowledge and blessing of their respective parents and there was "no psychological or physical violence involved".
- [70] Ultimately, the Court held that the sentence of 14 months' incarceration was excessive in light of the romantic relationship that was approved and encouraged by the parents of both parties and instead imposed a 90-day sentence.
- [71] In my view, the facts of *Caron-Barrette* are distinguishable because the relationship was a romantic relationship where the trial judge found there was no psychological abuse or breach of trust or authority and where the victim's parents were supportive of the relationship.

- [72] That is not the case here. You and G.N. were secretive about your relationship. G.N. was having issues with her mother at the time and was defiant of her.
- [73] Mr. van der Walle also refers to the recent comments of the Alberta Court of Appeal in *R. v. Ford*, 2019 ABCA 87, where a sexual relationship with a 13-year-old and a 20-year-old was considered in the context of a relationship of genuine affection. It held that the burden of proving such a relationship was on the party seeking to rely on it. If one was found to exist, it may be considered a mitigating factor, but there must be evidence brought forward to show a sustained emotional connection between the parties, the absence of grooming, manipulation, or exploitation. Infatuation and similar emotions are not sufficient.
- [74] Here, I am not persuaded that the relationship you had with G.N. was a relationship of genuine affection within the meaning of those cases. Rather, I conclude it was one of infatuation.
- [75] Mr. Cossentine, it was a regrettable decision you made to keep up your romantic involvement with G.N. well after you became aware of her actual age. I am satisfied that your conduct was a serious violation of G.N.'s sexual integrity that has caused psychological and emotional harm to her that may last for years to come, if not for the rest of her life. Your moral culpability is significant. You understood what you were doing and later tried to persuade G.N. help you evade liability, in breach of a condition of your undertaking.

## Decision

- [76] As earlier mentioned, denunciation and deterrence are the preeminent principles and, as I have said, due regard must be had to the repetitive nature of highly intrusive sexual offending and, of course, to the fact that G.N. was only 15 years old at the time.
- [77] I am not persuaded that the circumstances urged upon me by Mr. van der Walle are exceptional or rare such that the sentence I impose is below the range.
- [78] In the end, the principle of proportionality requires that the sentence does not exceed your culpability and is just and appropriate. I conclude that what you did was a serious error in judgment and that you knew it and persisted in that course of conduct.
- [79] However, your moral blameworthiness is less serious than the moral blameworthiness of the offenders in many of the cases upon which the Crown relies involving offenders who were convicted following a full trial, where the offenders displayed a lack of remorse, had prior criminal records, where the sexual touching involved aggressive assaults, predatory behaviour, prior breaches of court orders, implied threats, callous disregard to the seriousness of the events, a lack of remorse, luring, grooming for sexual pleasure, breach of trust, and other odious circumstances.
- [80] So, Mr. Cossentine, please stand.

- [81] Given the circumstances, the various aggravating and mitigating factors which I have previously discussed, the authorities to which I have been referred, and being mindful of the principles of rehabilitation and restraint, and giving you the benefit of all the restraint that I can, it is my view that a fit, just, and proportionate sentence would be one of 16 months' incarceration, and I impose that sentence on Count 1, the s. 151 offence, Court File Number 89585-3.
- [82] Respecting the breach-of-undertaking offence, Court File Number 89585-4, I agree with the Crown that a sentence of four months is appropriate. I also accept Mr. van der Walle's submission on the reasons for your breaching the no-contact order, that they relate to your attempt to mentally deal with what had happened and out of a misguided act of desperation and while using drugs and alcohol.
- [83] I do not agree that that sentence should be served consecutively. However, because the offence was so closely related to the s. 151 offence, I therefore impose a sentence on that charge of four months to be served concurrently.
- [84] You can have a seat now, Mr. Cossentine.

### Ancillary Orders

- [85] Following your release, Mr. Cossentine, you will be on probation for a period of two years. The conditions of your probation order will be, from the Picklist:
- a) 2001, you must keep the peace and be of good behaviour. You must appear before the court when required to do so by the court. You must notify the court or your probation officer seven days in advance of any change of name, address, and promptly notify the court or your probation officer of that.
  - b) 2002, you must have no contact or communication directly or indirectly with G.N.
  - c) 2005, you must not go to or be within 50 metres of any residence, school, or workplace of G.N. or within 50 metres of where you might reasonably know G.N. may be residing, attending school, or working.
  - d) 2104, you must report in person to a probation officer at 1355 Water Street, Kelowna, within two days after your release from custody, unless you have obtained, prior to your release, written permission from the probation officer to report elsewhere or within a different timeframe. After that, you must report as directed by the probation officer.
  - e) 2202, you must reside at a residence approved in advance by your probation officer and must not change your residence or phone number without written permission from your probation officer.

- f) 2601, you must attend, participate in, and successfully complete any intake, assessment, counselling, or program as directed by your probation officer. Without limiting the general nature of this condition, the intakes, assessments, counselling, or programs may relate to sexual offence prevention.
- [86] In addition, pursuant to s. 490.012(1) of the Code, I am required to order in Form 52 that you comply with the Sex Offender Information Registration Act for a period of 20 years.
- [87] I have that form here. I have signed it as of today, Mr. Registrar.
- [88] THE CLERK: Thank you.
- [89] THE COURT: In addition, because this is a primary designated offence, pursuant to s. 487.051(1), I make an order in Form 5.03 authorizing the taking of samples of bodily substances from you for the purposes of registration in the DNA national bank. The samples will be taken from you while you are in jail and you must submit to the taking of those samples.
- [90] So those are my reasons. Now, Mr. Blumenkrans, what does the Crown propose to do with Counts 2, 3, and 4 of File 89585-3?
- [91] MR. BLUMENKRANS: Crown will be directing a stay of proceedings on those. However, just -- one just further matter I noted. My Lord, I wonder if the Court had considered a no-contact with G.N. while Mr. Cossentine is in custody, and that would be pursuant to 743.21.
- [92] THE COURT: While he was in custody?
- [93] MR. BLUMENKRANS: Yes, so it is a provision -- essentially, her name and contact information would go on a list with Corrections so that Mr. Cossentine would not have contact with her while he is in custody.
- [94] THE COURT: Oh, I see. Yes, that makes sense. I will make that order.
- [95] MR. BLUMENKRANS: So, again, it is s. 743.21(1).
- [96] THE COURT: All right, so ordered.
- [97] Anything else? Mr. van der Walle?
- [98] MR. VAN DER WALLE: No, not that I can think of, My Lord, thank you.
- [99] THE COURT: Mr. Blumenkrans?
- [100] MR. BLUMENKRANS: Just to be clear that My Lord is not intending a s. 161 order? That was the one about, you know, not going to playgrounds, to --
- [101] THE COURT: No.
- [102] MR. BLUMENKRANS: -- deal with that?

[103] THE COURT: I looked at that. No. Given his background and this being a one-off, in a sense, event, I am not going to make that order.

[104] MR. BLUMENKRANS: Thank you.

[105] MR. VAN DER WALLE: Thank you very much.

[106] THE COURT: All right. Mr. Cossentine, I wish you the best of luck. Get this behind you and let us move forward. Thank you.

"G.P. Weatherill J."

Appendix "A"

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Prepared on 29 October 2026 · Esheria