

CANADA / JUDGMENT

## R. v. Degner

2025 BCSC 432

COURT

Supreme Court of British Columbia

DECIDED

25 February 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 432 R. v. Degner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Degner,

2025 BCSC 432

Date: 20250225

Docket: 113488-2

Registry: Kamloops

Rex

v.

Christopher James Allan Degner

Before: The Honourable Justice B. Smith

Oral Reasons for Sentence

Counsel for the Crown:

K.E. Bouchard

Counsel for the Accused:

J. Killoran

Place and Date of Trial/Hearing:

Kamloops, B.C.

February 25, 2025

Place and Date of Judgment:

Kamloops, B.C.

**February 25, 2025**

- [1] THE COURT: These are oral reasons for judgment. If a transcript is ordered, I reserve the right to edit these reasons to improve readability, correct minor errors, and add case citations. If I do make any such edits, my decision and the reasons for my decision will not change.
- [2] On March 16, 2024, the jury in this matter found Mr. Degner guilty of the sole count on the indictment. That count read:

### **Count 1**

Christopher James Allan DEGNER, between the 1st day of January, 2020 and the 30th day of November, 2022, inclusive, at or near Merritt, in the Province of British Columbia, did sexually assault C.S., contrary to Section 271 of the Criminal Code.

- [3] On October 25, 2024, I provided a decision concerning findings of fact made pursuant to s. 724 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. I found the following facts had been proven beyond a reasonable doubt:
1. Between January 1, 2020 and November 30, 2022, inclusive, at or near Merritt, British Columbia, Mr. Degner, on more than one occasion, sexually assaulted C.S. by having vaginal sex with her while she was asleep without her consent.
  2. Between January 1, 2020 and November 30, 2022, inclusive, at or near Merritt, British Columbia, Mr. Degner, on more than one occasion, sexually assaulted C.S. by obtaining fellatio from her while she was on a toilet without her consent; and
  3. On or about September 2022, at or near Merritt, British Columbia, Mr. Degner sexually assaulted C.S. as described in an excerpt from her testimony at trial, which, for the purposes of these reasons for sentence, I will not read into the record, but they can be summarized as follows:
    - a) The incident occurred in or around September 2022. C.S. and Mr. Degner and their daughter, who was then about two months old at the time, were at home;
    - b) Mr. Degner wanted to have sex with C.S.; she did not want to. She was then two months post-partum;
    - c) She said it was difficult for her to have sex then and even enjoy it at all;
    - d) She communicated to Mr. Degner that she did not wish to have sex. He did not take no for an answer;

- e) She eventually gave in and he proceeded to have sex with her on the bed while the two-month-old infant was also on the bed next to them.
- [4] C.S. vocalized her non-consent on more than one occasion, but Mr. Degner was undeterred and continued with the sexual assault. C.S. testified to the effect that this had on her, how she felt objectified; the effect that the assault was taking place in the company of their daughter; and that there was no doubt that she knew that Mr. Degner knew that she did not consent, as evidenced by the fact that she was crying, to which he objected and said that she should vocalize in a way so as to indicate that she was enjoying it.
- [5] The court heard this morning from Chloe Stirbys who, upon her application, can now be identified as Chloe Stirbys, the complainant in this matter. She read out her victim impact statement, which consisted of a narrative appended to the victim impact statement form. I am not going to read the victim impact statement into the record. Suffice it to say that it is obvious that Ms. Stirbys has been greatly affected by Mr. Degner's offending, and the effects that she experienced continue to this day and likely will continue for some time, based on the content of the victim impact statement.
- [6] It is obvious from the content of the statement that this has affected her as a woman, as a mother, and that it has permeated most, if not all, aspects of her life in a negative way.
- [7] Also of relevance is the fact that, while subject to judicial interim release, Mr. Degner was charged with breaching what is colloquially referred to as a no-contact condition in relation to his contacts with Ms. Stirbys in the period between March 17, 2023 and August 31, 2023. I gather that those allegations have been admitted, because I am told that there has been a guilty plea entered in connection with the charge and that Mr. Degner has a sentencing scheduled for March 4, 2025.
- [8] I am not, of course, sentencing Mr. Degner for the breach allegation, nor is the sentence which I will impose on him in any way inclusive of that offending, but it is relevant because defence counsel in this case submits that it should be appropriate that a conditional sentence order should be considered by the court.
- [9] The Crown's position with respect to sentence is that Mr. Degner should receive a three-and-a-half-year penitentiary sentence followed by a number of ancillary orders as follows:
- a DNA order;
  - an order that he not have contact with Ms. Stirbys while he is in custody;
  - a weapons prohibition order for ten years for non-restricted weapons and lifetime for others; and
  - a SOIRA order for 20 years.

- [10] Mr. Killoran, on behalf of Mr. Degner, submits that the court should consider a conditional sentence order of two years plus three years' probation or, in the alternative, a sentence of two years less a day imprisonment. Mr. Killoran made no submissions concerning ancillary orders, and I understand from that that they are not at issue.
- [11] The applicable sentencing principles are undisputed. The fundamental purpose of sentencing is to protect society by imposing just sanctions that have one or more of the objectives of denunciation, deterrence, separation, rehabilitation, community reparations, and the promotion of responsibility in offenders, and acknowledging the harm done to victims: s. 718 of the Code.
- [12] All available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders: s. 718.2(e) of the Code. Mr. Degner is not Indigenous.
- [13] Sentencing is an inherently fact-driven and individualized process. Section 718.2 of the Code requires a sentencing judge to take consideration of various aggravating and mitigating circumstances, some of which are identified in the Code, two of which being aggravating are that evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family. Ms. Stirbys was Mr. Degner's intimate partner at all material times during the timeframe on the indictment. Secondly, evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim. Thirdly, evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation.
- [14] Further principles of sentencing include that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; that an offender should not be deprived of liberty if less-restrictive sanctions may be appropriate in the circumstances; and, as alluded to a few moments ago, that all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.
- [15] Finally, s. 718.201 of the Code addresses the increased vulnerability of female intimate partners in the circumstances of Aboriginal female victims:

A court that imposes a sentence in respect of an offence that involved the abuse of an intimate partner shall consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Aboriginal female victims.

- [16] Ms. Stirbys is Indigenous.

- [17] In terms of quantum, the maximum sentence for sexual assault is ten years in jail. There is no mandatory minimum sentence.
- [18] In *R. v. G.M.*, 2015 BCCA 165, the Court of Appeal held that in serious sexual assault cases, denunciation and deterrence are paramount and that the generally applicable range for a sentence is two to six years. It is self-evident that this case involves serious sexual assault.
- [19] *R. v. Maslehati*, 2024 BCCA 207 is most useful in determining the appropriate quantum in this case. Maslehati recognized that all sexual assaults are serious, regardless of the nature of the physical acts involved. The more aggravating the circumstances, the objectively graver is the offence, and that a non-exhaustive list of aggravating features of sexual assaults includes:
- highly invasive, violative, and/or demeaning sexual conduct - that aggravating factor is present in this case;
  - prolonged duration and/or repeated occurrences - that factor is present in this case;
  - additional physical violence and/or physical injury - that factor is not present in this case;
  - administering drugs or alcohol to incapacitate the victim or taking advantage of incapacity - that factor is present in this case, in that Ms. Stirbys was asleep during the course of some of the assaultive behaviour;
  - threats and/or the use of a weapon - that factor is not present;
  - persistence in the face of communicated non-consent or acts intended to overcome resistance - that factor is present;
  - more than one offender involved - that factor is not present;
  - sexual assault in the presence of children - that factor is present, although the child was a two-month-old infant at the time and one might assume either did not see or, if she did see, did not comprehend what she was seeing and that thus the gravamen of the aggravating factor may not be present. However, what that fails to account for is the fact that the assault nevertheless occurred in the presence of the child's mother, and the fact that the mother had to be assaulted in the presence of the infant child is itself, in my view, an aggravating factor;
  - the violation occurs in the victim's home - that factor is present;
  - planning and/or steps taken to facilitate the offence - I am not satisfied that the state of the evidence at trial or that I have found leads me to conclude that that factor is present;
  - attempts to prevent disclosure or avoid detection - that factor is not present;
  - age of the victim - for the purposes of this sentencing and based on the evidence led in the case, I am not satisfied that that aggravating factor is present;

- a particularly vulnerable victim - as indicated previously, it is statutorily an aggravating factor that the victim is a female intimate partner and an Aboriginal woman, however it is obviously important that Mr. Degner not have what is, in essence, the same aggravating factor applied twice;
- the actual and reasonably foreseeable harms that flowed from the offence, including significant impact on the victim - I would regard it as self-evident that a sexual assault can actually and reasonably be foreseen to inflict harm on the victim of the offence, particularly when the offence involves the level of offending that was present in this case, and of course we have the victim impact statement of Ms. Stirbys;
- breach of trust - Ms. Stirbys was Mr. Degner's intimate partner and that she was his intimate partner is already identified as an aggravating factor. I am reluctant to say that breach of trust should be attributed as an aggravating factor twice, and consider it only in the context of the fact that she was his intimate partner.

[20] The Court in Maslehati held that, in the absence of diminished moral blameworthiness or compelling mitigating factors, a penitentiary term of at least two years' imprisonment will generally be required for an adult sexual assault that is prosecuted by indictment and involves aggravating factors, even where that assault is committed by a first-time offender and does not involve penile penetration.

[21] Here we have an adult sexual assault which has been prosecuted by indictment and involves multiple aggravating circumstances, and has been committed by a first-time offender, and involves penile penetration on more than one occasion.

[22] There is no statutory bar to the imposition of a conditional sentence order for the sexual assault of an adult victim. However, a conditional sentence order can only be imposed where the court is satisfied that the appropriate sentence is less than two years' jail and the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the Code.

[23] The Court in Maslehati said that in cases involving an adult sexual assault with aggravating circumstances, a conditional sentence will rarely be available, even for offenders without a criminal record. The Court further held that a conditional sentence will generally not constitute a fit sentence for the kind of offence that was at issue in that appeal without a factual finding of diminished moral blameworthiness or compelling mitigation.

[24] R. v. Proulx, 2000 SCC 5, remains the leading case on when a sentencing judge can impose a conditional sentence order. I will not repeat all of the various pronouncements from Proulx. One, though, is important and that is that there are certain circumstances in which the need for denunciation is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct.

- [25] Crown and defence have both referred me to various cases. Crown has referred me to R. v. F.J.A.G., 2023 BCPC 247 and R. v. S.S., 2023 BCCA 207.
- [26] Defence has referred me to R. v. Ancheta, 2024 BCPC 64 and R. v. T.H., 2024 BCCA 123. I have reviewed these cases and, whilst I find them somewhat useful fundamentally, it is trite to observe that sentencing is an individualized process in which the court has to determine the fit and proper sentence for the offender before the court and, in determining the answer to that question, I find that Maslehati is the most helpful case.
- [27] Mr. Degner is 32 years of age. He was born in Nanaimo. He grew up on Vancouver Island. When he was about eight years old, he moved to Westbank in the southern interior. He had what can only be described as a tumultuous family environment growing up. There was drug use by both of his biological parents. He stayed with his biological father for a number of years in his formative pre-teen years, at which time he was exposed to controlled substance use, not only by his father but introduced to drug use himself by his father.
- [28] Following a jaw injury which resulted in him having to have Dilaudid administered by liquid, Mr. Degner became addicted to Dilaudid and subsequently cocaine. He struggled at school and with pro-social behaviour. He left school at the end of grade 11. He has been the victim of various assaults, including a sexual assault. His father has died from a drug overdose. He has held a variety of jobs. He has the goal of qualifying and securing work as a heavy equipment operator.
- [29] He has children. He has a daughter, now two years old, the infant that I referred to earlier in these reasons, whose biological mother is the complainant or the victim, Ms. Stirbys. He has a son and a daughter: son aged eight, daughter aged six. He has had full custody of them since 2019. He also has a ten-year-old stepdaughter. He is, by all accounts, a good father.
- [30] He suffers from general anxiety depressive disorder. He abuses alcohol, although I am told that he is what is sometimes referred to as a functioning alcohol user.
- [31] He has had mental health struggles, including in connection with what his counsel described as agony associated with the sentencing that is happening today. He has been suicidal within the past few days, I am told, and was apprehended under the Mental Health Act by the RCMP.
- [32] By all accounts, Mr. Degner has had a hard life, yet despite this he does not have a criminal record.
- [33] I have also been provided by his counsel with a book of materials, the vast majority of which are support letters, including from his mother, his sister, and various friends and relatives. These support letters are, without exception, positive. They speak to a man who is a good parent and a good friend.

- [34] The letters, for the most part, make no reference to whether or not the letter writers know any of the facts surrounding the matter that has led to Mr. Degner's conviction. It is, therefore, difficult for me to know to what extent, if any, the content of those letters would be different if, for example, somebody knew more than they currently do know. I am simply unable to assess that. That being said, Mr. Degner is not responsible for the content of what people write or what they are told, and I accept them as positive supportive letters.
- [35] In my view, having regard to the facts as have been proven and the prevailing law, a conditional sentence order would be inconsistent with the fundamental principles of sentencing, in particular denunciation and deterrence, because of the aggravating factors that are present in this case. I reach this conclusion taking into account the mitigating factors that Mr. Degner does not have a criminal record and that his personal circumstances are such that a period of incarceration is necessarily going to also affect his children. However, given the seriousness of his offending activity and the fact that his moral culpability is high, the aggravating factors have to be assessed, weighed, and balanced against the mitigating factors. Having conducted that exercise, I find that the aggravating factors greatly outweigh the mitigating factors.
- [36] Mr. Degner, please stand.
- [37] Mr. Degner, I sentence you to two and a half years in a federal penitentiary. You may be seated.
- [38] THE ACCUSED: I can sit?
- [39] THE COURT: Yes. In terms of the ancillary orders, I impose a SOIRA order pursuant to s. 490.012(3). Ms. Bouchard, how long was that for, 20 years?
- [40] CNSL K. BOUCHARD: Twenty years.
- [41] THE COURT: For a period of 20 years. I impose a DNA order pursuant to s. 487.051(1). I impose a weapons prohibition order pursuant to s. 109. This will be for ten years in relation to non-restricted weapons and for life in respect to others.
- [42] You will have no communication with Ms. Stirbys while incarcerated, and I make that order pursuant to s. 743.21 of the Code.
- [43] Any other ancillary orders?
- [44] CNSL K. BOUCHARD: No, we just have to address the victim fine surcharge.
- [45] THE COURT: All right.
- [46] CNSL K. BOUCHARD: And I would say he's going to be incarcerated, Your Honour -- Justice, so I would ask that that be waived in the circumstances.
- [47] THE COURT: Yes. In the circumstances, Mr. Degner is going to be incarcerated and I am satisfied that it is appropriate the victim fine surcharge will not be imposed.

[48] Finally, s. 743.2 of the Code says that a court that sentences or commits a person to a penitentiary shall forward to the Correctional Service of Canada its reasons and recommendation relating to the sentence or committal, any relevant reports that were submitted to the court, and any other information relevant to administering the sentence or committal, and that will happen in this case.

"B. Smith J."

B. SMITH J.

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      <https://www.bccourts.ca/jdb-txt/sc/25/04/2025BCSC0432.htm>

**CASE PAGE**              <https://chat.esheria.ai/case-law/canada/r-v-degner-2025>

Prepared on 27 October 2026 · Esheria