

CANADA / JUDGMENT

R. v. Erickson

2021 BCSC 2717

COURT

Supreme Court of British Columbia

DECIDED

21 June 2021

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2021 BCSC 2717 R. v. Erickson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Erickson, 2021 BCSC 2717 Date: 20210621 Docket: 167137-2 Registry: Victoria Regina v. Kenneth Charles Erickson Before: The Honourable Mr. Justice G.R.J. Gaul Oral Ruling: Application to Vacate s. 486.4(2) Ban on Publication Counsel for the Crown appearing via teleconference: P. K. Cheema, Q.C. Appearing on her own behalf via teleconference, the applicant: K. Favro Appearing on his own behalf via teleconference: K. C. Erickson Place and Date of Hearing: Victoria, B.C. June 21, 2021 Place and Date of Judgment: Victoria, B.C. June 21, 2021

- [1] THE COURT: I thank you all for your submissions. Given the nature of the issue before me, I will give you my decision now. In doing so, I note that these oral reasons for judgment are subject to editorial revisions before their reproduction in final form. Those revisions could include the insertion of additional references to the evidence, authorities, or submissions I have heard. In no manner will the results of my decision be changed.
- [2] Mr. Erickson was charged with two counts of sexually assaulting Ms. Kelly Favro in 2015, contrary to section 271 of the Criminal Code.
- [3] Mr. Erickson's trial in Provincial Court occurred over the course of two days in July and August 2016. On 16 September 2016, Mr. Erickson was found guilty and convicted of one of the two counts. He was acquitted of the other.
- [4] On 19 December 2016, he was sentenced to an 18-month conditional sentence, followed by two years of probation.
- [5] Mr. Erickson appealed from his conviction. That summary conviction appeal came before me. On 10 September 2020, I rendered my decision dismissing the appeal.
- [6] At some point in the proceedings against Mr. Erickson, an order pursuant to section 486.4 of the Criminal Code was made prohibiting the publication in any document or the broadcast or transmission in any way of any information that could disclose the identity of the complainant, Ms. Favro. I am advised that the request for the order was made by the Crown without much, if any, discussion with Ms. Favro.

- [7] By notice of application filed 16 June 2021, Ms. Favro now seeks an order vacating the ban on publication. In her affidavit sworn 14 June 2021 and filed in support of her application, Ms. Favro explains:
4. A publication ban was obtained by Crown Counsel in respect of the prosecution of these two sexual assaults.
 5. I did not seek the ban on publication nor did I consent to the application to obtain the ban.
 9. I understand that bans on publication are ordered in cases like this to protect my privacy and to ensure that the accused has a fair trial.
 10. I do not need or wish to have my privacy protected in this matter any longer.
 13. I volunteer in the area of victim's rights and it is important for me that people know that I am prepared to make public my identity as a victim of a sexual assault and important that the identity of the accused is made public.
- [8] In her submissions before me, Ms. Favro made it patently clear that she wishes to have the publication ban vacated because she wants to be free to "speak her truth" and publicly confirm that she was the person Mr. Erickson sexually assaulted.
- [9] The Crown is not opposed to Ms. Favro's request.
- [10] I have also heard from Mr. Erickson on this application. He says he has been harassed on social media by individuals who appear to be aware that he was found guilty of sexually assaulting Ms. Favro. He also says he has received harassing text messages and that his car has been vandalized. In all of the circumstances, Mr. Erickson would prefer that his case not attract any more attention than it already has and for that reason he would like the publication ban to remain in place.
- [11] While I have taken note of what Mr. Erickson has had to say about the harassment he has endured since he was convicted of the sexual assault, I am not at all persuaded that Mr. Erickson's concerns can justifiably defeat Ms. Favro's desire to tell her story publicly and confirm that she was the victim of the sexual assault.
- [12] The purpose of a section 486.4 publication ban is to encourage the reporting of sexual offences by protecting the privacy and identity of the alleged victim. However, in my respectful view, when a victim of a sexual assault comes before the court, as Ms. Favro has, and asks to have a publication ban lifted so that they can openly discuss and publish the details of the offence, including identifying themselves as the victim, the request ought to be respected and granted unless there is a strong and articulable reason why the ban should remain in place. In the present case, I can find none. To be more specific, I see no reason why Ms. Favro should be prohibited from publishing the fact that she was the victim who Mr. Erickson sexually assaulted.

- [13] The lifting of the publication ban will go beyond permitting Ms. Favro to self-identify as the victim in this case. It will also allow others to publish her name and identify her as the victim in this case. In other words, Ms. Favro's identity as the victim of a sexual assault will no longer be kept private and out of the public domain. I am satisfied that Ms. Favro understands all of this.
- [14] In my view, there is merit in Ms. Favro's position and her application ought to be granted. I am therefore ordering that the section 486.4 ban on publication relating to Ms. Favro be vacated, effective immediately. Unless there are other bans on publication, and I take it there are not because they were not referenced in the notice of application or mentioned during today's hearing, that should bring this matter to a conclusion.
- [15] Anything further, Ms. Favro?
- [16] KELLY FAVRO: No. Thank you very much, Your Lordship. I appreciate your time today.
- [17] THE COURT: All right. Ms. Cheema, the Court appreciates your attendance and participation in this matter. "G.R.J. Gaul, J."

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