

CANADA / JUDGMENT

R. v. F.C.M.

2025 BCSC 2665

COURT

Supreme Court of British Columbia

DECIDED

5 December 2025

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

2025 BCSC 2665 R. v. F.C.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. F.C.M.,

2025 BCSC 2665

Date: 20251205

Docket: 99089-1

Registry: Kelowna

Rex

v.

F.C.M.

Restriction on Publication: Pursuant to 486.4(1) C.C.C.

Before: The Honourable Justice R. Hewson

Oral Reasons for Sentence

Counsel for the Crown:

K.J. Short

Counsel for the Accused:

M.S. Lowe

Place and Date of Trial/Hearing:

Kelowna, B.C.

December 5, 2025

Place and Date of Judgment:

Kelowna, B.C.

December 5, 2025

- [1] THE COURT: These are oral reasons for sentence following a conviction on Indictment 99089-1 in the Kelowna Registry of the Supreme Court. There is a publication ban in place. In these reasons, I will refer to the witnesses and to the accused by the names they were referred to during the evidence at the trial, but in the event that a transcript of these reasons is prepared or information about the case is published, the names should be redacted in accordance with the publication ban.
- [2] We have been assisted by an interpreter who has translated the proceedings from English into Spanish in real time. She has a copy of the notes I am reading from to assist her in translating what I say accurately for F.C.M. At the conclusion of my reasons, I will ask our interpreter to return the notes to the clerk of the court.
- [3] F.C.M. has been convicted of one count of sexually assaulting K.A. and one count of touching K.A., who was a person under the age of 16 years, for a sexual purpose. Those two crimes are contrary to ss. 271 and 151 of the Criminal Code respectively. The crimes were committed in Kelowna on November 23, 2022.
- [4] At the invitation of the Crown and without opposition by the offender, I have entered a judicial stay on the count alleging sexual assault on the basis of the principles in the Kienapple decision.
- [5] The Criminal Code provides for a maximum sentence of 14 years for the offence of sexual interference when the Crown proceeds by indictment, as they have done here.
- [6] Both Crown and defence have told me today that a fair and fit sentence for F.C.M. would be a sentence of incarceration for four years and six months, which is 1,620 days. This is not a true joint submission as that term was considered in the decision of the Supreme Court of Canada in *R. v. Anthony-Cook*. F.C.M. pleaded not guilty and proceeded to trial. In those circumstances, the judicial restraint accorded a joint submission is not engaged: see *R. v. Dunkers*, 2018 BCCA 363 at para. 44.
- [7] F.C.M. is a man aged 45. He was born in Colombia and had a secondary school education. He lived in Colombia until he was about 28, when he left to find a better life. In Canada, he worked as a painter and in construction. Since being charged with these crimes until he went into custody, he lived on social assistance.

- [8] At the time that he committed the crimes against K.A., he was separated from his wife and lived in a rented room in the basement suite of his work colleague, J.A. His daughter is now in her late teens and lives with her mother. He also has a second daughter, aged two.
- [9] In November 2022, F.C.M. had been sharing the basement suite with J.A. for about a year. F.C.M. and J.A. were friends but lived independently of each other.
- [10] J.A. was also separated from Ms. H., the mother of his two children. He frequently cared for his own two children, as well as for a third child, the infant daughter of his ex-partner. K.A. was seven at the time of the offences. Her brother and sister were younger than her. Her brother's name was D. and her baby sister's name was L. All three children regularly stayed overnight in the basement suite. From time to time, F.C.M.'s teenage daughter also visited the basement suite.
- [11] F.C.M. has no criminal record.
- [12] On the date these offences were committed, F.C.M. came home from work between 6:30 and 7:00 p.m. He went into his bedroom to change and then watched TV in his bedroom. J.A., C., and C.'s younger brother and sister were watching TV in their TV room.
- [13] After about an hour, F.C.M. went to the bathroom and had a shower. The bathroom was right beside his bdrm. After he showered, he went to the kitchen and began preparing his dinner. He went back to his bedroom while his dinner was cooking. When the meal was ready, he returned to the kitchen and served himself. He took his dinner back into the bedroom where he ate alone. After he finished eating, he went back to the kitchen, cleaned up, and went to the bathroom. He went back into his bedroom again and went to sleep.
- [14] Later that evening, K.A., her younger brother, and younger sister all went to bed. The three children shared a bedroom. D. slept on the top bunk and K.A. and L. slept together on the bottom bunk. K.A. slept on the side of the bed closest to the wall. The door to the hallway was open and a nightlight was on but shaded by a pillowcase.
- [15] F.C.M. entered the bedroom while the children were sleeping. He pulled K.A. around her stepsister to the bottom of the bed and removed her shorts and underwear. K.A. was naked. Her lower legs were hanging over the edge of the bed toward the floor. He touched her vulva with his hand and with his penis. He pushed his penis against her vulva for about 10 seconds, and then he licked his hand and rubbed it against her vulva as well. K.A. pretended to be asleep at first, but then she asked him, "Why are you doing this?" F.C.M. replied, she said, "Because you are pretty". K.A. told him, "Stop. I'm tired". F.C.M. stopped assaulting her and left the bedroom.
- [16] K.A. went to her father's bedroom immediately. She told him what happened. He recorded part of what she told him on his cellphone.

- [17] I have had the benefit of a victim impact statement read to me by K.A.'s mother. It has been filed as an exhibit and will be subject to the same publication ban that I spoke of earlier. It is a powerful account of the traumatic effects and the serious harm done to this child by F.C.M.
- [18] Let me speak briefly about the objectives and principles of sentencing in Canadian courts.
- [19] The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and to the degree of responsibility of the offender.
- [20] Section 718 of the Criminal Code says that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions that have one or more of several stated objectives. Section 718.01 provides that when a court imposes a sentence for an offence that involved the abuse of a person under the age of 18 years, the objectives of denunciation and deterrence shall be given primary consideration.
- [21] A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating either to the offence or to the offender.
- [22] In this case, there are few mitigating circumstances. I note that during his trial, F.C.M. made reasonable admissions of fact that allowed the court to focus on the real issues in the trial.
- [23] On the other hand, the aggravating factors are stark. The age of the child victim, the offender's trusted presence in her second home as the roommate of her father, and evidence of the significant impact the offence had on this child are all deemed to be aggravating circumstances under s. 718.2(a).
- [24] As counsel have correctly noted, sentences imposed for child sex offences since the decision of the Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9 have been increasing. As our Court of Appeal said last year in the decision of *R. v. G.J.M.*, 2024 BCCA 82 at para. 1:
- [1] [T]he Supreme Court of Canada established an analytical approach to sentencing for sexual violence against children that gives effect to its "profound wrongfulness and harmfulness": at para. 1. The Court sent a clear message: sentencing judges must do more than simply state that sexual offences against children are serious; they must impose sentences that are commensurate with their gravity: *Friesen* at para. 76. This approach responds to society's deepened understanding of the far-reaching damage caused by sexual violence to children, and places them, and the harm that they suffer, at the centre of the discussion. Its application mandates increased sentences that reflect this modern understanding and Parliament's choice to increase the sentences imposed for such crimes: *R. v. Bertrand Marchand*, 2023 SCC 26 at paras. 31-32 [emphasis in original.]
- [25] That decision was cited for me in the decision of *R. v. B-B.*, 2025 BCSC 232, at para. 11, which was provided to me by Ms. Lowe.

- [26] The time that F.C.M. has spent in custody prior to today should be considered. F.C.M. was arrested by the police on the evening of the offence. He was released on bail shortly afterwards. F.C.M.'s release order was cancelled following his conviction on June 25, and he has been detained in custody since then. He has now been in custody for a total of 164 days prior to sentencing. The Criminal Code allows time served to be credited towards a resulting sentence of imprisonment. However, crediting a single day for every single day spent in a remand centre is often insufficient to account for the full impact of that detention. Time spent in remand does not account for the purposes of eligibility for parole, earned remission, or statutory release. Moreover, conditions in remand centres tend to be particularly harsh. They are often crowded and dangerous and generally do not provide rehabilitative programs: see *R. v. Mavros*, 2018 BCCA 398 at paras. 15-16. F.C.M. will be credited 1.5 days for every day spent in presentence custody.
- [27] The impact on F.C.M.'s immigration status should also be considered. He is a permanent resident in Canada, but not a citizen of this country. One of the effects of this conviction is likely to be an order for his deportation from Canada. This collateral consequence should be taken into account.
- [28] [F.C.M.], would you please stand, sir.
- [29] Having considered your circumstances, the circumstances of the crime you committed, and all of the relevant principles and factors, I find that I agree with counsel that the just sentence to impose on you is a sentence of 4.5 years which will be recorded as 1,620 days. You served 164 days of custody prior to sentencing. I will give you credit for 1.5 days for each day of presentence custody, which totals 246 days of credit. The actual amount of new time is 1,374 days' incarceration.
- [30] Pursuant to s. 109(2), you are prohibited from possessing any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition, and explosive substance for a period of 10 years following your release, and you are prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- [31] This offence is a primary designated offence. Pursuant to s. 487.051(1) of the Criminal Code, I make an order authorizing the taking of samples of bodily substances from you for the purpose of registration in the National DNA Data Bank. The samples will be taken from you while you are in custody and you must submit to the taking of samples.
- [32] Pursuant to s. 490.012 of the Criminal Code, you are required to comply with the Sex Offender Information Registration Act for 20 years.
- [33] Pursuant to s. 161(1)(a.1) of the Criminal Code, you are prohibited for 10 years from being within 500 metres of any residence, school, or workplace of K.A.

- [34] The warrant of committal shall be endorsed with the following order: Pursuant to s. 743.21(1) of the Criminal Code, you must have no contact of any kind with K.A. while you are in custody.
- [35] Given that you had a minimal income before going into custody and that your financial circumstances in the future are uncertain given your immigration status, I will waive the victim fine surcharge as it would cause undue hardship.
- [36] I know that our interpreter has interpreted all of that for F.C.M. I am not going to require him to attend before the justice of the peace to have those orders reread to him.
- [37] That concludes this matter. The Court will stand down.

"Hewson 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/25/26/2025BCSC2665.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-f-c-m-2025-bcsc-2665>

Prepared on 26 October 2026 · Esheria