

CANADA / JUDGMENT

R. v. Francois

2025 ONCA 777

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Francois Collection Decisions of the Court of Appeal Date 2025-11-13 Neutral citation 2025 ONCA 777 Docket numbers COA-24-CR-0959 Judges Miller, Bradley; Paciocco, David M.; Favreau, Lise G. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Francois, 2025 ONCA 777[1] DATE: 20251113 DOCKET: COA-24-CR-0959 Miller, Paciocco and Favreau JJ.A. BETWEEN His Majesty the King Respondent and Eugene Francois Appellant Eugene Francois, acting in person Ariel Herscovitch, appearing as duty counsel Kevin Rawluk, for the respondent Heard: November 5, 2025 On appeal from the sentence imposed by Justice Scott K. Campbell of the Superior Court of Justice on August 23, 2024. REASONS FOR DECISION

- [1] The appellant was found guilty of sexual exploitation, making child pornography and two counts of voyeurism.[2] He was sentenced to a total custodial sentence of 76 months, with 36 months left to serve after the application of Summers, Duncan and Downes credit.
- [2] The appellant only appeals his sentence. After hearing submissions from duty counsel, the appellant and the Crown, the panel advised that the appeal was dismissed with reasons to follow. These are our reasons.
- [3] The convictions for sexual exploitation, making child pornography and one of the counts of voyeurism relate to one complainant, A.M., who was 17 years old at the time of the offences. A.M. lived with the appellant at his residence for approximately two months in 2013. There was a 33-year age difference between the appellant and A.M. As found by the trial judge, A.M. was vulnerable when she came to live with the appellant, and she regarded the appellant as a safe adult. At the time, she was fleeing an abusive boyfriend and did not have any family to rely on. In that context, two or three weeks after A.M. moved in with the appellant, he initiated sexual relations with her. They had regular sexual contact until she left his apartment to go live somewhere else. During this time, the appellant also took numerous nude or semi-nude photos and videos of A.M., including while they were having sexual relations. Most of the photos and videos were taken without her knowledge. The police found these photos and videos at the appellant's residence when they executed a search warrant in 2021 after A.M. came forward with her complaint.

- [4] The other conviction for voyeurism arises from additional photos and videos the police found in the appellant's residence when they executed the search warrant. The appellant taught music and ran a music recording studio out of his residence. The appellant had set up secret cameras in his apartment, including in his bathroom. He photographed numerous girls and young women while they were in the bathroom and elsewhere. The photographs depicted girls and young women using the toilet, changing their clothes, taking showers and, in some instances, having sexual encounters with other men. The police were able to identify and contact at least 25 victims, several of whom gave statements to the police. They were all unaware that the appellant had taken their photos while they were in his residence.
- [5] The appellant pled guilty to the charges of making child pornography and voyeurism related to A.M. and the charge of voyeurism involving the multiple victims. The charge of sexual exploitation went to trial. The trial judge was satisfied that the count of sexual exploitation was made out based on the evidence and the criteria for finding exploitation under s. 153(1.2) of the Criminal Code, including A.M.'s age, the age difference between A.M. and the appellant, the evolution of their relationship and the degree of control the appellant had over A.M.
- [6] The trial judge imposed a total sentence of 76 months for all convictions. With respect to the offences involving A.M., he imposed a sentence of 40 months for sexual exploitation, 12 months for voyeurism to be served concurrently, and 12 months for making child pornography to be served consecutively to the two other sentences, for a total of 52 months. With respect to the offence of voyeurism committed against the multiple victims, the trial judge imposed a sentence of 24 months to be served consecutively to the sentences imposed in relation to the offences involving A.M. The trial judge then deducted a total of 40 months: 32 months of Summers credit for pre-sentence custody, 3 months of Duncan credit for the difficult conditions of incarceration during pre-sentence custody and 5 months of Downes credit for the appellant's strict conditions of release once bail was granted.
- [7] With the assistance of duty counsel, the appellant raised three issues on appeal.
- [8] First, duty counsel submitted that the trial judge erred in stating that he was required to impose a consecutive sentence for the child pornography conviction, pursuant to s. 718.3(7) of the Criminal Code. Duty counsel correctly points out that the offences involving A.M. were committed in 2013, and s. 718.3(7) did not come into force until after 2013. He submitted that the consecutive sentence on the child pornography conviction was therefore not mandatory. He further submitted that the trial judge's conviction for sexual exploitation depends largely on the fact that the appellant took photos and videos of the complainant while she lived with him, and that the same evidence therefore gave rise to the convictions for sexual exploitation and child pornography.
- [9] We reject this argument. While we agree the trial judge was not required to impose a consecutive sentence for the child pornography conviction given the dates of the offences, it was not an error in principle for him to do so in the circumstances of this case. These were

separate offences and the trial judge relied on many factors beyond the photos and videos to conclude that the appellant was in an exploitative relationship with A.M. More importantly, the trial judge had regard to the totality principle when imposing the overall sentence. A total sentence of 52 months for the offences committed against A.M., and 76 months for all offences is entirely fit. These were very serious sexual offences against A.M., who was 17 years old at the time, and against the other victims. In *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, at paras. 109-110, the Supreme Court instructed that the range of sentences for sexual offences against children needed to increase to reflect the seriousness of such offences, including their traumatic impact on the victims. The Supreme Court held that, for a specified list of sexual offences against children, including sexual exploitation, “mid-single digit penitentiary terms ... are normal and that upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstance”: *Friesen*, at paras. 44 and 114. Accordingly, the 40-month sentence for sexual exploitation on its own is low. In addition, the appellant’s sentence of 12 months for making child pornography can only be described as lenient. That sentence would fall at the lower end of the sentencing range even for the less serious offence of possession of child pornography: *R. v. M.V.*, 2023 ONCA 724, 169 O.R. (3d) 321, at para. 99. Accordingly, the overall sentence for the offences against A.M. was entirely fit, as was the overall sentence for all offences.

- [10] Second, duty counsel submits that the trial judge erred in treating some of the elements of the offence of sexual exploitation as aggravating factors. In effect, in his reasons, the trial judge stated that the aggravating factors in this case included the “circumstances of the offences”, which he described as exploiting A.M., making child pornography of A.M., surreptitiously observing A.M. and making recordings of her, and observing and recording the other victims when they had a reasonable expectation of privacy. It is indeed an error for a trial judge to rely on the elements of an offence on their own as aggravating factors: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 83. Trial judges should be careful to avoid such an error. However, in this case, the trial judge’s description of the aggravating factors went well beyond a recitation of the elements of the offence. For example, in relation to A.M., the trial judge noted that she and the appellant lived together at the time of the offences, and that the offences took place in what was her home at the time. With respect to all victims, the trial judge observed that they all viewed the appellant as “a friend, mentor, collaborator, instructor” and that they viewed his home as a “safe haven”. As another aggravating factor, the trial judge described the devastating impact the offences had on the victims, including that many “have engaged in treatment and counselling” and that many “struggle with interpersonal relationships and employment issues and trust issues.” In the circumstances, we see no error in this case in the trial judge’s analysis of the aggravating factors.

- [11] Third, the appellant submits that the trial judge should have granted him additional Duncan credit given his harsh conditions of pre-sentence detention. We reject this submission. The trial judge was aware of the conditions of incarceration and gave the appellant three months of pre-sentence Duncan credit for those conditions. This was a discretionary decision to which we owe deference. We see no error in principle in his decision on this issue.
- [12] Despite the very helpful and able submissions made by duty counsel, we were not persuaded that the trial judge made any reversible errors in sentencing the appellant.
- [13] Leave to appeal the sentence is granted, but the appeal is dismissed. “B.W. Miller J.A.” “David M. Paciocco J.A.” “L. Favreau J.A.”
- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.
- [2] Recent legislative amendments replaced the term “child pornography” with “child sexual abuse and exploitation material” in the Criminal Code, R.S.C. 1985, c. C-46. These reasons retain the former terminology given that the amendments came into force after Mr. Francois’s conviction and sentence.

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