

CANADA / JUDGMENT

R. v. Hooper

2024 BCSC 2177

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 2177 R. v. Hooper

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hooper,

2024 BCSC 2177

Date: 20241118

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Registry: Victoria

Rex

v.

Peter John Hooper

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Before: The Honourable Mr. Justice Brongers

Oral Reasons for Sentence

Counsel for the Crown:

S. Green

Counsel for the Defence:

N. Acker (hearing only)

B. McPhail (judgment only)

Place and Date of Hearing:

Victoria, B.C.

October 25, 2024

Place and Date of Judgment:

Victoria, B.C.

November 18, 2024

Introduction

- [1] THE COURT: On October 4, 2023, I found Peter Hooper guilty of two counts of sexual assault and two counts of sexual interference, contrary to ss. 271 and 151 of the Criminal Code, R.S.C. 1985, c. C-46 ("Code"). The convictions arise from two incidents involving the same victim, J.G.
- [2] Sentencing submissions were presented by the Crown and the defence on October 25, 2024. There is a considerable disparity between their positions. Counsel for the Crown seeks a total sentence of between eight and 10 years of imprisonment. Counsel for the defence proposes instead a conditional sentence order of two years less a day, as well as a two-year probation order.
- [3] I have considered their submissions and the material in the court's record. My sentencing decision is as follows.

The Facts

Circumstances of the Offences

- [4] The factual circumstances surrounding the offences are set out in my reasons for judgment indexed at R. v. Hooper, 2023 BCSC 1871. They relate to a first incident that took place in June 2018 in Langford (the "Langford Incident"), and a second incident that took place in October 2018 in Saanich (the "Saanich Incident").
- [5] Counsel for the Crown has accurately summarized these circumstances in her written submissions. I have adopted this summary with just some minor stylistic changes.

Langford Incident

- [6] J.G. first met Mr. Hooper in June 2018 when she was 14 years old. At this time in her life, J.G. was actively abusing drugs, had dropped out of school, and was spending time in downtown Victoria with others who were also experiencing addiction issues.
- [7] On one particular day that month, J.G. was with two acquaintances, Randy and Maddie, in Bastion Square. Randy suggested that the three of them bus to Langford to obtain drugs from Mr. Hooper. They did so and waited for Mr. Hooper at a Tim Hortons.

- [8] At approximately 2:00 a.m., Mr. Hooper showed up in his car. J.G., Randy and Maddie got into the car with Mr. Hooper. The four of them smoked meth and drove to various locations in Victoria so that Mr. Hooper could purchase more drugs. Eventually, Mr. Hooper drove the group to the Bear Mountain area of Langford where an unoccupied motorhome was parked.
- [9] Once inside the motorhome, the group smoked more meth. Mr. Hooper also provided some lines of cocaine, which he and J.G. consumed. At one point, Mr. Hooper left the motorhome to get condoms. Meanwhile, Randy had J.G. change into some lingerie.
- [10] Upon Mr. Hooper's return, J.G. was sitting next to Mr. Hooper on a couch in the motorhome. It was there that he unzipped his fly and pulled out his penis. Mr. Hooper put his penis inside J.G.'s vagina and had intercourse with her on the couch. Mr. Hooper was wearing a condom. Mr. Hooper did not ask J.G. for permission and J.G. did not want to have sex with him. Mr. Hooper stopped after he ejaculated. He left the motorhome at around 4:00 a.m.
- [11] Mr. Hooper did not ask J.G. about her age, and she did not tell him. Randy had instructed J.G. to tell Mr. Hooper that she was 17 if Mr. Hooper were to ask.
- [12] Following the Langford incident, J.G. did not see Mr. Hooper again until July 2018 when he briefly said hello to her at Centennial Square. J.G. also saw Mr. Hooper in August 2018 at her friend Alyssa's house where she resided, but J.G. did not interact with him.

Saanich Incident

- [13] The next time J.G. saw Mr. Hooper was in October 2018. J.G. was then 15 years old and was still living with Alyssa. By this time, J.G. had become a meth addict and was consuming crack daily.
- [14] One day in mid-October 2018, J.G. and Alyssa were using Xanax. They had run out of drugs and decided to contact Mr. Hooper to obtain drugs from him. J.G. was then willing to have sex with Mr. Hooper to get drugs. Alyssa contacted Mr. Hooper and he arrived at her home in his car with another person called Moose.
- [15] These four individuals - Mr. Hooper, Moose, J.G. and Alyssa - got into the car and drove to Saanich, arriving eventually at Mount Tolmie. J.G. gave her pipe to Mr. Hooper, and she initially believed that he had put meth in it. However, when she smoked from the pipe, she did not experience the stimulation she was used to feeling from meth. Instead, J.G. felt sleepy, leading her to believe that the substance Mr. Hooper had put in her pipe was fentanyl.
- [16] Mr. Hooper kicked Moose and Alyssa out of the car, and J.G. moved to the front passenger seat. Mr. Hooper undid his fly, pulled out his penis, and put a condom on. He then got on top of J.G. She pulled her pants down, and Mr. Hooper put his penis inside of J.G.'s vagina. At this time, J.G. was very tired and was "nodding off". When she woke up, she was still in the passenger seat of Mr. Hooper's car, but was now outside of Alyssa's house, confused.

- [17] J.G. did not want to have sexual intercourse with Mr. Hooper, but did want drugs. However, Mr. Hooper did not give J.G. any drugs, other than what he provided her to smoke prior to the sexual activity.
- [18] Once again, Mr. Hooper did not ask J.G. how old she was at the time of the incident, and she never told him.

Impact on the Victim

- [19] In addition to J.G.'s testimony at trial regarding her personal circumstances, the court had the benefit of her victim impact statement, as well as one that was prepared by her parents. J.G.'s father was present at the sentencing hearing, and he read the latter statement into the record.
- [20] While brief, J.G.'s statement is poignant. J.G. says she suffers from complex post-traumatic stress disorder (C-PTSD) as a result of Mr. Hooper's actions and her experience of recounting them to the court. She has nightmares, flashbacks when she is intimate with partners, and is triggered when she sees people who look like Mr. Hooper.
- [21] J.G. was particularly distressed by the emotional impact that the incidents had on her family when it learned of them. She also found it traumatic to endure the suggestion made to her by defence counsel that she had hallucinated what happened with Mr. Hooper, saying that it made her feel gaslighted.
- [22] The statement of J.G.'s parents is also moving. It attests to J.G.'s struggles with mental health and substance dependency issues which were exacerbated by what Mr. Hooper did to her. As such, Mr. Hooper's actions also affected J.G.'s parents, her older brother, and her extended family. Their collective suffering is summarized most clearly in this paragraph of the statement:

Knowing what we know now, Peter Hooper most definitely preyed on an extremely vulnerable girl, one that was dependent on drugs and easily influenced. He took advantage of a situation that frankly was vile and incomprehensible. The timing of these assaults certainly exasperated our daughter's continuous efforts to get sober and prolonged her and our great suffering during that period. In retrospect, these assaults certainly made her recovery just that much more complex and challenging to her and us. To this day, we are still navigating her recovery and PTSD symptoms, and will likely continue to do so for a long time.

Circumstances of the Offender

- [23] At the sentencing hearing, information regarding Mr. Hooper's circumstances was provided through counsel submissions and various documents. The latter include pre-sentence reports, psychological/psychiatric assessments, a Gladue report, and documentation regarding Mr. Hooper's previous convictions.

- [24] Mr. Hooper is now 49 years old. He was 42 at the time of the Langford Incident, and 43 at the time of the Saanich Incident.
- [25] Mr. Hooper was born in Kamloops and grew up mostly in Victoria. His pre-sentence and psychological reports indicate that he had a mostly happy childhood with his two parents and three siblings, and that he seemed to be affiliated with "mainstream Caucasian-Canadian culture". However, Mr. Hooper also has Indigenous ancestry, and is described in his Gladue report as non-status Huron-Wendat on his paternal side.
- [26] There were no incidents of physical violence or addictions in his childhood home, although Mr. Hooper suffered verbal abuse from his father. This was a factor in Mr. Hooper's decision to leave home and live independently with his brother when he was 16, although his relationship with his father improved over time. His parents separated when he was an adult, and his father passed away in 2017. Mr. Hooper remains close with his mother, and they presently live together.
- [27] Mr. Hooper is a high school graduate. He has also taken some post-secondary courses in the field of power engineering, obtaining his Ice Facility Operator Certification and Swimming Pool Mechanical-Levels One and Two.
- [28] Mr. Hooper has been working since he was a teenager, initially for employers that included his father's towing company, a restaurant, and a large grocery store chain. In his 20s and 30s, he embarked upon a career in sales for a number of food distribution and packaging product companies. After he obtained his certifications, Mr. Hooper began working for Victoria-area recreation facilities and was so employed until his 2018 arrest. Since then, Mr. Hooper has worked with his mother doing cash jobs like cleaning houses and picking mushrooms, which supplements the income assistance he receives.
- [29] Mr. Hooper married his wife in or around 2005. They have a daughter, who is now nine years old. He has been separated from his wife since the arrest.
- [30] Mr. Hooper started to use cocaine recreationally when he was 30 years old. While he stopped after his daughter was born, he started up again in the wake of the deaths of his sister and father. Mr. Hooper was then introduced to crystal methamphetamine, and he began to use that drug consistently for six months up until the time of his arrest in late 2018. However, Mr. Hooper quit drugs while in remand and has taken counselling and programming to address his addiction, and he has not relapsed since his release from custody in early 2019.
- [31] Mr. Hooper's entire criminal history is described in his pre-sentence report as stemming solely from sexually-motivated offences occurring in 2018, when he was 42 to 43 years old. They arise from: (1) the incidents involving the victim in this case, J.G., when she was 14 and 15 years old in June and October 2018; (2) an incident involving a 15-year-old victim, E.L., that took place in July 2018; and (3) incidents involving two other victims, S.M. and F.M., who were 16 and 17 years old, over the period from May to December of 2018.

- [32] Mr. Hooper's first conviction arose out of two breaches of a police undertaking that was imposed on October 23, 2018, further to Mr. Hooper's arrest in respect of the allegations of sexual offences against E.L. Mr. Hooper was then required to abstain from communicating or being alone with persons under the age of 18. He breached this undertaking first on November 17, 2018, and then again on November 23, 2018. He was sentenced on October 22, 2020, receiving a 12-month probation order in the form of a conditional discharge.
- [33] Mr. Hooper's second conviction came after he pled guilty on January 12, 2021, to two offences against E.L. which took place on July 25, 2018: (1) invitation to sexual touching of a person under the age of 16; and (2) exposing his genitals to a person under the age of 16. Mr. Hooper was sentenced to 90 days in jail (less credit for pre-sentence time in custody), as well as a 24-month probation order and a lifetime Sexual Offender Information Registry Act, S.C. 2004, c. 10 (SOIRA) order.
- [34] Mr. Hooper's third conviction is the present one relating to the four offences against J.G. committed in June and October 2018, that I pronounced in my judgment of October 4, 2023.
- [35] Mr. Hooper's fourth conviction relates to sexual exploitation and sexual assault against S.M. and F.M. at various times between May and December 2018. It was pronounced by Justice Saunders on November 30, 2023 in reasons for judgment indexed at R. v. Hooper, 2023 BCSC 2212. Mr. Hooper has yet to be sentenced for these offences.
- [36] At the sentencing hearing in this matter, Mr. Hooper was given an opportunity to address the court directly. He remarked only that this process has been a long one, and expressed regret that he has been separated from his daughter for the past five years. Mr. Hooper said nothing about J.G. or any of his own actions in this case.

Principles of Sentencing

- [37] The essential principles to be considered by the court in sentencing are set out primarily in s. 718 to 718.3 of the Code.
- [38] Section 718 provides that the fundamental purpose of sentencing is:
- ... to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions ...
- [39] This is done by reference to six objectives. They are: (1) denunciation of unlawful conduct; (2) deterrence of the offender and other person from committing offences; (3) separation of offenders from society, where necessary; (4) assistance in the rehabilitation of offenders; (5) provision for reparations for harm done to victims or to the community; and (6) promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims or to the community.
- [40] Pursuant to s. 718.1, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[41] Section 718.2 describes a number of specific principles to be considered in sentencing, including that the sentence should account for any relevant aggravating or mitigating circumstances. Of particular note in this case are four subsections of s. 718.2, namely, (b), (c), (d) and (e). The first provides that sentences should be similar to those imposed on similar offenders committed in similar circumstances. The second indicates that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh. The third states that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. The fourth provides that all available sanctions, other than imprisonment, that are reasonable and consistent with the harm done should be considered for all offenders, with particular attention to the circumstances of Indigenous offenders.

[42] Section 718.01 also applies here because Mr. Hooper inflicted abuse upon J.G., a person who was under the age of 18. Accordingly, the court must give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

[43] Similarly, s. 718.2(a) (ii.1) and s-s. (iii.1) provide that the fact that J.G. was under 18 and experiencing health issues must be considered as aggravating circumstances, as follows:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

...

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

...

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

...

shall be deemed to be aggravating circumstances;

[44] Because there was a significant gap in time between the Langford Incident and the Saanich Incident, this is a case in which the "cumulative punishment" provision set out at s. 718.3(4) (b)(i) of the Code applies. It states:

(4) The court that sentences an accused shall consider directing

...

(b) that the terms of imprisonment that it imposes at the same time for more than one offence be served consecutively, including when

(i) the offences do not arise out of the same event or series of events, . . .

[45] Also of relevance are s. 722(1) and (9) of the Code. They provide that the court must consider victim impact statements when making a sentence determination, and may consider other evidence concerning the victim of the offence as well.

[46] Finally, it should be noted that Mr. Hooper is Indigenous. Therefore, the specific factors identified by the Supreme Court of Canada in *R. v. Gladue*, [1999] 1 S.C.R. 688, and *R. v. Ipeelee*, 2012 SCC 13 must be taken into account as well.

[47] They include consideration of the intergenerational and contemporary impacts of such matters as colonialism, displacement, and residential schools on Indigenous people and communities, and how that history continues to affect Indigenous peoples today: *Gladue*, at para. 60. In particular, the court must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Indigenous heritage or connection: *Gladue*, at para. 66.

[48] Furthermore, *Ipeelee* cautions sentencing judges not to require an Indigenous offender to establish a causal link between background *Gladue* factors and the commission of the offence before being entitled to have those factors considered. However, the factors must be tied in some way to the particular offender and the offence. Unless the unique circumstances of the particular offender bear on his or her culpability for the offence or indicate which sentencing objectives can and should be actualized, they will not influence the ultimate sentence: *Ipeelee*, at paras. 80 to 83.

[49] Of course, none of the *Gladue* or *Ipeelee* principles will necessarily lead to a reduced or a non-custodial sentence for Indigenous offenders. In *R. v. Wells*, 2000 SCC 10, at para. 44, Justice Iacobucci of the Supreme Court of Canada noted:

44 Let me emphasize that s. 718.2(e) requires a different methodology for assessing a fit sentence for an aboriginal offender; it does not mandate, necessarily, a different result. Section 718.2(e) does not alter the fundamental duty of the sentencing judge to impose a sentence that is fit for the offence and the offender. Furthermore, in *Gladue*, as mentioned the Court stressed that the application of s. 718.2(e) does not mean that aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice and less weight to goals such as deterrence, denunciation, and separation (at para. 78). As a result, it will generally be the case, as a practical matter, that particularly violent and serious offences will result in imprisonment for aboriginal offenders as often as for non-aboriginal offenders (*Gladue*, at para. 33). Accordingly, I conclude that it was open to the trial judge to give primacy to the principles of denunciation and deterrence in this case on the basis that the crime involved was a serious one.

[emphasis in original]

[50] Ultimately, "the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a 'just and appropriate' sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender": R. v. M. (C.A.), [1996] 1 S.C.R. 500.

Position of the Crown

[51] Counsel for the Crown takes the position that Mr. Hooper's two sexual assault convictions should be conditionally stayed in accordance with the rule against multiple convictions for the same act. As such, Mr. Hooper should only be sentenced for the two counts of sexual interference of which he was convicted. The Crown also says that these two sentences should be consecutive.

[52] With respect to duration, the Crown submits that Mr. Hooper should be sentenced to a five-year jail term in relation to the Langford Incident, and a six-year jail term for the Saanich Incident. However, once the principle of totality is taken into account, Mr. Hooper's final sentence should fall in the range of eight to 10 years.

[53] The Crown says that there are 10 aggravating factors in this case, namely:

- (a) that the offences involve the abuse of J.G., a young person under the age of 18;
- (b) the impact the offences had on J.G. as a person under 18 with mental health and drug addiction challenges;
- (c) J.G.'s particular vulnerability to Mr. Hooper stemming from her status as a high risk, drug addicted youth at the time of the offences;
- (d) that Mr. Hooper provided J.G. with drugs during both incidents causing her to be intoxicated and therefore more vulnerable to him;
- (e) that Mr. Hooper provided fentanyl to J.G. without her knowledge during the Saanich incident causing her to become sleepy and unconscious while he offended against her;
- (f) that both incidents were highly intrusive, involving penile penetration of J.G.'s vagina;
- (g) that the extent of the touching during the Langford Incident was significant and not fleeting;
- (h) that both incidents took place at secluded locations;
- (i) the significant age gap of approximately 28 years between Mr. Hooper and J.G.; and
- (j) Mr. Hooper's related criminal record for offences in very similar circumstances.

[54] As for mitigating factors, the Crown says that there are two. The first is Mr. Hooper's identification as an Indigenous person. The second is that Mr. Hooper took steps to address his drug addiction through counselling and programming.

Position of the Defence

- [55] Counsel for the defence agrees with the Crown that there should be a conditional stay of the sexual assault charges against Mr. Hooper, and does not take issue with the imposition of consecutive sentences for the sexual interference charges with a reduction for totality. He also does not dispute the existence of any of the aggravating or mitigating factors cited by the Crown.
- [56] However, counsel for the defence urged the court to also focus on the timing of the offences that took place in 2018, a period during which Mr. Hooper was regularly consuming crystal methamphetamine. He says that this made him careless about who he was spending time with and what he was doing. In particular, Mr. Hooper was not careful about verifying the age of persons with whom he engaged in sexual activity. This reckless behaviour ceased after Mr. Hooper stopped using drugs. As such, counsel for the defence submits that Mr. Hooper is not a sexual predator who poses a risk to young persons.
- [57] Accordingly, counsel for the defence asks the court not to sentence Mr. Hooper to a custodial sentence. Rather, he proposes that Mr. Hooper first serve a sentence of two years less one day in the community further to a conditional sentence order (CSO) under s. 742.1 of the Code, and then be subject to a two-year probation order after that.

Analysis

- [58] As has already been noted, I found Mr. Hooper guilty of four offences in relation to two incidents of sexual activity involving J.G.: (1) the June 2018 Langford Incident; and (2) the October 2018 Saanich Incident. Each of the two incidents gave rise to one charge of sexual assault and one charge of sexual interference. As agreed to by the parties, I therefore conditionally stay Mr. Hooper's two sexual assault convictions by applying the principle against multiple convictions for the same criminal conduct as was set out by the Supreme Court of Canada in *R. v. Kienapple*, [1975] 1 S.C.R. 729.
- [59] What must then be decided are the appropriate sentences for the remaining two charges of sexual interference.
- [60] By application of s. 718.3(4)(b)(i) of the Code, I conclude that consecutive sentences are warranted in principle for each conviction notwithstanding the fact that they involve the same victim, J.G. This is because there was a four-month gap in time between the Langford Incident and the Saanich Incident, and there was no meaningful contact in the interim between Mr. Hooper and J.G. As such, I find that the two offences do not arise out of the same event or series of events. However, I must make my final decision on whether the sentences are to be served consecutively or concurrently after considering the totality principle as required by s. 718.2(c) of the Code. I will do so only after I determine what individual sentence would be appropriate for each of the two separate offences.

- [61] Pursuant to s. 151 of the Code, the maximum sentence for sexual interference is 14 years. There is no mandatory minimum sentence: *R. v. Scofield*, 2019 BCCA 3.
- [62] The leading case that provides guidance on the specific sentencing principles that apply to this offence and others involving sexual abuse of children is *R. v. Friesen*, 2020 SCC 9. I summarize several of those that are especially relevant to this case as follows:
- (a) for sentencing purposes, sexual interference should not be treated as less serious than sexual assault as their elements are similar and convictions for both types of offences against children can frequently be supported on the same factual foundation (*Friesen*, at paras. 119 and 120);
 - (b) sexual offences against child victims should be punished more severely than sexual offences against adult victims (*Friesen*, at paras. 115 to 118);
 - (c) courts must be careful to impose proportionate sentences in cases where the victim is an adolescent child as disproportionately low sentences have historically been imposed in these cases, and sexual violence by adult men against adolescent girls is associated with higher rates of physical injury, suicide, substance abuse, and unwanted pregnancy (*Friesen*, at para. 136);
 - (d) it is an error of law to consider a child victim's non-resistance, participation, or "de facto consent" as mitigating factors or otherwise relevant to determining a fit sentence since it is the adult offender who had the sole responsibility to refrain from and prevent the occurrence of sexual activity with the child victim (*Friesen*, at paras. 148 to 154);
 - (e) any physical contact of a sexual nature with a child always constitutes a wrongful act of physical and psychological violence even if it is not accompanied by additional physical violence and does not result in physical or psychological injury (*Friesen*, at para. 77); and
 - (f) while there is no strict sentence range for sexual offences against children, substantial sentences will frequently be required, with mid-single digit penitentiary terms being normal, and upper-single and double-digit penitentiary terms being neither unusual nor reserved for rare or exceptional circumstances (*Friesen*, at para. 114).
- [63] Counsel for the Crown also cited four relatively recent sentencing cases involving sexual offences committed by adults against adolescent children. While none involve circumstances identical to those in the case at bar, they are nevertheless of assistance. I will discuss them in reverse chronological order.

R. v. Yanulik, 2018 BCSC 1361 - four-year sentence

- [64] The 54-year-old offender was convicted of sexual interference with a 13-year-old victim. The incident occurred at their first meeting in the presence of the victim's foster sister, who previously had sexual activity with the offender in return for money and cigarettes. The offender engaged in a myriad of sexual conduct with the victim, including unprotected

sexual intercourse, after which he paid her \$30. The court found that aggravating circumstances included the age differential, the grooming aspect of the offender's behaviour, the nature of the sexual activity, and the fear instilled in and objectification perpetrated of the victim. It was noted that the offender had a dated conviction for an assault charge to which he had pled guilty, although he had initially been also charged with sexual assault in a case involving two minor girls. The offender was referred to sex offender treatment but was unwilling to cooperate. Ultimately no mitigating factors were found to be present, and the offender expressed no insight into his offending. It must be noted that this case was decided prior to the Supreme Court of Canada's decision in Friesen, and therefore the sentencing judge did not have the benefit of its guidance when making his decision.

R. v. Scribner, 2020 BCSC 1685 - four-year sentence

[65] The 28-year-old offender was convicted of sexual interference with a 14-year-old victim. They had sexual intercourse on two occasions after engaging in sexualized social media communication during which the offender and the victim truthfully disclosed to each other their respective ages. The victim was especially vulnerable in that she was experiencing personal, emotional and self-esteem problems. In addition to the offender's high degree of moral responsibility and the serious negative impact on the victim, the sentencing judge also noted that this was the offender's first conviction and that he had been at large on reasonably restrictive bail conditions for several years.

R. v. Harrison, 2023 BCSC 1203 - five-year sentence

[66] The 60-year-old offender was convicted of sexual interference with a 14-year-old victim who was described as an extremely vulnerable girl. She was street-involved, engaged in drug-seeking behaviour, and under the influence of drugs given to her by the offender at the time of his offending sexual activity, which included penile-vaginal intercourse. The offence was perpetrated upon the victim at two secluded locations on the same night. The sentencing judge found there to be no mitigating factors, and the offender's dated and unrelated criminal record was held to be of minimal relevance.

R. v. Harry, 2023 BCSC 1026; aff'd 2023 BCCA 448 - four-year sentence

[67] The 36-year-old offender was convicted of sexual interference with and invitation to sexual touching of a 13-year-old victim. The offences had a profound negative effect on the victim psychologically and emotionally, and she attempted suicide twice after the incident, which involved sexual activity that included unprotected penile-vaginal intercourse while she was under the influence of drugs and alcohol. The offender showed no remorse and little empathy for the victim, and had a criminal record that included an assault which arose in an intimate partner relationship. On the other hand, the offender had significant Gladue factors, including having personally witnessed or experienced poverty, violence, substance abuse, and cultural disassociation as a member of a First Nation in British Columbia.

- [68] Turning to the case at bar, I agree with counsel for the Crown that all of the aggravating factors she identified are present here.
- [69] The most significant are J.G.'s vulnerable circumstances at the time of the offences, including her young age, her state of mental health, and her substance abuse issues. It is reprehensible that Mr. Hooper took advantage of these vulnerabilities by initiating and engaging in highly intrusive and unwanted sexual activity after having provided J.G. with drugs to which she was, or would become, addicted to. This is particularly so in relation to the Saanich Incident as J.G. became sleepy and unconscious while Mr. Hooper was in the midst of such activity after he had provided her with fentanyl. The impact of Mr. Hooper's actions on J.G. has been significant and enduring, diminishing J.G.'s quality of life, even today, six years later. Mr. Hooper's conduct must be denounced, and he must be deterred from engaging in such abhorrent behaviour in the future.
- [70] The fact that Mr. Hooper has been convicted of similar crimes involving similar victims who were also vulnerable adolescents at the time the offences were committed is also very troubling. I agree with counsel for the Crown that in 2018 Mr. Hooper was engaging in a pattern of targeting young, vulnerable, drug-addicted teens for his personal sexual gratification, using his access to drugs, cars, and remote locations to facilitate his offences. This, too, requires the imposition of a sentence that will denounce and deter such conduct.
- [71] In so finding, I have considered Mr. Hooper's plea to contextualize his behaviour as having occurred while he was abusing illicit drugs in 2018, including crystal methamphetamine and cocaine. I accept that this goes to Mr. Hooper's lower risk of recidivism today, as found in the pre-sentencing and psychological/psychiatric assessment prepared by Dr. Toma. However, I do not agree with the suggestion that this might be a mitigating factor when considering the extent of Mr. Hooper's overall moral blameworthiness. Indeed, there is no evidence that drug intoxication caused Mr. Hooper to commit the specific sexual offences he inflicted upon J.G. in June and October 2018.
- [72] On the other hand, I do accept the conclusions set out in the Gladue report that there are certain mitigating factors present in the concentric circles of Mr. Hooper's community, family, and personal life, that impact upon Mr. Hooper and his offences. For example:
- (a) Loss of identity - Mr. Hooper lost his Indigenous identity, only becoming aware of his Huron-Wendat ancestry as a teenager when it was mentioned to him by his father, but without any introduction to Huron-Wendat relatives or to any Indigenous traditions or ceremonies;
 - (b) Abuse - Mr. Hooper experienced the normalization of his father's verbal abuse against him and his brother, as well as his father's controlling behaviour towards his mother;
 - (c) Interruption of child/parent attachment - Mr. Hooper began working full-time and living independently at age 16 along with his brother in order to remove themselves from their father's verbal abuse; and

- (d) Familial level impact of drug use - Mr. Hooper experienced trauma while supporting two of his siblings who suffered from drug addictions.
- [73] In addition, I recognize that Mr. Hooper has attended substance abuse programming and counselling, following which he has succeeded in abstaining from illicit intoxicating drugs since early 2019. This is commendable and is a mitigating factor that must be taken into account.
- [74] Finally, I note that I cannot rely on remorse as a mitigating factor in this case. It is apparent from the reports tendered into evidence that Mr. Hooper does not accept any responsibility for or show any insight into the harm he has caused to J.G. Conversely, however, I of course do not consider this absence of remorse as an aggravating factor for sentencing purposes.
- [75] This brings me to a consideration of counsel for Mr. Hooper's submission that a non-custodial CSO should be imposed in this case. He is correct that, as noted by the Supreme Court of Canada in *R. v. Proulx*, 2000 SCC 5, a CSO can achieve the objectives of denunciation and deterrence in some circumstances. However, as was recently indicated by our Court of Appeal in *R. v. Maslehati*, 2024 BCCA 207, it will only be in the rarest of cases that a CSO will ever be appropriate following a sexual offence conviction with aggravating circumstances, such as when the victim is a vulnerable youth.
- [76] This is not one of those exceptional cases. In particular, it is a case where a sentence of imprisonment of less than two years would not be proportionate to the gravity of Mr. Hooper's offences and his degree of responsibility: *R. v. Sharma*, 2022 SCC 39, at paras. 7 to 14. This is a precondition for issuing a CSO, and it is not present here. Instead, I will account for Mr. Hooper's mitigating factors when considering the length of his custodial sentence.
- [77] Weighing all of the aggravating and mitigating factors just discussed, I find that a fit and just sentence for Mr. Hooper in relation to the sexual interference he perpetrated upon J.G. during the Langford Incident is three years and six months. For the more serious Saanich Incident during which J.G. lost consciousness, I find that a four-year custodial sentence is appropriate.
- [78] That does not end the matter, however. As I have decided that the two sentences warrant being imposed consecutively, I am required by s. 718.2(c) of the Code to consider whether their combined length of seven years and six months would result in an unduly long or harsh punishment. In my view, it would. Therefore, the principle of totality must be applied as well.
- [79] Our Court of Appeal in *R. v. Somers*, 2021 BCCA 205, at paras. 47 and 48 explained how this principle is to be applied practically as follows:

- [47] To reduce the total length of a number of sentences based on the totality principle because taken together they would otherwise be too harsh, the sentencing judge may choose to reduce the length of one or more individual consecutive sentences, or may choose to order that what would otherwise be consecutive sentences be served concurrently. See, for example, *R. v. Mavros*, 2014 BCSC 2347 at paras. 110-111, varied on appeal only with respect to giving enhanced credit for pre-trial custody, 2018 BCCA 398.
- [48] Nevertheless, the sentencing judge needs to consider whether imposing concurrent rather than consecutive sentences for multiple offences will properly reflect the offender's culpability. In many cases when an offender has committed multiple serious offences that, but for the totality principle, would otherwise result in consecutive sentences, the offender's moral culpability is greater than had the offender committed the same offences on one occasion. The judge applying the totality principle needs to consider the greater moral blameworthiness arising from the multiple offences.
- [80] In other words, a judge who finds that the total length of the multiple sentences to be imposed would be too harsh can either: (1) modify individual sentence lengths; or (2) order that otherwise consecutive sentences be served concurrently. If the latter option is chosen, the judge must nevertheless ensure that the total sentence still reflects the offender's greater moral blameworthiness arising from having committed multiple offences.
- [81] In my view, a fit aggregate sentence that respects the totality principle in the circumstances of this case is five years, before credit for time served. This duration follows a holistic consideration of all of the aggravating and mitigating factors discussed above, including Mr. Hooper's revictimization of J.G. by having offended against her a second time in Saanich four months after having done so in Langford.
- [82] In order to effect this result, I will reduce the length of each of Mr. Hooper's individual sentences by one-third. This means that the sentence for the Langford Incident will be two years and four months; and the sentence for the Saanich Incident will be two years and eight months. The two sentences will be served consecutively, for a total duration of five years.

Sentence

- [83] Mr. Hooper, will you please stand.
- [84] THE ACCUSED: I [indiscernible/not at microphone] -- I want to [indiscernible].
- [85] THE COURT: Mr. Hooper, will you please stand.
- [86] THE ACCUSED: I'm asking if [indiscernible/not at microphone], why my lawyer hadn't done that. I'd fire him [indiscernible].
- [87] THE COURT: Mr. Hooper, please stand.
- [88] THE ACCUSED: Why should I stand when I'm not getting my freedom of right -- my rights and my voice?

- [89] THE COURT: On Count 2, sexual interference with J.G. in June 2018 in Langford, I sentence you to imprisonment for a period of two years and four months.
- [90] On Count 4, sexual interference with J.G. in October 2018 in Saanich, I sentence you to imprisonment for a period of two years and eight months.
- [91] These sentences are to be served consecutively. In other words, the totality of the combined sentences is five years.
- [92] You will receive a credit of three days towards these sentences for the two days of pre-trial custody you had in respect of these offences.
- [93] In addition, I make four ancillary orders.
- [94] First, you must comply with the Sexual Offender Information Registration Act for the rest of your life. This follows from s. 490.012(2)(a) and (b) and s. 490.013(6) of the Code because you were previously convicted of a primary offence and have been subject to a lifetime SOIRA order since January 12, 2021.
- [95] Second, you are prohibited for a period of 10 years from owning, possessing or carrying any firearm, crossbow, restricted weapon, ammunition, or explosive substance. You are also prohibited for life from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, or prohibited ammunition for life. This is pursuant to s. 109(1)(a) of the Code.
- [96] Third, you will be required to provide a DNA sample in accordance with s. 487.051(1) of the Code.
- [97] Fourth, you are not to have any contact or communication, direct or indirect, with J.G. for the duration of your custodial sentence. This is pursuant to s. 743.21 of the Code.
- [98] Mr. Hooper, you may be seated now.
- [99] There are two other matters that I wish to note on the record. First, pursuant to s. 743.2 of the Code, I direct the Court Services Branch to forward to the Correctional Service of Canada a copy of the pre-sentence, psychological assessment, and Gladue reports that were entered into evidence at the sentencing hearing, as well as a copy of these reasons once they are transcribed.
- [100] Lastly, s. 726.3 of the Code requires me to inquire of the prosecutor if reasonable steps were taken to determine whether the victim wishes to receive information regarding the sentence and its administration. Ms. Green, can you comment on that?
- [101] CNSL S. GREEN: Justice, I have not spoken to the victim directly but I imagine her father would appreciate receiving that information on behalf of J.G. So I would ask that that be done.

[102] THE COURT: Section 726.3 also requires that if a victim's wishes are known they must be entered into the record of the proceedings. Ms. Green's comments are noted for the record.

[103] That concludes my reasons for sentence. Unless there are any other matters, we are adjourned.

[104] CNSL S. GREEN: No. No further matters, thank you, Justice.

[105] CNSL B. MCPHAIL: Thank you, Justice.

"Brongers J."

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