

CANADA / JUDGMENT

R. v. J.A.F.

2025 BCSC 1392

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1392 R. v. J.A.F.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. J.A.F.,

2025 BCSC 1392

Date: 20250613

Docket: 26568-2

Registry: Smithers

Rex

v.

J.A.F.

Restriction on Publication: A publication ban has been imposed under s. 486.4 of the Criminal Code restricting the publication, broadcasting or transmission of any evidence that would identify the complainant. This publication ban applies indefinitely unless otherwise ordered.

Corrected Judgment: The offence dates have been corrected at para. 3 on August 12, 2025.

Before: The Honourable Justice Ahmad

Oral Reasons for Sentence

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Place and Date of Hearing:

Smithers, B.C.

June 12, 2025

Place and Date of Judgment:

Smithers, B.C.

June 13, 2025

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[1] THE COURT: These reasons on sentence were delivered orally. They have been edited for distribution and publication. Neither the reasoning nor the outcome has changed.

[2] These proceedings are subject to a publication ban pursuant to s. 486.4(1) of the Criminal Code, R.S.C. 1985, c. C-46 [Criminal Code], such that no information that could identify the victim can be published, broadcast, or transmitted. Accordingly, I have anonymized the names of the victim, her family members, and the offender. In these reasons, I refer to the offender as "J.A.F." or "Mr. F.", the victim as "H.C.", the victim's mother as "D.C.", and the victim's sister as "F.C."

I. Introduction

- [3] J.A.F. is before the court for sentencing in respect of two charges relating to sexual offences committed in Topley, British Columbia, in the period, November 1, 2021 to January 2, 2022. H.C. is the victim of these offences.
- [4] Following a trial by jury, Mr. F. was found guilty of both offences set out in the indictment. They are:
- a) Count 1: sexual interference of a person under the age of 16 years contrary to s. 151 of the Criminal Code; and
 - b) Count 2: sexual assault contrary to s. 271 of the Criminal Code.
- [5] The Crown concedes that the circumstances and facts underpinning the convictions for both Counts 1 and 2 are the same. Accordingly, pursuant to the principles set out in *R. v. Kienapple*, [1975] 1 S.C.R. 729, it submits that Count 2 should be stayed and that sentencing proceed only on Count 1, that being the more serious offence which takes the victim's age into account. The defence agrees.
- [6] Accordingly, Count 2 is stayed. As a result, sentencing will only proceed on Count 1.
- [7] These are my reasons for judgment on sentencing on Count 1.

II. Background Facts

- a. Circumstances of the Offence
- [8] After hearing submissions of the parties, on June 11, 2025, I advised the parties of my findings of fact for the purposes of sentencing. Since then, the Crown has provided its written summary of those facts which I accept and adopt as an accurate summary of the circumstances of the offence. That summary follows:
- [9] Mr. F. was the intimate partner of the victim's mother, D.C., from May of 2019 until shortly before January 2, 2022. Mr. F. first met D.C.'s two children, H.C., the victim, and F.C., in 2019. Mr. F. moved into the family home where D.C. and her two children lived in May of 2021. Mr. F. left the home on January 2, 2022.
- [10] Between November 7, 2021, and January 2, 2022, Mr. F. sexually assaulted H.C. on approximately seven occasions when she was 15 years old and he was 26. H.C.'s recollection of the assaults tended to blur together and she was unable to provide details of more than four instances of assaults committed by Mr. F.. However, H.C. was able to recall that the assaults mostly happened in the basement where Mr. F. kept a spare mattress.

- [11] The assaults, with the exception of the last in time, involved acts up to and including forced vaginal intercourse and occurred when D.C. was out at work and Mr. F. was at home with her children. Mr. F. did not wear a condom during the assaults involving intercourse. H.C. was able to provide some details regarding four of the assaults in her statement to the police, which was entered as an exhibit on the trial.
- [12] The first incident H.C. remembered was also the very first assault, which occurred on November 7, 2021. Mr. F. was watching television with H.C. while D.C. was out of the home. Mr. F. commented on H.C.'s body and mentioned a boy that H.C. had been interested in. Mr. F. then put his hand down H.C.'s shirt and began groping the rest of her body before bringing her hand to his penis area. Mr. F. told H.C. that she "had to" touch his penis. He then undressed both himself and H.C. and had vaginal intercourse with her. Mr. F. asked H.C. to perform fellatio on him, but on this occasion, she did not. Mr. F. warned H.C. not to tell D.C., or D.C. may harm them both.
- [13] H.C. described herself as being not "even in my body really" during the assault. At the end of the assault, Mr. F. told H.C. that she was "a good girl" and that this was "our little secret".
- [14] The second incident occurred approximately one week after the first. Mr. F. asked H.C. to come into the basement to help him with something. Mr. F. forced vaginal intercourse with H.C., removing her shirt and pulling her pants partway down. Mr. F. was "more aggressive" this time and pushed H.C. into different positions. The assault occurred on the mattress. Mr. F. ejaculated on H.C.'s body before going upstairs.
- [15] The third incident H.C. remembered occurred sometime around December 2, 2021. H.C. did not believe it to be the third incident in time, but it was the third incident that she could remember the particulars of. While attempting to avoid Mr. F., H.C. went into the basement. Mr. F. found H.C. and forced her to perform fellatio on him. H.C. also tried to walk away, but was told by Mr. F. to "bend over". Mr. F. then had vaginal intercourse with H.C. while she was on all fours. Mr. F. attempted anal intercourse with H.C., but was unable to penetrate her in that manner. The encounter ended when Mr. F. ejaculated on H.C.'s back.
- [16] The final incident that H.C. could recall was shortly before Mr. F. left the home. Mr. F. gave H.C. a hug and grabbed her buttocks. D.C. was in the room, but did not see what Mr. F. had done.
- [17] H.C. also recalled that during one of the assaults, although not a specific one she could remember, Mr. F. asked her to wear a diaper, although she did not. Mr. F. would also tell H.C. about his sex life with D.C. when they were alone.
- [18] After moving out of the home, Mr. F. moved to Vernon for a time, but remained in contact with D.C. H.C. did not disclose the assaults to anyone until May of 2022 when Mr. F. returned to the area and attended at the home to pick up his dog. H.C. felt unsafe when Mr. F. returned and was worried that he would reconcile with D.C. H.C. disclosed the assaults to D.C. the next day, and soon after, she gave her statement to the police.

b. Circumstances of the Offender

- [19] In considering Mr. F's circumstances, I have had the benefit of a pre-sentence report ("PSR") prepared by Brittany Neufeld from Williams Lake Community Corrections.
- [20] Mr. F. is currently 28 years old. He was 26 at the time of the offences.
- [21] Prior to his convictions, Mr. F. did not have a criminal record. Since then, he was charged with a breach of a release order, resulting in his spending five days in jail, but for which a jail term of one day would have been imposed.
- [22] As set out in the PSR, Mr. F. is one of four children born to a single mother, Norma Stewart. Mr. F. maintains a close relationship with the siblings and his mother, who attended many days of the trial in support of her son.
- [23] Other than his family, Mr. F. does not have any meaningful friendships and lives alone in an RV park outside of Williams Lake.
- [24] Mr. F. has a grade eight level education and attended an alternative school due to attention deficit hyperactivity disorder, with which he was diagnosed at a young age. However, he was able to obtain and maintain steady employment up until the commencement of the release order which, as I understand, prohibited him from contact with people under the age of 16. Since then, Mr. F. has struggled financially and depends on social assistance and support from his mother and older brother.
- [25] Mr. F. currently smokes marihuana, which he says helps with his ADHD. He does not currently consume alcohol or hard drugs.
- [26] Mr. F. had previously attended a one-year program as well as a follow-up program, which included anger management courses. There, he was given skills and tools to help cope with stressful situations and manage his anger. He currently has no issues in that regard.
- [27] Since his arrest on this offence, Mr. F. was noted to be "often combative" and described as "rude" by his previous probation officer. More recently, however, Mr. F. has been abiding by his conditions and reporting as directed. It was noted that he attended the PSR interview on time and with a willingness to be open with the PSR writer.
- [28] However, citing his decision to appeal his conviction, at the time the PSR was prepared, Mr. F. maintained his innocence and was unwilling to discuss his receptiveness to potential programming available. Consequently, the PSR contains no information about whether he is remorseful or has any insight into the offences.
- [29] However, while he did not expressly admit his guilt, in his allocution at the sentencing hearing, Mr. F. apologized for the circumstances and the effect they have had. He expressly advised the court that he planned to seek counselling and to better himself and that he hopes to finish school.

[30] While not diminishing the consequences of the matter, at the sentencing hearing, Mr. F.'s mother advised the court, through counsel, that this matter has been very difficult for her family.

c. Impact on the Victim

[31] In October 2024, H.C. provided a victim impact statement. In it, H.C. sets out the impact the offences have had on her, including anxiety and emotional distress, struggles to maintain her emotions, and feelings of being overwhelmed, causing her to have "crying breakdowns". H.C. says she struggles to form new friendships due to trust issues.

[32] The emotional turmoil has caused her to take pills as a form of self-harm. The emotional impacts on H.C. also include an inability to focus, which has resulted in her falling behind a year at school.

[33] In addition, since the assaults, H.C. has suffered from pelvic and abdominal pain, for which she has had to visit specialists to rule out sexually transmitted diseases as a cause for those issues.

[34] H.C. has blamed her mother for bringing Mr. F. into the home, which has damaged their relationship.

[35] D.C. chose not to complete a victim impact statement but communicated to the Crown that the offences have also had a significant negative impact on her. D.C. has experienced stress watching her daughter participate in the prosecution by testifying at two stages of the proceedings, and she struggles with the psychological and physical effects Mr. F.'s conduct has had on her daughter.

III. Legal Framework

a. Purpose and Principles of Sentencing

[36] Section 718 of the Criminal Code sets out the fundamental purposes of sentencing, which it achieves by imposing just sanctions with several objectives. Those objectives include denunciation and deterrence, separation of offenders from society where necessary, and to assist in rehabilitation.

[37] Pursuant to s. 718.01, when a court imposes a sentence for an offence that involves the abuse of a person under the age of 18, it shall give primary consideration to the objectives of denunciation and deterrence.

[38] Section 718.1 of the Criminal Code stipulates that:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

- [39] Achieving this objective involves a balance of the imposition of a sentence that is severe enough to denounce the offence without exceeding, "what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence": *R. v. C.K.*, 2023 BCCA 468 at para. 50, citing *R. v. Bissonnette*, 2022 SCC 23 at paras. 50 - 51.
- [40] Section 718.2 of the Criminal Code sets out other principles that must be taken into consideration in sentencing. They include:
- a) any relevant aggravating or mitigating circumstances; and
 - b) that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
- [41] Factors that are statutorily deemed to be aggravating in the context of child sexual offences include: abuse of a person under the age of 18 (s. 718.2(a)(ii.1)), breach of trust or authority in relation to the victim (s. 718.2(a)(iii)), and evidence of a significant impact on the victim considering their age and other personal circumstances (s. 718.2(a)(iii.1)).
- b. Specific Considerations for Sexual Offences Committed Against Children
- [42] In *R. v. Friesen*, 2020 SCC 9, the court addressed sentencing of an offender convicted of a sexual offence against a child, noting that "to effectively respond to sexual violence against children, sentencing judges need to properly understand the wrongfulness of sexual offences against children and the profound harm that they cause. Getting the wrongfulness and harmfulness right is important": *Friesen* at para. 50.
- [43] The harms and impacts identified by the Supreme Court of Canada include: harm to children's "personal autonomy, bodily integrity, sexual integrity, dignity, and equality"; damage to their relationships with their caregivers and other social relationships; profound harm to parents, caregivers, and family members who may be left "feeling powerless and guilty" over their child's experience; and "broader harm to the communities in which children live and to society as a whole".
- [44] As the court in *Friesen* summarized at para. 5:
- we send a strong message that sexual offences against children are violent crimes that wrongfully exploit children's vulnerability and cause profound harm to children, families, and communities. Sentences for these crimes must increase. Courts must impose sentences that are proportional to the gravity of sexual offences against children and the degree of responsibility of the offender, as informed by Parliament's sentencing initiatives and by society's deepened understanding of the wrongfulness and harmfulness of sexual violence against children. Sentences must accurately reflect the wrongfulness of sexual violence against children and the far-reaching and ongoing harm that it causes to children, families, and society at large.
- [45] With that message in mind, at para. 114, the court set out specific guidance to sentencing judges, noting:

it is incumbent on us to provide an overall message that is clear That message is that mid-single digit penitentiary terms for sexual offences against children are normal and that upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances. [citing R. v. L.M., 2008 SCC 31] maximum sentences should not be reserved for the "abstract case of the worst crime committed in the worst circumstances" Instead, a maximum sentence should be imposed whenever the circumstances warrant it

[46] Indeed, as the Court of Appeal of this province subsequently noted in C.K. at para. 112, in the years since the issuance of Friesen, substantial penitentiary terms are no longer rare or require exceptional circumstances even for first-time offenders.

[47] Commencing at para. 121 of Friesen, the court sets out a non-exhaustive list of significant factors to determine a fit sentence for sexual offences against children. They are:

- a) likelihood to reoffend;
- b) abuse of a position of trust or authority;
- c) duration and frequency of the offences;
- d) age of the victim;
- e) degree of physical interference; and
- f) victim participation.

[48] As the Court notes in C.K.:

[54] Friesen established a new analytical approach to sentencing for child sexual violence. It is an approach that " places children, and the harm they suffer, at the centre of the discussion": R. v. Bertrand Marchand, 2023 SCC 26 at para. 32, emphasis added. The Friesen framework reflects society's deeper understanding of the immediate and long-term impacts of sexual abuse on children, their families, their communities, and society at large: at paras. 50, 60-67, 74-86.

[49] C.K. provides a comprehensive summary of the principles applicable to sentencing of child sexual offences at paras. 50-62.

c. Legal Parameters

[50] The Crown proceeded by indictment. The maximum sentence of imprisonment for Count 1 is 14 years in jail. There is no minimum sentence for this offence.

IV. Mitigating and Aggravating Circumstances

[51] The Crown refers to seven factors it argues are aggravating, some of which are statutorily aggravating factors. With one exception, the defence did not dispute that they were. I agree that the undisputed factors, all of which have been proven beyond a reasonable doubt, are aggravating. They are:

- a) The sexual interference involved the abuse of a person under the age of 18 (s. 718.2(a)(ii.1);
- b) The offences had a significant impact and have caused harm to H.C., especially considering her age and mental health (s. 718.2(iii.1)). I have set out the details of that impact and harm in the "Impact on the Victim" section above. It bears noting that many of the harms actually suffered by H.C. include harms expressly contemplated in Friesen, for example, harm to her "personal autonomy, bodily integrity, sexual integrity, dignity and equality", risk of physical pain and other medical issues, including the risk of STDs or pregnancy, damage to her relationship with her mother and other social relationships;
- c) The assaults occurred in the victim's home, a place where she should have been safe from sexual predation. That Mr. F. also lived in the home would have a further impact on H.C.'s inability to extricate herself from the circumstances, her being only 15 years old;
- d) There were multiple incidents of sexual offending, involving repetitive acts over a series of approximately two months. I have set out the nature of the offences in the "Circumstances of the Offence" section and will not repeat them here;
- e) The acts committed were highly intrusive, involving a series of approximately seven incidents, including, in some instances, forced vaginal intercourse; and
- f) Mr. F. engaged in threats of consequence to H.C. if she were to disclose the assaults to D.C. by telling H.C. that, if she disclosed to D.C., "she may harm them both". I accept, as the Crown submits, those threats were a tool of manipulation designed to implicate H.C. as a willing participant.

[52] In addition, the Crown submits that an additional aggravating factor, that is, what it alleges is Mr. F.'s abuse of a position of trust (s. 718.2(a)(iii)), is also present in this case.

[53] The defence disputes that assertion. He argues that, at 15 years old, H.C. was capable of taking care of herself and did not need anyone to look after her when her mother was out of the home. The defence argues there was no evidence that Mr. F. assumed any parental-like role, such as assisting with homework or attending parent-teacher meetings, and there was no suggestion that he had any legal or ethical obligation to protect her from harm.

[54] In my view, the defence position takes too narrow a view of what is a "position of trust". Specifically, I do not accept that the term can be solely defined by a list of tasks or any legal obligation or definition. As the court notes in Friesen at para. 125:

Trust relationships arise in varied circumstances and should not all be treated alike (see *R. v. Aird*, 307 O.A.C. 183, at para. 27). Instead, it makes sense to refer to a "spectrum" of positions of trust (see *R. v. R.B.*, 2017 ONCA 74, at para. 21 (CanLII)). An offender may simultaneously occupy multiple positions on the spectrum and a trust relationship can progress along the spectrum over time (see *R. v. Vigon*, 2016 ABCA 75, 612 A.R. 292, at para. 17).

- [55] Similar circumstances were present in *R. v. Blanthorne*, 2024 BCSC 227, where the offender was "not in a parental-type role" to the victim. In that case, the fact that the victim's mother allowed her and her sibling to have frequent unsupervised contact with the offender, including sleeping over at his and his wife's house, was enough for the court to conclude that a position of trust existed: *Blanthorne* at para. 42(d).
- [56] In this case, Mr. F. himself described his relationship with H.C. as a "stepfather role" and agreed on cross-examination with descriptors of the relationship as "close" and "fatherly". It is also significant that, as was the case in *Blanthorne*, D.C. also allowed Mr. F. to have unsupervised contact with her children, including H.C. and her younger sister. It is easy to infer that D.C. and, by extension H.C., assumed that they would be safe in his presence or, at the very least, that he would not cause harm to them. I am satisfied that he was in a position of trust.
- [57] Mr. F. abused that trust not only by using his time alone with H.C. to engage in the sexual assaults that he did, but also by threatening H.C. not to tell D.C. or "D.C. may harm them both". The Crown has proven this aggravating factor beyond a reasonable doubt.
- [58] The Crown cites Mr. F.'s lack of a criminal record when the offences were committed as the sole mitigating factor. I agree that it is a mitigating factor. However, it is not the only one.
- [59] In addition, while Mr. F. had maintained his innocence and was unwilling to discuss possible future programming, that changed, at least in part, at the sentencing hearing. While he did not admit his guilt, he did apologize for the circumstances and advised the court that he planned to seek counselling and to complete his schooling. In my view, that expression of intent, which I took to be sincere, shows some insight into the harms that have been caused and indicates an intention to lead a more positive life.
- [60] Moreover, while Mr. F. does not have a large support system, I accept that the close relationship with his family, including his mother, who has provided him with financial and emotional support by attending this trial, may well serve as a support system to assist in any counselling he pursues.
- [61] This is also a mitigating factor.

V. Position of the Crown and the Defence

- [62] The Crown submits that a five-year custodial sentence of "new time" is appropriate.
- [63] In addition, the Crown also seeks the following ancillary orders:
- a) a mandatory DNA order;
 - b) a mandatory firearms' prohibition;
 - c) a no-communications order in respect of H.C. and D.C. during the custodial portion of the sentence;

- d) various conduct orders restricting Mr. F.'s contact with persons under 16 and preventing him from being within two kilometres of where H.C. lives for a period of 10 years after his release from custody; and
 - e) an order that he comply with the obligations of the Sex Offender Information Registration Act, S.C., 2004, c. 10, for a period of 20 years.
- [64] Mr. F. submits that a penitentiary sentence of three to four years is appropriate. He does not take any position on the ancillary orders sought by the Crown.

VI. Discussion and Analysis

- [65] In determining a fit sentence in this case, I must consider the fundamental principles of sentencing as set out in s. 718.1 of the Criminal Code, that is, the sentence must be proportionate to the seriousness of the offence, and the degree of the offender's responsibility. Proportionality must also be considered in the unique circumstances of each case: *R v. LaCasse*, 2015 SCC 64 at para. 53; *R. v. Parranto*, 2021 SCC 46 at para. 12.
- [66] In applying the principle of proportionality, I am directed by Friesen to give effect to the inherent wrongness, potential and actual harm of Mr. F.'s sexual offences against H.C., focusing on the harm to her personal autonomy, her bodily and sexual integrity, dignity, and her relationships with family and friends, as well as the harm to society as a whole. In addition to considering the mitigating and aggravating factors, which include several of the significant factors identified in Friesen, I am required to balance the objectives of sentencing, giving primacy to the sentencing objectives of denunciation and deterrence.
- [67] I now turn to the non-exhaustive list of factors which determine a fit sentence for offences such as these, as set out in Friesen.
- [68] Of those, five in particular have a bearing on the appropriate sentence to be imposed in this case.
- [69] First, I turn to the first Friesen factor, that is, the risk of Mr. F.'s likelihood to re-offend. This factor invokes both "[t]he fundamental purpose of sentencing, to protect society", as well as the object of rehabilitation set out in s. 718 of the Code: Friesen at paras. 122- 124. In respect of the latter objective, the court in Friesen said this:

Courts should encourage efforts toward rehabilitation because it offers long-term protection (Gladue, at para. 56). Rehabilitation may also weigh in favour of a reduced term of incarceration followed by probation since a community environment is often more favourable to rehabilitation than prison (see Proulx, at paras. 16 and 22). At the same time, depending on the offender's risk to reoffend, the imperative of providing immediate and short-term protection to children may preclude early release. In these cases, efforts at rehabilitation must begin with such treatment or programming as is available within prison (see *R. v. R.M.S.* (1997), 1997 CanLII 12497 (BC CA), 92 B.C.A.C. 148, at para. 13). In some cases, the only way to achieve both short-term and long-term protection of children may thus be to impose a lengthy sentence (see *R. v. Gallant*, 2004 NSCA 7,

220 N.S.R. (2d) 318, at para. 19, per Cromwell J.A., as he then was).

[70] As I have noted, in this case, Mr. F. chose not to discuss either his attitude and understanding regarding the offences or his receptiveness to further supervision and programming at the time the PSR was prepared. However, in his allocution, he confirmed that he planned to seek counselling. While I commend Mr. F. for that commitment, it is unfortunate that the court is left with no professional assessment of his risk of re-offending.

[71] Having said that, having heard from Mr. F., I accept that it is his sincere intention to take advantage of counselling or programming that will be available to him when incarcerated. However, it would be naïve to suggest that, notwithstanding the recently communicated intention, there is no risk to reoffend. I must consider that possibility on this assessment.

[72] Second, as the court notes in Friesen at para. 129:

The abuse of a position of trust is also aggravating because it increases the offender's degree of responsibility. An offender who stands in a position of trust in relation to a child owes a duty to protect and care for the child that is not owed by a stranger. The breach of the duty of protection and care thus enhances [the] moral blameworthiness. The abuse of a position of trust also exploits children's particular vulnerability to trusted adults, which is especially morally blameworthy 129.

[73] Friesen notes that the presence of trust may inhibit children from reporting sexual violence and that the barrier may be "particularly pronounced where the perpetrator of the sexual violence resides with the victim and as a parent or caregiver" (para. 128).

[74] As discussed above, I accept that, although not a legal guardian, Mr. F. was in a position of trust.

[75] The third applicable Friesen factor is the duration and frequency of the abuse. Specifically, sexual offences against children that are committed on multiple occasions for longer periods of time should attract significantly higher sentences. As the court notes, "Each further instance of sexual violence traumatizes the child victim anew and increases the likelihood that the risks of long-term harm will materialize. Each further instance shows a continued and renewed choice by the offender to continue to violently victimize children": Friesen at para. 133.

[76] In this case, the offending conduct was not limited to a single incident. In addition to the four incidents for which H.C. could specifically recall, there were up to three other assaults that occurred over a two-month period.

[77] The fourth factor is the age of the victim. This factor is relevant to both the gravity of the offence and the degree of responsibility of the offence: Friesen at para. 135. This factor is not restricted to cases involving particularly young children, but includes adolescents, as well, in respect of whom, historically, disproportionately low sentences have been imposed: Friesen at para. 136.

[78] As the court explains further at para. 136:

In particular, sexual violence by adult men against adolescent girls is associated with higher rates of physical injury, suicide, substance abuse, and unwanted pregnancy (I. Grant and J. Benedet, "Confronting the Sexual Assault of Teenage Girls: The Mistake of Age Defence in Canadian Sexual Assault Law" (2019), 97 Can. Bar Rev. 1, at p. 5; "The 'Statutory Rape' Myth", at p. 269; R. v. Hess, 1990 CanLII 89 (SCC), [1990] 2 S.C.R. 906, at pp. 948-49, per McLachlin J.).

[79] In this case, at 15 years old, H.C. has the potential to suffer all of those harms as a result of Mr. F.'s conduct. As revealed in the victim impact statement, she has already engaged in acts of self-harm.

[80] The fifth applicable factor was the degree of physical interference, a factor which reflects the degree of violation of the victim's bodily integrity. It also reflects the sexual nature of the touching and its violation of the victim's sexual integrity: Friesen at para. 139. In addition, "[t]he degree of physical interference also takes account of how specific types of physical acts may increase the risk of harm". Again, as the Court explains:

For instance, penile penetration, particularly when unprotected, can be an aggravating factor because it can create a risk of disease and pregnancy (see Hess, at p. 948; R. v. Deck, 2006 ABCA 92, 384 A.R. 106, at para. 20; T.(K.), at para. 18). Penetration, whether penile, digital, or with an object, may also cause physical pain and physical injuries to the victim (see Stuckless (2019), at para. 125, per Pepall J.A.; T.(K.), at paras. 10-11). Children's bodies are especially vulnerable to physical injuries from penetrative sexual violence (see Hess, at p. 920, per Wilson J., and p. 948).

[81] I have already described the nature of the physical interference, which includes unprotected penetrative intercourse and will not repeat it here. On this factor, I note H.C. has suffered some of the effects and risks specifically contemplated by the Supreme Court of Canada and has had to receive medical attention in respect of those issues.

[82] Having considered those factors, I must also consider the parity principles as set out in s. 718.2(b) of the Criminal Code, that is, the idea that the sentence imposed in this case should be consistent with or similar to other sentences imposed for similar offences committed by similarly situated offenders

[83] As Justice Riley, then of this court, notes in R. v. D.J.H. 2022 BCSC 1743 at para. 47 [D.J.H.]: "At the same time, this is one of the hardest parts of the exercise, because no two cases are truly alike, and because some of the comparators in a particular case pull in one direction (in favour of a lengthier jail sentence), while other comparators in the same case pull in the other direction (in favour of a more lenient sentence)".

[84] However, as a general starting point, I am guided by the reminder in Friesen that, "mid-single digit penitentiary terms for sexual offences against children are normal and that upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional [cases]": Friesen at para. 114.

- [85] In this case, counsel has referred me to a number of cases they argue provide further guidance. The Crown relies on: *R. v. D.J.H.*, 2022 BCSC 1743, *R. v. Harrison*, 2023 BCSC 1203, and *R. v. Harry*, 2023 BCCA 448. In those cases, sentences of six years, five years, and four years, respectively, were imposed.
- [86] The defence relies on *R. v. P.R.J.*, 2023 BCCA 169, *R. v. B-B.*, 2025 BCSC 232, *R. v. T.A.M.*, 2025 SKCA 22, *R. v. Taylor*, 2024 BCPC 130, and *R. v. Maslehati*, 2024 BCCA 207, in which sentences of 36 months, 4 ½ years, four years, 30 months, and 28 months were imposed.
- [87] Of those cases, in my view, two of the cases relied on by the defence, B-B. and Taylor, are distinguishable on the basis of the guilty plea, which, particularly in the case of sexual offences against children, is important in two ways. First, the plea relieved the child victim from having to re-live the assaults, not once, but twice when giving evidence and thus reduced one aspect of the harm caused by the offender's conduct. Second, the plea was direct evidence of the offender's insight into his conduct and, it follows the possibility of rehabilitation.
- [88] Both factors weigh in on the assessment of a fit sentence.
- [89] A third decision, Maslehati, is also distinguishable in that the victim in that case was an adult. While I accept, as the defence argues, that the court nonetheless considered the decision in Friesen, it is not entirely clear to me that consideration focused on harm suffered by children in its analysis. Indeed, because the victim was an adult, there was no need to "[place] children, and the harm they may suffer, at the centre of the discussion" (citation omitted), as the court emphasized must be done in C.K. In my view, it is distinguishable.
- [90] Of the remaining cases relied on by counsel, I find the seriousness of the offences committed by Mr. F. and his degree of moral blameworthiness to be slightly more aggravating than was the case in P.R.J., in which a sentence of 36 months was imposed. While the offending conduct in that case was perpetrated by the victim's mother (i.e., a person with a greater degree of trust than Mr. F.), the offence was a single-incident occurrence perpetrated by an offender who was "extremely intoxicated" and likely experienced anxiety and depression, both of which served to attenuate her moral blameworthiness.
- [91] By contrast, the conduct and moral blameworthiness in this case may be slightly less aggravating than that of the offender in T.A.M., which involved multiple sexual assaults on two of the offender's grandchildren every summer over a period of seven years, commencing when the victim was five years old. The abuse only ceased when one of the grandchildren became psychologically aware that it was wrong and then physically strong enough to stop it. A sentence of four years was imposed in that case.

- [92] In my view, of the cases I was referred to, the most similar is the decision in D.J.H., in which a six-year sentence was imposed. That case involved repeated sexual assaults against a seven-year-old victim by her step-grandfather. The abuse was committed over a period of weeks or months at times when the victim was staying at their condominium for weekend visits, when the victim was alone with D.J.H. while his wife was out at work.
- [93] The victim gave evidence of five separate incidents of sexual touching which included D.J.H. licking her vagina, digitally penetrating the victim's vagina, putting his penis in her mouth, and putting his buttocks in J.D.'s face and compelling her to lick his anus. The aggravating factors included the repetitive offending, the significant impact on the victim and her family, and that D.J.H. threatened J.D. with death if she told anyone about the assaults.
- [94] Like Mr. F., the offender in that case had no criminal record, but had a productive work history and support from family and friends in the community. However, in keeping with his intention to appeal the conviction, D.J.H. declined to discuss the offences during a psychological assessment and PSR interview. The failure to participate left the court unable to determine his appreciation of the harm caused or for the court to consider in mitigation any acceptance of responsibility.
- [95] While that had been the case here, as I have said, since then, Mr. F. has provided the Court with some assurance of his intention to engage in counselling and other programming that may be available to him. That assurance favours Mr. F. on this analysis.
- [96] Again, as is often stated in the caselaw, no two cases are alike. Indeed, that is why the Supreme Court of Canada has stressed that the individual circumstances of each case must be considered in fashioning an appropriate sentence.
- [97] However, in keeping with the principle of parity, I have considered the cases referred to me by counsel, the principles guiding the assessment of a fit sentence as mandated in Friesen and C.K., all while giving primacy to the sentencing objectives of denunciation and deterrence.

VII. Disposition on Sentence and Ancillary Orders

- [98] Mr. F., I ask that you please stand.
- [99] After taking all of the relevant factors into consideration, I sentence you to serve a jail sentence of five years or 1,825 days.
- [100] However, you have served five days in jail for a breach of the release order relating to this offence. Given its related nature, I am satisfied that it is appropriate to credit you for that time at a rate of 1.5 to one amounting to a total enhanced credit of eight days. With that credit, your sentence for the offence before the court today is 1,817 days.

[101] In my view, the sentence achieves the goals of denunciation and deterrence and reflects the gravity of your offence and the high degree of moral blameworthiness while also taking into account the mitigating factors I have described.

[102] You may be seated.

[103] I also make the following ancillary orders pursuant to the Criminal Code:

- a) Pursuant to s. 487.051, I make an order in Form 5.03 authorizing the taking from you, for the purpose of a forensic DNA analysis, any number of samples of one or more bodily substances that are reasonably required for that purpose by means of the investigative procedures described in s. 487.06(1).
- b) Pursuant to s. 490.012 and 490.013, you must comply with the obligations of the Sex Offender Information Registration Act for a period of 20 years. That order is to be in Form 52.
- c) Pursuant to s. 109(1)(a) and (2):
 - i. you are prohibited from owning, possessing, or carrying any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, firearm part, ammunition, and explosive substance for a period of 10 years; and
 - ii. you are prohibited from owning, possessing, or carrying any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- d) Pursuant to s. 161(1)(a.1), (b), and (c), you are prohibited from the following enumerated activities for a period of 10 years after release from custody:
 - i. being within two kilometres of where H.C. lives;
 - ii. seeking, obtaining, or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of 16 years; and
 - iii. having any contact -- including communicating by any means -- with a person who is under the age of 16 years unless you do so under the supervision of a person whom the court considers appropriate.
- e) Pursuant to s. 743.21, you must not have any direct or indirect contact or communication with H.C. or D.C. during the custodial portion of your sentence.

[104] A prohibition order will be prepared by the appropriate authorities and served upon Mr. F. I delegate to the appropriate authority the duty to inform Mr. F. of the consequences of violating the prohibition orders.

[105] Subject to what I might hear from counsel, Ms. Yao, I am waiving the victim fine surcharge in this case. Given Mr. F.'s financial circumstances and the period that he will be serving in incarceration, I find it would be undue hardship on him to impose the fine.

[106] CNSL E. YAO: Yes, that's agreeable and I was just looking at my list of ancillary orders, Justice, and note that the normal practice is we should have prepared the --

[107] THE COURT: The Form 52.

[108] CNSL E. YAO: Yes --

[DISCUSSION REGARDING THE FORM 52.]

[109] THE COURT: Is there anything else that is arising from those sentencing reasons?

[DISCUSSION REGARDING THE PROVISION OF THE DNA SAMPLE.]

[110] Mr. F., it is truly my sincere hope that you use the time and the opportunity that you now have to pursue counselling and to further your education, as you mentioned it is your intention to do. I wish you good luck in that regard.

[111] I do not see the family of H.C. in attendance, but I do want to acknowledge that it has been a long and difficult road for H.C. and her family. It is my hope that they will be able to begin healing.

[112] Thank you, counsel, for the manner in which you have handled this matter. It is greatly appreciated.

"Ahmad J."

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