

CANADA / JUDGMENT

R. v. J.W.W.

2025 BCSC 849

COURT

Supreme Court of British Columbia

DECIDED

10 April 2025

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. J.W.W.,

2025 BCSC 849

Date: 20250410

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Registry: Kelowna

Rex

v.

J.W.W.

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Before: The Honourable Mr. Justice Milman

Oral Reasons for Sentence

Counsel for the Crown:

C. Gagnon

Counsel for the Accused:

L. McPheeters

Place and Dates of Trial:

Kelowna, B.C.

October 21-25, 2024

Place and Date of Sentence:

Kelowna, B.C.

April 10, 2025

I. Introduction

- [1] THE COURT: Before the Court for sentencing is J.W.W. On November 29, 2024, in my judgment now indexed as 2024 BCSC 2262, I found him guilty on two counts in relation to one of the two complainants whose allegations gave rise to the four-count indictment that was before me. One of the counts on which I convicted has been conditionally stayed on the basis of the Kienapple principle (R. v. Kienapple, [1975] 1 S.C.R. 729). This sentencing is therefore proceeding on the single count of sexual interference involving that one complainant, K.R.J.

II. Circumstances of the Offence

- [2] The circumstances of the offence are described in my judgment and I will canvass them only briefly here. The events in issue occurred over a five-year period just under three decades ago, specifically between January 1, 1993, to December 31, 1998. At the time, J.W.W. was in a romantic relationship with the mother of the two complainants, W.J., who had three young children from a different relationship, including the two complainants.
- [3] They were living in a series of homes in the Kelowna area. K.R.J. was between five and 10 years old during the period in question.
- [4] The essential acts forming the subject matter of the offence include three occasions when J.W.W. masturbated himself to ejaculation and rubbed his semen on K.R.J.'s back, and one incident of his having taken her hand and made her masturbate him.

III. The CircumstanceS OF THE OFFENDER

- [5] J.W.W. is now 58. He would have been in his thirties at the time of the incidents with which we are concerned. He is originally from Sault Ste. Marie in Ontario, but now lives in Alberta and has been there for about 25 years. He is employed and earns what defence counsel describes as a good income from his work as a shipper receiver at a company for whom he has worked for 24 years.

- [6] He married his current wife, M.B., a short time after the passing of W.J., the mother of the complainants. It is worth noting that J.W.W. supported W.J. during the last years of her life through her illness.
- [7] J.W.W. currently supports M.B., who has been dealing with some challenging health issues herself and relies on J.W.W. for support, given that she cannot work. J.W.W. also has an elderly mother in a care home whom he visits regularly.
- [8] I have read M.B.'s and the other letters that defence counsel provided to the Court. These come from family, friends, a former neighbour, and a supervisor at work. A few details from those letters stand out. M.B. says that if J.W.W. goes to jail, they will likely lose the condominium they recently purchased. They are servicing the mortgage with his salary, which will leave her homeless if that were to occur. She speaks of J.W.W. as an upstanding person, especially to her and her family, but also to his friends and coworkers.
- [9] That message was reiterated in the letter from M.B.'s daughter. She describes J.W.W. as kind, hardworking, and a person who is deeply devoted to family.
- [10] I also have a letter from J.W.W.'s brother, B., who says J.W.W. has looked after him all of his life. He says, further, that J.W.W. has been a source of emotional and financial support for him. He says J.W.W. has helped many people and would do anything to help anyone.
- [11] I have a letter from his friend and supervisor at the company that employs him. He says that J.W.W. has performed well in his job, earning him the respect of his coworkers. He describes J.W.W. as an honest, hardworking employee. That person's children look up to J.W.W. and think of him as an uncle. He knows J.W.W. to be an honourable person, a person of good character and conduct.
- [12] There is a letter from a former romantic partner of one of the complainants who remains close to J.W.W., despite what has occurred. He described J.W.W. as a kind and generous person who helps others.
- [13] J.W.W. has a criminal record that dates back to the late 1980s. It includes two convictions: one for impaired driving, the other for failing to appear. He received small fines for both.
- [14] Crown counsel agrees that the minor record is dated and unrelated to the matter before the Court and should not weigh heavily in the analysis today. I agree.

IV. Victim Impact

- [15] I was provided with no victim impact statement. Nevertheless, I am able to infer significant and lasting harm to the victim by the very nature of what occurred. Some of this was described to me during the trial. In any event, in the leading case of *R. v. Friesen*, 2020 SCC 9, which I will say more about shortly, there is also a discussion about the lasting harm that offences of this kind are understood to cause.

- [16] I also refer in this regard to the judgment of Donegan J., then of this court, in *R. v. Palmer*, 2023 BCSC 1818, in which significant harm was inferred in a case like this, despite the absence of a victim impact statement.

V. Arguments of the Parties

- [17] Defence counsel seeks a conditional sentence order ("CSO") lasting two years less a day, arguing that the circumstances are sufficiently exceptional to justify a departure from the range for an offence of this kind. Defence counsel cites three cases in support of that submission.
- [18] The first case is *R. v. J.F.D.V.*, 2025 BCCA 4. That case is cited for principles to be applied in considering whether a CSO will be appropriate for an offence of this kind. In that case, the Court of Appeal overturned a decision of the Provincial Court imposing such a sentence, but on grounds that defence counsel argues are not present here; namely, that the victim was Indigenous and disabled, and therefore particularly vulnerable.
- [19] The second case cited is *R. v. Klair*, 2021 BCSC 1976. Defence counsel relies on this case for the range that would be appropriate if a custodial sentence is to be imposed, particularly for the less serious counts in that case that are said to be more analogous to the situation before me in this one. In defence counsel's submission, they suggest a range of approximately six months for each incident, for a total of two years.
- [20] The third case cited by defence counsel is *R. v. I.C.*, 2024 ONSC 1406. In that case, the offender received a 10-month jail sentence for conduct that is only loosely analogous to that before me here.
- [21] Crown counsel seeks a custodial sentence of three to five years, as well as a number of ancillary orders. Crown counsel relies on a large number of cases to support that range, including: *R. v. Brown*, 2020 BCSC 2168; *R. v. Palmer*, 2023 BCSC 1818; *R. v. Taber*, 2022 BCSC 652; *R. v. C.C.*, 2015 ONCA 59; *R. v. J.A.H.*, 2024 BCSC 260; *R. v. A.A.J.T.*, 2022 MBCA 47; *R. v. C.K.*, 2023 BCCA 468; *R. v. K.D.M.*, 2017 ONCA 510; *R. v. R.H.*, 2021 ONCA 236; *R. v. Whittingstall*, an unreported decision of the Provincial Court; *R. v. M.L.*, 2021 NBCA 27; *R. v. S.H.B.*, 2022 BCSC 441; and *R. v. Whitney*, an unreported decision of the Alberta Court of King's Bench.
- [22] As Crown counsel acknowledges, many of these cases involved more aggravated circumstances than those in issue here. Only *Whitney* was referred to in oral submissions at length, and then only for the principles to be applied, given some parallels to this case. However, there were also many important differences from this case, and indeed, each case is unique.

VI. Sentencing Principles

- [23] In imposing sentence, I must be guided by the principles set out in ss. 718, 718.01, 718.1, and 718.2 of the Criminal Code, R.S.C. 1985, c. C-46. These provisions state that the purpose of sentencing is to contribute to respect for the law and to maintain a just and peaceful and safe society by imposing just sanctions. A just sentence is one that is proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [24] The objectives of sentencing are stated to include the following:
- a) to denounce unlawful conduct;
 - b) to deter the offender and others from committing offences;
 - c) to separate offenders from society, where necessary;
 - d) to promote the rehabilitation of offenders;
 - e) to provide reparations for harm done to victims; and
 - f) to promote a sense of responsibility and acknowledgment of the harm done to victims and the community.
- [25] The relative weight and importance of the various factors enumerated in those provisions will vary with the circumstances of the offence and the individual offender. Because the offence before the Court today involves the abuse of a child who was five to 10 years old at the material time, s. 718.01 requires that I give primary consideration to the need to denounce and to deter such conduct.
- [26] Pursuant to s. 718.2, the following are statutory aggravating factors in this case:
- a) the abuse of a person under the age of 18; and
 - b) the abuse of a position of trust or authority as the victim's stepfather.
- [27] In Friesen, the Supreme Court of Canada has given sentencing courts additional guidance with respect to the analysis to be followed in passing sentences for offences in this category, emphasizing in particular the considerable harm that they are understood to cause to victims who are children and to society at large. Those considerations include a requirement that sentencing courts impose heavier sanctions than had been the norm previously, particularly prior to the statutory increase in the maximum sentence in 2015.
- [28] In particular, the Supreme Court of Canada has clarified that mid-single-digit penitentiary terms should now be considered normal, and upper single-digit and double-digit penitentiary terms should not be treated as unusual or reserved for exceptional cases.
- [29] The Court also directed sentencing and appeal courts to avoid the following errors:
- a) relying on sentencing ranges that depend on the kind of physical act committed;

- b) assuming that the harm caused to the victim depends on the nature of the physical act committed;
- c) failing to recognise the potential for serious harm, even where the degree of physical interference is less pronounced; and
- d) relying on a supposed hierarchy of physical acts.

[30] The Court listed the following factors to be considered in crafting the appropriate sentence in such cases:

- a) the likelihood that the offender will reoffend;
- b) whether the offender abused a position of trust or authority;
- c) the duration and frequency of the acts committed;
- d) the age of the victim at the time of the offence; and
- e) the degree of physical interference that occurred.

VII. Aggravating and Mitigating Circumstances

[31] The parties generally agree on the aggravating and mitigating circumstances in this case. The aggravating circumstances include the following:

- a) J.W.W. was in a position of trust in relation to the victim;
- b) the victim was a very young child, as young as five years old, when the conduct began;
- c) the offending occurred in her home where she should have felt safe; and
- d) the incidents occurred over many years and were accompanied by other sexual conduct that I found traumatised the two complainants in their childhood.

[32] I also recognise that a number of important mitigating factors are present here. They include the fact that the offending conduct occurred decades ago. Since then, J.W.W. appears to have led a productive life. He has been supporting others, including members of his own and the victim's family. He has been caring and generous to many others. He has contributed to the community through his work and private life. I am satisfied that there is a minimal risk of his reoffending.

[33] He has essentially no criminal record, other than the two minor acts that predate the offence in issue and involve unrelated conduct.

[34] I should add that J.W.W. maintains his innocence, and therefore is not in a position to express remorse or to propose rehabilitation measures, but that is not an aggravating factor, but merely the absence of a mitigating factor that is sometimes present in the authorities and therefore treated as a neutral consideration here.

VIII. Discussion

- [35] The first question I must answer is whether a CSO would be an appropriate sentence in this case. In considering that question, I am mindful that a CSO can be sufficiently punitive to meet the objectives of denunciation and deterrence in a case such as this. However, such cases must necessarily be rare.
- [36] There are certainly strong arguments to be made in favour of a CSO in this case. Foremost among these is that the impact of a custodial sentence would be devastating on M.B. in particular. I am also mindful of the distinctions between this case and J.F.D.V. As I mentioned earlier, in that case, Winteringham J.A. writing for the Court, set aside the sentence imposed in the Provincial Court, because the sentencing judge failed to give adequate weight to the principles of deterrence and denunciation in doing so.
- [37] Defence counsel says that this case is distinguishable, and I agree. The question is whether the absence of those aggravating factors that distinguish the case, particularly the presence of an Aboriginal victim with disabilities, is sufficient to distinguish that case, when coupled with the additional mitigating factors present here, to such an extent as to make a CSO an appropriate order here.
- [38] Having considered the circumstances of this case as I have outlined them, I am not persuaded that a CSO would be an appropriate disposition, in light of the authorities that have been cited to me, given the aggravating factors that I have outlined. However, I am satisfied that the mitigating factors present in this case, although not justifying a CSO, do justify a custodial sentence at the lower end of the range described in those cases.

IX. Disposition

- [39] J.W.W., please stand. I am sentencing you to a term of two and a half years' imprisonment.
- [40] In addition, this is a primary designated offence and so, pursuant to s. 487.051 of the Criminal Code, the number of samples as are reasonably required for the purpose of forensic DNA analysis will be taken from you.
- [41] Pursuant to s. 490.012, you are to comply with the provisions of the Sex Offender Information Registration Act, S.C. 2004, c. 10, for a period of 20 years.
- [42] There will be a 10-year weapons prohibition pursuant to s. 109 of the Criminal Code.
- [43] And finally, pursuant to s. 743.21 of the Criminal Code, you are to have no contact with M.J., K.A.J., or K.R.J. during the period of your incarceration.

"Milman J."

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