

CANADA / JUDGMENT

R. v. K.I.Z.

2025 BCSC 2643

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2643 R. v. K.I.Z

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. K.I.Z.,

2025 BCSC 2643

Date: 20251216

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Rex

v.

K.I.Z.

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

Before: The Honourable Justice B. Hardwick

Oral Reasons for Sentence

Counsel for the Crown:

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Place and Date of Trial/Hearing:

Penticton, B.C.

December 16, 2025

Place and Date of Judgment:

Penticton, B.C.

December 16, 2025

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- [1] THE COURT: A publication ban has been mandatorily imposed under s. 486.4 of the Criminal Code respecting the publication, broadcasting, or transmission in any way of the evidence that could identify a complainant or a witness referred to in the indictment by the initials C.G. (hereinafter defined as "C.").This publication ban applies indefinitely unless otherwise ordered.

Introduction

- [2] As described by now Chief Justice Marchand in R. v. Smith, 2022 BCCA 405, at para. 26:

Sentencing is a highly individualized process. Sentencing judges have "front-line" experience, see and hear all the evidence and submissions in person, and are generally familiar with the circumstances and needs of the local community. As a result, sentencing judges have broad discretion to impose a fit sentence.

Overview

- [3] On March 25, 2025, I convicted K.I.Z. ("Mr. Z.") of the offence of sexual interference contrary to s. 151 of the Criminal Code. It was a single count on the indictment dated November 7, 2023 (the "Indictment").
- [4] In my reasons for judgment published and indexed at 2025 BCSC 1920 (the "Conviction Reasons"), I outlined in detail the findings of fact underlying my conclusion that Mr. Z. had been proven guilty beyond a reasonable doubt of sexually interfering with the complainant, who I referred to as C. in the Conviction Reasons. I shall again summarize certain key facts for the purposes of sentencing.
- [5] C. was born in July of 2009. She is currently 16 years of age.
- [6] At the material times relevant to the Indictment, C. was 12 years old.
- [7] C. is the eldest of five siblings. Prior to Mr. Z.'s arrest, all the siblings were being raised by their biological mother, whom I defined as "D." in the Conviction Reasons.
- [8] In 2021, C. was living in a two-level residence on "X" Avenue in downtown Penticton, British Columbia, which had five bedrooms (the "House"). The living situation in the House was fluid and somewhat chaotic.
- [9] In or about late April of that year, Mr. Z. and D. became acquainted in some fashion. They were not particularly close acquaintances and Mr. Z. had not met C. or any of her siblings. D. and Mr. Z. were not in a romantic relationship at that time.
- [10] D., however, came to be aware through mutual connections that Mr. Z. needed accommodation on what was then understood to be a short-term basis. D. indicated that she had a room at the House that Mr. Z. could rent for this purpose.
- [11] Mr. Z. moved into the House on or about May 3, 2021. C. was 11 years of age at that time and attending Grade 5 at a local elementary school. Mr. Z. was immediately aware of her age and grade. C. was, based on her own evidence, mature for her age.
- [12] At the time that he moved into the House, Mr. Z. occupied his own bedroom located on the lower level of the House, (defined in the Conviction Reasons as "Mr. Z.'s bedroom"). Around the time that Mr. Z. and D. commenced an intimate romantic relationship during the summer of 2021, Mr. Z. and D. commenced sharing that same lower-level bedroom.
- [13] The evidence at trial confirmed that almost immediately after moving into the House, Mr. Z. started assuming a role within the household different than that of a conventional room and board situation. Specifically, Mr. Z. started assisting with the childcare for C.'s siblings and various other domestic tasks. As C. described it, she and Mr. Z. would "work together to watch them", ("them" being C.'s siblings) when D. was at work. Mr. Z. and C. would then "hang out" together after C.'s siblings had gone to bed for the evening, both on the couch and in Mr. Z.'s bedroom.

- [14] Specifically, while Mr. Z. did have interactions with C. when D. was home, much of the time that C. was "hanging out" with Mr. Z. took place when D. was not present. D. was employed on a full-time basis during the material time, which included quite regularly working night shifts. Mr. Z. was not employed and so he was, in contrast, present at the House most of the time.
- [15] By virtue of this arrangement, C. had the opportunity to become close to Mr. Z. quite quickly. In the Conviction Reasons, I quoted directly from portions of C.'s evidence regarding her relationship with Mr. Z.
- [16] C. was also, as noted, in the Conviction Reasons, in quite a vulnerable place in her life when Mr. Z. moved into the House.
- [17] A key turning point in C. and Mr. Z.'s friendship occurred around C.'s 12th birthday in July of 2021. C. testified that she developed feelings for Mr. Z.
- [18] I found Mr. Z. did not actively discourage C.'s affection towards him.
- [19] To the contrary, C.'s evidence at trial, which I accepted, is that there were five specific incidents of sexual contact between her and Mr. Z. following her 12th birthday and prior to his arrest at the end of October of that year. They were as follows:
- a) Incident 1--vaginal touching of C. by Mr. Z. after they were cuddling at the House;
 - b) Incident 2--oral sex performed on C. by Mr. Z. after some cuddling at the House. C. specifically testified that Mr. Z. "ate her out";
 - c) Incident 3--penile/vaginal intercourse primarily initiated by Mr. Z. at the House, which was terminated voluntarily by Mr. Z. upon observing that C. was becoming anxious. Mr. Z. did not ejaculate on this occasion;
 - d) Incident 4--penile/vaginal intercourse primarily initiated by Mr. Z., which resulted in Mr. Z. ejaculating outside of C.'s body; and
 - e) Incident 5--penile/vaginal intercourse initiated by Mr. Z. in a public place. This intercourse resulted in Mr. Z. ejaculating while penetrating C.'s vagina.
- [20] Mr. Z. did not wear a condom in any of the three incidents involving penile/vaginal intercourse with C.
- [21] As a result of having unprotected sexual intercourse with Mr. Z., C. became concerned that she was potentially pregnant. It was her disclosure of that concern to a similar-aged peer that ultimately led to the disclosure of her sexual involvement with Mr. Z. and the involvement of the RCMP. I discussed this in greater detail in the Conviction Reasons.

- [22] The issue of the use of cannabis by C. in the presence of Mr. Z. is also addressed in the Conviction Reasons. As articulated therein, I find this was poor judgment by Mr. Z. and exacerbated C.'s vulnerability. However, cannabis use only directly factors into Incident 5 when both Mr. Z. and C. were, I accept, particularly high after consuming a potent form of cannabis.
- [23] Extremely importantly, C. did not legally have the capacity to consent to sexual contact with Mr. Z. She was only 12 years of age. However, for the purposes of assessing certain key authorities that I was referred to, it is material that C. was clear in her evidence that there were no threats, violence, or other intimidating behaviour by Mr. Z. Rather, Mr. Z. utilized his position of trust within the House and C.'s affection towards him for his own personal sexual gratification, notwithstanding that he is a father himself. Mr. Z. does not dispute that he was in a position of trust for the purposes of sentencing.
- [24] The final point I will make before turning to the relevant legal principles is that Mr. Z. knowingly involved C. in fabricating a story that their only sexual contact was because of a "mistake" wherein Mr. Z. believed that C. was D. and was communicating with her up to the point that she provided her initial statement to the RCMP. This is explained in more detail in the Conviction Reasons and, as I will return to shortly, it is still the same premise upon which the psychological report/risk assessment was prepared, even though I rejected Mr. Z.'s evidence in this regard and specifically concluded that there were five instances of intentional sexual contact with C.

Circumstances of the Offender

- [25] Mr. Z. is currently 28 years of age.
- [26] He comes before the court as a first-time offender.
- [27] In considering Mr. Z.'s circumstances, I have had the benefit of a presentence report (the "PSR") prepared by Mike Cliffe, senior probation officer for Penticton Community Corrections. This report was filed with the court on June 4, 2025.
- [28] I also have the benefit of a psychological report/risk assessment prepared by Dr. Kimberly Kreklewetz, registered psychologist with the Forensic Psychiatric Services Commission, and assisted by Cassia McIntyre, a clinical psychology practicum student (the "Psychology Assessment"). This was filed with the court on September 2, 2025.
- [29] The Crown does not take any significant issue with the PSR.
- [30] Based upon the PSR, Mr. Z. self-identifies as Métis. He has apparently applied for a Métis citizenship card but has not yet received one. His siblings have apparently, according to his self-report, obtained their citizenship cards, but this was not confirmed by any of his siblings (who, as noted, he has a very strained and at times largely non-existent relationship with).

[31] Mr. Z. reports having a very challenging childhood. To a limited extent, I address this in the Conviction Reasons. The PSR augments this significantly.

[32] I shall read into the record the following paragraphs of the report:

[Mr. Z.] was born in Victoria, BC and his mother moved to Calgary shortly after he was born. When he was 5 years old, his mother moved to Kamloops, and they moved into a residence with his father. His father, [name redacted] was verbally and physically abusive. [Mr. Z.] frequently witnessed his father using street drugs and physically abusing his mother. His father was also verbally and physically abusive towards [Mr. Z.] and his siblings. [Mr. Z.] describes his childhood as chaotic and unstable.

[Mr. Z.] reports that when he was 8 years old, his family moved from Kamloops to Penticton. He reports that he entered into an independent living agreement when he was 16. [Mr. Z.] reports that his father currently resides in Penticton, but they have not had any recent contact. He reports that his father is not supportive of him and when they do have contact, he is verbally abusive.

[Mr. Z.] reports that his mother, [name redacted], died from a drug overdose approximately 5 years ago. He reports that he went to his mother's residence in Penticton and found her deceased. Prior to her death, his mother had planned on enrolling in a residential drug treatment program.

His relationship with his mother was not stable. His mother told him he had to leave her residence when he was 14 years old after he disclosed that he was bisexual. [Mr. Z.] reports that he felt abandoned as a child due to his parents' drug use and unstable relationship. He recalls, at a young age, looking after his younger siblings when they were left on their own.

[Mr. Z.] reports that he has four siblings. His two sisters live in Penticton, but he does not have regular contact with either sister. He reports that his relationships with all his siblings are strained due to childhood abuse and neglect. He disclosed that his sisters were sexually abused by an uncle, and he was sexually abused by a babysitter at age 12.

[Mr. Z.] has a [it says four, but I believe it is actually five]-year-old son from a previous relationship. Due to violence in the relationship, he has not had contact with his son since August 2021. [Mr. Z.] would like to pursue contact with his son in the future. [Mr. Z.] reports that he is not currently in a relationship. He reports that he spends most of his time on his own.

With respect to education, [Mr. Z.] reports that he attended Penticton High School and partially completed Grade 11. He reports no difficulties with reading or writing. [Mr. Z.] reports that due to conflict with teachers, he moved to an alternate program and then stopped attending school. He reports that he had difficulty managing his anger and recalls being suspended due to behavioural problems. He attributes a lot of his problems in school to his unstable home life.

With respect to employment, [Mr. Z.] is currently unemployed and collects disability due to multiple barriers to employment. He has previously been employed as a cook and dishwasher in different restaurants in Penticton. He has also previously been employed at Penticton Safeway and at a couple of different pizza restaurants. [Mr. Z.] reports that he has difficulty maintaining employment due to conflict with coworkers and supervisors.

With respect to health, [Mr. Z.] reports that he has been diagnosed with Post Traumatic Stress Disorder (PTSD) due to childhood trauma and abuse. He qualified for disability due to PTSD and ongoing problems with depression and anxiety. He disclosed that he had a mental breakdown in February of 2025 after a dispute with his older sister escalated and the police were called. [Mr. Z.] reports that he is not currently taking any prescribed medication.

With respect to drug use, [Mr. Z.] reports daily use of marihuana to manage anxiety. He reports that he does not use any other drugs. With respect to alcohol use, [Mr. Z.] reports that when his mother died, he drank vodka daily for 9 months to cope with grief. He reports no current problems with alcohol use.

[33] The psychological assessment contains quite similar background information regarding Mr. Z.'s very challenging childhood, which again the Crown is not taking issue with and so I will not read it into the record, as it is on the whole not inconsistent with what I have just read in from the PSR.

[34] The Crown does identify, however, that the psychological assessment is based upon the initial Crown synopsis wherein it was alleged that there was one incidence of sexual contact between C. and Mr. Z. which was by virtue of opportunity and mistaken identity.

[35] Specifically, the premise of the psychological assessment is set forth at page 2 of the report as follows:

The Report to Crown Counsel Narratives indicate that on October 11, 2021, [Mr. Z.] and his girlfriend's 12-year-old daughter, [C.], were on his bed watching TV while [C.'s] mother was at work. They both fell asleep and [C.] awoke to [Mr. Z.] sexually assaulting her. [Mr. Z.] explained to [C.] afterward that he "accidentally" had sex with her because he thought she was her mother as they smelled and sounded the same and all the lights were off. [Mr. Z.] apologized to [C.'s] mother for "ruining her life" and stated that, "I'm a monster just like your ex." On October 31, 2021, [C.'s] mother asked her roommate [whose name I will omit and include the acronym that I used in the Conviction Reasons as "A."] to keep an eye out for Mr. Z. and C. as the two continued to spend time together in his room. Later that night, [A.] confronted [Mr. Z.] and told him that he needed to leave the residence. A physical altercation ensued after [A.] refused to leave [Mr. Z.'s] room. [A.] reported the altercation and the index offence to police the next morning.

[36] Under the heading in the psychological assessment, "[Mr. Z.'s] Version of Events", it states as follows:

At first, [Mr. Z.] indicated to the writers that he had no knowledge of the index offence. The writers then read the Report to Crown Counsel Narratives and relayed to [Mr. Z.] that he had previously reported to police that he thought it was his girlfriend in bed with him at the time, not [C.]; [Mr. Z.] nodded in response to this description. Mr. Z. reported that he had consumed half of a 26-ounce bottle of alcohol and a pack of coolers on the day of the index offence. He recalls that he had started drinking alcohol again as a way of coping with the difficulties he had with the mother of his child, and stated that "I shouldn't have been in charge of anything at that point." He remarked that [A.] was "talking out of her ass" and that "she's not a good parent."

[Mr. Z.] reported that it was not common for [C.] to fall asleep in his bed. He stated that he believed [C.] misinterpreted his behaviour toward her and that "I don't think she has the understanding to tell the difference between me being nice and me being attracted to her." He elaborated that he told [C.] about his own hardships as a way of connecting with her because "I'm not just her mother's boyfriend, I'm trying to be there and stuff." [Mr. Z.] also commented that he similarly does not understand when people flirt with him (i.e., he does not realize when it is happening).

[37] The above, as will be apparent, is not consistent with the findings of fact I made and as detailed in the Conviction Reasons. The Crown accepts certain responsibility for the oversight in not providing the Conviction Reasons to the report authors, but does ask the Court to consider the weight to be applied to the risk assessment component wherein Mr. Z.'s risk for sexual reoffending is placed within the low-moderate to moderate-average range.

[38] Before reading into the record the material portions of that risk assessment, which I have summarized, I will also note that Mr. Z. reported that he was "stoned" when he attended the interview with the assessors (albeit with his response speed to questions being noted to return to normal limits during the course of the interview). It was also specifically observed in the report by the authors that there was often minimization and externalization of blame, particularly with respect to his education and employment history.

[39] The most material parts of the assessment, I find, include the following, which start at page 9, under the heading "Diagnostic Impressions (DSM-5-TR)":

Based on [Mr. Z.'s] statements during the clinical interview, behavioural observations, and a review of the file and collateral information, the following DSM-5-TR diagnostic formulation is proffered:

Alcohol Use Disorder, current severity mild to moderate

Cannabis Use Disorder, current severity moderate

Adjustment Disorder with mixed anxiety and depressed mood

Query Autism Spectrum Disorder

Query Social Anxiety Disorder

[Mr. Z.] reported a range of mood and anxiety symptoms that currently appear to be best conceptualized as an Adjustment Disorder stemming from a combination of stressors associated with being unhoused and with his legal circumstances. Should these symptoms fail to improve within six months of resolution of these stressors, a diagnosis of Major Depressive Disorder may be more appropriate.

[40] Most significantly, under the heading "Risk Assessment" and "Sexual Recidivism" the assessment states:

The Static-99R is an actuarial tool used for the prediction of sexual and violent recidivism amongst adult males who commit sexual offences. The measure consists of the following static (unchanging) variables: 1) age at release, 2) ever lived with a lover for at least two years, 3) index offence convictions for non-sexual violence, 4) prior convictions for non-sexual violence, 5) prior sex offences, 6) prior sentencing dates, 7) convictions for non-contact sex offences, 8) any unrelated victims, 9) any stranger victims, and 10) any male victims. Total scores are categorized as Very Low, Below Average, Average, Above Average, and Well Above Average. On demographic variables of the Static-99R, [Mr. Z.] was 24 years old at the time of the index offence and had never had a romantic relationship longer than one year. In terms of criminal history, [Mr. Z.] has no record of non-sexual violent offences, has 3 prior sentencing dates unrelated to the index offence, and has no convictions for non-contact sex offences. Regarding victim characteristics, the index offence included a non-related, (non-familial) female child who was known to [Mr. Z.]. According to Static-99R, [Mr. Z.'s] overall risk level for sexual recidivism is classified as Average.

The Risk for Sexual Violence Protocol (RSVP-V2) - Structured Professional Guidelines for Assessing Risk of Sexual Violence and Static-99R were utilized in assessing [Mr. Z.'s] risk for sexual re-offending.

The RSVP-V2 comprises a set of 23 risk factors deemed important in the scientific and professional literatures regarding the assessment of risk of sexual violence and includes several dynamic risk variables. The 23 factors are divided into two domains: Nature of Sexual Violence (N) and Perpetrator Characteristics (P). The P domain is sub-divided into Psychological Adjustment, Mental Health, Social Adjustment, and Manageability.

[41] Ultimately, after considering these factors, the authors reached the following result:

[Mr. Z.'s] risk for sexual re-offending based on the RSVP-V2 falls within the Low-Moderate range.

At this juncture, [Mr. Z.'s] risk for sexual re-offending based on an assessment of dynamic and static factors should be considered to fall in the Low-Moderate to Moderate (Average) range. Future offences are likely to be relatively impulsive and opportunistic, and / or occur during a period of time of stress and /or intoxication, with future victims being known to [Mr. Z.].

Address to the Court by Mr. Z.

- [42] Mr. Z. took the opportunity today to address the Court and to read a statement that he had prepared.
- [43] In his allocution, Mr. Z. provided, in particular, some insight he has gained of late due to programming he has received while in custody, as detailed below, and in particular with respect to the cycle of victimization and the impact of that cycle on C. as well as himself.
- [44] Mr. Z. also indicated that he wants to work towards bettering himself and giving back to the community.
- [45] Mr. Z. expressed a desire to apologize to C., but for the purposes of the ancillary orders that will not be permitted. It is acknowledged by the Court, with the caveat that I understand Mr. Z.'s position to be, as he is entitled, to maintain that there was only one incident of sexual contact between him and C. and that it was by accident.

Credit for Time Served and Conduct in Custody

- [46] Mr. Z. was released very promptly after his arrest. Mr. Z. remained on judicial interim release subject to quite limited conditions pending trial. He complied with all of his conditions. Accordingly, after convicting Mr. Z., he remained out on judicial interim release pending sentencing while the PSR and the psychological assessment were prepared.
- [47] After some unfortunate delay in completing those, the matter was set for a full day hearing in Penticton on October 30, 2025. It was only on that morning, after I had arrived in Penticton for the purpose of the hearing, that I was advised by counsel for Mr. Z. that Mr. Z., who I know from the trial does not drive, had been unable to secure a ride from Princeton to Penticton.
- [48] Although Mr. Z. was not truly "in the wind", as he was in communication with his counsel and his general whereabouts were known, his non-attendance was unfortunate, given that the Court and counsel were in attendance and we had a courtroom, which can be challenging here in Penticton. However, it was not realistically possible for him to be apprehended that day and brought to court for the purposes of sentencing.
- [49] Accordingly, a warrant was issued for his arrest and, to his credit, I am informed that Mr. Z. very promptly turned himself in on October 31, 2025, and has been in custody since that time.
- [50] As a result, the defence submits and the Crown concedes that Mr. Z. is entitled to 71 days of credit.
- [51] In this regard, Mr. Z. has also productively used his time in custody, tendering to the Court five certificates that he has obtained and one vocational ticket. A notable amount of effort in a relatively short period of time he has been at OCC, particularly with the Court's knowledge of what programs are available there.

Victim Impact

- [52] Neither C. nor her mother, or any other family member, elected to provide a victim impact statement. That is their choice.
- [53] As the trial judge, however, I am entitled to rely upon certain evidence that I heard during the trial which is material to the issue of assessing victim impact.
- [54] Firstly, as I specifically addressed in the Conviction Reasons, the index offence resulted in a fundamental change in C.'s living situation. She was removed from the care of her mother by MCFD and began living in another community separate and apart from her four siblings (who remained in the care of her mother). She specifically testified to the difficult impact to her relationship with her mother resulting from her removal. I also noted in the Conviction Reasons the greater animation that C. used when speaking about her siblings and opined about the impact to those children about losing the benefit of having their elder sister in their lives on a daily basis (the youngest of whom were still toddlers at the time of Mr. Z.'s arrest and C.'s removal from her mother's care).
- [55] Secondly, there was an incident that occurred during the period of time in which C. was testifying at the trial wherein after the court day concluded, C., who was visiting from out of town for the purposes of the trial, apparently became intoxicated, fell, and ended up needing attention at the hospital. The trial was briefly delayed as a result. I conclude, based on the other evidence from C., that she was generally doing well in her new community and not engaging in this sort of behaviour on any regular basis. Rather, it appears that this was directly related to the stress of the trial and the impact of the index offences-even if C. herself might have not fully appreciated the connection, given her age and corresponding level of maturity.

Principles of Sentencing

- [56] Section 718 of the 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.
- [57] Pursuant to s. 718.01, when a court imposes a sentence for an offence that involves an abuse of a person under 18, it shall give primary consideration to the objectives of denunciation and deterrence.
- [58] Section 718.1 of the Code stipulates that "[a] sentence must be proportionate to the gravity of the offence and the degree of the responsibility of the offender".

- [59] 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": see *R. v. C.K.*, 2023 BCCA 468 at para. 50, citing *R. v. Bissonnette*, 2022 SCC 23 at paras. 50 and 51.
- [60] Section 718.2 of the 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.
- [61] 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 the evidence of a significant impact on the victim, considering their age and other personal circumstances (s. 718.2(a)(iii.1)).

Specific Considerations for Sexual Offences Committed Against Children

- [62] In the seminal decision of *R. v. Friesen*, 2020 SCC 9, the Supreme Court of Canada addressed the 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": see *Friesen* at para. 50.
- [63] The harms and impacts identified by the Supreme Court of Canada in *Friesen* include: harm to the children's "personal autonomy, bodily integrity, sexual integrity, dignity, and equality"; damage to the 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 communities in which children live and society as a whole".
- [64] As the court summarized in *Friesen* at para. 5:
- [5] we [need to] 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.

- [65] With that in mind, at para. 114, the Court set out specific guidelines to sentencing judges such as myself, noting:
- [114] 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
- [66] Indeed, the Court of Appeal in 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.
- [67] Commencing at para. 121 of Friesen, the Court sets out a non-exhaustive list of factors to determine a fit sentence for sexual offences against children. They are:
- a) the likelihood to reoffend;
 - b) the abuse of a position of trust or authority;
 - c) the duration or frequency of the offences;
 - d) the age of the victim;
 - e) the degree of physical interference; and
 - f) victim participation.
- [68] As the court notes in C.K. at para. 54:
- [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. [Emphasis in original.]

Position of the Crown

- [69] The Crown submits that a fit sentence for Mr. Z. is a custodial sentence of six to seven years.
- [70] The Crown also seeks, in summary, the following ancillary orders:
- a) a mandatory DNA order;
 - b) an order that Mr. Z. be required to comply with the Sex Offender Registry for 20 years; and

- c) an order pursuant to s. 161 of the Code that, for a period of 10 years, Mr. Z. be prohibited from:
 - i. attending at a public park or public swimming place where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground, or community centre;
 - ii. being within two kilometres of any residence or school or the workplace of C.;
 - iii. seeking or obtaining or continuing any employment, whether or not employment is remunerated, or becoming a volunteer in a capacity that involves a position of trust or authority towards persons under the age of 16; and
 - iv. having communication with a person who is under the age of 16, except for incidental contact in the course of Mr. Z's employment or the child's employment; and
 - v. pursuant to s. 743.21(1) that there be no contact with C. while Mr. Z. is in custody.

[71] Beyond Friesen, the Crown relies upon two specific authorities:

- a) R. v. J.A.F., 2025 BCSC 1392, and
- b) R. v. D.H.F., 2022 BCSC 1743.

Position of the Defence

[72] The defence concedes that a custodial sentence is appropriate but submits that the position sought by the Crown is overly harsh. The defence submits that a fit sentence of incarceration is four years.

[73] The defence does not oppose the ancillary orders sought by the Crown.

[74] Beyond reference to Friesen and R. v. Gladue, [1999] 1 S.C.R. 688, 1999 CanLII 679, the defence relies upon the following authorities, all of which involved Aboriginal offenders:

- a) R. v. Porcher, 2025 BCSC 669. This resulted in a sentence of two years less a day incarceration plus a three-year term of probation.
- b) R. v. B.L.M., 2022 BCPC 187. This resulted in a conditional sentence order of two years less a day plus a term of three years' probation.
- c) R. v. J.N.P., 2020 BCSC 570. This resulted in a custodial term of three years' imprisonment.
- d) R. v. Alfred, 2021 BCCA 71. In this instance the Court of Appeal upheld a sentence of nine months' incarceration.
- e) R. v. L.S.N., 2020 BCCA 109. Again, this was a successful Crown appeal of a suspended sentence wherein a two-year term of provincial imprisonment was imposed.
- f) R. v. Scribner, 2020 BCSC 1685. This resulted in a custodial sentence of four years.

Analysis

- [75] In being tasked with determining a fit sentence in this case, I must consider the fundamental principles of sentencing as set out in s. 718.1 of the Code referenced above; 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: see *R. v. Lacasse*, 2015 SCC 64 at para. 53, and *R. v. Parranto*, 2021 SCC 46 at para. 12.
- [76] In applying the principle of proportionality, I am guided by *Friesen* to give the effect to the inherent wrongness, potential harm, and actual harm of Mr. Z.'s conduct involving C., focusing on the harm to her personal autonomy, her bodily and sexual integrity, dignity, and the relationship with her family and friends, as well as harm to society as a whole. In addition to considering any mitigating and aggravating factors, which include several of the significant factors identified in *Friesen*, I am required to balance the objectives of sentencing, again giving primacy to the sentencing objectives of denunciation and deterrence.
- [77] I will now turn to the non-exhaustive list of factors which were established to assist in deferring a fit sentence for offences such as these, as set out in *Friesen*.
- [78] I turn to the first *Friesen* factor, namely the risk of Mr. Z.'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 as set out in s. 718(d) of the Code: see *Friesen* at paras. 122 to 124.
- [79] In respect of the latter objective, the Court in *Friesen* said this at para. 124:
- [124] 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)*, 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).
- [80] In this case, there are concerns, as noted, with the psychological assessment based upon the facts upon which it was prepared and their inconsistency with my finding of the facts at trial as articulated in the Conviction Reasons. This does not, however, render the risk assessment entirely without weight. Rather, I conclude in the circumstances that the risk of Mr. Z. reoffending falls towards the moderate end of the range, versus low to moderate.

- [81] Second, as the Court notes in Friesen at para. 129:
- [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 moral blameworthiness. The abuse of a position of trust also exploits children's particular vulnerability to trusted adults, which is especially morally blameworthy.
- [82] 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 as parent or caregiver": see para. 28.
- [83] As discussed above and as noted in more detail in the Conviction Reasons, I accept that although not a legal guardian, Mr. Z. was in a position of trust. C. was also not initially willing to disclose the sexual contact that occurred. Mr. Z., as noted, although taking a different view of the facts of the case, concedes for the purposes of sentencing that he was in a position of trust.
- [84] The third applicable Friesen factor is the duration or 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:
- [133] 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. As Abella J.A. (as she then was) wrote in *Stuckless* (1998), where the offender has committed numerous assaults, the court cannot shy away from assessing the full dimensions of the wrong but must give effect to the "staggering" and "systematic" nature of the sexual violence in the sentence imposed (p. 116).
- [85] In this case, the offending conduct was not, I found, limited to a single incident. There were five specific incidents which occurred over a period of approximately three to five months after C. turned 12 and before Mr. Z.'s arrest.
- [86] 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 offender: see Friesen at para. 135. This factor is not restricted to cases involving particularly young children, but includes adolescents, a group in respect of whom disproportionately low sentences have been imposed: see Friesen at para. 136.
- [87] As the Court further explains at 136:

- [136] [I]n 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] 2 S.C.R. 906, at pp. 948-49, per McLachlin J.).
- [188] In this case, C. has the potential to suffer all of the above harms as a result of Mr. Z.'s conduct. Even without the benefit of the victim impact statement, there is at least some evidence that some of these harms have occurred already.
- [189] The fifth applicable factor was the degree of physical interference, a factor which reflects the degree of violation of a victim's bodily integrity. It also reflects the nature of the touching and the violation of the victim's sexual integrity: see Friesen at para. 139. In addition, "[t]he degree of physical interference also takes into account how specific types of physical acts may increase the risk of harm". Again, as the Court explained, I have already described the nature of the physical interference which includes unprotected penetrative intercourse, which I will not repeat.
- [190] Having regard to those factors, I must also consider the parity principle as set out at s. 718.2(b) of the Criminal Code. This principle is premised on the idea that the sentence imposed should be consistent with or similar to other sentences imposed for similar offences committed by similarly-situated offenders, including Aboriginal offenders.
- [191] As noted, though, in D.J.H. at para. 47:
- [147] 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 [can] 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).
- [192] However, as a general starting point, I return to the point I addressed earlier in Friesen that "[m]id-single digit penitentiary terms for sexual offences against children are normal and that upper-single digit and double-digit penitentiary terms should neither be unusual nor reserved for rare exceptional [cases]": Friesen at para. 114.
- [193] However, again with reference to the principle of parity, I have considered the cases that were referred to me by counsel, particularly defence counsel, and the principles guiding the assessment of a fit sentence as mandated in Friesen, the important impact of the Gladue factors, all while giving primacy to the sentencing objectives of denunciation and deterrence while determining a fit and proportionate sentence here today.

Disposition on Sentence

- [194] Mr. Z., I will ask you to stand.

- [95] After taking all of the relevant factors into consideration, I sentence you to serve a jail sentence of five years and two months. Converted to days for Corrections' purposes, that is 1,860 days.
- [96] However, you are entitled, as conceded to by the Crown, to credit for 71 days. Accordingly, your remaining sentence is 1,789 days.
- [97] In my view, the sentence achieves the goals of denunciation and deterrence and reflects the gravity of your offence, and what I consider to be a high degree of moral blameworthiness, while also taking into account mitigating factors and other factors and circumstances I have described in these reasons, and are set out in greater detail in the PSR and the psychological assessment.
- [98] You may be seated.

Ancillary Orders

- [99] Despite the fact that the defence did not oppose the ancillary orders, I am not prepared to make the s. 161 order that Mr. Z. be prohibited from attending public parks or community centres and so forth for the period of 10 years.
- [100] Without in any way minimizing my conclusions regarding his moral blameworthiness and my difficulty in somewhat reconciling his allocution to the Court with the psychological assessment, I do not think this order is appropriate in the circumstances. To the contrary, and having regard to the reality that Mr. Z.'s social connections, to the extent they exist, are in the South Okanagan, which is made up of smaller communities where such amenities are in closer proximity to necessary services, I am concerned that there is a real possibility of inadvertent or unintentional breaches. Further, there is nothing before me to suggest that Mr. Z. has engaged in any such problematic behaviours while he was out on judicial interim release for several years following his arrest.
- [101] I am satisfied that the remaining orders shall go with the exception that I am going to specifically permit that Mr. Z. be entitled to have contact with his own son if permitted by court order or by written agreement of that child's guardian.
- [102] Accordingly, I 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 purposes 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 s. 490.013, you must comply with the obligations of the Sex Offender Information Registration Act for a period of 20 years. That order shall be in Form 52.

- c) 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 your release from custody:
- i. being within two kilometres of any residence, school, or workplace of C.;
 - ii. seeking, obtaining, or continuing any employment, whether or not that 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 communication with a person who is under the age of 16 years, except incidental contact in the course of your employment or the child's employment, or in relation to your biological son, if permitted by court order or by written agreement of that child's guardian.
- d) Finally, pursuant to s. 743.21(1), you shall have no contact of any kind with C., while you are in custody.

[103] Mr. Selamaj, I did not hear specifically from you regarding the victim surcharge, but having regard to Mr. Z.'s financial circumstances before being taken into custody and the length of his custodial sentence, I would invite a submission that it be waived on the basis of undue hardship.

[104] CNSL N. SELAMAJ: Yes, I apply so.

[105] THE COURT: Yes, okay.

[106] CNSL D. BORGIA: And Justice, just one final --

[107] THE COURT: That is the -- so the victim surcharge is waived. Crown -- yes.

[108] CNSL D. BORGIA: Yes, thank you. Yes, no position on that.

[109] THE COURT: Yes.

[110] CNSL D. BORGIA: I neglected to indicate that a s. 109 firearms prohibition is mandatory on a sexual interference.

[111] THE COURT: Oh yes, that is true.

[112] CNSL D. BORGIA: I didn't add it to this and I apologize, but --

[113] THE COURT: I have it too, and I knew that.

[114] CNSL D. BORGIA: I think I mentioned it, but it's not on the -- the document.

[115] THE COURT: Yes. Thank you, Ms. Borgia. So that is mandatory and it is pursuant to s. 109(1) (a) and (2). You are prohibited from owning, possessing, or carrying any firearm, other than a prohibited firearm or restricted firearm, any cross-bow, restricted weapon, firearm part, ammunition, and explosive substance for a period of 10 years, and you are also prohibited from owning, possessing, or carrying any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.

- [116] Sorry, although it is mandatory, I was not overly concerned about weapons in the circumstances here, but -- yes, Mr. Selamaj?
- [117] CNSL N. SELAMAJ: I heard you, Justice, consider in your reason and declining the Crown's application for a 161 prohibition order, but yet I -- I am sorry, but yet Your Honour pronounced that order.
- [118] THE COURT: No, no, what I took away was I do not --
- [119] CNSL N. SELAMAJ: I see.
- [120] THE COURT: I took away the first part. I do not feel that there is a --
- [121] CNSL N. SELAMAJ: I see.
- [122] THE COURT: I really am concerned that that would put Mr. Z. in a position of inadvertent breaches when he needs to access --
- [123] CNSL N. SELAMAJ: Yes.
- [124] THE COURT: -- necessary services. So staying away from [C.], who lives in a different community, is entirely different than him being in the vicinity of the park while he is going to the grocery store or various different other things in the community. Given his behaviour on judicial interim release --
- [125] CNSL N. SELAMAJ: Yes.
- [126] THE COURT: -- that really is not a concern from the Court's perspective.
- [127] CNSL N. SELAMAJ: Thank you. Thank you, I will clarify my notes. Thank you, Justice.
- [128] THE COURT: Thank you.
- [129] CNSL D. BORGIA: Thank you.
- [130] THE COURT: Thank you.
- "Hardwick J."

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