
CANADA / JUDGMENT

R. v. L.I.

2014 BCSC 2550

COURT

Supreme Court of British Columbia

DECIDED

15 December 2014

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2014 BCSC 2550 R. v. L.I.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. L.I.,

2014 BCSC 2550

Date: 20141215

Docket: 46998

Registry: Vernon

Regina

v.

L.I.

Restriction on publication:

Pursuant to 486.4(1) of the Criminal Code;

Restricted Access

Before: The Honourable Mr. Justice Cole

Oral Reasons for Sentence

Counsel for the Crown:

C. Cabulea

Counsel for the Offender:

J. O'Quinn

Place and Date of Hearing:

Vernon, B.C.

November 26, 2014

Place and Date of Judgment:

Vernon, B.C.

December 15, 2014

[1] THE COURT: The offender was charged with an eight-count indictment.

Count 1: L.I., between the 1st day of January, 2010 and the 1st day of August, 2012, inclusive, at or near Armstrong, in the Province of British Columbia, did commit assault of another person, M.S-I., contrary to Section 266 of the Criminal Code.

Count 2: L.I., between the 1st day of October, 2009 and the 1st day of August, 2012, inclusive, at or near Armstrong, in the Province of British Columbia, did commit assault of another person, M.I.S-I., contrary to Section 266 of the Criminal Code.

Count 3: L.I., between the 1st day of October, 2009 and the 1st day of August, 2012, inclusive, at or near Armstrong, in the Province of British Columbia, did commit assault of another person, M.A.S-I., contrary to Section 266 of the Criminal Code.

Count 4: L.I., between the 1st day of January, 2010 and the 1st day of August, 2012, inclusive, at or near Armstrong, in the Province of British Columbia, did commit assault of another person, J.S-I., contrary to Section 266 of the Criminal Code.

Count 5: L.I., between the 1st day of October, 2009 and the 1st day of August, 2012, inclusive, at or near Armstrong, in the Province of British Columbia, did in committing an assault upon M.I.S-I., use a weapon, contrary to Section 267(a) of the Criminal Code.

Count 6: L.I., between the 1st day of October, 2009 and the 1st day of August, 2012, inclusive, at or near Armstrong, in the Province of British Columbia, did in committing an assault upon M.A.S-I., use a weapon, contrary to Section 267(a) of the Criminal Code.

Count 7: L.I., between the 1st day of October, 2009 and the 1st day of August, 2012, inclusive, at or near Armstrong, in the Province of British Columbia, did sexually assault M.S-I., contrary to Section 271(1) of the Criminal Code.

Count 8: L.I., between the 1st day of January, 2010 and the 1st day of August, 2012, inclusive, at or near Armstrong, in the Province of British Columbia, did knowingly utter a threat to M.S-I., to cause death or bodily harm to M.S-I., contrary to Section 264.1(1) of the Criminal Code.

[2] The offender was convicted of Count 1 to 7. A conditional stay was entered on Counts 2 and 3 based on the principles set out in *Kienapple v. The Queen*, [1975] 1 S.C.R. 729. He was found not guilty on Count 8.

- [3] The children of this relationship, M.I.S-I. born 2006, M.A.S-I. born 2007, and J.S-I. born 2010, lived with the complainant and the offender. The offender is 42 years of age, was formerly a pastor doing missionary work in Africa. The complainant is 30 years of age.
- [4] With respect to the circumstances, they are set out in my reasons for judgment, but briefly, with respect to the assault on the children, there are nine specific incidents of assault using a weapon, namely, a comb, that was made of wood, one-and-a-half inches wide and nine inches long. There was also another pink comb which was not marked as an exhibit or described. When M.I.S-I. was three-and-a-half years old, she was crying and the offender took his comb and hit her forcefully on top of the head. He then struck her five or six times. She developed red welts on her forehead. The welts were a couple of inches long. When M.I.S-I. was four years of age, she asked her father to help grate some cheese. When he did not respond, M.I.S-I. told her mother that, "Daddy said no." The offender called M.I.S-I. a liar, and slapped her across the face with the back of his hand. She had a red welt the following day. He then asked M.A.S-I. to get the comb from the bathroom and he struck M.I.S-I. with the comb on her arms and legs five or six times. The complainant attempted to stop him, but he "shushed her," and said: "This is the way the Bible tells us to treat children. Otherwise, they will become liars and prostitutes."
- [5] When the complainant would come home from working and the offender was looking after the children, she said that she would find bruises, welts, and red marks on M.I.S-I. and M.A.S-I.. When M.A.S-I. was approximately two years of age, he pooped his pants. The offender hit him with the back of his hand on the head calling him a dog. M.A.S-I. was stunned and complained of headaches later. M.A.S-I. pooped his pants again and the offender took him into the bathroom, slapped his bum and legs leaving red marks. M.A.S-I. also dumped toys on the floor when he was approximately two years of age. The offender grabbed him, pinned him down, covered his mouth and nose with his hands, and M.A.S-I.'s face turned red. He could not breathe. M.A.S-I.'s lips were swollen for the rest of the day. When the complainant was pregnant in 2010, M.A.S-I. was three years old. He was crying. The offender told him to be quiet, took a comb from the bathroom and hit him over the legs and arms. M.A.S-I.'s fingers were sore and swollen the next day and he had marks on his arms and legs. In July of 2012, M.A.S-I. was doing handstands and J.S-I. was below him. M.A.S-I. fell and cut J.S-I.'s forehead with his tooth. The offender backhanded M.A.S-I. across the face. M.A.S-I.'s face was red and swollen and he had a swollen blood vessel under his eye.
- [6] In 2009, when M.A.S-I. and M.I.S-I. were playing, the complainant took a shower. She could hear the children crying, saw the offender take a comb and hit both children. They had swollen fingers and red marks on top of their heads and were crying. When J.S-I. was 18 months old, the offender was watching a soccer game when J.S-I. accidentally scratched the offender's back. The offender hit him twice on the arms with the back of his hand. J.S-I. had red marks on his arms which lasted the entire day. In the spring of 2010, there was the smell of a lamp burning. The offender asked the children who did it. They blamed each other. The

offender got his comb and hit M.A.S-I. and M.I.S-I. on their hands five or six times. When the children used poor grammar such as "gonna" instead of "going to," he would hit them with the back of his hand.

- [7] With respect to the sexual assault, including many incidents of the offender wanting sex and the complainant refusing, he would lock the door and bend her over the bed, take her clothes off, and enter her from behind. When she was pregnant in 2010, she came home from work and the offender wanted sex and he took her into the bathroom, bent her over on the mat, pushed her face towards the bathtub, and tried to enter her from behind. She started to cry because of the pain.
- [8] In July of 2012, after putting the children to bed, she took a blanket into the bedroom and wrapped herself in the blanket. The offender wanted sex. She resisted. He got the blanket off her. He refused to stop, forced her legs open, had intercourse saying, "Sorry, I will never do it again." Also in 2010, when she was cooking, the offender said he needed sex. She refused. He took her into the bedroom. She resisted, but was not successful and he had sex with her. On another occasion, he put his hand on her clothes. She said she was tired and in pain. He pushed her down and had sex with her. She said she her vagina was swollen and had a few drops of blood.
- [9] In July 2012, she was rocking J.S-I. to sleep in the living room when the offender approached her, attempted to put his penis in her mouth. She said no because she did not like to do it and it hurt her mouth. She turned away. The offender grabbed her head with his hands so she could not move and put his penis in her mouth. The child was still in her arms, but she felt she had no choice.
- [10] With respect to the common assault of the complainant, this took place over approximately a two-year period. The offender says that she could not hear properly and took a pair of scissors and put them one or two inches away from her ear. On another occasion, he slapped her arm, pushed her, took a butcher knife to her lips, and said, "Let's cut that off," because he complained she was talking too much. He drilled his fingers into her back on another occasion. He hit her on the head.
- [11] In the Criminal Code, there is a maximum term of imprisonment of five years on Count 1 to 4 and a maximum term of imprisonment of 10 years on Counts 5, 6, and 7.
- [12] The presentence psychological assessment was conducted. It stated that:
- Mr. I.'s main risks for violence appear to be attributable to his historic violent behaviour in the setting of his intimate relationships contributed to by personality dysfunction and interpersonal deficit. His future risk of violence would appear to be predominantly in intimate relationships and child rearing based [on the information available.]
- [13] The recommendations were limited because of the lack of collateral information about his early life and relationships, and stated:

There may be some cultural or religious biases against acknowledging mental health difficulties in this case which could preclude the detection of a mental illness such as depression or an anxiety disorder.

[14] The report recommends that the offender would benefit from psychological treatment, although they say that:

His presentation suggests psychological treatment might be difficult given his personality structure.

[15] It was also recommended that he should be involved in a sexual offender treatment program. The presentence reports noted that the offender did not display any insight or remorse for his actions.

VICTIM IMPACT STATEMENT

[16] The complainant says the physical healing has taken place, but the lasting effect of years of abuse has left her battling severe anxiety, post-trauma stress, fear of men, fear of rejection, eating disorder, consistent neck pain from the offender striking her there. She lives in fear that the offender "will come after us, try to hurt us." She says, "Always having to be looking over my shoulder takes its toll." She is attending numerous doctors and counsellors. The complainant says that M.I.S-I. has frequent flashbacks about incidents with her father suffering from post-traumatic stress, high anxiety, has outbursts of anger, and believes it is her fault that her father hit her. She has low self-esteem, struggles with school, and struggles socially. M.A.S-I. suffers anxiety, nightmares, and post-traumatic stress. He fears his father will come and hurt him again. He is afraid to be alone and afraid of men. He is struggling with a lot of anger for what his father did to him. He also blames himself for what has happened. J.S-I. suffers from anxiety, nightmares, and had issues with sleeping at night. He also displays anger and is afraid of men.

MITIGATING FACTORS

[17] The offender has no criminal record.

AGGRAVATING FACTORS

[18] The assaults took place in the family home where the complainant and the children had a right to feel safe. The offender was in a position of trust with respect to his children and his wife. He is 12 years older than the complainant. He reminded her that he was stronger than her and demanded respect. He was controlling and manipulative. The children were very young when the assaults took place, between 18 months and four years. On one occasion, M.A.S-I. was ordered by the offender to take the comb from the bathroom and the offender used the comb to strike M.I.S-I. thus making M.A.S-I. a party to the violence. The offender disciplined the children or, to use his words, "corrected" them to prevent them from being liars and prostitutes. The offender fails to understand that violence, especially when dealing

with young children, will most likely only teach them that people that love them have a right to hurt them. The offender sexually assaulted the complainant when he knew or ought to have known that intercourse was painful for her because of her previous Caesarian sections. He continued his sexual assaults even when the complainant was protesting. The assaults on the children and the complainant took place frequently and over a period of nearly two years.

[19] The principles of sentencing are set out in the Criminal Code, s. 718, 718.01, 718.1, and 718.2.

718 The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

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

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

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
- (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,
- (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
- (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

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

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or

(v) evidence that the offence was a terrorism offence

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[20] It is clear that in these circumstances, general and specific deterrence and denunciation are the primary sentencing principles that apply to these types of offences. It is also well established that in spousal assault, the principles of denunciation and deterrence are heightened; *R. v. Donnelly*, 2010 BCSC 1786.

[21] With respect to Count 7, the position of the Crown is that the range of sentence is between 22 months and seven years. The offender says the appropriate range of sentence is 12 months. With respect to Count 5 and 6, that is, assault with a weapon, Crown says the appropriate sentence is a year. The offender says the appropriate sentence is 20 days. The Crown refers to *R. v. Kinde*, 2002 BCCA 233, where a sentence of seven years was imposed for a sexual assault causing bodily harm and common assault. Here, the charge is not assault causing bodily harm, although the circumstances of the present case are quite severe, considering the nature and extent of the assaults and that it occurred over a two-year period. In *R. v. W.R.*, 2012 ONSC 3935, the accused was found guilty of sexual assault which took place in October 2009. The assault included touching the complainant's breast, putting his hand between her legs, digitally penetrating her, and penetrating her with his penis. The accused had no criminal record, he showed remorse, and was sentenced to 22 months' imprisonment for the sexual assault.

- [22] In this case, the offender rationalizes his conduct based on his religious beliefs that you must discipline or, to use his words, "correct" the children from becoming liars and prostitutes. Religious freedom is protected by our Charter of Rights and Freedoms, but when conduct based on religious beliefs is contrary or conflicts with the Criminal Code of Canada, then the Criminal Code must prevail otherwise we will have anarchy. Unfortunately, the offender has no insight into his cruel and selfish behaviour. The principles of denunciation and deterrence are paramount in this case.
- [23] After considering and weighing all the evidence including the able submissions of counsel, what was said by the offender, the presentence report, and the psychiatric assessment, I am satisfied the appropriate sentence in respect of Count 7 is three-and-a-half years' imprisonment, and six months' imprisonment on Count 1 which will be concurrent to Count 7.
- [24] With respect to Counts 5 and 6, that is, assault with a weapon, *R. v. D.L.W.*, 2014 BCSC 617, the accused entered a plea to one count of assault with a weapon, namely, a ruler and a wooden spoon. The offence occurred over a number of years between June 28, 2000, and December 31, 2008. The offender severely strapped his stepson on the buttocks on almost a daily basis starting when his stepson was seven years of age until the stepson left home at age 13. The offender had no criminal record. He accepted responsibility and understood that force was excessive. A joint submission of one year was accepted by the Court. The circumstances in this case deal with younger children, the two oldest having suffered approximately two years of abuse. The hitting was on the head, the face, the arms and legs, using a comb or his hand including the back of his hand.
- [25] I am satisfied, considering all the circumstances, the appropriate sentence is one-year imprisonment on Count 5, one year on Count 6 concurrent to Count 5, and three months' imprisonment on Count 4 concurrent with Count 5 and Count 6. I am satisfied that there is an overlap in time between Counts 4 to 6 and Counts 7 and 1. The victims were the offender's children and his wife. In my view, a total sentence of four-and-a-half years is not unduly harsh or disproportionate and, therefore, I order that Count 5 be consecutive to Count 7.
- [26] There will be an order for a DNA as this is a primary designated offence, an order under s. 490.013(2)(b) for 10 years, and an order under s. 109 for a firearm prohibition of 10 years.

The Honourable Mr. Justice F.W. Cole

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