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CANADA / JUDGMENT

## R. v. L.S.N.

2019 BCSC 1619

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COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 1619 R. v. L.S.N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. L.S.N.,

2019 BCSC 1619

Date: 20190906

Docket: 27350

Registry: Vancouver

Regina

v.

L.S.N.

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Before: The Honourable Mr. Justice G.C. Weatherill

Oral Reasons for Sentence

Counsel for the Crown:

A. Flanders

Counsel for the Accused:

B. Coleman, Q.C.

S.I. MacKenzie

Place and Dates of Hearing:

Vancouver, B.C.

May 21, June 7, September 6, 2019

Place and Date of Judgment:

Vancouver, B.C.

### September 6, 2019

[1] THE COURT: On September 26, 2018, the accused was convicted of one count of sexual interference contrary to s. 151 of the Criminal Code, R.S.C. 1985, c. C-46. A second conviction for sexual assault contrary to s. 271 of the Criminal Code was stayed pursuant to the Kienapple principle.

circumstances of the offence

[2] During the summer of 2016, the accused, on two occasions, touched the developing breasts of his then 11-year-old stepdaughter. On a third occasion, he lay beside her on a bed, put his hand down her pajamas, and fondled her vagina. There was no digital penetration.

[3] The offences took place in the accused's home while he was parenting his stepdaughter and others, and while he was in a position of trust and authority.

[4] The accused was remanded in custody for nine days between January 18 and January 27, 2017, following his arrest for the offences for which he is now being sentenced. He has been on bail since January 27, 2017.

[5] I have had the benefit of a forensic psychiatric report dated December 12, 2018, authored by a Dr. P. Randall Kropp, a registered psychologist. I have also had the benefit of a presentence report dated December 17, 2018, authored by Nicolle Binnie, who has been the accused's probation officer for several years. Finally, I have had the benefit of a full and thorough Gladue report dated May 14, 2019, prepared by Carolyn Buckshot, KaNigan a Pit, which means "woman who teaches", of the Algonquin Nation.

[6] While I found all three reports to be informative and helpful, I agree with counsel for the accused, Mr. Coleman, that the Gladue report provides the most complete insight into the accused, who he is, and why he is who he is.

- [7] The accused is a 37-year-old member of the Squamish First Nation. His mother and grandmother were subjected to the exigencies of the residential school program. Both are reported to have experienced physical, sexual, and other abuses while attending the residential schools.
- [8] The accused was raised by his mother, who was described as having been a violent and mean alcoholic who suffered from mental health issues. The accused experienced violence, verbal abuse, and neglect at his mother's hands. The accused witnessed several suicide attempts by his mother.
- [9] At times during his formative years, the accused was placed in group foster homes where he remembers experiencing neglect, crying for food, being screamed at, and locked in his room for extended periods. He also reported being sexually abused by an older girl who was staying at the home.
- [10] The accused's mother committed suicide in 2002. His grandmother died in 2010. Both deaths were traumatic for the accused. He consumed a great deal of alcohol in an attempt to cope with his mother's death. Members of his aboriginal community have been cruel to him and he has been in several fights with them.
- [11] The accused believes that he has fetal alcohol spectrum disorder ("FASD") and that he suffers from anxiety and depression. He has never been assessed for FASD and none of these conditions has yet to be formally diagnosed.
- [12] The accused has five biological children and two non-biological children, all of whom he raised as his own. The eldest of the two non-biological children is the victim of the offence for which the accused is now being sentenced.
- [13] This is the accused's second conviction for a sexual offence against a female under 16 years of age. The victim of his first offence was the 14-year-old daughter of the sister of his then-partner, the mother of his biological children. The accused pleaded guilty to that offence in April of 2014 and was incarcerated for a total of approximately seven months. One of the terms of his release was that he complete the forensic sex offender program; however, he breached that condition by failing to attend his appointments and is currently under a probation order for that breach.
- [14] The accused attributes his attendance failures to not appreciating that he had agreed to attend, to an ongoing struggle to remember and keep track of the sessions, and to a fear of leaving his home and being subjected to ridicule and harm by other members of his community, all the result of his perceived anxiety and, he says, FASD.
- [15] The accused's insight into why he committed the sexual offences he has been convicted of is limited. He has identified alcohol abuse as a likely contributing factor. The accused admits to a history of binge drinking and believes he was intoxicated at the time of both offences. He has been sober since January 2017 when he was arrested on the charge currently before the court, having stopped drinking "cold turkey" because, in his words, he does not want to

fail anymore. He has expressed deep remorse for his actions, stated he feels terrible, and "hates that this has happened".

- [16] I have no difficulty believing that these statements were and are genuine. The accused has also acknowledged that his behaviour was harmful and will likely have a lasting negative impact on the victim's life.
- [17] The accused and his current partner have a daughter who is now, I believe, two years old. The accused is currently employed full-time with a construction company whose owner describes him as "trustworthy, reliable, dependable person that can be left at a job site without any supervision" and who takes great pride in his work. His employer says that the accused can work for the company as long as he wishes.
- [18] Dr. Kropp is the author of the forensic psychiatric report. He testified at the sentencing hearing and was qualified to give opinion evidence in the area of psychology, as well as on the accused's risk of reoffending and the various treatment options that are available.
- [19] Dr. Kropp opined that, based upon the Risk for Sexual Violence Protocol Guidelines that he helped develop in 2003, the accused represents a "relatively high risk" to commit another sexual offence. His opinion was based on the following factors:
- a) The accused is now a repeat sexual offender;
  - b) The accused did not respond well to repeated opportunities for sex offender treatment in the past, as exhibited by his poor performance and inconsistent participation in group sessions;
  - c) The accused appears to have very little insight into his motivation for offending and his risk factors;
  - d) The accused has historical problems with substance abuse which directly played a role at least in his second offence;
  - e) The accused's two convictions show "strong behavioural evidence" that he has deviant sexual interests involving early adolescent females; and
  - f) There is some evidence that the accused has used "grooming" as a form of physical and psychological coercion in his sexual offending.
- [20] Dr. Kropp opined that the accused is of low-average intelligence and has difficulty planning ahead. He opined the trauma relating to his mother's death by suicide may still be affecting the accused today.
- [21] Dr. Kropp agreed on cross-examination that FASD could be an explanation for the accused's difficulties in planning and organization, and that a referral to the Asante Centre for Diagnosis may be appropriate.

- [22] Dr. Kropp opined that whether or not the accused reoffends is dependent upon the extent to which he participates in sex offender and substance abuse treatment programs, is placed on conditions and restrictions, is monitored, and safety planning is put in place for potentially at-risk victims. Dr. Kropp offered that such treatments would likely lower the accused's risk of reoffending and that the accused states that he is more prepared and motivated to participate in these programs than he was after his first offence.
- [23] Dr. Kropp did not have the benefit of the Gladue report at the time he prepared his report.
- [24] As I have stated, the Gladue report is detailed and comprehensive. Plainly, the accused has had an extremely difficult life. Despite his appalling upbringing and financial struggles, he was able to provide for his children. Indeed, he was their primary caregiver. By all accounts, the accused was a good father and is adored by his children. He misses not being able to see his children because of the conditions imposed upon him as a result of this current offence. He believes that these feelings are reciprocated by them. Indeed, the complainant stated at trial words to the effect that all she wants is for the accused to get help.
- [25] The accused is in the process of building a relationship with his father, who abandoned his mother before the accused was born, and who he had never met until 2002 at his mother's funeral. His father describes the accused as lost, angry, and depressed as a result of not being able to be with his children.
- [26] The accused has stated that he is ashamed of his actions and the harm he has caused to the victim in this case. He stated that he is committed to taking sex offender and alcohol addiction treatment.
- [27] The accused has, with the assistance of his support worker, attended his appointments with his probation officer, his therapist, and his support worker. He is about to start attending sessions with an addiction counsellor.
- [28] The court has not been provided with a victim impact statement.

#### legal principles of sentencing

- [29] Section 718 of the Criminal Code provides that 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. This purpose is achieved by imposing sentences which have, among others, the following objectives:
- 1) denouncing unlawful conduct;
  - 2) deterring the offender and other persons from committing offences;
  - 3) separating offenders from society where necessary;
  - 4) assisting in the rehabilitation of offenders;
  - 5) providing reparations for harm done to the victim and to the community; and

- 6) promoting a sense of responsibility in offenders and acknowledgment of the harm done to the victim and to the community.
- [30] In cases where there are no exceptional or unique circumstances, s. 718.1 of the Criminal Code stipulates that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: *R. v. L.M.*, 2008 SCC 31 at para. 22.
- [31] Section 718.2 of the Criminal Code stipulates that when imposing a sentence, the court shall take into consideration any relevant aggravating or mitigating circumstances relating to the offence or to the offender, including evidence that the offender, in committing the offence, abused a person under the age of 18 years and/or abused a position of trust or authority in relation to the victim.
- [32] It is well established that the victimization of a vulnerable person is an aggravating factor. As was stated recently by our Court of Appeal in *R. v. D.N.*, 2018 BCCA 190 at para. 20:
- [20] Among the core values of our society is recognition of the need to care for vulnerable children and protect them from harm and suffering. Children are entitled to be nurtured, protected, and guided by their parents and stepparents, not used for their depraved pleasure. When this essential trust is broken, the offender's moral culpability is high and the harm caused to the victim is profound. In consequence, in cases involving sexual offences committed against children, the authorities are replete with statements regarding the need to give precedence to denunciation, deterrence and retributive punishment.
- [33] In *R. v. Gladue*, [1999] 1 S.C.R. 688, the Supreme Court of Canada noted the systemic and background factors that have affected indigenous people in Canada. At para. 67, the court stated:
- [67] The background factors which figure prominently in the causation of crime by aboriginal offenders are by now well known. Years of dislocation and economic development have translated, for many aboriginal peoples, into low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation. These and other factors contribute to a higher incidence of crime and incarceration.
- [34] Many, if not all, of these factors are present in the accused's case.
- [35] The principles relating to sentencing aboriginal offenders discussed in *Gladue* were affirmed by the Supreme Court of Canada in *R. v. Ipeelee*, 2012 SCC 13 at paras. 56 to 87. Mr. Justice LeBel summarized the decision in *Gladue* at para. 59 of the *Ipeelee* decision:
- [59] The Court held, therefore, that s. 718.2(e) of the Code is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing (*Gladue*, at para. 93). It does more than affirm existing principles of sentencing; it calls upon judges to use a different method of analysis in determining a fit sentence for

Aboriginal offenders. Section 718.2(e) directs sentencing judges to pay particular attention to the circumstances of Aboriginal offenders because those circumstances are unique and different from those of non-Aboriginal offenders (Gladue, at para. 37). When sentencing an Aboriginal offender, a judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (Gladue, at para. 66). Judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally, but additional case-specific information will have to come from counsel and from the pre-sentence report (Gladue, at paras. 83-84).

[36] However, the application of Gladue principles does not mean that aboriginal offenders will necessarily receive shorter sentences. In cases involving serious offences where there is a pressing need for denunciation and deterrence, such as sexual assaults against children committed by adults in a position of trust, it is now settled law that, absent extraordinary circumstances, both aboriginal and non-aboriginal offenders will generally receive sentences of imprisonment: see *R. v. Wells*, 2000 SCC 10 at paras. 34, 39-42, 44; Gladue at paras. 33, 54, 74, 78-79, and 93; *R. v. Kakekagamick* (2006), 211 C.C.C. (3d) 289 (O.N.C.A.) at paras. 35 to 36 and 42 to 43 and 71 to 74; and *R. v. E.M.Q.*, 2015 BCSC 201 at paras. 48 and 49.

[37] Those are the principles of sentencing and considerations that I must apply today.

#### Aggravating Factors

[38] In its submissions on sentencing, the Crown points to the following aggravating factors in this case:

- a) The victim was a vulnerable 11-year-old girl at the time of the offence;
- b) The accused was in a position of trust;
- c) This is the accused's second conviction for a sexual offence involving a young girl, such that there is an established pattern of culpable behaviour; and
- d) At the time he committed the second offence, the accused was on probation and in breach of a probation order for failing to attend the treatment programs as required by his parole conditions.

#### Mitigating Factors

[39] The Crown acknowledges the following mitigating factors:

- a) The accused had an extremely difficult and traumatic upbringing;
- b) It is possible, although never diagnosed, that the accused may be suffering from fetal alcohol spectrum disorder; and

- c) The accused has stopped consuming alcohol and has become a contributing member of society and is supporting his family.

[40] The Crown also points out as non-mitigating factors that the accused did not plead guilty and the complainant was required to testify, both at the preliminary hearing and at trial. Crown also submits that the accused's statements of remorse are unlikely to be genuine.

crown's position on sentencing

[41] The Crown seeks a jail sentence of two years less a day followed by two years' probation, together with the usual probation conditions and ancillary orders.

[42] Crown relies on the following cases involving similar facts:

- a) R. v. D.N., 2018 BCCA 190, where the court imposed eight years' imprisonment which was upheld for the sexual assault and sexual touching of a stepdaughter taken place on numerous occasions and had escalated over a lengthy period of time, and the accused expressed no remorse or appreciation for the harm he had caused the victim;
- b) R. v. R.R.M., 2009 BCCA 578, there was two years' imprisonment followed by three years' probation for a First Nations offender who showed no remorse over having forced himself sexually upon his 15-year-old stepdaughter;
- c) R. v. Safaei, 2009 BCCA 367, there was 18 months' imprisonment followed by two years' probation for the sexual assault of a six-year-old girl in her daycare facility;
- d) R. v. M.G.F., 2010 ABCA 102, again an 18-month sentence imposed for multiple incidents of sexual interference on a 10-year-old stepdaughter while in the accused's care and while the accused was in a position of trust;
- e) R. v. F.E.H., 2015 BCSC 175, a total of 38 months' imprisonment for four counts of sexual inference of the offender's stepdaughter and her friend while he was in a position of trust and they were between eight and nine years old. The offender in that case had no prior criminal record and denied his criminal conduct and accepted no responsibility or remorse for it;
- f) R. v. Frost, [unreported, November 7, 2016, BCPC, Surrey Registry File 175769) imprisonment of two years was imposed for the sexual assault upon an 11-year-old girl by an offender who had been accepted by his girl's mother into their home and was thereby in a position of trust;
- g) R. v. Melendez, 2016 BCPC 0091, two years less one day imprisonment for numerous sexual assaults on a number of occasions of an eight-year-old by her foster parent; and finally

- h) R. v. E.M.Q., 2015 BCSC 201, 13 months' imprisonment was imposed, followed by two years' probation, for the sexual interference of a 14-year-old who the accused was babysitting. The sexual conduct in that case involved repeated and unwanted attempts to touch the complainant's breasts and vagina, and successful touching of her clothing in the pelvic area around her vagina. The accused's circumstances were not dissimilar from those of the accused in this case.

defence's position On sentencing

- [43] For the offence, Mr. Coleman submits that in the circumstances of this case, which I have outlined in detail, a suspended sentence and three years' probation is appropriate. He relies primarily on the circumstances of the accused, both before and after the offence took place, again which I have previously detailed.

### analysis

- [44] Sentencing is an individualized process. However, as part of its analysis, the court considers the range of sentences imposed for similar offenders committing similar offences, and the principles governing sentences that I have reviewed are those that must prevail.
- [45] There is no question in this case that the accused took advantage of the trust vested in him by his stepdaughter and violated her innocence and physical integrity. When this essential trust is broken, the offender's moral culpability is high and the harm caused to the victim is profound. In such circumstances, the law is clear that the need for denunciation, deterrence, and retributive punishment must take precedence: D.N. at para. 20; R.B.M. at para. 20.
- [46] Although these principles can be addressed in some cases by a suspended sentence order, such orders will be rare in cases involving sexual assaults upon a vulnerable child.
- [47] I accept that the aggravating factors enumerated by the Crown are present in this case. I also accept that the mitigating factors are present.
- [48] The accused has acknowledged his guilt and has expressed remorse and shame for his conduct and regret for the impact it has had on his stepdaughter. It is clear from the presentence report, the forensic psychiatric report, and the Gladue report, that the unfortunate circumstances of the accused's upbringing, together with his alcohol consumption, were major contributing factors to the accused's commission of the offence.
- [49] The accused, will you please stand. Is there anything that you wish to say before I sentence you?

[COMMENTS BY THE ACCUSED]

- [50] THE COURT: Thank you. You may have a seat.

- [51] Sentencing, not just an aboriginal offender, but any offender for a sexual offence where there has been evidence that the offender has suffered from historical or systemic abuse is an extremely difficult task. While judges must be sensitive to the conditions, needs, and understandings of aboriginal offenders and communities, that does not mean that the sentences for such offenders will focus solely on restorative objectives or give less weight to conventional sentencing objectives such as deterrence and denunciation: R.R.M. at para. 24.
- [52] That said, sentencing of aboriginal offenders must proceed on an individual or case-by-case basis for this offence by this offender harming this victim in this community in determining the appropriate sanction. Again, I quote from R.R.M. at para. 24.
- [53] I have given the circumstances of this case considerable thought.
- [54] I have considered that at the time of the offence, you were in a position of trust, that the assaults took place in your stepdaughter's home, a place where she had every right to feel safe, that there were three separate incidents of touching of a sexual nature.
- [55] I have also considered your extremely difficult upbringing and tragic and problematic life prior to this offence having taken place. I have considered, as well, that since your arrest for this offence and your release from custody some ten days later, that there are numerous positive factors that have become entrenched in your day-to-day life that were absent before, including you having been embraced by many family members, you having obtained full-time work in the carpentry field, you having learned new skills in that field, you having taken great pride in those skills and, most importantly, a complete abstinence from consumption of alcohol, for which again I commend you.
- [56] There is no doubt in my mind that the accused's inexcusable conduct, that is the subject of this offence, was largely influenced by his drinking, habitual drinking of alcohol. Again, I commend you for coming to grips with that problem and for you being sober for as long as you have been.
- [57] Having considered all of what I have mentioned, I agree with Mr. Coleman that this is a rare example of a case where incarceration is not the answer. In my view, it will neither further the ends of justice nor serve to protect anyone. I do not accept Dr. Kropp's assessment that the accused is a serious risk to reoffend. Rather, I find that, provided he completes the prerequisites for intake into an aboriginal restorative justice program and then participates in such a program, both you, the accused, and society as a whole will be significantly better off than would be the case if you were simply incarcerated.
- [58] One such restorative justice program is the Tsow-Tun Le Lum substance abuse and treatment centre in Lantzville, BC, which is a well-known aboriginal treatment facility that offers an intensive five-week residential substance abuse treatment grounded in native culture and tradition, and addresses the issues, including unresolved intergenerational trauma, grief, and loss.

- [59] The prerequisites for attendance at Tsow-Tun Le Lum include that you be living in the community, you abstain from the use of alcohol and drugs for at least six months, that you have completed a sex offender program, and that you have completed six counselling sessions with a qualified counsellor. I am confident that you are now profoundly motivated and disposed to attend those sessions, in stark contrast to your previous, what I will call lackadaisical attitude which led to poor attendance.
- [60] Indeed, I believe that you have demonstrated that motivation in your attendance since your release from incarceration in this case.
- [61] As I have said, the accused's circumstances are, in my view, exceptional. He has shown both insight into the harmful effects of his actions, as well as genuine remorse for them. He has made significant and sustained progress in his life and has immersed himself in a supportive community. He now has meaningful employment that will assist him in his continued betterment.

the sentence

- [62] In my view, the objectives of deterrence, denunciation, and rehabilitation can be met by suspending the passage of sentence and placing the accused on probation for three years, the terms of which probation will be as follows:
- 1) That you keep the peace and be of good behaviour. You must appear before the court when required to do so by the court. You must notify the court or your probation officer in advance of any change of name or address, and promptly notify the court or your probation officer of any change in employment or occupation.
  - 2) You must have no contact or communication, directly or indirectly, with your non-biological children during your probation.
  - 3) You must not go to any residence, school, or workplace that you know to be that of your non-biological children.
  - 4) You must reside at your current residence and not change your residence or phone number without written permission from your probation officer.
  - 5) You must work with your probation officer to take the steps necessary to complete the prerequisites for attendance at the Tsow-Tun Le Lum Substance Abuse and Treatment Centre, including -- that is in Lantzville -- including that you live in the Squamish Indian Band community, that you abstain from the use of alcohol and drugs, that you complete a sex offender program, and that you complete six counselling sessions with a qualified counsellor. You may well have completed some of those already, I do not know. Once you have completed the prerequisites, you then must attend the five-week substance abuse and trauma programs at Tsow-Tun Le Lum Substance Abuse and Treatment Centre in Lantzville as soon as your participation in those programs becomes available to you.

[63] There will be a DNA order pursuant to s. 487.051(1) in Form 5.03.

[64] There will be an order in Form 52, requiring that you comply with the Sex Offender Information Registry Act for 20 years, as required by s. 490.013(2.1) of the Criminal Code, because you have been convicted of more than one designated offence under s. 487.04.

[65] Finally, there will be a 10-year firearms restriction pursuant to ss. 109(1)(a) and 109(2) of the Criminal Code.

[66] Section 161 of the Criminal Code provides:

161 (1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 . . . [which is applicable here] the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from

(a) attending a public park or public swimming area where persons under the age of 16 . . . are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;

(a.1) being within two kilometres, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or of any other place specified in the order;

(b) 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;

(c) having any contact -- including communicating by any means -- with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; or

(d) using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.

[67] As I have said, sexual interference contrary to s. 151 of the Criminal Code is one of the offences referred to in the section I have just read, but a prohibition order under s. 161 is discretionary and applies only to offenders who constitute a danger to children. That is *R. v. Heywood*, [1994] 3 S.C.R. 761.

[68] I have considered s. 161 and its purpose, which is to serve an overarching protective function to shield children under the age of 16 from sexual violence: *R. v. K.R.J.*, 2016 SCC 31 at para. 44.

- [69] A sentencing judge has the flexibility to address the degree of risk of an individual offender reoffending in the community and to craft an order that is tailored to the circumstances of the individual offender: K.R.J. at para. 47. Section 161 of the Criminal Code orders can be imposed only where there is an evidentiary basis upon which to conclude that the particular offender poses a risk to children and the sentencing judge is satisfied that the terms of such an order are a reasonable attempt to minimize that risk: K.R.J. at para. 48.
- [70] With the exception of the prohibition that I have already put in place regarding the accused's non-biological children, I am not persuaded that he poses a risk to children generally or that a broad-ranging s. 161 order is necessary in this case.
- [71] All right, counsel, is there anything further?
- [72] MR. FLANDERS: There are, and forgive me, My Lord, if I have simply missed hearing some of these. The first condition that I would suggest is really required given your subsequent orders, and I may not have heard it, is a reporting condition. He will be required to report for any of the subsequent conditions to make sense, I would submit.
- [73] THE COURT: I think that is appropriate, thank you.
- [74] MR. FLANDERS: So the wording will be different than that that I have previously suggested in 2104, because that order begins, "You must report in person to a probation officer within two business days of your release". Obviously that would not be appropriate, but other than that, I would suggest the wording that I have already suggested.
- [75] THE COURT: All right, so that language should go then, that you will report within 48 hours to your probation officer at 100-233 West First Street, North Vancouver.
- [76] MR. FLANDERS: I am going to suggest two business days, because we are on the weekend.
- [77] THE COURT: All right, it is Friday, right, within two business days; that is, before four o'clock p.m. on September 10th.
- [78] MR. FLANDERS: Now, the following suggested condition is one that essentially creates a way, and I do not anticipate that the accused will necessarily be one of those individuals, but it is a way to get people back on track reporting when they have been in custody, if they have missed a reporting period, otherwise there is no way to do that, if he is to subsequently go into custody for any other reason. So if he commits another offence, for instance.
- [79] So I would suggest that he have a condition that if, at any time prior to the expiration of this order, etc.
- [80] THE COURT: Well, hopefully he will not reoffend, so it will not be necessary, but in the event that something untoward happens, there will be a condition that if, at any time prior to the expiration of this probation order, you are arrested, detained, or have served a sentence for another offence, you must report to the probation officer within two business days of your release. All right.

- [81] MR. FLANDERS: I will assume for the purposes of the sentencing, that your reasons on the s. 161 order apply equally to the Crown's suggested probation order that he have no contact with anyone under the age of 16?
- [82] THE COURT: Well, that I put in place and the s. 161 order -- that order goes.
- [83] MR. FLANDERS: Oh sorry, I --
- [84] THE COURT: Sorry, no, my -- the no-contact order is limited to the accused's non-biological children.
- [85] MR. FLANDERS: Right, and I had suggested a more generic one, so I assume that your reasons apply to that probation condition as well, not just the s. 161 order, which are fundamentally different. Or the s. 161 order is its own process.
- [86] THE COURT: There is -- yes, but the s.161 order contemplates --
- [87] MR. FLANDERS: Right.
- [88] THE COURT: -- no contact with the victim. I have already dealt with that.
- [89] MR. FLANDERS: Yes, and so I -- all I am confirming on the record is that Your Honour is not disposed to a more generic condition of no contact with anyone under the age of 16 --
- [90] THE COURT: Correct.
- [91] MR. FLANDERS: -- on a probation order.
- [92] THE COURT: Correct.
- [93] MR. FLANDERS: I just wanted to be clear.
- [94] THE COURT: Yes.
- [95] MR. FLANDERS: Then finally, and I do think that I have simply missed this --
- [96] THE COURT: Just to emphasize, I am not persuaded that the accused poses a general risk to anyone.
- [97] MR. FLANDERS: Thank you. Now, and I may have just missed this, I was unclear, because I was taking notes, whether or not there was a SOIRA order imposed?
- [98] THE COURT: I believe there was.
- [99] MR. FLANDERS: Madam Clerk is shaking her head.
- [100] THE COURT: Yes. Yes, Form 52, compliance with the Sex Offender Information Registry Act for 20 years, I made that order.
- [101] MR. FLANDERS: Right, so there will be an order and I had previously been under the impression that it was required to be a lifetime order.

[102] THE COURT: Yes, I believe it is 20 years. If I am wrong, please help me, but ...

[103] MR. FLANDERS: We may need to --

[104] THE COURT: I believe that -- I know your suggested conditions said lifetime, but my understanding is it is 20 years in this case. You might want to check that.

[105] MR. FLANDERS: And that is my only remaining point, in any event.

[106] THE COURT: All right. Mr. Coleman, can you help us on that?

[107] MR. COLEMAN: I will look it up, but --

[108] THE COURT: Section 487.04.

[109] MR. COLEMAN: I am sorry, four?

[110] THE COURT: Oh sorry, 490.013(2.1).

[111] MR. FLANDERS: 2.1?

[112] THE COURT: 2.1.

[113] MR. FLANDERS: And so 2.1 reads:

An order made under subsection 490.012(1) applies for life if the person is convicted of, or found not criminally responsible on account of mental disorder for, more than one offence referred to in paragraph (a), (c), (c.1) [etc.] . . .

And essentially any of the designated offences, and I believe both of these are designated offences.

[114] THE COURT: All right, if that is the case then it should be lifetime then, all right. So Madam Registrar, instead of 20 years, it will be lifetime. Thank you, Mr. Flanders.

[115] MR. FLANDERS: I do not believe that the Crown has any other matters for now, thank you.

[116] THE COURT: All right. For what it is worth, I have given you a significant break and I am confident that you will use it to your advantage and use it to continue to improve your life as you have done.

[117] THE ACCUSED: I will, sir. I will, sir.

[118] THE COURT: And once these probation conditions have been met, you will once again be able to be with your children. So it is up to you. I wish you the best, the very best.

"G.C. Weatherill J."

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