

CANADA / JUDGMENT

R. v. Megannety

2024 BCSC 2496

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 2496 R. v. Megannety IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Megannety, 2024 BCSC 2496 Date: 20241212 Docket: 44452-2 Registry: Duncan Rex v. Eric Tristan Megannety Restriction on publication: Pursuant to ss. 278.95, 486.4(1), and 486.4(2) of the C.C.C. Before: The Honourable Madam Justice C. Murray Oral Reasons for Sentence Counsel for the Crown: S. Meijers Counsel for the Accused: B. Martland, KC Place and Date of Trial/Hearing: Duncan, B.C. December 12, 2024 Place and Date of Judgment: Duncan, B.C. December 12, 2024

- [1] THE COURT: These are my oral reasons for sentence. I have obviously written them relatively quickly so I could impose the sentence today. If they are ordered, I may make grammatical corrections if need be, but the decision will not change.
- [2] Mr. Megannety has pled guilty to sexually assaulting E.L. in the summer of 2010. The facts are set out in an agreed statement which has been marked an exhibit on this sentencing hearing. Put briefly, Mr. Megannety and E.L. both lived on Salt Spring Island. At the relevant time, Mr. Megannety was in his early 30s and worked as a boat mechanic. He routinely worked at a marina where E.L.'s parents kept their boat. E.L. was 15 and in high school. She worked part-time at the marina.
- [3] Shortly after she turned 15 in the summer of 2010, E.L. was staying home alone and her parents were sleeping on the boat. She and Mr. Megannety were sending messages through MS Messenger. E.L. asked what Mr. Megannety was doing. He said he was sitting at home drinking wine. He asked if she wanted to join him and she said yes. He went and picked her up in his truck and took her back to his place to hang out. E.L. and Mr. Megannety were watching TV. He leaned in and kissed her. Mr. Megannety carried E.L. to his bed and they had sexual intercourse with a condom. E.L. told the police that she was not forced into having sex and agreed with the police question that the contact was "to some level consensual, as much consent you can give as a 15-year-old." Mr. Megannety took E.L. back home in the morning before her parents returned home. At the time, Mr. Megannety knew that E.L. was 15.

- [4] Crown seeks a sentence of two-and-a-half years. Crown says that young people need to be protected and that a federal period of incarceration is required to denounce the accused's behaviour and deter other like-minded individuals. Defence submits that a sentence of 10 months plus two to three years' probation to follow is appropriate.
- [5] The fundamental purpose of sentencing is set out in s. 718 of the Criminal Code, R.S.C., 1985, c. C-46 which reads as follows: The fundamental purpose of sentencing is to protect society and 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
- [6] Of the list that follows, the paramount considerations on this sentencing are deterrence and denunciation.
- [7] The duty of a sentencing judge is to fashion a just and appropriate punishment that is proportionate to the culpability of the offender. What constitutes just and appropriate turns on the specific facts of each case. On this sentencing hearing, both Crown and defence referred to a number of cases in an effort to establish a range. All of them are different factually, some dramatically so. I agree with Mr. Martland that what the cases illustrate is that sentencing is a highly individualized and discretionary process as opposed to a mathematical equation.
- [8] Having said that, when embarking on this individualized discretionary exercise, the Court is guided by strong principles articulated by the Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9, that children must be protected from sexual violence and that sentences that respond to the gravity of sexual offences against children and the degree of responsibility of the offender will frequently require substantial sentences. The Supreme Court of Canada also said that mid-single-digit penitentiary sentences for sexual offences against children are normal and that substantial sentences can be imposed where there is just a single incident. Of note, the Supreme Court of Canada also states that, in making these statements, it is not establishing a range.
- [9] The Court also noted that it is well established that sentencing ranges are guidelines, not hard and fast rules, and that simply departing from a sentencing range is not in itself an error in principle. Our Court of Appeal in *R. v. Armstrong*, 2012 BCCA 248 similarly stated that there is no requirement for there to be exceptional circumstances in order to justify a sentence outside of an articulated range. The issue is whether the sentence is proportionate to the offence committed and the moral blameworthiness.
- [10] With those principles in mind, I now turn to the question of what the appropriate sentence is. I will begin by considering aggravating and mitigating circumstances. The Aggravating Circumstances

- [11] The aggravating factors are as follows. Mr. Megannety had sexual intercourse with E.L. when she was 15. Mr. Megannety was in his early 30s. While the complainant was by all accounts a willing participant in the sexual activity, that is not a defence. Under our law, a child under the age of 16 cannot consent to sexual activity with a person so much older. The policy reasons for that are clear and involve a recognition that youth lack maturity, judgment, and life experience. It also recognizes the power imbalance between children and adults. E.L. had just turned 15 at the time of the incident. Mr. Megannety knew her age. While E.L. elected to not complete a victim impact statement, the Court must presume that sexual assault will give rise to potential significant harm.
- [12] Now, the mitigating factors. Mr. Megannety has no criminal record. He is an upstanding, well-respected, productive member of the community. Many letters of support were filed on this sentencing, all of them written by people that know about Mr. Megannety's guilty plea to sexual assault and the circumstances of it. All write glowingly about his character, how generous he is, how he will drop everything to go to a friend's aid, how he will do all he is able to help people, and how he mentors young people. Mr. Megannety has a lot of support in the community from both family and friends. I pause to note that his whole family is in court today supporting him- his mother, father, and two brothers.
- [13] According to the psychiatric assessment, Mr. Megannety is a low risk to reoffend. According to Dr. Morgan, who wrote the psychiatric assessment, Mr. Megannety has some understanding of the factors and processes that led to his offending. That Mr. Megannety entered a guilty plea is a significant mitigating factor in this case as there were triable issues of credibility and reliability. In addition, the complainant lives abroad and it would involve substantial disruption to her life to come and testify.
- [14] In addition to aggravating and mitigating circumstances, there are other factors that do not fit neatly under one category or the other, but in my view, must be considered in determining a fit sentence. In the 11 to 12 years between the time of the offence and the complaint to police, Mr. Megannety was a contributing member of society. He did not commit any other criminal offences. This offence occurred about 14 years ago. Mr. Megannety has suffered significantly since the offence came to light approximately 12 years after it happened. His 15-year common law relationship with his wife ended. A few of his friends speak in their letters of how difficult the loss of this relationship was on Mr. Megannety. In addition to losing his wife, Mr. Megannety lost his dogs in the separation. Reading between the lines of the letters it is clear that the dogs were very important to him. And he lost his home of 10 years; a home that he had put much work into.

- [15] This is a challenging sentencing. On the one hand, the Court must send a message to Mr. Megannety and like-minded individuals that engaging in sexual activity with people under the age of 16 will not be condoned. That message is generally sent through the imposition of a significant jail sentence. On the other hand, the purpose of sentencing is not to devastate a law-abiding, productive member of society because of an error in judgment, albeit a serious one, that he made over 14 years ago.
- [16] Regarding specific deterrence, Dr. Morgan is of the opinion that Mr. Megannety is a prosocial person on whom even being charged will likely have a pronounced deterrent effect. I agree. Mr. Megannety was forthright when confronted by police. He has accepted full responsibility. He has not minimized his actions or blamed the complainant. He has acted responsibly. An example of this comes shining through one of the letters of reference from a female neighbour of Mr. Megannety's that has two children, one of whom is a teenaged girl. That neighbour writes that, at the beginning of their friendship, Mr. Megannety took her aside and told her about this charge.
- [17] So, what is a fit sentence that takes into account all of the principles of sentencing? I agree with Mr. Martland that the sentence must be heavy and strong, fair and proportionate. It must involve real time, but it should not be life ending for Mr. Megannety.
- [18] Having considered all of the circumstances of this case including the circumstances of Mr. Megannety, submissions of counsel, and the cases put before me, I am of the view, that the appropriate sentence is that which is suggested by Mr. Martland: a period of incarceration of 10 months.
- [19] Let me explain the 10 months. This sentencing was originally scheduled for October. Mr. Megannety mentally and physically prepared himself to go to jail. He moved out of his home. Close to the sentencing date, Crown sought an adjournment in order to get a victim impact statement. This is not a criticism of Crown. I would have sentenced Mr. Megannety to one year. I am subtracting two months to recognize the two months that Mr. Megannety's life has been on hold pending sentence. For a person of Mr. Megannety's character, that must have been a painfully long two months.
- [20] Stand up, please, Mr. Megannety.
- [21] I sentence you to 10 months in jail followed by two years' probation.
- [22] The terms of probation will be as follows:
- (1) First, report to a probation officer, the address will be provided to you when you are released, within 72 hours of your release and thereafter as and when directed by your probation officer.
 - (2) You will keep your probation officer apprised of your current residential address.

- [3] You will take counselling as directed by your probation officer. That may include forensic psychiatric counselling;
- [4] You are to have no contact directly or indirectly with E.L.
- [23] I also make the following ancillary orders. Pursuant to s. 487.051(1) of the Criminal Code, I order that DNA samples be taken from you. That will be done in custody.
- [24] Pursuant to s. 490.013(2)(b), you are required to comply with the Sex Offender Information Registration Act for a period of 20 years.
- [25] Pursuant to s. 109, you are prohibited from possessing firearms, crossbows, prohibited weapons, restricted weapons, prohibited devices, ammunition, prohibited ammunition, and explosive substances for a period of 10 years.
- [26] Let me just pause. Victim fine surcharge?
- [27] CNSL MARTLAND: I didn't address it, but we -- it's appropriate. I'd ask that just out of an abundance that maybe two months be given to ensure that's paid properly?
- [28] THE COURT: I have looked for the section. I could not find it, offhand.
- [29] CNSL MARTLAND: I feel like I should know that, but I don't.
- [30] THE COURT: Yes.
- [31] CNSL MARTLAND: I'll look now.
- [32] THE COURT: Do you know a number I can just say?
- [33] CNSL MARTLAND: No.
- [34] THE COURT: No?
- [35] CNSL MARTLAND: The number of the section? No, I don't offhand.
- [36] THE COURT: Okay. Sorry, Mr. Megannety, you can have a seat. We are just going to give you a victim fine surcharge.
- [37] CNSL MARTLAND: 737, I think
- [38] THE COURT: Okay. Oh, yes, okay. \$200. Okay.
- [39] THE COURT: I am going to order, pursuant to s. 737, a victim fine surcharge in the amount of \$200. How many months?
- [40] CNSL MARTLAND: Two months, please?
- [41] THE COURT: Two months to pay. Okay.

[42] Mr. Megannety, let me just say this. Do not let this define you. This is a lapse in judgment 14 years ago. You are a good person. The world is a better place having you in it, okay? I think you will probably find some relief just to have this over with. I wish you well. "C. Murray J."

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