
CANADA / JUDGMENT

R. v. P.R.J.

2021 BCSC 2537

COURT

Supreme Court of British Columbia

DECIDED

13 December 2021

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2021 BCSC 2537 R. v. P.R.J.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. P.R.J.,

2021 BCSC 2537

Date: 20211213

Docket: 91385-2

Registry: Kelowna

Regina

v.

P.R.J.

Restriction on publication: Pursuant to ss. 486.4(1) and 486.4(2.1)

of the Criminal Code.

Pursuant to s. 16(4) of the Sex Offender Information Registration Act [SOIRA],

no person shall disclose any information that is collected pursuant to an order under

SOIRA or the fact that information relating to a person is collected under SOIRA.

Before: The Honourable Mr. Justice Davies

Oral Reasons for Sentence

Counsel for the Crown:

D. Blumenkrans

Counsel for the Accused:

M.A. Newcombe

Place and Date of Hearing:

Kelowna, B.C.

December 13, 2021

Place and Date of Judgment:

Kelowna, B.C.

December 13, 2021

- [1] THE COURT: I will not address the circumstances of the accused P.R.J.'s offending in great detail in this sentencing decision. They are outlined fully in my oral reasons for judgment that have now been transcribed and are available under neutral citation 2021 BCSC 2420.
- [2] In summary, P.R.J. sexually offended against her daughter, P. as described in those reasons on one occasion likely in July 2018 when P.R.J. sexually interfered with P. (as charged in Count 1 of the Indictment) by digitally inserting a finger into her vagina and also kissing her vagina. P.R.J. committed the offence of invitation to sexual touching (as charged in Count 2) when she caused P. to touch P.R.J.'s own vagina.
- [3] P. was at the time seven or eight years old. As a consequence of circumstances that arose after that sexual offending, she was removed from her mother's care and is now in the care of her aunt and her aunt's family.
- [4] Recent authorities, including, most importantly, the decision of the Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9, establish that in sentencing offenders for sexual offences against children courts must recognise, without differentiation as to the nature of the offending, that any and all such offending violates the integrity of children, both sexually and physically.
- [5] The authorities and the Criminal Code, R.S.C. 1985, c. C-46, are clear that the primary purposes and objectives of the sentencing of individuals convicted of sexual offences against children are both general and specific denunciation and deterrence. Also important in the determination of an appropriate sentence in this case is the fact in committing these offences P.R.J. breached her position of trust and authority in failing to protect P. from harm by anyone, including most importantly harm from herself.
- [6] I approach this sentencing from those perspectives.
- [7] I also approach this sentencing from the perspective of not knowing what effect P.R.J.'s offending may eventually have upon P. although she now appears to be a resilient child who is now reportedly doing well with her aunt and her aunt's family.

- [8] In that regard, I would be remiss in not observing that not only P. and society in general, but also P.R.J. should be grateful for the intervention of M.F. and her family in P's life to assist her during the last three years as I expect they will continue to do.
- [9] It cannot, however, now be known how P. and her life may, in future, be adversely effected by her mother's violation of her integrity. We can only hope that she will continue to do well.
- [10] There is a substantial body of both literature and judicial authority that tells us that we cannot know what the ultimate ramifications of a violation of a child's physical and sexual integrity will be or when or how such ramifications may manifest.
- [11] That is why Parliament, the Supreme Court of Canada, appellate courts, and, trial judges courts across the country recognize that judges must approach sentencing in cases of sexual offending against children as very serious cases by considering not only the inherent wrongfulness of such offences but also by considering and assessing the harm that is done not only to a particular child victim but also the harm done to communities and society as a whole when children are violated especially by those relied upon to protect them from harm.
- [12] Relying upon all of those principles Crown Counsel submitted that P.R.J. should be sentenced to 4 years in jail for her sexual offending against P. in this case.
- [13] As I stated during submissions on this sentencing hearing I do not consider that a 4 year sentence of imprisonment would be an appropriate sentence in all of the circumstances.
- [14] I say that because: P.R.J. is a first-time offender; she is over 40 years of age; and, while she has had difficulties in the past with substance abuse she has never previously been before the courts. Importantly also, as egregious as her sexual offending was, it occurred on one occasion only. In that regard P.R.J. is not like many offenders who sexually abuse children either a serial offender against many children or an offender who has repeatedly abused a child over a protracted period of time.
- [15] Although, as I will next discuss, while only the fact that P.R.J. is a first offender is a mitigating factor in the determination of an appropriate sentence, other aspects of her circumstances and of her offending to which I have referred also impact that determination.
- [16] P's evidence at trial that I accepted over the testimony of P.R.J. (who testified that she had not committed the sexual acts about which P. testified) not only satisfied me beyond a reasonable doubt that P.R.J. committed the sexual offences for which she has been convicted but also convince me that when she committed those offences P.R.J. was extremely intoxicated by alcohol and likely further uninhibited in her conduct by reason of her misuse of prescription medication that night.
- [17] The totality of the evidence convinces me that P.R.J.'s offending that night was an aberration in the relationship between mother and daughter.

- [18] Although I do not have evidence of specific mental and emotional issues from which P.R.J. then suffered or may now suffer I had the opportunity to hear her evidence at trial about the state of her anxiety and depression at the time of the offending. I also heard P.s evidence who testified about alcohol abuse by P.R.J. not only at the time of the offending but also her alcohol and drug related behaviour that eventually resulted in P. being removed from her care all of which I discussed in my reasons for conviction.
- [19] In all of those circumstances I must ask myself in determining an appropriate sentence for P.R.J.'s sexual offending against P. whether, as submitted by the Crown, a lengthy sentence of incarceration is necessary to meet the sentencing objectives of general and specific denunciation and deterrence for this offender's sexual offending.
- [20] If, however, I conclude that such a lengthy term of imprisonment is not necessary to achieve those objectives, I am satisfied that it is necessary to then consider whether an appropriately denunciatory and restrictive conditional sentence order may serve the same purposes.
- [21] I say that because, notwithstanding the provisions of the Criminal Code that would, in most circumstances, require the imposition of a mandatory sentence of incarceration for the two offences which P.R.J. is now to be sentenced, a conditional sentence may be imposed in appropriate circumstances. See: R. v. Scofield, 2019 BCCA 3; R. v. Chen, 2021 BCSC 882; and R. v. Vaux, 2021 1773.
- [22] Without ignoring in any way that this was an offence committed upon a child by a person in trust and authority and was committed in P's home, I have concluded that a sentence of incarceration is not necessary to meet the objectives of sentencing for P.R.J.'s offending in this case.
- [23] For the following reasons I find that a conditional sentence order will not only appropriately address the necessary sentencing objectives of general and specific denunciation and deterrence but, more likely than would her imprisonment, also aid in achieving another important sentencing objective by promoting the rehabilitation of the P.R.J.:
- 1) P. was adamant that the offending occurred once when her mother was, in P's own words "not normal".
 - 2) After that aberrant behaviour, P.R.J. and P. lived together for at least another five months after the offences were committed with no suggestion of similar behaviour.
 - 3) P.R.J.'s behaviour that eventually led to the removal of P. from her care was also alcohol and substance abuse-driven.
 - 4) Given her history and given also the particular circumstances of her offending as well as her performance while on bail for the last three years I am not satisfied that that P.R.J. poses a risk to the community if she is not incarcerated.

- 5) P.R.J.'s conduct has deservedly been denounced and will continue to be denounced at least in part by reason of the total removal of her only child from her life. While that removal is necessary to protect P. there is a punitive aspect to it.
- 6) The pre-sentence report filed as an exhibit on this sentencing proceeding convinces me that there is a better likelihood of P.R.J. dealing with her underlying substance abuse issues and psychiatric issues in the community than there would be if she were to be incarcerated.
- [24] In result, on Counts 1 and 2 of the indictment (with the sentence on each to be served concurrently) I sentence P.R.J. to a conditional sentence order of 23 months to be served in the community. That conditional sentence will be followed by a probation order of a further two years.
- [25] That conditional sentence order will be on the following terms:
- 1) You will keep the peace and be of good behaviour.
 - 2) You will appear before the court as and when required.
 - 3) You will report by 3:00 p.m. today, December 13, 2021, to a conditional sentence supervisor in Kelowna, British Columbia. If, due to COVID-19 pandemic, you must report initially by telephone to a supervisor, you are permitted to do so. Thereafter, you will report as when, where and in the manner as directed by a supervisor.
 - 4) You will provide your address and phone number to your supervisor and not change that address or phone number without prior written permission of your conditional sentence supervisor.
 - 5) During the term of your conditional sentence, you will remain in the Province of British Columbia unless you receive prior written permission from your supervisor or the court to go outside the jurisdiction.
 - 6) You will attend, participate and complete any intake assessment program, treatment or a full-time, live-in treatment program as directed by your conditional supervisor. This may include programming, counseling or treatment for alcohol and drug addiction, psychiatric and psychological health and sexual offending.
 - 7) You must attend for a psychiatric intake assessment or treatment program through Forensic Psychiatric Services as directed by your conditional sentence supervisor.
 - 8) If you are expelled or remove yourself from the treatment centre recovery home program, you must tell your conditional sentence supervisor immediately. If your conditional supervisor's office is closed, you must contact your supervisor immediately when the office opens the next business day.

- 9) During the first 12 months of your conditional sentence order, you will be subject effectively to house arrest. You will remain in your home or your residence or on the property immediately adjacent to your residence except for the following purposes:
 - a) you will be allowed outside your residence to attend medical or dental treatment;
 - b) you will be allowed to attend for counseling sessions which may be supervised pursuant to the terms of this order or as approved by your supervisor;
 - c) you may be away from your residence during your house arrest with the prior written permission of your conditional sentence supervisor. Such permission is to be given only for employment, education, schooling or other compelling reasons. You must carry the permission which can be in electronic form with you when you are outside of your residence;
 - d) you must not permit anyone to visit your residence except with the permission of your supervisor;
 - e) you will be allowed outside of your residence for emergency medical treatment for yourself or an immediate family member. If asked, you must provide your conditional sentence supervisor proof of your attendance at a healthcare facility; and
 - f) you will present yourself immediately at the door of your residence upon request of any peace officer or conditional sentence supervisor.
- 10) During the course of your conditional sentence order, you will carry a copy of the order on your person at all times when not in your place of residence and you will produce it as proof of identification when required identification by any police officer or conditional sentence supervisor.
- 11) You will complete 100 hours of community service work within the first 12 months of your conditional sentence order under the direction of your conditional sentence supervisor.
- 12) During the remaining 11 months of the conditional sentence order you will be no longer subject to house arrest, but you will obey a curfew from 6:00 p.m. to 8:00 a.m. The same exceptions will apply with respect to that allowance to be outside your residence between those hours.
- 13) You will have no contact or communication directly with P. or M.F. or your mother.
- 14) You will not attend within two blocks of any place you know to be the residence, place of employment or school of P. You must not be at a place where P. happens to be. If you see her, you must leave that place immediately without any words or gestures.

- [15] You must not associate or have a relationship with anyone named by your conditional supervisor, if your supervisor has reasonably determined that relationship or association to be a risk to yourself or others, or to be detrimental to your counseling or reintegration into the community or presents a risk to the public.
- [16] Finally, you must not possess or consume alcohol, drugs or any other intoxicating substance with the exception of medical prescriptions.
- [26] Following the expiration of that conditional sentence order, you will report to a probation officer within two business days and will be bound by your probation order for two years and abide by the same conditions that are in effect for your conditional sentence order other than with respect to house arrest or curfew.
- [27] In addition, there will be the following ancillary orders, pursuant to s. 487.051(1) of the Criminal Code, there will be a DNA order. Pursuant to s. 487.051(1), I authorize the taking of bodily substances from P.R.J. reasonably required for the purposes of forensic DNA analysis; and two, pursuant to s. 490.012, there will be an order requiring P.R.J. to comply with the provisions of the Sex Offender Information Registry Act, S.C. 2004, c. 10 [SOIRA], for life and there will also be a mandatory firearm prohibition as required by the provisions of s. 109 of the Criminal Code.
- [28] I am going to decline to make a s. 161 order under the Criminal Code. I am satisfied that the no contact orders that will be in place for the next five years will be sufficient to address concerns under s. 161 of the Criminal Code. Yes?
- [29] CSNL M. NEWCOMBE: Just one small comment, My Lord. As you may recall from the evidence, I think we got it in the evidence that her mom lives in the same apartment block.
- [30] THE COURT: The two blocks restriction is with respect to P's residence or school. It would not apply when she is visiting her grandmother where the more specific no contact restrictions will be in effect.
- [31] CNSL D. BLUMENKRANS: Yes, I am just thinking. I was just going to look into the -- a SOIRA order. Did Your Lordship say for life or 20 years?
- [32] THE COURT: Twenty years.
- [33] CNSL D. BLUMENKRANS: Oh, thank you.
- [34] THE CLERK: Is it 20 years?
- [35] THE COURT: Yes.

[NOTE: 20 year SOIRA order should have been for life as later acknowledged by Crown and accepted by the Court but not modified before entry]

"Davies J."

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