
CANADA / JUDGMENT

R. v. Sam

2014 BCSC 1267

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sam,

2014 BCSC 1267

Date: 20140610

Docket: 58836-2

Registry: Chilliwack

Regina

v.

Leslie Gerald Sam

Ban on Publication

Pursuant to s. 486.4(1)

Criminal Code of Canada

Before: The Honourable Mr. Justice Joyce

Oral Reasons for Sentence

Counsel for the Crown:

S.K. Domaradzki

Counsel for the Accused:

A. Sidhu

Place and Dates of Hearing:

Chilliwack, B.C.

April 17, 2014

May 29, 2014

Place and Date of Judgment:

Chilliwack, B.C.

June 10, 2014

- [1] THE COURT: Mr. Sam has pleaded guilty to a charge of sexual touching of a person under the age of 14 years, contrary to s. 151 of the Criminal Code, R.S.C. 1985, c. C-46. I now have to determine an appropriate sentence.
- [2] The circumstances of the offence are set out in an agreed statement of facts, which I summarize as follows.
- [3] The offence took place between 2003 and 2005, when the victim was between the ages of seven and nine. The victim was the daughter of close friends of Mr. Sam. Mr. Sam took the victim on many outings and babysat her from time to time. These visits were as frequent as once or twice a week. Mr. Sam was therefore in a position of trust towards the victim.
- [4] The first incident of touching consisted of Mr. Sam putting his hands down the victim's pants and touching her vaginal area. It is not clear whether the touching was on top of or under the victim's underwear.
- [5] Over the course of approximately two years Mr. Sam touched the victim approximately 50 times in the vaginal area. On about 30 occasions, Mr. Sam took the victim's shirt off and pressed his face against her chest area. On approximately one third of the incidents of sexual touching, Mr. Sam touched the victim's vaginal area with his tongue. On the last occasion when there was sexual contact, Mr. Sam attempted penile penetration of the victim. On at least one occasion of sexual contact, Mr. Sam ejaculated.
- [6] The sexual touching was first reported to the victim's grandmother in 2005 and a statement was provided to the police in January 2005. However, charges were not sought at that time due to the victim's age and lack of maturity. Mr. Sam was charged on March 11, 2010.
- [7] There is no victim impact statement per se but the victim was interviewed by the person who prepared a pre-sentence report. She told the author of the report that when the touching took place, she felt "dirty, angry, and confused". She continues to have difficulty coping with the memories of what happened and still has bad dreams. At times, she feels guilty, disgusted with herself and worthless, feelings which of course she should not in any way have towards herself, but which are consequence of these actions by Mr. Sam. The victim has difficulty trusting people, particularly males. She has been receiving counselling

for the last eight years to help her cope with the effects of what was done to her.

- [8] The following information is drawn from the pre-sentence report concerning the circumstances of Mr. Sam.
- [9] Mr. Sam is 34 years old. He was between the ages of 26 and 28 when he committed the offence. Mr. Sam is one of four children. He is of Aboriginal descent. Mr. Sam's biological father was not part of his life when growing up. Mr. Sam's mother married his stepfather when Mr. Sam was seven years old. Mr. Sam has had limited involvement with his First Nations culture and customs but occasionally attends sweats and participates as a smokehouse dancer. He expressed to the author of the report a desire to further explore his Aboriginal heritage. Opportunities in that regard are available through the Native Friendship Centre in Mission, British Columbia.
- [10] Mr. Sam described a stable upbringing with no abuse of any kind. His parents used alcohol but Mr. Sam does not believe that their use of alcohol had any adverse effects on his upbringing. Mr. Sam still resides with his parents. They have lived in the same house for the last 22 years. Mr. Sam has never been married and has no children. Mr. Sam was in one relationship in 2004 that lasted about eight months, but it came to an end when he learned the woman was living with another man. Mr. Sam apparently has no friends outside of his extended family.
- [11] Mr. Sam left school one credit short of attaining his high school diploma. After leaving school, Mr. Sam obtained a Culinary Arts Certificate. He has a history of sporadic and short-term seasonal employment as a cook at various restaurants and pubs. The pre-sentence report indicates that he also worked from 2005 until November 2013 -- which, if those dates are correct is quite a long stretch -- for the CPR as a lift operator, whatever that is. Mr. Sam is currently working as a cook at a local hotel.
- [12] Mr. Sam denied any deviant sexual fantasies or sexual interest in children. He denied any problems with alcohol or any drug abuse although he admitted to the author of the report that he uses small amounts of marihuana on a daily basis. Mr. Sam has no previous criminal record.
- [13] The author of the pre-sentence report opined that Mr. Sam has limited insight into his offending although he appreciates that it was wrong. His explanation as to why he offended was that he was going through a period of loneliness and depression over the breakup with his girlfriend. The author of the pre-sentence report also opined that Mr. Sam showed limited remorse or empathy.
- [14] When addressing the Court following submissions of counsel, Mr. Sam did apologize for his actions, which apology I felt was genuine.

- [15] With respect to the positions of the Crown and defence, the Crown submits that a custodial sentence of one year in jail would be appropriate in the circumstances, although the prosecutor acknowledged that given the dates of the offences and her submission that a sentence of less than two years would be appropriate, it is necessary for the Court to consider a conditional sentence. If the Court decides to impose a conditional sentence, the Crown submits it should be for a period of two years less one day with curfew provisions.
- [16] The defence submits that a conditional sentence would adequately meet the principles of sentencing.
- [17] I begin my analysis with a review of some of the principles of sentencing.
- [18] The general purpose and principles of sentencing in Canada have been codified in ss. 718 to 718.2 of the Criminal Code. Section 718 provides:
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.
- [19] Section 718.1 provides:
- 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [20] Other principles of sentencing are set out in s. 718.2 of the Criminal Code including the following principles namely:
- 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
 - (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar 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.
- [21] With regard to the last principle, the Court must take into account the systemic factors that affect Aboriginal peoples and which have contributed to an over-representation of Aboriginal offenders in our prison system, even where the particular offender does not have close connections to his or her Aboriginal heritage and has not been directly impacted in a negative way as a result of Aboriginal factors. That is not to say, however, that being of Aboriginal heritage gives an offender a stay out of jail card or an automatic discount, but the systemic factors can sometimes operate in subtle ways that are difficult to discern.
- [22] In this case, the Court must be concerned in particular with the principles of denunciation and deterrence. However, Mr. Sam is still a relatively young man who does not have a criminal background so his rehabilitation must also be given due consideration.
- [23] The maximum penalty for the offence to which Mr. Sam pleaded guilty is ten years. There was no minimum sentence when the offence occurred. Crown submits, and I agree, that a sentence of less than two years would be a fit sentence.
- [24] There are aggravating factors in this case. The victim was young and in a position of vulnerability; Mr. Sam occupied a position of trust; the offending occurred over an extended period of time and went beyond mere manual touching.
- [25] There are also mitigating factors. Mr. Sam pleaded guilty after the preliminary inquiry saving the need for a trial and the impact that a trial would have on the victim. He has no criminal record, he is relatively young, and has some insight to his offending and is willing to undergo counselling. There is no suggestion that Mr. Sam has been in trouble with the law in the nine years since the incidents giving rise to this charge.
- [26] As I have said earlier, given the state of law at the time of the offence, I must consider whether or not it would be appropriate for Mr. Sam to serve his sentence in the community subject to supervision and other conditions pursuant to s. 742.1 of the Criminal Code. That section as it read at the time of the offence provided as follows:
- 742.1 Where a person is convicted of an offence except an offence that is punishable by a minimum term of imprisonment and the court
- (a) imposes a sentence of imprisonment of less than two years, and
- (b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purposes and principles of sentencing as set out in section 718 to 718.2, the court may for the purpose of supervising the offender's behaviour in the community order that the offender serve the sentence in the community subject to the offender complying with the conditions of a conditional sentence order made under s. 742.3.

[27] Here the statutory requirements for a conditional sentence are met:

1. There is no minimum sentence;
2. A sentence of less than two years is appropriate.

[28] Considering Mr. Sam's lack of prior criminal record and the lack of any offending since this offence, I am satisfied that serving the sentence in the community subject to supervision will not endanger the safety of the community.

[29] Further, I am satisfied that a conditional sentence at the high end of the range of sentence subject to stringent conditions can adequately meet the principles of denunciation and deterrence while providing Mr. Sam with the opportunity to work and to be a productive member of society. Accordingly, I will impose the following conditional sentence.

[30] Mr. Sam, would you please rise.

[31] Mr. Sam, I sentence you to a term of two years less one day to be served in the community under supervision subject to the following conditions:

1. To keep the peace and be of good behaviour.
2. To appear before the Court when required to do so by the Court.
3. To report to a supervisor within two days and thereafter to report as and when required by the supervisor.
4. To remain in British Columbia unless permission to go outside British Columbia is obtained from the Court or from the supervisor in writing.
5. To reside at 42949 Lougheed Highway and not change your place of residence without the approval of the conditional sentence supervisor or this Court.
6. To notify the Court or the supervisor in advance of any change of name or address and promptly notify the Court or the supervisor of any change of employment or occupation.
7. During the first 12 months of the sentence, you are to abide by a curfew from the hours of 9:00 p.m. until 6:00 a.m., seven days a week, unless permission is obtained in writing from the supervisor to be outside of your residence during curfew hours or for emergency health care reasons. I add this proviso: you may be outside of your residence during the curfew hours in order to be at, go to, or come from your place of employment, but you must provide your supervisor with information concerning your employment and your hours of work.
8. To present yourself at the door of your residence to any peace officer or your supervisor for the purpose of determining compliance with the curfew condition of this order.
9. To respond immediately to the telephone during curfew hours when a peace officer or your supervisor telephones your residence for the purpose of determining compliance with the curfew conditions of this order.

10. To make reasonable efforts to maintain employment.
11. To attend and participate in any counselling or programs as directed by your supervisor.
12. To abstain absolutely from the consumption of alcohol and non-prescription drugs.
- [32] You may be seated.
- [33] I also make the following ancillary orders:
1. As this is a primary designated offence, there will be an order that Mr. Sam provide a sample for DNA analysis to the National DNA Databank.
 2. There will be a ten-year weapons prohibition order under s. 109 of the Criminal Code.
 3. [SOIRA order].
- [34] Are there any other matters that I need to address?
- [35] MS. DOMARADZKI: My Lord, I'm wondering in the counselling section whether the Court would be willing to add assessments as well as counselling so that Mr. Sam could be assessed initially and then complete counselling.
- [36] THE COURT: Yes, I would have thought that that would be part of it, but to make it clear he has to attend for assessment and participate in any counselling program or other programs as directed by the supervisor.
- [37] MS. DOMARADZKI: Thank you. And last time you were in Court Your Lordship asked me to hang onto the SOIRA order so I'll just pass that up for Your Lordship's signature.
- [38] THE COURT: Yes. All right.
- [39] MS. DOMARADZKI: And Madam Clerk, Count 1 is still outstanding. The Crown is entering a stay of proceedings with respect to that count.
- [40] THE COURT: Thank you.

"B.M. Joyce J."

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