

CANADA / JUDGMENT

R. v. Sandhu

2020 BCSC 1190

COURT

Supreme Court of British Columbia

DECIDED

8 July 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1190 R. v. Sandhu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sandhu,

2020 BCSC 1190

Date: 20200708

Docket: 81373-2

Registry: New Westminster

Regina

v.

A.P.S. Sandhu

Restriction on Publication: Pursuant to 486.4 of the Criminal Code, information that could identify the complainant shall not be published, broadcast or transmitted in any way. This publication ban applies indefinitely unless otherwise ordered by the Court.

Before: The Honourable Madam Justice Fleming

Oral Reasons for Sentence

Counsel for the Crown:

C.A. McPherson, Q.C.

Counsel for the Accused:

J. Whysall

Place and Date of Trial/Hearing:

New Westminster, B.C.

July 2, 2020

Place and Date of Judgment:

New Westminster, B.C.

July 8, 2020

Introduction

- [1] These are my reasons for sentence.
- [2] On October 22, 2019, I found Mr. Sandhu guilty of one count of sexual assault, which involved him committed multiple sexual assaults of the complainant from June 1, 2016 to September 1, 2016. The multiple sexual assaults included one incident of forced sexual intercourse and about ten incidents of forced "hand jobs" by the complainant that often also involved Mr. Sandhu sexual touching her, as well as some more minor incidents of sexual touching. At the time, the complainant was a very young woman, about 18 years old, and employed by Mr. Sandhu and his former spouse Ms. Sandhu at a massage business they owned and operated out of their home.
- [3] My reasons for conviction (2019 BCSC 2284), which are unpublished, identify the complainant, along with two others, by their initials. In these reasons, I refer to her as the complainant or the victim to protect her privacy and dignity as much as possible, as well as to ensure she is not identified.
- [4] The evidence at the sentencing hearing included a psychological assessment with a risk assessment component completed by Dr. Evan Lopes, dated March 17, 2020; a presentence report prepared by Probation Officer Lacey Jackson, dated February 13, 2020; and a number of letters of support from Mr. Sandhu's friends and some family members, as well as a letter from a physician. No victim impact statement was tendered, although the presentence report outlines Ms. Jackson's discussion with the complainant regarding the impact of offence.
- [5] The Crown seeks a sentence of three to four years imprisonment, plus three mandatory ancillary orders.
- [6] Based on what he identifies as unusual or exceptional circumstances, Mr. Sandhu takes the position that a suspended sentence of three years with a mixture of punitive and rehabilitation conditions is appropriate.

Circumstances of the Offender

- [7] Following his arrest on March 21, 2017, Mr. Sandhu was released on a promise to appear and has remained in the community since that time.

- [8] Now 53 years old, Mr. Sandhu was born and raised in India. He is one of three siblings. His father passed away when Mr. Sandhu was a teenager. Apart from that he described his childhood as "awesome" and his family as well off, if not very affluent.
- [9] Mr. Sandhu completed high school and left college during his first year to work for the family business. Married for the first time at a young age, Mr. Sandhu's second marriage to Ms. Sandhu took place in 2006. She then sponsored his immigration to Canada.
- [10] After arriving in Canada, Mr. Sandhu completed a number of training courses such as taxi host, driving instructor training, interpretation, security guard training, and some very brief massage courses. At some point he worked as a Punjabi interpreter. In addition to the massage business, he and Ms. Sandhu had a [redacted] business. Mr. Sandhu also owned and operated a driving school.
- [11] Ms. Sandhu testified in support of Mr. Sandhu at the trial. During her testimony she said their marriage was unhappy from the outset, they slept in separate bedrooms and had no sexual relationship for many years. Mr. Sandhu portrayed the marriage more positively, although he acknowledged the lack of intimacy. The two separated after he was arrested and charged with sexual assault.
- [12] According to Mr. Sandhu, his relationship with his current partner, Ms. L., began about three years ago. She told Ms. Jackson it started before his separation from Ms. Sandhu. In any event, they now live together in their own home and earn income renting their basement suite and from a pizza franchise.
- [13] Mr. Sandhu's mother either visits them frequently or lives with them. One sibling lives locally and the other has remained in India. Mr. Sandhu has two adult children from his first marriage. He last saw them a number of years ago in India, although he states he has regular contact with them.
- [14] Describing himself as very close to his family, Mr. Sandhu indicates they are aware of the criminal proceeding and supportive of him.
- [15] Mr. Sandhu reports no history of substance misuse and only occasional social drinking. He has Type 2 diabetes and also reports some issues with high blood pressure. In a letter dated June 2, 2020, Dr. B. Dhillon writes that Mr. Sandhu's diabetes is not well controlled and it has started to affect his kidneys, making his condition more complex. Identifying Mr. Sandhu's immune system as compromised, Dr. Dhillon states he is more prone to contracting infectious diseases such as COVID-19. Dr. Dhillon recommends Mr. Sandhu not be confined in an area where multiple people are living together in close quarters.
- [16] Mr. Sandhu told both Dr. Lopes and Ms. Jackson that he has never been diagnosed with a mental health issue, nor has he received any mental health treatment, although he has experienced sadness in the past and lately felt some anxiety due to this proceeding. Ms. L. states in her letter of support that Mr. Sandhu has claustrophobia, in addition to anxiety.

- [17] Mr. Sandhu has no criminal record.
- [18] He declined to discuss his sexual assaults of the complainant with either Ms. Jackson or Dr. Lopes. When asked by Ms. Jackson about the likelihood of reoffending, he said it would never happen again, he is totally different now, and he will not be involved in this type of situation again and will have to make sure he "knows people well". When asked how his offending impacted on the complainant, he told Ms. Jackson he did not know how she might be feeling.
- [19] In their letters of support, friends and family members describe Mr. Sandhu as a kind, loving, and generous person. Ms. L. describes their relationship, as does he, as positive if not very positive.
- [20] However, Ms. Sandhu agreed that Mr. Sandhu angered easily, she did not want to anger him, she was quite scared of him, and she told her children to lock their bedroom doors, during cross examination. Similarly, she told Ms. Jackson that he was mean and controlling and spoke about emotional abuse and name calling. The pre-sentence report also indicates Ms. Sandhu said she was aware Mr. Sandhu had at least four affairs while they were married.
- [21] Mr. Sandhu identified only three or four age-appropriate intimate partners in his lifetime. He also described less frequent sexual involvement with Ms. L. than did she, no masturbation, and very infrequent viewing of erotic material, although Ms. Sandhu said he did so daily during their marriage.
- [22] For a number of reasons, I found Mr. Sandhu's testimony at the trial, which included denying any and all sexual contact with the victim and two other complainants, not credible. In general, I found his evidence very unbalanced insofar as he denied any personal wrongdoing and consistently depicted himself as fundamentally good, except for admitting to extramarital affairs during the period of the sexual assaults, evidence he relied upon to suggest he had not and would not have sexual contact with a young female employee.
- [23] At the beginning of his report, Dr. Lopes notes that much of his assessment is based on self-reported information from Mr. Sandhu that has not been corroborated by other sources. Leaving aside his refusal to discuss the sexual assaults, I have little doubt Mr. Sandhu would tailor the information he provided in an attempt to portray himself favourably.
- [24] In assessing risk, Dr. Lopes considered the community risk/needs management scale and static and dynamic risk instruments. The first resulted in a low needs rating, based on Mr. Sandhu's vocational skills, pattern of employment, financial management, patterns of family and intimate relationships, which currently involve no difficulties, satisfactory housing, behavioural/emotional stability, some alcohol use, the absence of current mental health difficulties, no current health difficulties, and an unknown attitude relative to the offence.

- [25] Similarly, the static risk assessment found below average risk. Dr. Lopes explained that rates represent the percentage chance of reconviction for groups of offenders with similar characteristics. In other words, they do not directly correspond to the recidivism rate for the individual offender. An offender's risk may be higher or lower than the probabilities estimated by the static risk instrument, depending on other risk factors that are not measured.
- [26] With respect to the dynamic risk instrument, Mr. Sandhu obtained a score consistent with "possible moderate (low end) risk". Factors include negative emotionality, sexist coping, deviant sexual preferences, and cooperation with supervision, some of which Mr. Lopes could not fully assess.
- [27] Ultimately, Dr. Lopes wrote that because Mr. Sandhu declined to comment on the sexual assaults, "not much could be provided beyond what is already known and it is not possible to comment on his level of insight or his understanding of the risks, triggers, or behavioural progression." Dr. Lopes suggested Mr. Sandhu offended opportunistically, but also used some degree of grooming behaviour. Given his conviction, he is eligible to attend treatment. Noting Mr. Sandhu's stated willingness to attend, Dr. Lopes recommended successful participation in and completion of the sex offender treatment program. The program is offered by Forensic Psychiatric Services in the community, Ford Mountain Institution, and in federal penitentiaries.

Circumstances of the Offence

- [28] In my view, Mr. Sandhu's sexual assaults of the victim are very troubling and serious.
- [29] She was very young, only 18 when they began. Further, the sexual assaults occurred while she was working for Mr. Sandhu, providing full body massages to mostly male clients, in circumstances that further heightened her vulnerability.
- [30] She and the two other equally young and inexperienced complainants were attracted to the job by what, for them, was high pay and the absence of any requirement for prior training. All of the training was provided by Mr. Sandhu himself in one of two massage rooms located in the lower level of the two storey home, away from Ms. Sandhu who rarely left the upstairs because her mobility was very limited by a knee condition and chronic pain. Afraid of losing her job, the complainant also did not tell Ms. Sandhu about the sexual assaults because she did not feel that Ms. Sandhu could do anything to stop Mr. Sandhu. In addition to being alone with him in the massage rooms and unprotected by Ms. Sandhu, the complainant and the other employees were instructed to not have their cellphones with them in the massage room.

- [31] Mr. Sandhu also engaged in highly-inappropriate sexual discussions with the complainant during driving lessons and casual sexual touching of her buttocks and breasts over her clothing in the upstairs level of the home, behaviour that sexualized the workplace where full body massages were occurring anyways and normalized sex as part of their employment relationship.
- [32] Mr. Sandhu's ability to sexually assault and continue to sexually assault the complainant was facilitated by all of these circumstances.
- [33] As indicated, Mr. Sandhu's sexual assaults of the victim included about ten forced hand jobs during so-called training massages and regular massages that she provided at his request. During many of the forced hand jobs, Mr. Sandhu would also touch the complainant's buttocks, finger her vagina, and try to touch her clitoris. On one occasion, Mr. Sandhu engaged in unprotected forced sexual intercourse of the complainant while Ms. Sandhu was out of the home. Before forcing penetration of her vagina, he touched her vagina, removed her underwear, retrieved his beard clippers, and shaved off her pubic hair. Afraid to the point of being unable to move during this particular sexual assault, the complainant was also very frightened of becoming pregnant, describing it as all she could think about immediately after being "raped".
- [34] The nature, frequency and duration of Mr. Sandhu's sexual assaults of the complainant are important features of the seriousness of the offence. The presentence report provides that she reported moving on from what happened, but it has taken time. She also said she has attended counselling and has resources for services if she is "triggered" in the future. The victim stated she does not have a reason to fear for her safety, as long as she does not see Mr. Sandhu in the community.
- [35] Relying upon the victim's statements to Ms. Jackson, Mr. Sandhu argues the impact of the offence was attenuated, an argument I strongly reject although I certainly hope she has recovered. The complainant who suffers from anxiety, was assisted by a support dog at the trial. Throughout her testimony regarding the sexual assaults, it was obvious she was experiencing significant if not intense emotional distress. Her distress was most acute when she described the incident of forced intercourse. Her evidence about how she felt during and after the sexual assaults, particularly the incident of forced intercourse, also made it clear she was being seriously affected.

Principles of Sentencing

- [36] The offence of sexual assault carries with it a maximum sentence of 10 years' imprisonment. There is no minimum sentence. A conditional sentence of imprisonment, however, is not available.

- [37] Determining a just and appropriate sentence is a highly-individualized exercise involving a careful balancing process that occurs within the framework provided by ss. 718 to 718.2 of the Criminal Code and common law principles.
- [38] Section 718 identifies the fundamental purpose of sentencing to protect society and to contribute to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions achieved through sentences that have one or more of the following objectives:
- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by 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 or to the community.
- [39] In serious sexual assault cases, it is recognized that denunciation and deterrence are the paramount sentencing objectives. Absent exceptional circumstances, the sentencing judge must give them primacy: *R v. G.M.*, 2015 BCCA 165, at paras. 17 and 18.
- [40] The fundamental principle of sentencing codified in s. 718.1 of the Criminal Code is proportionality. It requires sentences to be proportionate to the gravity of the offence and the degree of responsibility of the offender. Justice LeBel explained proportionality as follows in *R. v. Ipeelee*, 2012 SCC 13, at para. 37:

Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system.

Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender.

- [41] Codified as a secondary sentencing principle, the parity principle requires similar offenders who commit similar offences in similar circumstances to receive similar sentences: s. 718.2(b).
- [42] A non-exhaustive list of additional secondary sentencing principles set out in s. 718.2 include the requirement to increase or reduce a sentence to account for relevant aggravating and mitigating circumstances relating to the offence or the offender. Specific circumstances are deemed to be aggravating. Applicable here is s. 718.2(a)(iii) which mandates that abusing

a position of trust or authority in the commission of the offences is an aggravating factor. Other secondary principles emphasize the need for restraint in the use of imprisonment. They require that an offender not be deprived of liberty if less restrictive sanctions are appropriate in the circumstances, and that all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or the community should be considered for all offenders, with particular attention to the circumstances of aboriginal or First Nations' offenders.

- [43] Despite the parity principle and other statutory requirements, the Supreme Court of Canada has continued to emphasize the discretionary nature of sentencing. *R. v. Nasogaluak*, 2010 SCC 6 explained the sentencing judge's task in these terms:
- [43] The language in ss. 718 to 718.2 of the Code is sufficiently general to ensure that sentencing judges enjoy a broad discretion to craft a sentence that is tailored to the nature of the offence and the circumstances of the offender. The determination of a "fit" sentence is, subject to some specific statutory rules, an individualized process that requires the judge to weigh the objectives of sentencing in a manner that best reflects the circumstances of the case (*R. v. Lyons*, [1987] 2 S.C.R. 309; *M. (C.A.)*; *R. v. Hamilton* (2004), 72 O.R. (3d) 1 (C.A.)). No one sentencing objective trumps the others and it falls to the sentencing judge to determine which objective or objectives merit the greatest weight, given the particulars of the case. The relative importance of any mitigating or aggravating factors will then push the sentence up or down the scale of appropriate sentences for similar offences. The judge's discretion to decide on the particular blend of sentencing goals and the relevant aggravating or mitigating factors ensures that each case is decided on its facts, subject to the overarching guidelines and principles in the Code and in the case law.
- [44] *R. v. Lacasse*, 2015 SCC 64, instructs us that proportionality is to be determined both on an individual basis in relation to the offender and the offence, and by comparison with sentences imposed for similar offences committed in similar circumstances. In other words, the concepts of individualization and parity of sentences must be reconciled for a sentence to be proportionate.
- [45] More recently in *R. v. Friesen*, 2020 SCC 9, the Supreme Court of Canada explained the interplay between the fundamental principle of proportionality and the parity principle at paras. 32 and 33.
- [32] Parity and proportionality do not exist in tension; rather, parity is an expression of proportionality. A consistent application of proportionality will lead to parity. Conversely, an approach that assigns the same sentence to unlike cases can achieve neither parity nor proportionality [Citations omitted.]

- [33] In practice, parity gives meaning to proportionality. A proportionate sentence for a given offender and offence cannot be deduced from first principles; instead, judges calibrate the demands of proportionality by reference to the sentences imposed in other cases. Sentencing precedents reflect the range of factual situations in the world and the plurality of judicial perspectives. Precedents embody the collective experience and wisdom of the judiciary. They are the practical expression of both parity and proportionality.
- [46] In simpler terms, the authorities characterize sentencing ranges as guidelines, not hard and fast rules.
- [47] In *G.M.*, our Court of Appeal identified the range of sentence for sexual assault involving intercourse as two to six years' imprisonment.

Positions of the Parties

- [48] The Crown submits and Mr. Sandhu does not dispute, the facts of the offence here clearly bring it within that range. The Crown suggests the absence of a criminal record is the only mitigating circumstance and there are a number of aggravating circumstances including:
- 1) penile penetration of the vagina;
 - 2) Mr. Sandhu's position of trust and authority as an employer;
 - 3) the very young age of the complainant;
 - 4) the exploitive and predatory nature of the sexual assaults;
 - 5) the complainant's resulting emotional distress;
 - 6) her fear of becoming pregnant;
 - 7) the frequency of the sexual assaults;
 - 8) the length of time over which they were committed; and
 - 9) the sexual discussions preceding the offences.
- [49] Based on the proportionality and parity principles, the paramount objectives of denunciation and deterrence, the combination of mitigating and aggravating circumstances, and strongly denying the presence of exceptional circumstances, the Crown takes the position, as I have said, that the appropriate sentence is imprisonment for three to four years, plus three mandatory ancillary orders.
- [50] Mr. Sandhu's position is that a suspended sentence is appropriate in this case, arguing:
- 1) it is more consistent with the purpose and principles of sentencing than actual separation from society;

- 2) he would not endanger the safety of the community by serving a suspended sentence, relying on both reports, his letters of support, and his presence in the community without reoffending since his release following his arrest in March 2017;
- 3) his offending, he says, was motivated by opportunistic recklessness as opposed to a deviant sexual preference; and
- 4) the complainant's current circumstances, which he asserts suggest "atonement" and a positive trajectory.

[51] Regarding the first point, while acknowledging denunciation and general deterrence are pressing objectives in sentencing for sexual assault, Mr. Sandhu asserts it is well established that a suspended sentence serves both. Further, he suggests that he has been deterred and his conduct denounced by the stigma of his conviction, the process of collecting support letters from those made fully aware of his offence, and his participation in the presentence report and the psychological assessment, all of which, are common if not typical consequences faced by those convicted of sexual assault pending sentencing. In any event, he argues separating him from society would be counterproductive, unnecessary, and inconsistent with the meaningful objectives of assisting him with rehabilitation and promoting his sense of responsibility, given his rehabilitation potential and the positive support network that surrounds him.

[52] Mr. Sandhu makes the point that only one of the statutory aggravating factors applies here. He suggests the abuse of trust involved in his sexual assaults of the complainant fall at the low end of the spectrum when compared, for example, to sexual assaults by a teacher or a family member. His position as the complainant's employer however, was more importantly perhaps one of authority. Given her young age and vulnerability, the nature of the massage business, and the role he played with young female employees, his authority over the complainant was quite significant.

[53] Mr. Sandhu identifies the following as mitigating circumstances:

- 1) he is a first time offender;
- 2) his prosocial attitude and behaviour in the community, pointing to gainful employment for extended periods; and his positive character reflected in the support expressed by friends and family;
- 3) his rehabilitation potential based on his view of the results of the risk assessment and the availability of treatment within the community;
- 4) again, what he describes as the moderate impact on the complainant; and
- 5) excessive delay from the charging date of May 25, 2017, to sentencing, approximately 39 months.

- [54] Mr. Sandhu also identifies as a collateral circumstance, his health condition which places him at heightened risk from COVID-19. The Crown points out there is no evidence to suggest a higher rate of infection in either provincial or federal correctional facilities or any concern regarding their adherence to current public health directives.
- [55] Further, Mr. Sandhu suggests Ms. L. will suffer economically if he is incarcerated because she will be required to sell their pizza business. I note this is not something she discussed with Ms. Jackson or in her support letter.
- [56] Each of the parties rely on a number of authorities, all of which I have considered. Mr. Sandhu's authorities include not only those he regards as sufficiently similar to invoke the parity principle, but also others that address some of the mitigating circumstances he identifies.
- [57] The Crown's cases include G.M. which also involved a "prosocial" first-time offender in his forties. He was convicted however, of a single incident of forced anal intercourse involving a former partner who initially consented but withdrew his consent.
- [58] The Court of Appeal found the sentencing judge's intermittent jail sentence of 90 days followed by two years' probation to be unfit, specifying that she erred by giving insufficient weight to the principles of denunciation and deterrence and the sentencing range, disregarding the aggravating nature of the sexual assault, and finding the offender unlikely to reoffend. At para. 32, Justice Goepel wrote:
- [32] An intermittent sentence does not serve the principles of denunciation and deterrence which are especially important in the context of sexual assault cases. While the trial judge found that the respondent's moral blameworthiness was high and his actions in continuing the assault, despite Mr. C's objections, showed a fundamental disrespect for [his] integrity, she failed to impose a sentence that recognized the seriousness of this assault.
- [59] The Court of Appeal imposed the sentence sought by the Crown, 18 months' jail followed by 18 month' probation, but emphasized it should not be view as within the appropriate or normal range of two to six years for sexual assault involving intercourse.
- [60] Both parties rely on R. v. Maley, 2014 BCSC 2532. Mr. Maley was convicted of two counts of inviting a young person to touch him sexually and one count of sexual assault involving three victims who were high school students, 16 to 18 years old, and part-time employees of Mr. Maley. He ran a limousine service out of his home. The sexual assault involved one incident of a forced hand job and the invitations to sexual touching involved the victims shaving and waxing his pubic hair in response to his requests. Although he greatly minimized his offences and demonstrated a "surprising lack of empathy for the victims", Mr. Maley acknowledged he may have an issue with sexual deviancy. Like Mr. Sandhu, he was willing to participate in sex offender treatment. The psychologist found Mr. Maley's poor insight into the impact of his behaviour increased his risk to reoffend. Also in his fifties, he had a heart condition. In addition, he had a very dated but related conviction for exposing

his genitals to two high school girls. Consecutive sentences were imposed that amounted to 22 months' imprisonment followed by three years' probation.

- [61] Although there were additional aggravating factors, including an old criminal record and younger victims under 18 years old, Mr. Maley's sexual offences were much less serious.
- [62] Mr. Sandhu's authorities include *R. v. Tayo Tompouba*, 2020 BCSC 308. The circumstances of the sexual assault involved Mr. Tayo Tompouba continuing to engage in sexual intercourse with the victim when he believed she was asleep, after he honestly but mistakenly believed she was consenting. Justice Marchand found the victim was clearly angry about the offence and suffered a loss of whatever trust she had in men, but she seemed strong and resilient. Only twenty-five year's old, Mr. Tayo Tompouba had immigrated to Canada from Cameroon as a teen. He had no criminal record and was co-parenting and supporting three very young children here, as well as family in Africa. If sentenced to six months or more in jail, he faced deportation from Canada.
- [63] After a careful review of several authorities including *G.M., Marchand J.* concluded in the vast majority of sex assault cases involving intercourse, the primary sentencing objectives of denunciation and deterrence dictate custodial sentences of between two to six years. In particularly compelling circumstances, he wrote, a custodial sentence below the usual range may be appropriate and in rare and exceptional circumstances, a community-based disposition may be imposed. He also identified a range of factors that may lead to this conclusion, including a modest impact on the complainant, an offender with a reduced level of moral blameworthiness, an offender with no criminal record who acted out of character and posed a low risk to reoffend, a significant impact on the offender's family if he were to be imprisoned, permanent resident status, and the absence of need to specifically deter the offender, none of which, excepting the absence of a criminal record are present here.

Analysis

- [64] Having considered the authorities, the evidence, and Mr. Sandhu's submissions with particular care, I firmly reject the notion that this case involves exceptional circumstances that would justify a suspended sentence.
- [65] Turning to consider the proportionality principle and, firstly, the gravity of the offence, there is no question that the sexual assaults Mr. Sandhu committed against the complainant are very serious. Always inherently violent, each sexual assault violated the sexual and bodily integrity of this very young and vulnerable victim, her dignity, her autonomy, and her sense of safety and security. Over and over again, Mr. Sandhu exploited her in this way, taking advantage of the stark power imbalance between them.
- [66] Additional aggravating circumstances include the particularly frightening and degrading act of shaving off the complainant's pubic hair as well as forcing intercourse without protection from the risk of sexually transmitted disease and pregnancy.

- [67] There is no question that Mr. Sandhu's degree of responsibility or moral blameworthiness is very high. His dishonest testimony at the trial made it perfectly clear that he could not be more aware of just how wrong and harmful sexually assaulting a very young and vulnerable employee is, let alone many, many times over during an extended period of time. Without the mental health and/or cognitive limitations suffered by offenders in some of the cases the parties rely upon such as *R. v. Chen*, 2019 BCSC 1290, Mr. Sandhu also had the benefit of a superlative upbringing absent any disadvantages, including childhood abuse, neglect, or other forms of harmful suffering.
- [68] In my view given the number of sexual assaults, their duration and their seriousness, it would be trivializing to characterize his offence as opportunistic.
- [69] Clearly, in this case, the sentencing objectives of denunciation and deterrence must be given primacy. I strongly reject Mr. Sandhu's suggestion that they have been effectively addressed by the stigma and loss of reputation he has suffered due to this proceeding. I also reject the suggestion I should give greater weight to the objective of rehabilitation, given what he describes as his rehabilitation potential and the absence of any risk he will reoffend. While I accept that whatever risk Mr. Sandhu may pose is not impacted by personal or economic instability, substance abuse, or mental health issues, I am not able to accept he presents no or even low risk. The same absence of risk factors present now were present at the time he offended, apart from his asexual marriage and involvement in extramarital affairs. Read as a whole, the risk assessment of Dr. Lopes says much the same and is incomplete at best.
- [70] The authorities recognize that while an offender is under no obligation to admit an offence and a lack of remorse is not an aggravating circumstance, continued denial is a material factor to be considered in determining whether an offender is likely to reoffend. While it is encouraging that Mr. Sandhu has indicated a willingness to attend treatment, where he will have to discuss the offence if his participation is to be successful, I am left with no evidence to suggest Mr. Sandhu has any insight into why he committed ongoing sexual assaults of the complainant or any empathy for her.
- [71] Turning to the mitigating and collateral circumstances, I agree with Mr. Sandhu that the absence of a criminal record, and even more so given his age, is a significant mitigating factor.
- [72] Regarding the question of delay, Mr. Sandhu relies on *Nasogaluak*. At para. 53, the Court observed that a sentence can be reduced "in light of" state misconduct, even if the incidents complained of do not rise to the level of a Charter breach, with reference to a number of cases, including *R v. Panousis*, 2002 ABQB 1109, where the delay in the proceeding was treated as a mitigating factor. Although the delay did not amount to a s. 11(b) violation pre-Jordan, it was found to have caused prejudice to the accused and a relevant mitigating circumstance. The majority of the Alberta Court of Appeal overturned the decision and imposed a heavier sentence. Their brief oral reasons did not state whether they disagreed with the finding regarding delay.

- [73] There appears to be an absence of appellate authority dealing with this aspect of Nasogaluak.
- [74] I am also aware of *R. v. Nghiem*, 2009 BCCA 170, where the Court of Appeal identified time spent on strict bail conditions prior to sentencing as a mitigating factor. At para. 16, Justice Groberman explained:
- [16] In my view, time spent under strict bail conditions is not to be considered by way of application of some mathematical formula to reduce the length of sentence. Instead, a court should concern itself with the degree to which objectives of sentencing may have already been accomplished through the imposition of strict bail conditions. While such conditions are not intended to be penal, they can nonetheless incidentally serve to further the goals of rehabilitation, deterrence and denunciation.
- [75] Very recently in *R. v. Downes*, 2020 BCSC 177, Justice MacNaughton cited both *Nasogaluak* and *Nghiem* and found a somewhat longer delay than here, together with strict bail conditions, mitigated the offender's sentence for voyeurism and child pornography.
- [76] In this case, there has been no state misconduct. Nor was there significant delay prior to conviction and Mr. Sandhu has never been subject to strict bail conditions. However, I do accept that waiting almost eight months to be sentenced, a period made longer by the pandemic, was difficult if not penalizing for him and therefore has resulted in some prejudice.
- [77] Bearing in mind the purpose and objectives of sentencing, the primacy of denunciation and deterrence, the fundamental principle of proportionality and the parity principle, and taking into account the seriousness of the offence, Mr. Sandhu's high degree of responsibility, and the aggravating, mitigating and collateral circumstances, I am satisfied that three years' imprisonment is a just and appropriate sentence.
- [78] I also grant the mandatory ancillary orders sought by the Crown:
- 1) Pursuant to s. 487.051 of the Criminal Code I authorize the taking from Mr. Sandhu of the number of samples of bodily substances that are reasonably required for the purposes of forensic DNA;
 - 2) Pursuant to s. 490.012(1) of the Criminal Code, I order Mr. Sandhu to comply with the Sex Offender Information Registration Act for a period of 20 years; and
 - 3) Pursuant to s. 109(1)(a) of the Criminal Code, I prohibit Mr. Sandhu from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for a period of not less than 10 years.
- [79] THE COURT: Mr. Whysall, I wanted to indicate that I did not ask Mr. Sandhu if he wished to address the court because it is clear that he is maintaining his denial of the offence.
- [80] MR. WHYSALL: Yes, thank you, My Lady.

"Fleming J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/11/2020BCSC1190.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-sandhu-2020>

Prepared on 26 October 2026 · Esheria