

CANADA / JUDGMENT

R. v. Scribner

2020 BCSC 1685

COURT

Supreme Court of British Columbia

DECIDED

24 September 2020

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Scribner,

2020 BCSC 1685

Date: 20200924

Docket: 38933-2

Registry: Duncan

Regina

v.

Corey Joseph Scribner

Restriction on publication: Section 486.4(2) of the Criminal Code: An order under this section may be made in cases involving sexual offences to ban publication of any information that could identify a complainant or witness under the age of 18. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Mr. Justice Baird

Oral Reasons for Sentence

Counsel for the Crown:

M. Giri

Counsel for the Defence:

D. Melville

Place and Date of Hearing:

Duncan, B.C.

September 24, 2020

Place and Date of Judgment:

Duncan, B.C.

September 24, 2020

- [1] THE COURT: This is a sentencing hearing. On November 5, 2019, I convicted the offender at bar, Corey Joseph Scribner, of charges that, on Count 1, he sexually touched D.A., a person under the age of 16 years; on Count 2, that he sexually assaulted D.A.; and, on Count 3, that he communicated with D.A. by means of telecommunication to facilitate the commission of sexual offences.
- [2] These offences were committed in the interval between November 15, 2015 and February 1, 2016. The maximum penalty for each offence is 14 years in prison. At the invitation of counsel I hereby enter a judicial stay of proceedings on Count 2 on the basis that it is duplicative of Count 1.
- [3] My reasons for conviction are indexed as 2019 BCSC 2064. In brief terms, I found that the accused had sexual intercourse with D.A. on two separate occasions after telecommunicating with her for that purpose while on clear notice that she was a child and incapable of consenting.
- [4] D.A. was only 14 years old at the relevant times. Her parents had separated. She was living with her mother in a ground floor condominium in central Duncan, B.C. She was having personal, emotional, and self-esteem problems. I found as a fact that she was a vulnerable person who was susceptible to sexual and emotional abuse such as the accused inflicted upon her.

BACKGROUND

- [5] A pre-sentence report was prepared in the present case. The accused was born on January 2, 1986. He is now 34 years old. He was 28 at the time he committed the offences at bar. His upbringing seems to have been reasonably happy, even though he never met his natural father and his mother and stepfather divorced when he was a teenager.
- [6] The accused has a high school education and some university training. Since leaving school, he has worked primarily in the construction and hospitality industries. He has also served as a volunteer firefighter. He has four children by three different partners. As I understand it, he is estranged from all of his children save for the youngest, a boy, whose mother is his present partner.

- [7] The impact of the accused's offending on the complainant D.A. has been predictably negative. This morning she read out her victim impact statement. First of all she said, "I'm not a victim. I'm a survivor." This is a very promising statement. Of course, part of the legacy of this type of offending, Mr. Scribner, is that one is never just sure how it is going to impact the complainant, what long-term problems she is going to have. But in these early days at least, the present complainant perceives that strength and resolve have come through enduring her troubles, and that her various problems just referred to are becoming things of the past for her. This is very encouraging and I wish her every future success in life.
- [8] But the complainant went on in her statement to discuss the negative emotional impact of your offending on her: sleepless nights; it took her years to understand that she was groomed; that she was not responsible for what had happened; she says that she was disgusted with herself; that she developed an eating disorder; that she shut her parents out of her life; she felt that they were repulsed by her. She experienced self blame, self castigation. "Why was I so dumb and naive?" she asked herself. She resorted to medications for anxiety, and became dependent on them. In the recent decision of the Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9, it is precisely these types of sequelae from sexual offences that the court talks about in directing us all to impose higher sentences for them.
- [9] Fortunately, the victim in this case was able to find help and get her life together; to rid herself of her dependency on prescription medications; to get a handle on her emotional problems, including a sense of anger and emotional exhaustion. She now feels herself to be growing into a strong young woman who will never be victimised again. This is a testament to her strength of character, but it is not a mitigating factor on sentence.

PRINCIPLES OF SENTENCING

- [10] The fundamental purpose of sentencing is to protect society and to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing measured sanctions that have the following objectives:
- a) to denounce unlawful conduct and the harm done to victims or the community;
 - b) to deter offenders 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 the victims or to the community; and
 - f) to promote a sense of responsibility in offenders and an acknowledgment of the harm done to the victims or the community.

- [11] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender; it should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender; and it should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
- [12] In *Friesen*, I have been enjoined in clear terms to leave behind a lot of old jurisprudence pertaining to sexual offending, on the footing that Parliament has, progressively over recent years, recognised how serious this sort of offending is, and it has ratcheted up the penalties, especially in 2015, when legislative amendments were made raising the maximum penalty for the offences here from 10 years to 14 years. Parliament has decided that harsher penalties must be imposed, because this type of criminal offending is becoming far too prevalent. It is growing. The sentences that have been imposed heretofore have not had the sort of deterrent effect that is required to curb it.
- [13] When it comes to the sexual abuse of children, by far and away the predominant sentencing principles are those of denunciation and deterrence, and these, of course, are now statutorily mandated. I refer in particular to s. 718.01 of the Criminal Code, R.S.C. 1985, c. C-46, and for emphasis, s. 718.2(ii.1) of the Code, which provides that abuse of a child under 18 is an aggravating circumstance on sentence.
- [14] Now, in *Friesen*, on the subject of sexual offending against children generally, the Supreme Court of Canada has handed down directions that really could not be clearer about imposing sentences that fully reflect and give effect to the profound wrongfulness and harmfulness of sexual offences against children in the midst of a wide-ranging analysis conveying with great urgency that:
- a) sexual offences against children are violent crimes that wrongfully exploit children's vulnerability and cause profound harm to children, families, and the communities in which they live;
 - b) sentences for these crimes must increase, in recognition of the fact that so far the desired effect has not been achieved through the processes of our criminal courts, and this is in step with Parliament's resolve, expressed legislatively in recent years, to require harsher sentences for this type of offending;
 - c) sentences have to increase in proportion to the growing realisation of the gravity of offences against children, the degree of responsibility of adult offenders, Parliament's sentencing initiatives in recent years, and our society's understanding of the harmfulness of sexual violence against children;
 - d) sentences must accurately reflect the wrongfulness of sexual violence against children and the far-reaching and ongoing harm that it causes to children, families, and society at large.

- [15] The Court in Friesen noted in particular that protecting children from wrongful exploitation and harm is the overarching objective of the criminal law in this domain; that protecting children from becoming victims of sexual offences is vital in a free and democratic society; that both the overall number of police-reported sexual violations against children and police-reported child luring incidents more than doubled between 2010 and 2017; and that new technology, such as those that you used, Mr. Scribner, in order to commit these offences for which I have convicted you, have enabled new forms of sexual violence against children and provided sexual offenders with new ways to access children; and that, as in this case, online child luring can be a grooming device or a prelude to sexual assault.
- [16] Parliament has mandated higher penalties to combat these alarming trends, and I must follow Parliament's lead. I understand completely the profound wrongfulness of child sexual offending and the disastrous harm that it can cause. Offences such as those at bar invade the victim's personal autonomy, violate bodily and sexual integrity, and gravely wound the victim's dignity. D.A.'s victim impact statement stands as clear confirmation of this. I recognise and emphasise, as well, that offences such as those at bar disproportionately affect girls, with an emphasis on adolescent girls, and they inflict not only physical harm but also profound emotional and psychological damage that is often long-lasting and debilitating.
- [17] The Supreme Court's decision in Friesen is a clarion call for a new way of thinking about sentencings such as this, and a compendium of principles that have developed over the years, which are now well recognised by the judges of this court and people in society generally, including that sexual exploitation causes profound damage to family and other relationships. It can inhibit a child's ability to form loving and compassionate and caring relationships later in life. These are profoundly damaging events in a child's life that can have permanent negative antisocial consequences.
- [18] Such offending also has broader implications for the community, and the cost to the community is something that is not stated as often as I think it ought to be in evaluating these matters, but these include the cost of social problems that sexual violence causes; the cost of state intervention, social workers, doctors, psychiatrists, all to mitigate the damage wilfully caused by adults on children; the economic impact of rising medical and interventional costs; lost productivity; treatment for pain and suffering, and so on.
- [19] Friesen also referred to the notorious fact that the victims of sexual offending may themselves be more likely to engage in sexual violence against children in adulthood. There is also the greater risk of future substance abuse, mental disorders and other illnesses, self-harm and suicide. The court noted that when children become victims of sexual violence their overall health and security is profoundly and negatively affected and society as a whole is diminished and degraded.

- [20] The offences at bar are extremely serious. The accused's moral responsibility for committing them is high. The intentional sexual exploitation and objectification of children is highly blameworthy, precisely because children are vulnerable and because there is such a profound power imbalance between a child and an adult. The accused at bar manipulated, exploited, and preyed upon the 14-year-old complainant knowing, I find, that she was vulnerable to precisely such depredations. He had sexual intercourse with her on two occasions, and the repetitive nature of this highly intrusive form of offending is an aggravating feature here.
- [21] In the present case, furthermore, there was a period of grooming over social media, which, in my assessment of things, showed a persistent determination on the accused's part to achieve his harmful and illegal purpose, and a commitment to sexual offending that requires sharp and decisive correction.
- [22] Let it clearly be said, finally, that the question of the victim's participation in the offences has no bearing on the matter. Friesen clearly establishes that, as a matter of Canadian law, adults always have a responsibility to refrain from engaging in sexual violence towards children. Adults, not children, are responsible for preventing sexual activity between children and adults.
- [23] In sum, our highest court ruled as follows, and I quote:
- [107] We are determined to ensure that sentences for sexual offences against children correspond to Parliament's legislative initiatives and the contemporary understanding of the profound harm that sexual violence against children causes. To do so, we wish to provide guidance to the courts on three specific points:
- (1) Upward departure from prior precedents and sentencing ranges may well be required to impose a proportionate sentence;
 - (2) Sexual offences against children should generally be punished more severely than sexual offences against adults; and,
 - (3) Sexual interference with a child should not be treated as less serious than sexual assault of a child.
- [24] Sentencing is an individualised process. No two cases are alike. The Friesen decision, however, makes it clear that the range of sentences set out in earlier B.C. case authorities, such as *R. v. Williams*, 2019 BCCA 295, are not necessarily to be followed. The Williams case, as counsel has emphasised this morning, has itself been remitted to the British Columbia Court of Appeal for disposition in accordance with the principles set out in Friesen. The court said:

... it is incumbent on us to provide the overall message ... that mid-single digit penitentiary terms for sexual offences against children are normal and that upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances. We would add that substantial sentences can be imposed where there was only one single instance of sexual violence ...

- [25] The accused continues to deny his involvement in the offences before the court. His defence at trial was on the issue of identification. There was no dispute, in other words, that the complainant was sexually abused and manipulated in precisely the manner that she alleged, but the accused testified that he was not the person responsible. He continues to insist, I gather, that I have entered wrongful convictions against an innocent man. His ongoing denial of responsibility does not constitute an aggravating factor on this sentence, merely the absence of a mitigating factor.
- [26] Having said that, in my view there are no exceptional circumstances in this case that would cause me to impose a lesser penalty than the clear instructions in Friesen, to which I have already referred, would plainly suggest is required to satisfy the predominating principles of sentencing.
- [27] Emphasising the gravity of the accused's course of criminal misconduct, his high degree of moral responsibility in committing it, the deleterious and serious negative impact that it has had on the complainant, and with the Supreme Court's instructions in Friesen freshly in mind, I also bear in mind that the accused is a first-time offender, who, in his 34 years, has never spent more than a day or two in jail. He has also been at large on reasonably restrictive bail conditions for several years now. Even if he is responsible for some of this delay by failing to attend court in the midst of this prosecution, I do take that factor into some consideration.
- [28] Stand up, please, Mr. Scribner.
- [29] The Supreme Court of Canada has instructed me in clear terms that there is nothing unusual, in fact, that it is normal for a significant penitentiary sentence to be imposed on people like you, first-time offenders who commit the sort of offences that I have found you guilty of committing. I will do so in your case because Friesen requires it, of course, but also because I think it is a fit sentence in your particular case given all of the circumstances.
- [30] Exercising the maximum degree of restraint that I consider to be admissible in the circumstances, and giving you the benefit of every consideration, I have decided that a fit and proportionate sentence on Count 1 is one of four years in a federal penitentiary, and 18 months on Count 3. I consider, however, that a five-and-a-half-year sentence for this first-time offender would be excessive, and so, with the principle of totality in mind, I hereby exercise my discretion to order that the sentences are to be served concurrently.
- [31] In accordance with s. 743.21 of the Criminal Code, I hereby order you to have no communication with the complainant while you are in prison.

[32] In accordance with s. 487.051(1) of the Criminal Code, I hereby order you, as this is a primary designated offence, to provide a sample of your genetic material, by the least intrusive means available, forthwith.

[33] In accordance with s. 490.012 of the Sex Offender Information Registration Act, you are to comply with the requirements of that statute for the rest of your life.

[34] In accordance with s. 161(1), for the period of 10 years, I hereby order that:

- a) you are not to seek, obtain, or continue 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.
- b) you are not to have any contact, including communicating by any means, with a person who is under the age of 16 years, except for immediate family members or in accordance with a further order of this court.
- c) you are not to use the Internet or other digital network for the purpose of communicating with a person under the age of 16 years, except for immediate family members or in accordance with a court order.

[35] Thank you. You may be seated. That is the judgment of this court.

"Baird J."

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Prepared on 26 October 2026 · Esheria