

CANADA / JUDGMENT

R. v. Tate

2025 BCSC 2254

COURT

Supreme Court of British Columbia

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2025 BCSC 2254 R. v. Tate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Tate,

2025 BCSC 2254

Date: 20251024

Docket: 185637-2

Registry: Victoria

Rex

v.

William Lee Tate

Before: The Honourable Justice Morley

Oral Ruling on Sentencing

Counsel for the Crown:

L. T. Phipps

Counsel for the Accused:

R. S. Horne

Place and Dates of Hearing:

Victoria, B.C.

October 16 and 24, 2025

Place and Date of Judgment:

Victoria, B.C.

October 24, 2025

Table of Contents

I. introduction.. 3

II. Overview.. 3

III. circumstances of the offence. 4

A. Victim Impact 5

IV. Circumstances of the Offender.. 6

V. Legal Principles. 7

A. Friesen and Sentencing of Sexual Offences Against Children. 9

VI. Is a Conditional Sentence Appropriate?. 12

VII. How Long Should Imprisonment Be?. 17

VIII. Mandatory and discretionary Ancillary Orders. 20

IX. conclusion.. 21

I. introduction

- [1] When I gave these reasons orally, I reserved the right to edit a written version for errors, omissions and clarity. I have made edits within those parameters. The result is the same and so is the basis for it.

II. Overview

- [2] William Lee Tate has pled guilty to one count each of transmitting, possessing and accessing child pornography contrary to ss. 163.1(3), 163.1(4) and 163.1(4.1) between October 2019 (the date the underlying investigation started) and February 2022 (when Mr. Tate's home was searched and various electronic storage devices were seized). Mr. Tate had numerous images and videos of child pornography on his computer and he shared many of these through a peer-to-peer network.[1]
- [3] Because the counts of possession and accessing are duplicative, I entered a judicial stay of the accessing charge pursuant to the principle in *Kienapple v. R.*, 1974 CanLII 14 (SCC), [1975] 1 S.C.R. 729. Today I must decide what the appropriate sentence is for Mr. Tate on the possession and transmission charges.

- [4] The Crown asks for a custodial sentence of two years less a day (so, the maximum amount of provincial time) plus three years' probation. It concedes that since the transmission and possession charges relate to the same behaviour, the sentences should be served concurrently and it does not really distinguish between the two offences in its submissions.
- [5] The Defence asks for a two-year conditional sentence order under house arrest.
- [6] The Crown also asks for a probation term of three years, with conditions, and a number of ancillary orders. Neither the probation term nor the ancillary orders (some of which are mandatory) were opposed by the Defence.
- [7] For the reasons I am going to set out, I do not think a conditional sentence order would adequately address the need for denunciation and general deterrence in this case. I agree with the Crown that a custodial sentence of two years less a day is appropriate for the transmission count. Because two years would be at the very highest end of the ordinary range for possession, and there are some mitigating factors here, namely Mr. Tate's age and guilty plea, I will provide for a concurrent 18 month sentence for the possession charge.
- [8] On release, Mr. Tate will serve a three-year probation term, on conditions I will lay out. The ancillary orders sought by the Crown will go as well.

III. circumstances of the offence

- [9] The child pornography investigation that led to the search of Mr. Tate's home began on October 29, 2019 when the U.S.-based Child Protection Service alerted the investigating officer that an IP address, later linked to Mr. Tate, was sharing a large volume of child sexual abuse material through the peer-to-peer network eDonkey/eMule. That IP address was in the top 10 uploaders and sharers of child pornography in the Greater Victoria area.
- [10] The investigation ultimately led to the search of Mr. Tate's home on February 17, 2022 and the seizure of a number of electronic storage devices, which were searched in turn. These were ultimately found to contain 60,491 unique images confirmed by two police officers reviewing them to meet the Code's definition of "child pornography" and 2,272 unique videos, also constituting "child pornography". The total run time of all the videos amounted to 5,742 hours and 54 minutes.
- [11] Mr. Tate admitted he had possession of these images and videos and that he transmitted similar material through the peer-to-peer network.
- [12] As I noted in my reasons on the voir dire, indexed at 2025 BCSC 1462, these networks incentivize sharing popular files in order to obtain quicker downloads of other files. So while this is not a conventional economy, Mr. Tate in effect bought access to child sexual abuse material by sharing it with others.

- [13] Police have summarized the contents of selected images and videos. They depict violent sexual abuse of prepubescent girls, some of them infants. One image, not apparently atypical, explicitly incites violence and sexual abuse against a child: it shows a naked seven-year-old girl with "cut me", "slut" and "hurt me" written on her body in red paint and showing a throwing knife pointed at her vagina. A video, also not apparently atypical, records the vaginal and anal rape of a toddler who screams and cries. The depiction of the suffering is presumably part of the appeal for the viewer. The images and videos show human nature at its cruellest and most malevolent directed against the most vulnerable.
- [14] In the inadequate language we must use in the sentencing of child pornography offences, this collection is at the high end of the spectrum both in quantity and in terms of the extreme violence and immorality of what is depicted.

A. Victim Impact

- [15] This is not a victimless crime. We may not know who Mr. Tate's victims were, but there were many, possibly thousands, of them. Girls were tortured and robbed of their childhoods and their fundamental right to sexual integrity. Mr. Tate may not have touched or filmed the victims, but he participated in their exploitation and enslavement. Their torture was for his benefit and of the benefit of others like him, including those he was actively "sharing" with.
- [16] In some cases, the torture may have happened decades ago, and these girls are now women living with the lifelong effects of the trauma they experienced. In other cases, the torture may have occurred shortly before Mr. Tate downloaded an image or video of it, so as recently as 2022. Either way, each of those images and videos depicts abuse that will have effects for decades.
- [17] The lifelong effects of all child abuse are well known. But in addition to the trauma that every child abuse victim experiences, the girls and women depicted in the images and videos Mr. Tate possessed and transmitted have to face additional harm, over and over again. They likely know that their abuse is being viewed by pedophiles for their sexual gratification. Every such viewing is another violation.
- [18] By possessing the images and videos, Mr. Tate participated in their victimization as a viewer. By transmitting those images and videos, he enabled others to victimize them in the same way. Sadly, it is difficult if not impossible to definitively eradicate digitized child pornography, so Mr. Tate's acts of transmission will likely contribute to further acts of victimization into the indefinite future.
- [19] As the Ontario Court of Appeal has recently stated, those who possess recordings depicting the sexual abuse and exploitation of children are themselves abusers of those children "invading their privacy, wounding their dignity and causing them serious emotional harm": *R. v. Scott*, 2024 ONCA 608 at para. 7.

IV. Circumstances of the Offender

- [20] Mr. Tate is 82 now. He was born in the United States of America. He had an unremarkable and happy childhood. He moved to Canada because he opposed the Vietnam War. He was a researcher at OISE, a longshoreman at the Vancouver Port, one of the founders of the Georgia Straight, and worked as a teacher. He is now retired.
- [21] He lives alone. He has two daughters from a previous marriage, one of whom he has occasional contact with. He is in touch with his sister in California, who has health problems.
- [22] Mr. Tate has a pension and lives in subsidized housing. He has a limited social life, but plays chess and has some friends. Mr. Tate has some heart problems, for which he takes medication and sees a cardiologist periodically. There are no documented mental health problems.
- [23] He appears to have discharged a firearm in the 1970s in the presence of his then-wife, but has no recent or relevant record.
- [24] Mr. Tate has admitted that he committed these offences. However, as the forensic psychologist noted, he "minimizes" the seriousness of his conduct. He stated that he did not know that it was illegal, which I find to be untrue. He claimed he had no sexual or erotic interest in images and videos of prepubescent girls, which is impossible to reconcile with his accumulation of a massive collection, and I also find that to be untrue.
- [25] He also minimized his culpability before me. He apologized for breaking the law, but did not acknowledge that what he had done was wrong. He claimed that he was accumulating the images and videos for research purposes and said he had no sexual interest other than in consensual relationships with adult women. I find this to be untrue.
- [26] As I will discuss in the course of my legal analysis, absence of remorse is not an aggravating factor, but just the absence of a mitigating one. At this point, I simply find that Mr. Tate, while acknowledging he broke the law, is not actually remorseful.

V. Legal Principles

- [27] The principal questions before me are whether there should be a conditional sentence order, as provided for by s. 742.1 of the Code and, if not, what the appropriate length of a custodial sentence should be.
- [28] 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 just sanctions: s. 718.
- [29] The objectives of sentencing are set out in s. 718 of the Code:

- a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct ("denunciation");
 - b) to deter the offender and other persons from committing offences ("deterrence");
 - c) to separate offenders from society, where necessary ("incapacitation");
 - d) to assist in rehabilitating offenders ("rehabilitation");
 - e) to provide reparations for harm done to the victim or the community; and
 - f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.
- [30] The fundamental principle, set out in s. 718.1, is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In other words, the severity of the punishment should increase with the seriousness of the consequences of the offence and the moral blameworthiness or culpability of the offender: *R. v. Lacasse*, 2015 SCC 64 at para. 12.
- [31] As explained in *R. v. Parranto*, 2021 SCC 46, two secondary principles, individualization and parity, although apparently contradictory, in fact express this fundamental principle. "Parity" implies that it is important to look at other cases and appellate guidance to ensure that sentences are similar to those imposed on similar offenders for similar offences committed in similar circumstances, as mandated as a consideration by s. 718.2(b) of the Code. The "individualization" principle, on the other hand, recognizes that no two situations are the same.
- [32] While I should pay heed to the general range of sentences for the offence to encourage greater consistency and to further the parity principle enunciated in s. 718.2(b) of the Code, ultimately regard must be had to all the circumstances of the offence and of the offender and to the needs of the community in which the offence occurred: *R. v. Nasogaluak*, 2010 SCC 6 at paras. 43-44. It is always about the seriousness of the specific offence and the blameworthiness of the specific offender before the court.
- [33] There is a principle that an offender should not be deprived of liberty if less restrictive sanctions are appropriate, and that available sanctions other than imprisonment should be considered if consistent with the harm done to the victims or the community. These are set out in ss. 718.2(d) and 718.2(e). They can together be referred to as the "restraint principle".
- [34] We should not punish more than is necessary to fulfill the objectives of sentencing. While 718.2(e) states that particular attention should be given to the circumstances of Aboriginal offenders, the restraint principle applies to all offenders. However, while we must not punish more than is necessary to fulfill the objectives of sentencing, to the extent a sentence, even a severe one, is required by those objectives, then it must be imposed.

A. Friesen and Sentencing of Sexual Offences Against Children

- [35] Both the Code and the case law set out principles that apply specifically in the context of sexual offences against children.
- [36] Section 718.01 states that the court shall give primary consideration to denunciation and deterrence when the offence involves the abuse of a child under the age of 18 years old. This does not mean the other objectives of sentencing, such as rehabilitation, cannot be considered at all, but it does mean that they must not be given more or even equal consideration to denunciation and deterrence.
- [37] Section 718.2(a)(ii.1) sets out that it is an aggravating circumstance that the offender abused a person under the age of 18 years.
- [38] In *R. v. Friesen*, 2020 SCC 9, the Supreme Court of Canada issued a clarion call for a change to the approach to sentencing crimes involving the sexual abuse of children and youth. As a result of *Friesen*, pre-2020 sentencing cases no longer provide a guide for a fit sentence. I will discuss later the relevance of this principle in light of how the "range" for sentencing for possession of child pornography has developed in British Columbia.
- [39] I have considered all the principles laid out in *Friesen*. I will not lay them all out now, but specifically draw attention to the following:
- a) Everyone deserves a childhood free of sexual violence. Offenders who deny children and adolescents these childhoods must be subject to sentences that fully reflect and give effect to the profound wrongfulness and harmfulness of sexual offences against children: *Friesen*, para. 1.
 - b) All sexual offences against children are violent crimes. They cause far-reaching and ongoing harm to children, their families and society at large. Sentences must accurately reflect the inherent wrongfulness of this violence and the extent of this harm: *Friesen* at para. 5.
 - c) As a sentencing judge, I have an obligation to properly understand the wrongfulness of sexual offences against children and the profound harm they cause. This means avoiding stereotypical reasoning or the misapplication or misidentification of aggravating and mitigating factors: *Friesen* at para. 50.
 - d) The prime interests that the legislative scheme of sexual offences against children are designed to protect are the personal autonomy, bodily integrity, sexual integrity, dignity and equality of children. For children, personal autonomy means the right to develop to adulthood free from sexual interference and exploitation by adults: *Friesen* at paras. 51-52.
 - e) The modern law of sexual offences against children reflects an understanding that the focus of a sexual offence scheme must not be on "sexual propriety", but "sexual integrity". The criminal law is designed to protect against violations of trust, humiliation, objectification, shame and loss of self-esteem: *Friesen* at paras. 53-55.

- f) In considering the gravity of the offence, I must consider the inherent wrongfulness of the violence in applying force of a sexual nature to a child. The sexual context does not remove the violence, but aggravates its wrongfulness. Courts must always give effect to the wrongfulness of the exploitation inherent in the power imbalance between adults and children, and the wrongfulness of treating children not as persons with equal dignity but as sexual objects: Friesen at paras. 77-78.
- g) I must take into account a contemporary understanding of the harms, both potential and already realized, from sexual violence against children. There is substantial social science evidence of the long-term nature of these harms, which can include difficulty forming loving adult relationships, the possibility of being more prone to engage in sexual exploitation themselves, and a greater propensity to a variety of mental health problems: Friesen at paras. 79-84 (potential harm) and para. 85 (actual harm).
- h) Intentional sexual exploitation and objectification of children is highly morally blameworthy because children are inherently vulnerable. Offenders, especially those like Mr. Tate who do not suffer from cognitive limitations, are aware of this and target precisely that vulnerability. The moral blameworthiness increases with the degree of vulnerability that the offender is aware of: Friesen at paras. 87-92.
- i) Parliament's decision to prioritize denunciation and deterrence for offences that involve the abuse of children must be respected: Friesen at paras. 101-105.
- j) The younger the victim, the more significant the sentence. At the same time, it is important not to understate the harm and moral blameworthiness of offences against adolescents: Friesen at paras. 134-136.
- k) The degree of physical interference is a complex factor. The Supreme Court of Canada cautioned sentencing judges against downgrading the wrongfulness of the offence where the sexually violent conduct does not involve penetration or physical injury: Friesen at paras. 144-145. At the same time, increases in the degree of physical interference increase the wrongfulness of the sexual violence and the type of physical act is relevant to the degree of physical interference: Friesen at para. 146.

VI. Is a Conditional Sentence Appropriate?

[40] Conditional sentences are provided for by s. 742.1 of the Code, which provides, in relevant part:

If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, 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 conditions imposed under section 742.3, if

- (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2;
 - (b) the offence is not an offence punishable by a minimum term of imprisonment;
- [41] While s. 163.1(3) and (4) both have mandatory minimums, these have been declared to be of no force and effect in British Columbia: *R. v. Swaby*, 2018 BCCA 416 and *R. v. Mollon*, 2019 BCSC 423.[2] The Crown therefore concedes that a conditional sentencing order is available, but says it would not be "consistent with the fundamental purpose and principles of sentencing" in the Code in light of both Parliament's clear intention over the years to provide for the priority of denunciation and general deterrence in the context of sexual offences against children and the direction of the Supreme Court of Canada in *Friesen*.
- [42] Specifically, in the very case in which the Court of Appeal struck down the mandatory minimum for possession of child pornography, it also stated that non-custodial sentences, including conditional sentences, are only available in "exceptional cases": *Swaby* at para. 67.
- [43] *Swaby* pre-dated *Friesen*'s call to increase sentences for offences involving sexual violence against children, which includes child pornography offences. So, if anything, conditional sentence orders must be even more exceptional today. And indeed that has been the case: sentencing courts have found CSOs inadequate even in the presence of significant mitigating factors and the absence of aggravating factors: see the survey of the post-*Friesen* case law in *R. v. Smith*, 2023 BCPC 188 at paras. 78-105.
- [44] The truly exceptional nature of conditional sentence orders in the context of child pornography offences was underlined by the Court of Appeal's decision in *R. v. Janzen*, 2025 BCCA 268. In *Janzen*, the Court of Appeal upheld a sentencing judge's decision to reject a joint submission for a conditional sentence order for possession of child pornography. This required the Court to find that the sentencing judge was correct to find that the "proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest": *Janzen* at para. 8. In other words, a conditional sentence order given the circumstances of the offence and offender in *Janzen* was not just mistaken but, in the word used in *R. v. Nahanee*, 2022 SCC 37 at para. 25 "unhinged".
- [45] I will discuss the aggravating and mitigating factors applying to Mr. Tate at greater length in my consideration of the appropriate length of imprisonment. The principal aggravating factors are both the horrifically violent nature and large size of his collection. His advanced age and the fact he pled guilty are both mitigating, but, as I mentioned and will discuss at greater length later, he has not shown insight or remorse. His situation is completely different from that of Mr. *Swaby*, who was borderline cognitively disabled and could legitimately claim he did not understand what he was downloading or why it was wrong. Mr. Tate is a highly intelligent and educated man, who used some degree of technical sophistication to acquire a massive collection of truly vile material.

- [46] At this point, I will say that he cannot possibly show that the circumstances of the offence he committed or his own circumstances are "exceptional" in the sense necessary to justify a non-custodial sentence.
- [47] The accused points to the factors set out R. v. Vandermeer, 2021 BCPC 94 at para. 37 as being ones that could indicate a case is "exceptional" such that a conditional sentence order is appropriate:
- a) Prior good character and the absence of a criminal record;
 - b) Sincere remorse;
 - c) Acknowledgement of the harm caused to children;
 - d) Significant steps towards rehabilitation;
 - e) Low risk to reoffend;
 - f) Demonstrable risk of very serious adverse physical or mental health impacts arising from incarceration;
 - g) Child pornography capable of categorization at the low end of the range of child pornography, in terms of both the volume of material and the nature of the activity depicted; and
 - h) Child pornography obtained from non-commercial sources.
- [48] With great respect, I disagree that most of these factors can be considered exceptional. It is common that offenders found guilty of possession or transmission of child pornography will have no criminal record and will otherwise be respectable members of the community. I agree with the Ontario Court of Appeal that it would be "class-based justice" contrary to the rule of law to weigh "good character" heavily in these cases. Of course, a prior conviction for a sexual offence against children would be an aggravating factor, but the absence of prior offences is not a significant mitigating factor and certainly not an "exceptional" one.
- [49] I also have doubts that remorse, acknowledgment of harm done, significant steps toward rehabilitation or a low risk to reoffend are exceptional in the context of a crime in which denunciation and deterrence must be taken as the dominant sentencing objectives. I completely accept that these are relevant mitigating factors, but it will presumably be common for child pornography offenders to express remorse and acknowledge the harm they have done. Further, on the evidence before me, the Child Pornography Offender Risk Tool (CPORT), used by forensic psychologists, will normally place offenders who do not have known contact sexual offending, have not breached their terms and are not more interested in boy than girl content as "low risk". These cannot be "exceptional" circumstances.
- [50] In any event, Mr. Tate has not expressed remorse, acknowledgment of harm done or significant steps toward rehabilitation. In his interview with the forensic psychologist, he claimed (implausibly) that he was not aware that possessing child pornography was illegal,

denied (equally implausibly) that he has sexual interest in children and generally engaged in minimizing behaviour. Mr. Tate also addressed the court and while he apologized for breaking the law, he did not acknowledge at all that he has victimized children or acted immorally. He claimed that he collected thousands of child pornography images and videos as part of a research project. He is either lying to himself or to the court. Either way, I do not see any serious expression of remorse.

- [51] Moreover, the forensic psychologist found his risk of reoffending to be "low to moderate" and it appears from her report that even this is dependent on his not having unsupervised access to the Internet.
- [52] I am also not persuaded that "child pornography capable of categorization at the low end of the range of child pornography, in terms of both the volume of material and the nature of the activity depicted" is actually an exceptional circumstance. I would reserve that for some of the hypothetical examples that would not be an ordinary person's understanding of "child pornography" but would meet the definition in s. 163.1(1) of the Code, such as a sext from one seventeen year old to another found on the latter's phone.
- [53] In any event, the images and videos Mr. Tate was in possession of were on the high end of the range of child pornography, both in terms of volume and the nature of the activity depicted, so this factor cannot benefit Mr. Tate.
- [54] If the "non-commercial source" category is to be retained, it should not include child pornography shared on peer-to-peer networks by pedophiles. While it is true that no money changes hands, that is only because the currency in these exchanges is child pornography itself. This in no way mitigates guilt.
- [55] I accept that because of his age, Mr. Tate will find incarceration more difficult than a younger man would, and this is a mitigating factor. But I do not find he exhibits the kind of "exceptional" risk of very serious adverse physical or mental health consequences from incarceration that would be necessary. He has no demonstrated mental health conditions. He has some heart problems that require medication and periodic outpatient consultation with a cardiologist, but the Corrections authorities are under a legal duty to ensure he obtains all necessary medical treatment. I have no reason to think he would be any worse in this regard if incarcerated than if he is in the community. Certainly, there is nothing "exceptional" about his physical or mental condition.
- [56] The Defence argues there is a risk that if Mr. Tate loses his current subsidized housing, he will not be able to get housing when released. I agree that disruption of housing continuity for offenders is a serious problem in our society and that we have a collective responsibility to address it. However, I do not see any reason that Mr. Tate is in any particular danger here. He is a pensioner with no debts. He could likely find rental housing somewhere when released.

[57] I am persuaded that a conditional sentence order would not fulfill the goals of deterrence and denunciation and would not be a fit sentence in the circumstances.

VII. How Long Should Imprisonment Be?

[58] Section 163.1(3) ("transmission") carries a maximum sentence of 14 years in jail. Section 163.1(4) ("possession") carries a maximum sentence of 10 years.

[59] The conventional view, expressed in any number of post-Friesen cases in this court and in the provincial court, is that the "ordinary range" for possession is four months to two years incarceration and for transmission is from one years to four years: see, for example, *R. v. Wakefield*, 2023 BCPC 274 at para. 35 ; *R. v. C.J.R.J.*, 2023 BCPC 37 at para. 121; *R. v. Smith*, 2023 BCPC 188 at para. 35; *R. v. Adams*, 2022 BCSC 2289 at para. 59; *R. v. Capewell*, 2021 BCSC 904 at para. 58; *R. v. R.J.H.*, 2020 BCSC 1070 at para. 50 (rev'd on other grounds 2021 BCCA 54).

[60] The effect of Friesen was to invalidate previous sentencing ranges set by provincial courts of appeal. At para. 5, the Supreme Court said, plainly, that "sentences for these crimes must increase." See also para.107(1). It specifically criticized the prior sentencing regime in British Columbia for sexual interference and sexual assault against minors: Friesen at paras. 111, 137 (criticizing *R. v. Williams*, 2019 BCCA 295 and *R. v. Scofield*, 2019 BCCA 3).

[61] At the same time, the SCC did not take up the invitation of the Crown counsel before it to "create a national starting point or sentencing range for sexual offences against children", leaving setting a range to provincial courts of appeal in recognition of legitimate regional differences: Friesen at para. 111.

[62] With respect to possession, the range of four months to two years was originally set before Friesen: see *R. v. R.L.W.*, 2013 BCCA 50 at paras. 43, 49.

[63] Although the Crown has not asked for more than two years, it has raised the question as to whether the R.L.W. range of four months to two years continues to be good law.

[64] This range was referenced approvingly after Friesen by the Court of Appeal in *R. v. Hagen*, 2021 BCCA 208 at para. 69, DeWitt-Van Oosten J.A. As I noted earlier, it has continued to be applied by this court and the Provincial Court (an exception is *R. v. Isbister*, 2024 BCSC 1836 at paras. 128-129).

[65] However, in *R. v. McCrimmon*, 2022 YKCA 1, DeWitt-Van Oosten J.A., speaking for the Yukon Court of Appeal, said at para. 72 that "Hagen's reference to a sentencing range of four months to two years' imprisonment for possession of child pornography does not stand as a post-Friesen endorsement of a generally accepted range for this offence", pointing out that whether to increase the sentencing range for possession after Friesen was not before the court in Hagen, given that it was the accused's appeal from a sentence within that range. She has since, albeit in obiter, referenced these remarks on behalf of the British Columbia Court of Appeal: Janzen at para. 11.

- [66] I take from the comments in McCrimmon and Hagen that penitentiary terms are available, in the appropriate case, for possession charges, including even for a first-time offence. Clearly, the Court of Appeal might, in the appropriate case, set out a higher range.
- [67] However, for now, I take four months to two years to continue to be the "ordinary" range for possession, which has never meant that a sentence above that range would necessarily be unfit. I do this because sentencing ranges are not of value in and of themselves, but as a way of promoting the parity principle, set out in the Code, that where the circumstances of the offence and the offender are similar, so should the sentence.
- [68] The Hagen range has been taken as a post-Friesen range, as Judge Mrozinski's extensive survey of the case law in Wakefield shows. Therefore, a marked departure from that range, unless justified by unusual circumstances of the offence or offender, would run the risk of offending the parity principle.
- [69] Since the Crown is not asking for a sentence above that range, this would not be an appropriate case for me to speculate further. Both the Crown and the Defence focused, understandably, on the totality of the sentence for possession and transmission, which depends on the higher sentence given that these are going to be concurrent sentences. Since the transmission range goes up to four years, it would be academic in this context to consider how high the possession range might go if and when the Court of Appeal explicitly reconsiders the range from R.L.W. in light of Friesen. Clearly, two years less a day is well within the range for transmission of child pornography.
- [70] The mitigating factors here are Mr. Tate's guilty plea and his advanced age. While his guilty plea does not, in his case, indicate remorse, this is a lack of a mitigating factor, not an aggravating one. The guilty plea filled the function of saving resources and times for the criminal justice system and it came promptly after a reasonable, albeit unsuccessful, Charter challenge.
- [71] The aggravating factors are the length of time Mr. Tate was engaged in possessing and transmitting child pornography (more than two years), the enormous quantity of material involved and the fact that the material was at the high end of violence and involved very young children.
- [72] Similar factors were present in R. v. L.H.H., 2023 BCPC 82; R. v. Adams, 2022 BCSC 2289; R. v. Perry, 2022 BCPC 251, and R. v. R.J.H., 2020 BCSC 1070.
- [73] In L.H.H., the offender pleaded guilty and was convicted of possession. He had hundreds of thousands of images and videos involving very young children. The court described the materials as horrific and sadistic in nature. The accused was sentenced to 13 months' custody and two years' probation taking into account mitigating factors such as counselling and demonstrated insight into the harms of child pornography.

- [74] In Adams, the offender pleaded guilty to possessing hundreds of images of child sexual abuse, including violent material involving children as young as six. Mr. Adams' lack of remorse and lack of awareness about the harm caused by his behaviour were referenced, and he was sentenced to 16 months in custody and two years' probation.
- [75] In Perry, the offender had a collection of over 1,500 images of a serious and violent nature, including imagery of infants. The court found a lack of any mitigating factors. Mr. Perry was found guilty of possession and sentenced to 18 months in custody and two years' probation.
- [76] In R.J.H., the offender's collection was described as "appalling" and included "the worst possible depictions of child sexual abuse". A guilty plea and the offender's young age were mitigating factors. The court found the offender failed to appreciate the harmful nature of his actions and sentenced him to 30 months for transmission and 15 months for possession.
- [77] In my view, 18 months is appropriate for the possession charge and two years less a day is appropriate for the transmission charge. I agree with the Crown that while these are not duplicative, they are sufficiently connected that they should be served concurrently. This will permit a provincial sentence and therefore a probation order, which in my view is appropriate in light of the sentencing objectives of specific deterrence and rehabilitation.

VIII. Mandatory and discretionary Ancillary Orders

- [78] Both counts are primary designated offences. Pursuant to s. 487.05(1) of the Code, an order in Form 5.03 must be made.
- [79] A SOIRA order is also mandatory. The duration of the order is 20 years pursuant to 490.013(2) (b).
- [80] The Crown is seeking a probation order for three years with the terms similar to those imposed in Perry at paras. 53-65. I agree that this is appropriate. In particular, I do not think Mr. Tate should have access to the Internet other than in the presence of a probation officer or someone approved by Corrections. If he wishes to keep in touch with his sister or others, he should do so with an old-fashioned phone that allows text messaging only.
- [81] I also agree with the Crown's proposed prohibition order under s. 161(1) of the Code, which is to similar effect.

IX. conclusion

- [82] Please stand up, Mr. Tate.
- [83] I pronounce the following sentence on you:
- You must surrender yourself into the custody of the Vancouver Island Regional Correctional Centre at 4216 Wilkinson Road, Victoria, B.C. no later than 4 p.m. on October 31, 2025.
 - Upon surrender into the custody of the VIRCC, you will serve a period of imprisonment of two years less one day on the third count of the indictment.

- c) Upon surrender into custody of the VIRCC, you will serve a period of imprisonment of eighteen months on the first count of the indictment, to be served concurrently with your term of imprisonment on the third count.
- d) On the completion of your period of imprisonment for the third count of the indictment, you must serve a three-year term of probation with the following conditions:
 - i) You must keep the peace and be of good behaviour.
 - ii) You must appear before the Court when required to do so by the Court.
 - iii) You must report to a probation office no later than 3 p.m. on the second business day after your release.
 - iv) Unless you obtain written approval to attend a different probation office, you must attend the Victoria Community Corrections office at 836 Courtney Street. After that you must report as directed by your probation officer.
 - v) On first reporting, you must provide your probation officer with your legal name and your address.
 - vi) You must notify your probation officer in advance of any change of name or address.
 - vii) You must not go to any public park, public swimming area, daycare centre, school ground, playground, community centre or theatre where persons under the age of 16 years are known by you to be present or can reasonably be expected to be present without prior written consent of your probation officer, which you are to have on you, and are to present to a peace officer on request, and in the presence of an adult person over the age of 18 years with knowledge of this order.
 - viii) You must not have any contact or communication directly or indirectly with, or be in the presence of any person under 16 years of age, except as ordered by an associate judge, judge or judicial justice, or in the presence of an adult person over 18 years of age with knowledge of this order.
 - ix) You must not seek, obtain, or continue with any volunteer position of employment that involves being in a position of authority towards a person under the age of 16 years.
 - x) Having consented in court, you must attend for a psychiatric intake, assessment or treatment program through Forensic Psychiatric Services as directed by your probation officer.
 - xi) You must not access any computer network including the Internet or possess any device capable of accessing the Internet, including a smart phone. The exceptions are:
 - 1) In the immediate presence of your probation officer.
 - 2) In the immediate presence of a person authorized in writing by your probation officer.

xii) You must not use any computer network, including the Internet to:

- 1) Access any social media sites, social networks, Internet discussion forums or chatrooms, or peer-to-peer networks, or
- 2) Communicate or attempt to communicate with anyone you know to be, believe to be, or who reasonably appears to be under the age of 18 years.
- e) Pursuant to s. 161 of the Code, and pursuant to the third court of the indictment, you are prohibited, starting the date of your release and continuing for ten years afterwards, from doing any of the following:
 - i) Attending any public park, public swimming area, daycare centre, school ground, playground, community centre or theatre where persons under the age of 16 years are known by you to be present or can reasonably be expected to be present, except in the presence of an adult over 18 years of age with knowledge of this order.
- ii) Seeking, obtaining, or continuing with any volunteer position of employment that involves being in a position of authority towards a person under the age of 16 years.
- iii) Having contact or communication with a person who is under the age of 16 years unless there is prior approval by court order or in the presence of a person over the age of 18 years who is also in the presence of the person under the age of 16 years, and who has knowledge of this order.
- iv) Using the Internet or other computer network, except in the immediate presence of your probation officer or another adult who has knowledge of this order.
- f) There will be an order in Form 5.03 authorizing the taking of samples of bodily substances from you as reasonably required for the purpose of forensic DNA analysis.
- g) There will be an order in Form 52 requiring you to comply with the Sex Offender Information Registration Act. This order will be in place for 20 years.

[84] The prohibition order will be prepared by the appropriate authority and served on Mr. Tate. I delegate to the authority the preparation of the order and the duty to inform Mr. Tate of the consequences of violating it.

[85] I waive the victim fine surcharge in light of Mr. Tate's uncertain income prospects on release.

"J. G. Morley, J."

The Honourable Justice Morley

[1] On October 10, 2025, amendments to the Criminal Code came into force replacing the term "child pornography" with "child sexual abuse and exploitation material". Since these changes long post-date the indictment period, I will generally use the term "child pornography" in these reasons, although following some pre-amendment cases, I will sometimes use "child sexual abuse and exploitation material" where a legal term of art is not required. Regardless

of the term used, it is important to recognize that these are in every case "pictures and videos of children being sexually assaulted": see R. v. S.J.H., 2024 BCCA 134 at ftn. 1.

- [2] Since these reasons for judgment were delivered orally, the Supreme Court of Canada released the decision of Quebec (Attorney General) v. Senneville, 2025 SCC 33 which held that the one year mandatory minimum for s.163.1(4) constituted cruel and unusual punishment and declared it to be of no force and effect. As I noted in my oral reasons, this was already the case in British Columbia.

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