

CANADA / JUDGMENT

## R. v. Vaux

2021 BCSC 1773

COURT

Supreme Court of British Columbia

DECIDED

7 September 2021

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2021 BCSC 1773 R. v. Vaux

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Vaux,

2021 BCSC 1773

Date: 20210907

Docket: 53484

Registry: Vernon

Regina

v.

### **Brydon Alexander Vaux**

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Before: The Honourable Madam Justice Devlin

Oral Reasons for Sentence

Counsel for the Crown:

M. Cissell

Counsel for the Defendant:

G.A.P. Verdurmen

**Place and Date of Hearing:**

Vernon, B.C.

June 17, 2021

September 7, 2021

**Place and Date of Judgment:**

Vernon, B.C.

September 7, 2021

THE COURT: This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.

**Introduction**

- [1] The accused Brydon Alexander Vaux has pleaded guilty to two counts of sexual interference with a person under 16 years of age, contrary to s. 151 of the Criminal Code, R.S.C., 1985, c. C-46 [Code]. The first incident (count 2), involving 15-year-old H.D., occurred between June 1, 2018 and September 1, 2018 (the "first incident"). The second incident (count 3), involving 14-year-old C.R., occurred on July 4, 2018 (the "second incident"). Both incidents took place at or near Vernon, British Columbia.
- [2] As I will discuss in more detail in these reasons, the Crown submits the appropriate sentence is 3.5 years for count 2 and 5 years for count 3, to be served consecutively. Taking into consideration the totality principle, they submit a global sentence of 5 to 5.5 years' incarceration is a fit and proper sentence. The Crown also seeks a number of ancillary orders. Defence submits that Mr. Vaux presents exceptional circumstances that support a sentence of 9 to 12 months on each count for a total sentence under 2 years to be served in the community, followed by a 3-year probation order.
- [3] The task for me in these reasons for sentence is to craft a fit and appropriate sentence, having regard to both the particular circumstances of the offender (which, as I will discuss in detail below, are uniquely exceptional in this case) and the nature of the offences, keeping in mind the purposes and principles of sentencing set out in Part XXIII of the Code. Importantly, in order to be "fit", the sentence must be proportionate to both the gravity of the offence and the degree of responsibility of the offender.

**Circumstances of the Offences**

- [4] An Agreed Statement of Facts ("ASF") was filed as an exhibit at trial, which sets out the circumstances of both incidents and should be read in conjunction with these reasons for sentence. Therefore, I will summarize the circumstances based on the contents of the ASF.

- [5] In the summer of 2018, H.D. met Mr. Vaux through mutual friends on Facebook. In one of her Facebook messages to Mr. Vaux, she told him she was 15 years old. On the day of the first incident, Mr. Vaux took H.D. for a drive in his Jeep, and then took her to his father's house where he was living. He and H.D. had some alcohol, which Mr. Vaux provided, and then used the hot tub. After that, as H.D. was getting dressed, Mr. Vaux came in and started asking her if she wanted to have sex with him. She replied that she did not. Despite her refusal, Mr. Vaux proceeded to have vaginal intercourse with H.D. He then masturbated himself, ejaculated on H.D., and proceeded to lick his ejaculate off of her. After the first incident took place, H.D. contacted her father to come take her home.
- [6] C.R. met Mr. Vaux when she was 13 years of age through some older friends (ages 15-17), who were also friends with Mr. Vaux. Mr. Vaux wished her happy birthday when she turned 14. On July 4, 2018, Mr. Vaux picked C.R. up from school, drove around with her, and then went to his father's house with her, where he was residing. He and C.R. watched a movie in Mr. Vaux's bedroom in the basement. While they were sitting on his bed, Mr. Vaux repeatedly tried to pull off C.R.'s clothing while asking her "what are my boundaries". C.R. told Mr. Vaux she did not want to - that she wanted to leave - but he proceeded to remove her sweater and bottoms. Mr. Vaux told C.R. it would be ok, that she would enjoy it, and that if she still wanted to leave when he was done, that they could go. Mr. Vaux then put on a condom and proceeded to have vaginal intercourse with C.R. He told her that it would be over soon, and that when he was done, he would take her home. He stopped when the condom broke, and then asked C.R. to give him a "hand job". She refused, and he then masturbated himself, ejaculated on her stomach, and licked his ejaculate off of her. Afterwards, they both got dressed, he drove C.R. back to the school, and she walked home.

### Victim Impact Statements

- [7] I am mindful of the comments in *R. v. Friesen*, 2020 SCC 9 [Friesen] that "direct evidence from children or their caregivers is not required for the court to find that children have suffered actual harm as a result of sexual violence": at para. 86. Although neither H.D. nor C.R. provided victim impact statements, I was advised that C.R. was present at the sentencing hearing. C.R.'s mother provided information to both Crown counsel and the author of the pre-sentence report ("PSR"). Unfortunately, shortly before the trial was scheduled to commence, C.R. suffered a stroke, which has compounded her challenges for recovery. C.R.'s mother advised that through counselling, her daughter is able to no longer be silent and speaks up about her experience to prevent others from experiencing similar abuse. C.R.'s strength and resiliency is admirable. I have no doubt that both C.R. and H.D. have suffered and will continue to suffer emotional and psychological harm as they mature into young women. Their encounters with Mr. Vaux have resulted in life-altering consequences, robbing them of their youth and innocence.

## Circumstances of the Offender

- [8] In addition to submissions by Mr. Vaux's counsel, I have been provided with significant detail with respect to Mr. Vaux's background in various documents, including the PSR dated May 4, 2021, a psychological assessment report dated January 20, 2021 prepared by Dr. Burnett, a registered psychologist with the Forensic Psychiatric Services Commission, as well as a psychological assessment report dated May 16, 2014 prepared by registered psychologists Dr. Welder and Dr. Stevenson at the request of Mr. Vaux's pediatrician. I have also been provided with a letter dated June 1, 2021 from Ms. Gooden, Native Court worker, and with a letter from Mr. Vaux's mother.
- [9] Mr. Vaux is currently 23 years old. He was born in Victoria and spent some of his early life living with his parents and younger sister in Victoria and Edmonton before eventually moving to Vernon, B.C. Mr. Vaux's parents separated when he was seven and he primarily lived with his mother, but would also spend time with his father. Mr. Vaux has a positive relationship with both his parents and his step-father. Mr. Vaux lived primarily with his mother and step-father until he graduated from high school with his Dogwood Diploma in 2016. Following graduation, Mr. Vaux began residing with his father and continues to do so. The two offences occurred at his father's residence while his father was away for work.
- [10] Mr. Vaux is of Métis heritage on his mother's side. While he never concealed his Métis status, it was never something that formed part of his identity or experiences growing up.
- [11] Mr. Vaux was born prematurely and displayed developmental delays early on. During pre-school, while his family was living in Alberta, he was diagnosed with autistic tendencies, and did well in the programming offered there. However, at age 4, his family moved back to British Columbia, where there were less services available to assist Mr. Vaux. According to Mr. Vaux's mother, Mr. Vaux would often be viewed as "odd" by teachers, support staff, and principals, but no supports or services were offered. Mr. Vaux's mother sought a private assessment for him when he was 12 years old. As a result, in May 2014, Mr. Vaux was first diagnosed with autism spectrum disorder ("ASD") and attention deficit hyperactivity disorder ("ADHD"). The 2014 assessment noted that Mr. Vaux demonstrated difficulties with his ability to focus and to regulate his emotions, and his overall adaptive functioning, as reported by his mother, was considered to be extremely low.
- [12] Although Mr. Vaux had a stable upbringing in a positive family home and did graduate from high school, he encountered many struggles throughout his young life due to his ASD. He struggled socially and was described by those who knew him as missing social cues, lacking social skills, and having difficulty developing same-age peer friendships. Mr. Vaux was bullied and tormented by his peers. They called him names, subjected him to pranks, teased, taunted, and physically tormented him. Mr. Vaux reported to the PSR author that he was lonely throughout his childhood due to a lack of friendships.

- [13] Mr. Vaux has had a variety of jobs in the past, including with both his father and step-father, but is presently unemployed and receives disability assistance.
- [14] Mr. Vaux has no criminal history. While on bail for these matters, he has been residing with his father and complying with the terms of his bail.
- [15] The letter of support from Ms. Joyce, Mr. Vaux's mother, provides some further insight into Mr. Vaux's background and the developmental challenges he faced throughout his young life. Ms. Joyce described the barriers she encountered accessing treatment and support for Mr. Vaux with respect to his ASD and ADHD. She also described the bullying and isolation Mr. Vaux experienced from his peers growing up, resulting in him associating instead with people much younger than himself. Ms. Joyce also expressed regret on behalf of herself, her husband, and Mr. Vaux's father for their failure to prevent the tragic events. Ms. Joyce explained that when Mr. Vaux was about 19 years of age, he began to live with his father and was provided access to a car in order to assist him in securing employment and achieving some independence as a young adult. However, because his father was out of town frequently for work, that resulted in Mr. Vaux living on his own without any guidance or limitations. It was during his father's absence that these two incidents occurred. Ms. Joyce remains supportive of her son and hopes that through this process he can gain access to counselling and treatment to assist him in his development.

### Dr. Burnett's Assessment

- [16] Dr. Burnett was asked to assess Mr. Vaux's cognitive functioning and level of impairment, if any. He was also asked to assess Mr. Vaux's risk of future sexual offending and to provide programming recommendations to diminish or manage any risk. Dr. Burnett met with Mr. Vaux in person on four occasions - December 12 and 23, 2020 and January 6 and 11, 2021 - and also administered standardized assessment tests. Dr. Burnett also reviewed various records relating to Mr. Vaux and the offences.
- [17] Dr. Burnett's 19-page report is before me, and neither counsel took any issue with the admissibility of any aspect of the report or the opinions contained therein.
- [18] Dr. Burnett observed that Mr. Vaux "impressed as somewhat immature", and that his "interactional style was slightly odd and somewhat unnatural".
- [19] Dr. Burnett described the results of the various psychological tests/instruments he administered to Mr. Vaux. With respect to Mr. Vaux's intellectual functioning, Dr. Burnett described Mr. Vaux's overall intellectual capacity within the average range. However, he opined that an estimation of Mr. Vaux's overall intellectual capacity "may not provide the most meaningful or complete representation with respect to his current cognitive functioning" because Mr. Vaux's performance across the various cognitive areas assessed in the testing showed significant variation, which suggested certain cognitive abilities were likely to be more or less developed than others. Therefore, he considered Mr. Vaux's performance on each of the specific cognitive domains assessed individually. On page 12 of

his report, after reviewing the results from the various assessment tools, Dr. Burnett concluded that the results of the psychological testing indicated that Mr. Vaux did not present with a global intellectual deficit. Dr. Burnett opined as follows:

Mr. Vaux exhibits a pattern of cognitive strengths and weakness [sic]; this uneven pattern, in several respects, is consistent with Mr. Vaux's previous diagnoses of Autism Spectrum Disorder and Attention-Deficit/Hyperactivity Disorder. Mr. Vaux's performance on psychological testing suggests that social and interpersonal difficulties are a prominent feature of his clinical presentation. His performance suggests an individual with impaired social cognition, poor social judgment, limited social skills, and limited social competence.

[Emphasis in original.]

- [20] Dr. Burnett found that Mr. Vaux presented with a well-established principal diagnosis of ASD. The most prominent feature of Mr. Vaux's clinical presentation was "a pattern of persistent and severe deficits with respect to social communication and social interaction". He opined that Mr. Vaux had had long-standing difficulties in developing, maintaining, and understanding interpersonal relationships. Dr. Burnett noted that Mr. Vaux described "a long-standing pattern of associating with much younger individuals" and opined that this likely reflected "a persistent inability to meet age-appropriate social and interpersonal demands". He opined that Mr. Vaux's "level of social maturity does not appear to be commensurate-with-age".
- [21] Dr. Burnett also found that Mr. Vaux's cognitive abilities were unevenly developed, which is common for someone diagnosed with ASD.
- [22] With respect to Mr. Vaux's ADHD diagnosis, he noted that Mr. Vaux continued to endorse at least mild and occasional difficulties with respect to concentration and focus, and opined that Mr. Vaux met the DSM-5 diagnosis for ADHD.
- [23] Dr. Burnett also noted that Mr. Vaux's performance on the Personality Assessment Inventory (PAI) assessment tool was suggestive of one who may have experienced a potentially traumatic event (or events) in the past. Dr. Burnett explained that someone who has ASD is typically at increased risk for exposure to trauma, and noted Mr. Vaux's reported severe and persistent bullying in his late childhood and early adolescence. Dr. Burnett recommended that this possible trauma-related injury be the subject of further investigation.
- [24] Dr. Burnett opined that it was probable that Mr. Vaux's significant social deficits associated with ASD, particularly with respect to social communication, social interaction, and social maturity, may have contributed to Mr. Vaux's offending behaviour. At page 14, Dr. Burnett explained:

At the time of the index offences, Mr. Vaux was associating all-but-exclusively with adolescent persons (reflecting his established pattern of socializing primarily with younger individuals). Indeed, Mr. Vaux's ability to establish and maintain meaningful relationships with his adult peers is/was severely limited. Accordingly, his access and opportunity with respect to age-appropriate

sexual and romantic partners is/was significantly restricted. In this respect, and at least to some degree, there was likely an opportunistic component to his offending behaviour. Moreover, deficits with respect to social-emotional reciprocity, specifically, may have contributed, at least somewhat, to the overtly coercive aspects of Mr. Vaux's offending behaviour. Deficits with respect to social-emotional reciprocity may also impact Mr. Vaux's understanding and appreciation with respect to sexual consent.

- [25] With respect to Mr. Vaux's risk for sexual violence, Dr. Burnett concluded that Mr. Vaux's current level of risk for recidivistic sexual violence (relative to other sexual offenders) is estimated to fall within the average range, based on standardized risk level categories. Dr. Burnett further explained that relative to other sexual offenders, Mr. Vaux's risk for reoffending sexually is "neither low nor high".
- [26] Dr. Burnett opined that Mr. Vaux's sexual victimization of young adolescents was "driven more by opportunity than by deviant sexual interest/disorder". However, Dr. Burnett did express concern regarding the presence of elements of psychological coercion in Mr. Vaux's offending behaviour, such as providing rides, access to alcohol, and a place to "hang out", and providing his victims with at least some degree of special attention, recognition, and emotional affirmation.
- [27] Dr. Burnett made a number of recommendations, including that Mr. Vaux participate in a course of specialized sexual offender treatment, which should be evidence-based and of moderate intensity. Due to Mr. Vaux's ASD, Dr. Burnett recommended treatment that is individually-delivered and tailored uniquely to Mr. Vaux's neurodevelopmental profile. Further, he recommended that sexual offender treatment should have a focus, at least in part, on attempting to address, manage, or compensate for Mr. Vaux's "significant social and intimacy deficits".
- [28] Dr. Burnett also noted that due to Mr. Vaux's significant social deficits, he may be somewhat vulnerable to exploitation and abuse within a correctional setting.
- [29] He noted that Mr. Vaux would also benefit from additional supports and services related to his ASD.
- [30] Finally, he recommended that Mr. Vaux's access to young persons should be monitored closely and severely restricted.

### Position of the Parties

- [31] As mentioned earlier, the Crown submits that a sentence of 3.5 years on count 2 and 5 years on count 3, consecutive, would be a fit sentence. Further, considering the totality principle, the Crown submits a total sentence of 5 to 5.5 years' incarceration would be appropriate. The Crown emphasizes the gravity of these offences and Mr. Vaux's high moral culpability in committing them. The Crown submits her position on sentence is consistent with the Supreme Court of Canada's recent guidance in Friesen. In addition to Friesen, the Crown

also relies on *R. v. Williams*, 2020 BCCA 286 [Williams] and its consideration of the Friesen factors, as well as *R. v. Scofield*, 2019 BCCA 3 [Scofield], a pre-Friesen decision that upheld a conditional sentence order ("CSO") for an offender who pleaded guilty to two counts of sexual interference contrary to s. 151, given the exceptional circumstances present in that case.

- [32] The defence submits Mr. Vaux's circumstances are exceptional and merit a sentence in the range of 9 to 12 months on each count to be served in the community, followed by a three-year probation order. Defence acknowledges the harm done to the two young victims, and the need for deterrence and denunciation. However, with reference to the factors discussed in Friesen, he submits Mr. Vaux's moral culpability is significantly attenuated as a result of his cognitive limitations resulting from his ASD and other personal circumstances. Defence counsel relies on Scofield to support his submission that a CSO is appropriate. Further, with respect to Mr. Vaux's Métis heritage, defence counsel submits the court must balance the principles expressed in Friesen with those expressed in *R. v. Gladue*, [1999] 1 S.C.R. 688 [Gladue] and *R. v. Ipeelee*, 2012 SCC 13 [Ipeelee]. Defence counsel relies on the analysis in *R. v. Laforge*, 2020 BCSC 1269 [Laforge], wherein Marchand J. (as he then was) recognized the need to consider the Gladue principles in situations where an offender has become disconnected from his heritage and community. Defence emphasizes the many mitigating factors, such as Mr. Vaux's young mental age, his lack of a criminal record, his strong family support, and his sincere expression of remorse.

## The Governing Legal Principles

- [33] Section 151(a) of the Code carries a maximum penalty of 14 years' imprisonment. Recently, in *R. v. Chen*, 2021 BCSC 882 [Chen] at para. 16, Justice Schultes declared that s. 742.1(c) of the Code is of no force and effect, meaning that a CSO cannot be prohibited by operation of s. 742.1(c). The Crown accepts that there is no basis to depart from the ruling of Schultes J. in Chen, and that a conditional sentence is available.
- [34] Prior to that, in Scofield at para. 89, the mandatory minimum sentence of one year imprisonment that s. 151(a) of the Code had carried was struck down, meaning that a CSO also cannot be prohibited with respect to s. 151(a) by s. 742.1(b) of the Code.
- [35] It follows that, if the remaining applicable conditions set out in s. 742.1 of the Code are satisfied, I may impose a conditional sentence in this case. To impose a CSO, therefore, the sentence to be imposed must be less than two years' imprisonment, and I must be satisfied that the service of the sentence in the community would not endanger the safety of the community, and that it would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 of the Code.
- [36] Sections 718 to 718.2 of the Code set out the fundamental principles and purposes to be considered by the courts in sentencing.

- [37] Section 718 provides that the fundamental purpose of sentencing is "to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions" with reference to six objectives. These objectives include: denunciation of unlawful conduct; deterrence of the offender and of other persons from committing offences; separation of offenders from society, where necessary; assistance in the rehabilitation of offenders; provision of reparations for harm done to victims or to the community; and the promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims or to the community.
- [38] Pursuant to s. 718.01, the Court is required to give primary consideration to the objectives of denunciation and deterrence when imposing sentence for an offence that involved the abuse of a person under the age of 18 years.
- [39] Pursuant to s. 718.1, a sentence must also be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [40] Section 718.2 sets out a number of specific principles that a court must take into consideration in sentencing. An important principle is that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender (s. 718.2(a)).
- [41] Another important principle is parity of sentence, which requires that a sentence imposed should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (s. 718.2(b)). I am mindful that I am not to lose sight of the individualized nature of the assessment before me, an assessment that requires me to weigh the objectives of sentencing in a manner that best reflects the circumstances of this case and of this offender: *R. v. Nasogaluak*, 2010 SCC 6 at para. 43. I am also mindful, as I will discuss in more depth below, of the Court's comments in *Friesen* that "[u]pward departure from prior precedents and sentencing ranges may well be required to impose a proportionate sentence": at para. 107.
- [42] Subsection 718.2(c) outlines what is referred to as the totality principle, which requires that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.
- [43] Subsections 718.2(d) and (e) emphasize the need for restraint in the use of imprisonment. These provisions 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 to the community should be considered for all offenders, with particular attention to the circumstances of Indigenous offenders. The Court of Appeal in *R. v. Bosco*, 2016 BCCA 55 at para. 35 stated that the restraint principle "encourages caution and moderation in the imposition of custodial sentences"; that pursuant to this principle, sentencing judges "should treat imprisonment as a sanction of last resort and limit any

custodial period imposed to the lightest term reasonable in the circumstances", and that the purpose of such restraint is "to reduce Canada's historically high incarceration rates and avoid sentences that are unduly harsh", citing *R. v. Proulx*, 2000 SCC 5 at paras. 16-17. Given Mr. Vaux's Métis heritage, this is an important factor to consider.

- [44] Pursuant to s. 718.3(7)(b), when sentencing an accused at the same time for more than one sexual offence committed against a child, the court shall direct that the sentence of imprisonment be served consecutively to a sentence of imprisonment it imposes for a sexual offence committed against another child.

### A Consideration of the Impact of the Decision in Friesen

- [45] In April 2020, the Supreme Court of Canada released new guidance on "how to impose sentences that fully reflect and give effect to the profound wrongfulness and harmfulness of sexual offences against children": Friesen at para. 1. The overarching message of Friesen for sentencing judges is set out at para. 5:
- [5] we send a strong message that sexual offences against children are violent crimes that wrongfully exploit children's vulnerability and cause profound harm to children, families, and communities. Sentences for these crimes must increase. Courts must impose sentences that are proportional to the gravity of sexual offences against children and the degree of responsibility of the offender, as informed by Parliament's sentencing initiatives and by society's deepened understanding of the wrongfulness and harmfulness of sexual violence against children. 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.
- [46] The Court emphasizes that "[t]o effectively respond to sexual violence against children, sentencing judges need to properly understand the wrongfulness of sexual offences against children and the profound harm that they cause. Getting the wrongfulness and harmfulness right is important": Friesen at para. 50.
- [47] The Court stresses that courts should focus on two categories of harm that sexual violence against children has the potential to cause: harm that manifests itself during childhood and long-term harm that only becomes evident during adulthood: Friesen at para. 80. Additionally, courts must focus their attention on not only physical harm, but on emotional and psychological harm, as sexual violence against children can cause serious emotional and psychological harm, the effect of which "may often be more pervasive and permanent" than that of any physical harm: Friesen at para. 56, citing *R. v. McCraw*, [1991] 3 S.C.R. 72. The sentence imposed must reflect the contemporary understanding of sexual violence against children; it must recognize the wrongfulness and harmfulness of sexual violence against children, and the life-altering harms to the victim's personal autonomy, bodily integrity, sexual integrity, dignity, and equality that often do flow from the sexual violence. The sentence must be commensurate with the gravity of sexual offences against children:

Friesen at paras. 56, 74, 76.

- [48] With respect to the gravity of the offence, at para. 76 the Court in Friesen states:
- [76] Courts must impose sentences that are commensurate with the gravity of sexual offences against children. It is not sufficient for courts to simply state that sexual offences against children are serious. The sentence imposed must reflect the normative character of the offender's actions and the consequential harm to children and their families, caregivers, and communities (see *M. (C.A.)*, at para. 80; *R. v. Morrissey*, 2000 SCC 39, [2000] 2 S.C.R. 90, at para. 35). We thus offer some guidance on how courts should give effect to the gravity of sexual offences against children. Specifically, courts must recognize and give effect to (1) the inherent wrongfulness of these offences; (2) the potential harm to children that flows from these offences; and, (3) the actual harm that children suffer as a result of these offences. We emphasize that sexual offences against children are inherently wrongful and always put children at risk of serious harm, even as the degree of wrongfulness, the extent to which potential harm materializes, and actual harm vary from case to case.
- [49] The Court states that "[s]exual offences against children should generally be punished more severely than sexual offences against adults": Friesen at paras. 107, 117. The Court noted that Parliament has determined that sexual violence against children should be punished more severely, citing as examples s. 718.01 of the Code (where Parliament prioritized deterrence and denunciation for offences that involve the abuse of children), the statutory identification of the abuse of persons under the age of 18 and/or by persons in a position of trust or authority as aggravating factors in s. 718.2(a)(ii.1) and (iii) of the Code, and the maximum sentences for sexual interference with respect to younger victims in contrast to older victims (see ss. 151(a) and (b) and 271(a) and (b) of the Code): at para. 116.
- [50] The Court in Friesen indicates at para. 114 that "mid-single digit penitentiary terms for sexual offences against children are normal and ... upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances."
- [51] With respect to the focus on deterrence and denunciation in sentencing, the Court in Friesen states at para. 104:
- [104] Section 718.01 thus qualifies this Court's previous direction that it is for the sentencing judge to determine which sentencing objective or objectives are to be prioritized. Where Parliament has indicated which sentencing objectives are to receive priority in certain cases, the sentencing judge's discretion is thereby limited, such that it is no longer open to the judge to elevate other sentencing objectives to an equal or higher priority [citations omitted]. However, while s. 718.01 requires that deterrence and denunciation have priority, nonetheless, the sentencing judge retains discretion to accord significant weight to other factors (including rehabilitation and Gladue factors) in exercising discretion in arriving at a fit sentence, in accordance with the overall principle of proportionality [citations omitted].

- [52] Beginning at para. 121, the Court in Friesen provides guidance on the factors relevant to sentencing for sexual offences against children. While not an exhaustive list of factors to consider when determining a fit sentence for sexual offences against children, they are aimed at promoting "the uniform application of the law of sentencing": Friesen at para. 121; Williams at para. 20. In Williams, our Court of Appeal stated that the Friesen factors include:
- a) the offender's likelihood to reoffend;
  - b) the offender's abuse of a position of trust or authority;
  - c) the duration and frequency of sexual violence;
  - d) the age of the victim; and
  - e) the degree of physical interference.
- [53] A sixth factor not listed in Williams that was also considered in Friesen was the participation of the victim: Friesen at paras. 148-154.
- [54] However, the Court in Friesen clarifies that this guidance should not be viewed as a direction by the Court to disregard other relevant factors that may reduce the offender's moral culpability. At para. 91, the Court in Friesen states:
- [91] These comments should not be taken as a direction to disregard relevant factors that may reduce the offender's moral culpability. The proportionality principle requires that the punishment imposed be "just and appropriate . . . , and nothing more" (M. (C.A.), at para. 80 (emphasis deleted); see also Ipeelee, at para. 37). First, as sexual assault and sexual interference are broadly-defined offences that embrace a wide spectrum of conduct, the offender's conduct will be less morally blameworthy in some cases than in others. Second, the personal circumstances of offenders can have a mitigating effect. For instance, offenders who suffer from mental disabilities that impose serious cognitive limitations will likely have reduced moral culpability (R. v. Scofield, 2019 BCCA 3, 52 C.R. (7th) 379, at para. 64; R. v. Hood, 2018 NSCA 18, 45 C.R. (7th) 269, at para. 180).
- [55] Similarly, when dealing with Indigenous offenders, the Court in Friesen explained that the principles from Gladue and Ipeelee still apply:
- [92] Likewise, where the person before the court is Indigenous, courts must apply the principles from R. v. Gladue, [1999] 1 S.C.R. 688, and Ipeelee. The sentencing judge must apply these principles even in extremely grave cases of sexual violence against children (see Ipeelee, at paras. 84-86). The systemic and background factors that have played a role in bringing the Indigenous person before the court may have a mitigating effect on moral blameworthiness (para. 73). Similarly, a different or alternative sanction might be more effective in achieving sentencing objectives in a particular Indigenous community (para. 74).

- [56] Considering the evidence with respect to Mr. Vaux's cognitive and social capacity in this case, I am also guided by Williams, wherein Justice Abrioux, writing for the Court of Appeal, discussed how judges should consider exceptional circumstances involving mental illness. At para. 28, Abrioux J.A. cited with approval the following from R. v. Badhesa, 2019 BCCA 70:
- [42] When mental illness causes or contributes to the commission of an offence, it is a mitigating factor and a sentence may be reduced because the offender's moral culpability is attenuated. In these circumstances, general deterrence is a less weighty consideration because a mentally ill offender is not an appropriate medium for making an example to others [citations omitted]. Nor does specific deterrence or severe punishment play a significant role in the determination of a fit sentence. The former is meaningless when an offender is out of touch with reality and the latter may be disproportionate to the offender's degree of responsibility [citations omitted].
- [Emphasis added by Abrioux J.A.]
- [57] The court in Williams accepted the submission that the sentencing judge in that case had erred by not specifically considering the appellant's mental health and personal circumstances as mitigating factors and their potential contribution to the offences: at para. 30.
- [58] Further, in Williams, Abrioux J.A. then considered the impact of Friesen in this assessment, stating at para. 33:
- [33] First, as noted in Badhesa, mental health issues may reduce a sentence because the offender's moral culpability is attenuated. But this factor must be considered in light of Friesen, in particular the comments of the Court at para. 75
- [59] I am also mindful of the comments of Justice Wagner (as he then was) at para. 58 of R. v. Lacasse, 2015 SCC 64 [Lacasse], to which the Court in Friesen referred at paras. 38 and 163:
- [58] There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case.
- [60] With these legal principles in mind, I turn now to an application of the relevant legal principles to the particular circumstances of this case. In conducting my analysis, I am guided by the analytical framework established in Friesen.

## Application of the Sentencing Principles

[61] I begin with a consideration of the mitigating and aggravating factors.

### Mitigating Factors

[62] In terms of the mitigating factors, I have considered Mr. Vaux's guilty plea, which indicates his acceptance of responsibility for his actions. His guilty plea has also alleviated the need for the two young complainants to testify in court, which to some extent may provide them with comfort. His guilty plea is also a genuine demonstration of remorse and a positive step towards rehabilitation.

[63] I had the benefit of hearing from Mr. Vaux directly when he addressed the Court. While obviously nervous, Mr. Vaux spoke well and I was impressed by his sincere expression of remorse and his genuine apology to the complainants for the harm that his actions have caused both of them. He accepted full responsibility for his actions. He described himself as an "unfinished product" and expressed a willingness to engage in any treatment and counselling recommended as part of his sentence. He also expressed an enthusiasm to engage with his Métis heritage.

[64] The fact that Mr. Vaux is a first time offender without a criminal history is also a mitigating factor. It was obvious to me as he addressed the Court that Mr. Vaux has been deeply impacted by his involvement in the criminal process.

[65] I have also considered that Mr. Vaux has been compliant with all of his conditions while on bail.

[66] Additionally, as stated at para. 91 of Friesen, the personal circumstances of offenders can have a mitigating effect. The Court in Friesen at para. 91 then provided as an example of such mitigating personal circumstances that "offenders who suffer from mental disabilities that impose serious cognitive limitations will likely have reduced moral culpability", citing Scofield at para. 64. In Scofield at para. 64, Justice Harris, writing for the majority of the Court of Appeal, agreed with the following statement from R. v. J.E.D., 2018 MBCA 123 [J.E.D.]:

[75] There is no question that an offender's mental disability can be a significant mitigating factor and relevant to sentencing principles and objectives (see R v Adamo, 2013 MBQB 225 at para 68; Okemow at para 107; and R v Ford, 2017 ABQB 322 at paras 47-48). When sentencing individuals with cognitive limitations, deterrence and punishment assume less importance.

[76] This decreased emphasis on punishment and deterrence in these circumstances is consistent with the proportionality principle in section 718.1 of the Code. A sentence must be proportionate to not only the gravity of the offence, but also the degree of responsibility of the offender

[Emphasis added.]

- [67] I note as well that Harris J.A. in *Scofield* went on to say at para. 65 that the "[p]ersonal circumstances of the offender are considered separately from the seriousness of the offence; they do not lessen its seriousness. Personal circumstances, where applicable, are considered independently to determine a proportionate sentence in light of the seriousness of the offence."
- [68] I agree with Mr. Vaux's counsel that his moral culpability was significantly reduced as a result of his cognitive deficits, which Dr. Burnett described as "impaired social cognition, poor social judgment, limited social skills, and limited social competence". As I have set out above, Dr. Burnett further opined that it was probable that Mr. Vaux's significant social deficits with respect to social communication, social interaction, and social maturity may have contributed, at least in part, to his offending behaviour. While I agree with the Crown that Mr. Vaux's personal circumstances, particularly his social deficits and cognitive impairment, are in some ways distinguishable from those of the offender in *Scofield*, there are also some significant similar features. Both Mr. *Scofield* and Mr. Vaux engaged in sexual activity with young girls while they were chronologically adults, but were cognitively closer in age to the age of the victims (or even less in the case of Mr. *Scofield*). Indeed, I find that, like in *Scofield*, Mr. Vaux's particular and peculiar personal circumstances are exceptional, and I am satisfied that Mr. Vaux's cognitive and social disabilities are a mitigating factor that significantly reduce his moral blameworthiness.
- [69] Mr. Vaux is strongly supported by his committed parents and step-father. They are well aware of the many challenges Mr. Vaux faces due to his ASD and ADHD, and remain devoted to their son and determined to assist him move forward to become a contributing member of society. This includes plans for Mr. Vaux to upgrade his education and to obtain employment. As I have set out above, Ms. Joyce, Mr. Vaux's mother, expressed regret on behalf of herself, her husband, and Mr. Vaux's father for their failure to prevent these tragic events. I accept that Mr. Vaux's strong family support will aid in his rehabilitation.
- [70] Dr. Burnett's opinion is that Mr. Vaux falls within the average range of risk to re-offend sexually, being neither low, nor high. The fact that Dr. Burnett opined that Mr. Vaux's actions were "driven more by opportunity than by deviant sexual interest/disorder" satisfies me that in his particular circumstances this is a mitigating factor. I cannot agree with the Crown that Mr. Vaux's offending behaviour presents the same degree of risk as that which arose in *Williams*. As noted by Abrioux J.A. at paras. 44-45 in *Williams*, "[s]everal aspects of [Mr. Williams's] presentation made treatment challenging; his plans for managing his risk for future sexual offending were unlikely to be effective; and he minimized or lied about his sexual offending". Additionally, when Mr. Williams was charged with the count relating to the first victim in that case, one of his bail conditions was a prohibition against contact with a minor. Justice Abrioux noted that "[n]otwithstanding this condition, he continued his relationship with [the second victim]", and that the trial judge was accordingly justifiably concerned about his risk of reoffending. These concerns do not arise here.

[71] Given Mr. Vaux's Métis heritage, I must also apply the principles from Gladue and Ipeelee in determining an appropriate sentence. Although Mr. Vaux is registered with the BC Métis Nation and has never concealed his Métis heritage, it has not figured prominently in his life growing up. Mr. Vaux's mother explained to the PSR author that her mother "struggled with the intergenerational impacts of their cultural heritage", and that her family lost connection with their Métis heritage. She noted that the last few generations of her family have not resided on a reservation "to avoid being subject to the Indian Act] repercussions", and that she and her family chose not to engage further with their heritage. Mr. Vaux's mother is also adamant that her son's behaviour was a result of his ASD and not connected to his Métis heritage. However, similarly to the situation observed in Laforge, Mr. Vaux has become disconnected from his heritage and his community, "[l]ike many Indigenous people in Canada, consistent with the objective of Canada's historic assimilationist policies": Laforge at para. 86. As stated in Laforge, in crafting the appropriate sentence I must take a holistic approach to imposing a fit sentence and be mindful that the Court in Gladue and Ipeelee "has recognized that sentencing Indigenous offenders has a role to play in addressing their over-representation in the criminal justice system": Laforge at paras. 40, 42; see also Friesen at para. 92.

#### Aggravating Factors

- [72] I agree with the Crown that there are several aggravating factors that must be considered when determining a fit sentence for Mr. Vaux.
- [73] Firstly, sexual violence against children is inherently wrong. As I have discussed previously, the actions of Mr. Vaux have had a life-altering impact on these two young women, both emotionally and psychologically. As stated in Friesen, "[s]entences 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": at para. 5.
- [74] The age and vulnerability of the two victims is a statutorily aggravating factor: s. 718.2(a)(ii.1) of the Code.
- [75] I also agree with the Crown that Mr. Vaux's role and conduct in the commission of the offences is an aggravating factor. As set out by Dr. Burnett in his report, Mr. Vaux provided the victims "with at least some degree of special attention, recognition, and emotional affirmation", and "with certain opportunities and benefits (e.g., access to alcohol, access to transportation, a "hang out" venue at his residence, etc.)". As the adult, Mr. Vaux chose to engage in sexual activity with these two young victims, despite both of them stating they did not want to do so.
- [76] However, I cannot agree with the Crown that Mr. Vaux's failure to grasp the significance of the victims' expressed refusals was in no way because of a failure to understand social cues due to his ASD. When assessing Mr. Vaux's offending conduct, I must also consider Dr. Burnett's assessment of Mr. Vaux. As discussed earlier, Dr. Burnett found that Mr. Vaux's performance on psychological testing suggested that due to his ASD, Mr. Vaux is an

individual with "impaired social cognition, poor social judgment, limited social skills and limited social competence". Dr. Burnett identified that Mr. Vaux presented with a "pattern of persistent and severe deficits with respect to social communication and social interaction". Dr. Burnett opined that "deficits with respect to social-emotional reciprocity, specifically, may have contributed, at least somewhat, to the overtly coercive aspects of Mr. Vaux's offending behaviour", and that those same deficits "may also impact Mr. Vaux's understanding and appreciation with respect to sexual consent". He also opined that it was probable that the significant cognitive deficits associated with Mr. Vaux's ASD contributed, at least in part, to Mr. Vaux's offending behaviour. As stated in Friesen at para. 91, and as discussed in more detail above, "offenders who suffer from mental disabilities that impose serious cognitive limitations will likely have reduced moral culpability".

- [77] I must also consider Mr. Vaux's risk of re-offending. As discussed earlier, Dr. Burnett concluded that Mr. Vaux's level of risk for sexual reoffending was in the average range, neither low nor high. Important to the assessment of risk is Dr. Burnett's finding that Mr. Vaux's offending actions were driven more by opportunity than by deviant sexual interest/disorder. The lower the risk of re-offending, the more appropriate lower periods of imprisonment or non-custodial dispositions may be: Friesen at paras. 122-124.

## Deterrence and Denunciation

- [78] Pursuant to s. 718.01 of the Code, deterrence and denunciation are of paramount importance when dealing with sexual offences against young persons. The Court in Friesen sent a very strong message that sexual offences against children are violent crimes and should be subject to condemnation. However, at para. 104 of Friesen, the Court also recognized that "while s. 718.01 requires that deterrence and denunciation have priority, nonetheless, the sentencing judge retains discretion to accord significant weight to other factors (including rehabilitation and Gladue factors) in exercising discretion in arriving at a fit sentence, in accordance with the overall principle of proportionality".
- [79] Additionally, as I have set out above, "[w]hen sentencing individuals with cognitive limitations, deterrence and punishment assume less importance"; the "decreased emphasis on punishment and deterrence in these circumstances is consistent with the proportionality principle", as the sentence "must be proportionate to not only the gravity of the offence, but also the degree of responsibility of the offender": Scofield at para. 64, citing J.E.D. at paras. 75-76.
- [80] In this regard, I note as well the comments by Justice Brundrett at para. 40 of R. v. Campbell, 2021 BCSC 323:
- [40] The Supreme Court of Canada has held that a conditional sentence, while most useful in satisfying the principles of rehabilitation and instilling a sense of responsibility, can also provide for deterrence and denunciation: R. v. Proulx, [2001] 1 S.C.R. 61 at paras. 98-100 [Proulx]. Moreover, while the gravity of such offences is clearly relevant to determining

whether a conditional sentence is appropriate in the circumstances, the Court held that it is both unwise and unnecessary to establish judicially created presumptions that conditional sentences are inappropriate for specific offences: Proulx at para. 81.

## Rehabilitation

- [81] While deterrence and denunciation are of paramount importance because of the nature of the offences, Mr. Vaux's personal circumstances, including all of the mitigating factors, must also be considered, making rehabilitation an important objective, as well.
- [82] Mr. Vaux has expressed a genuine interest in engaging in counselling and treatment to assist him in dealing with his ASD and in becoming a contributing member of society. In furtherance of this goal, he has the unrelenting support of his parents and an opportunity to re-engage with his Métis heritage.
- [83] Given the nature of these offences, Mr. Vaux's moral blameworthiness is high, although, as I have found, it is markedly attenuated by his significant social deficits with respect to social communication, social interaction, and social maturity, which probably contributed, at least in part, to his offending behaviour.

## Parity of Sentence

- [84] As stated earlier, it is a principle of sentencing that a sentence should be similar to sentences imposed on similar offenders for similar offences in similar circumstances. Section 718.2(b) of the Code requires that I consider the principle of parity. Counsel acknowledge that an assessment of parity must be considered in light of the Court's comments in Friesen and the developments in society's understanding of the impact of sexual violence upon children. While the Court in Williams considered the principles in Friesen, the circumstances in that case were far more egregious than those here.
- [85] In Williams, the accused pleaded guilty to two counts of sexual interference. He had sexual relationships with two young girls - a 14-year old and a 15-year old - that he met online. One of the victims (M.B.) was "vulnerable and experiencing depression", and Mr. Williams was found to have "exploited [her] vulnerabilities through domineering and controlling conduct". Specifically, he viewed her as his "slave" and demanded she do what he asked of her. M.B. ended their relationship at one point, and Mr. Williams told her he would only resume the relationship if she "was obedient and his slave" and that she could not refuse his demands; she did return to him. Their relationship continued on and off for approximately two years, including after he was on bail with conditions prohibiting him to have contact with a minor. Mr. Williams's relationship with the second victim (N.D.) involved eight incidents of unprotected intercourse, and he impregnated N.D. against her will. Again, he viewed N.D. as his "slave", referring to her as such, insisting on control and obedience, and demanding she do whatever he said. He engaged in dominating sexual activity with her, including slapping and choking, and engaged in a pattern of controlling behaviour with her.

- [86] It is evident that the circumstances in Williams were far more egregious than those here. Mr. Williams engaged in "prolonged and predatory relationships, which in the case of N.D. involved him impregnating her against her wishes"; the "duration and frequency of Mr. Williams' sexual offending significantly increased the harm to his victims, which magnified the severity of the offences and increased [his] moral blameworthiness": Williams at para. 36. The sentencing judge considered, *inter alia*, that Mr. Williams conducted himself in an "overbearing, dominant and in some ways threatening [manner] toward both girls", by which he exploited their vulnerability and exacted an emotional and psychological toll on each of them", that he had encouraged N.D. to tell the police she had told him she was 16, and that he engaged in "gratuitous violence" against N.D.: Williams at para. 7 citing *R. v. Williams*, 2019 BCCA 295 at para. 40.
- [87] I agree with counsel for Mr. Vaux that this case is more similar to that of Scofield, albeit with some distinguishing features, which I have discussed in more depth above. Of course, Scofield was heard prior to Friesen, and thus I must exercise great caution in placing any reliance on it, given the comments in Friesen that prior precedents and sentencing ranges may no longer apply at paras. 108-114.
- [88] As set out above, I find the comments of Wagner J. (as he then was) at para. 58 of Lacasse instructive, and worth repeating here:
- [58] There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case.

## Disposition

- [89] I have found crafting an appropriate sentence in this case to be a particularly difficult exercise. It involves two young, vulnerable young girls whose lives are forever altered as a result of the sexual interference of their bodily integrity by Mr. Vaux.
- [90] It also involves a young man who, while chronologically an adult, lacks the maturity and cognitive and social skills of someone his age. Rather than possessing the necessary abilities to navigate in a social setting, Mr. Vaux is someone who has been plagued his entire life by significant social deficits that have impacted every aspect of his life. Due to his ASD, he has difficulty developing, maintaining, and understanding interpersonal relationships. As Dr. Burnett opined, Mr. Vaux's significant social deficits probably contributed to his offending

behaviour. While this is not an excuse for his offending behaviour, it does provide an important contextual framework.

- [91] I have also considered that due to his social deficits discussed above, Dr. Burnett identified Mr. Vaux as someone who would be somewhat vulnerable to exploitation and abuse within the correctional setting.
- [92] In determining the appropriate sentence, I am mindful of the strong message from the Court in Friesen that mid-single digit penitentiary terms for sexual offences against children are normal: at para. 114. However, I am also guided by Wagner J.'s (as he then was) observations in Lacasse that "[t]he determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation": at para. 58. I am also mindful that "the Court in Gladue and Ipeelee has recognized that sentencing Indigenous offenders has a role to play in addressing their over-representation in the criminal justice system", and that "Indigenous offenders are different from other offenders because they "are victims of systemic and direct discrimination"": Laforge at para. 40.
- [93] I am satisfied that a term of imprisonment must be imposed. However, given all of the circumstances of the offences, and given the particularly unique and exceptional circumstances of the offender that result in his moral culpability for the offences being markedly reduced, I am also satisfied that the imposition of a strict conditional sentence with appropriate terms will serve to express society's denunciation of Mr. Vaux's behaviour and to deter others from engaging in similar behaviour. As is required by s. 742.1(a) of the Code, I am satisfied that the service of the sentence in the community would not endanger the safety of the community, and that it would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718-718.2 of the Code.
- [94] More specifically, as discussed above, the paramount sentencing objectives here are denunciation and deterrence. However, as I have stated above, because of Mr. Vaux's social and cognitive limitations, those objectives here assume less importance, as the sentence must be proportionate not only to the gravity of the offence, but also to the degree of responsibility of the offender: Scofield at para. 64, citing J.E.D. at paras. 75-76. As I have found above, Mr. Vaux's moral culpability is significantly attenuated due to his social and cognitive deficits.
- [95] Additionally, as noted by Brundrett J. at para. 81 of Campbell, "while secondary, I would not lose sight of the restorative goals of repairing the harm suffered by the [complainants] and the community as a whole, promoting a sense of responsibility and acknowledgment of harm by the offender, and rehabilitating the offender".

- [96] As set out at para. 70 of Scofield, I acknowledge that a CSO "will rarely satisfy the primary sentencing objectives of deterrence and denunciation in cases involving sexual touching of vulnerable children", but agree that "there are situations in which a CSO can satisfy those principles". I find that this is a rare, exceptional case in which a CSO can satisfy the purposes and principles of sentencing.
- [97] In light of the principles expressed in Friesen, I have not come to this decision lightly or easily. However, the Court in Friesen was cautious to not establish a range of sentences or to set out "binding or inflexible quantitative guidance" for sentencing judges in these circumstances: at para. 114. Rather, the Court at para. 114 noted Justice Moldaver's comments in *R. v. D.(D.)* (2002), 58 O.R. (3d) 788 (C.A.) at para. 33 that "'judges must retain the flexibility needed to do justice in individual cases' and to individualize the sentence to the offender who is before them". I find those comments to be particularly apposite in this case.
- [98] Additionally, as I have stated above, the Court in Friesen, citing Scofield, set out that "offenders suffering from mental disabilities that impose serious cognitive limitations will likely have reduced moral culpability", and noted that, even in "extremely grave cases of sexual violence against children", courts must apply the Gladue and Ipeelee principles where the person before the court is Indigenous: at paras. 91-92. Both of these considerations apply here.
- [99] Ultimately, I must craft a sentence that "does justice" in the circumstances of this case, and in so doing, I must individualize the sentence to the particular offender before me. As I have set out above, there are various mitigating and aggravating factors in this case that I must consider.
- [100] I stress that this case, like Scofield, is a highly exceptional one. The unique and exceptional personal circumstances of Mr. Vaux do not lessen the seriousness of the offences, nor the very serious harms caused to the victims. However, I must consider the personal circumstances of Mr. Vaux in determining a fit and proportionate sentence, in light of the seriousness of the offences: Scofield at para. 65.
- [101] Mr. Vaux, please stand as I am now going to impose my sentence.
- [102] On the charge of sexual interference of H.D., contrary to s. 151 of the Code, which is count 2, I impose a sentence of 11 months.
- [103] On the charge of sexual interference of C.R., contrary to s. 151 of the Code, which is count 3, I impose a sentence of 12 months to be served consecutively to the sentence imposed on count 2.
- [104] Therefore, I sentence you to a conditional sentence of 23 months, to be followed by a probation order for 3 years.
- [105] The terms of the conditional sentence order will be as follows:

1. You will keep the peace and be of good behaviour.
2. You will appear before the court as and when required.
3. You will report by 3pm today, September 7, 2021, to a conditional sentence supervisor at Vernon, B.C. If due to the COVID-19 pandemic, you must report initially by telephone to a supervisor you are permitted to do so. Thereafter, you will report as, when, where, and in the manner directed by the supervisor.
4. You will provide your address and phone number to your supervisor and not change that address or phone number without the prior written permission of your conditional sentence supervisor.
5. During the term of your conditional sentence, you will remain in the Province of British Columbia unless you receive prior written permission from your supervisor or the court to go outside the jurisdiction.
6. You will attend, participate in, and complete any intake assessment program treatment or a full-time live-in treatment program as directed by your conditional sentence supervisor. This may include programming, counselling or treatment for (a) alcohol or drug addiction; (b) psychiatric and psychological health and (c) sexual offending.
7. You must attend for a psychiatric intake, assessment or treatment program through Forensic Psychiatric Services as directed by your conditional sentence supervisor.
8. If you are expelled or remove yourself from the treatment centre/recover home/program, you must tell your conditional sentence supervisor immediately. If your conditional sentence supervisor's office is closed, you must contact your supervisor immediately when the office opens on the next business day.
9. During the first 12 months of the conditional sentence order, you will be subject effectively to house arrest and you will remain in your home or your residence, or on the property immediately adjacent to your residence, except for the following purposes:
  - a) You will be allowed outside of your residence to attend medical or dental treatment for yourself. You must be in the immediate presence of Tikicia Joyce or Adam Joyce.
  - b) You will be allowed to attend for counselling sessions which may be required pursuant to the terms of this order or as approved of by your supervisor.
  - c) You may be away from your residence during your house arrest with the prior written permission of your conditional sentence supervisor. Such permission is to be given only for employment, education/schooling or other compelling reasons. You must carry the permission, which can be in electronic form, with you when you are outside of your residence.

- d) You must not permit anyone to visit your residence except your mother, father and step-father.
  - e) You will be allowed outside of your residence for emergency medical treatment for yourself or an immediate family member. If asked you must provide your conditional sentence supervisor proof of your attendance at a healthcare facility.
  - f) You will present yourself immediately at the door of your residence upon request of any peace officer or conditional sentence supervisor.
10. During the course of your conditional sentence order, you will carry a copy of the order on your person at all times when not in your place of residence, and you will produce it as part of proof of identification when required to provide identification by any peace officer or conditional sentence supervisor.
  11. You will complete 100 hours of community work service within the first 12 months of your conditional sentence under the direction of your conditional sentence supervisor.
  12. During the remaining 11 months of the conditional sentence order, you will be no longer subject to house arrest, but you will obey a curfew of 6:00 p.m. to 8:00 a.m. The same exceptions above will apply, except that the allowance to be outside your residence will apply between 8:00 a.m. and 6:00 p.m.
  13. You will have no contact or communication, directly or indirectly, with H.D. or C.R.
  14. You will not attend within two blocks of any place you know to be the residence, place of employment, or school of H.D. or C.R.. Further, you must not be in any place where H.D. or C.R. happen to be. If you see them, you must leave the place immediately without any words or gestures.
  15. You must not distribute, publish, post or make publicly available in any way, information, including comments and images, which refer to or depict H.D. or C.R.
  16. During the term of the conditional sentence order, you will not have in-person contact with anyone under the age of 18, unless another adult is immediately present. Incidental contact with a person under the age of 18 is not included in this condition. If you have incidental contact with someone under the age of 18, you are to immediately make your best efforts to remove yourself from the presence of the third party.
  17. You must not associate or have a relationship with anyone named by your conditional sentence supervisor if your supervisor has reasonably determined the relationship or association to be a risk to yourself or others or to be detrimental to your programming, counselling, reintegration into the community, or presents a risk to the public.
  18. You must not possess or consume alcohol, drugs or any other intoxicating substance, except with a medical prescription.

[106] Following the expiry of your conditional sentence order, you will report to a probation officer within two business days and be bound by a probation order for 3 years, and will abide by the following conditions:

1. You will keep the peace and be of good behaviour.
2. You will appear before the court when required.
3. You will report within two business days of the commencement of your probation order to a probation officer at Vernon, B.C., or other probation office to which you are directed by your conditional sentence supervisor. You may initially report by telephone for your intake appointment. Thereafter, you will report as, when, where, and how directed.
4. You will provide your address and phone number to your probation officer and not change that address or phone number without the prior permission of the court or your probation officer.
5. You will attend, participate, and complete any program or counselling that may be recommended by your probation officer. Such program or counselling may be a continuation of any program or counselling begun under your conditional sentence order.
6. You will have no contact or communication, directly or indirectly, with H.D. or C.R.
7. You will not attend within two blocks of any place you know to be the residence, place of employment, or school of H.D. or C.R. Also, you must not be in any place where H.D. or C.R. happen to be. If you see them, you must leave the place immediately without any words or gestures.
8. You must not possess or consume alcohol, drugs or any other intoxicating substance, except with a medical prescription.

[107] In addition, there will be the following ancillary orders:

1. Pursuant to s. 487.051(1) of the Code there will be a DNA order. Pursuant to s. 487.051(1), I authorize the taking of samples of bodily substances from Mr. Vaux reasonably required for the purposes of forensic DNA analysis.
2. Pursuant to s. 490.012 of the Code, there will be an order requiring Mr. Vaux to comply with the provisions of the Sex Offender Information Registration Act, S.C. 2004, c. 10 for life.

[108] I turn now to the orders sought under s. 161 of the Code. The Crown seeks orders pursuant to s. 161 to prohibit Mr. Vaux from engaging in various forms of conduct that would give him access to children under the age of 16. The defence agrees that the order should be made, but expressed some concern regarding the extent of restrictions of internet use.

[109] I am satisfied that in all of the circumstances of this case, orders of ten years' duration are appropriate and will serve to minimize the risk in this case.

[110] Pursuant to s. 161 of the Code, you are prohibited from:

- a) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground, or community centre for a period of 10 years, unless you are accompanied by another adult, who is aware of this order;
- b) being within two kilometres of any dwelling-house where H.D. or C.R. ordinarily resides for a period of 10 years;
- c) seeking, obtaining, or continuing 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, for a period of 10 years.
- d) having any contact -- including communicating by any means -- with a person who is under the age of 16 years, for a period of 10 years; and
- e) using the internet or other digital network for the purpose of communicating with a person under the age of 16 years for a period of 10 years, except in the following circumstances:
  - (i) to access the internet for the sole purpose of paying bills, banking, searching, or applying for employment, searching for books at a public library, or communicating with a government agency; or
  - (ii) for purposes directly and immediately related to your employment.

[111] Mr. Vaux, I wish you the best of luck with your rehabilitation. I hope you ponder your actions and the harm you have caused to H.D., C.R., their families and friends, and the impacts on your community. Moving forward I am certain you will consider that decisions you make in life have repercussions that can profoundly affect others. I also would remind you that a breach of your conditional sentence order will result in you spending the balance of your sentence in custody.

[112] Thank you counsel, we may adjourn.

"Devlin J."

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Prepared on 27 October 2026 · Esheria