

CANADA / JUDGMENT

R v. Walkus

2024 BCSC 1821

COURT

Supreme Court of British Columbia

DECIDED

19 September 2024

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Walkus,

2024 BCSC 1821

Date: 20240919

Docket: 44055

Registry: Campbell River

Rex

v.

Ronald David Louie Walkus

also known as Ronnie Davie Walkus

Restriction on Publication: Pursuant to 486.4(1) C.C.C.

Before: The Honourable Mr. Justice Brongers

Oral Reasons for Sentence

Counsel for the Crown:

B. Ward

J.D.M. Petty

(September 19, 2024)

Counsel for the Accused:

T.L. Spettigue

Place and Date of Hearing:

Nanaimo, B.C.

August 23, 2024

Place and Date of Judgment:

Nanaimo, B.C.

September 19, 2024

THE COURT (by videoconference):

I. Introduction

- [1] On February 9, 2024, Ronald Walkus was found guilty of breaking and entering and committing sexual assault of D.W., contrary to ss. 348(1)(b) and 271 of the Criminal Code, R.S.C. 1985, c. C-46 (the "Code"). The incident that gave rise to the two charges took place during the night of October 20, 2021, at D.W.'s apartment in Port Hardy.
- [2] Sentencing submissions were presented by the Crown and the defence on August 23, 2024. They agree that custodial sentences, served concurrently, would be appropriate for each count. They disagree on the duration. The Crown proposes six to eight years. The defence suggests four to five and a half years.
- [3] I have considered the submissions and the material in the court's record. My sentencing decision is as follows.

II. The Facts

Circumstances of the Offence

- [4] Mr. Walkus was convicted by a jury. For the purposes of sentencing, s. 724(a) of the Code requires me to accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty. Section 724(b) of the Code permits me to find any other relevant fact that was disclosed by evidence at the trial to have been proven.
- [5] In *R. v. Ward*, 2009 BCCA 409, at paragraphs 11 to 14, our Court of Appeal set out the guiding principles for applying s. 724, as drawn from the Supreme Court of Canada's decision in *R. v. Ferguson*, 2008 SCC 6. In particular, the sentencing judge:
 - a) must not make findings inconsistent with the jury's verdict;
 - b) does not have to find the facts most favourable to the accused; and
 - c) should find only sufficient facts in order to impose sentence, and not attempt to set out a complete theory of the facts.

- [6] Furthermore, when the factual implications of the jury's verdict are ambiguous, the sentencing judge should not try to follow the logical process of the jury. Instead, the judge should come to an independent determination of the relevant facts. Before relying on these facts for sentencing purposes, however, the judge must be satisfied that they were proven on a balance of probabilities, unless it is an aggravating fact, in which case the standard of proof is that of beyond a reasonable doubt: Ferguson at paragraph 15.
- [7] In the case at bar, the only direct evidence of the incident was provided by D.W. herself. Based on this evidence, I find that the jury must have accepted as proven the following facts regarding the circumstances of the offences of breaking and entering and sexual assault.
- [8] On October 20, 2021, D.W. was at her apartment in Port Hardy. In the late evening, Mr. Walkus came to her front door. Mr. Walkus knocked on the door and D.W. opened it. D.W. told Mr. Walkus that he was not welcome in her apartment and should leave. Mr. Walkus nevertheless forced open the door and entered D.W.'s apartment without her permission. While inside the apartment, Mr. Walkus also forced sexual intercourse upon D.W. without her consent.
- [9] Counsel for the Crown further submits that, pursuant to s. 724(b) of the Code, the court should accept that the following facts were proven by the evidence at trial:
- a) Mr. Walkus went to D.W.'s apartment at around 11:00 p.m. on October 20, 2021.
 - b) When Mr. Walkus arrived at D.W.'s apartment, he knocked, and said "It's Ronnie," when she asked who it was.
 - c) D.W. had heard of Mr. Walkus but did not know him personally.
 - d) After Mr. Walkus entered D.W.'s apartment, he forced her into her bedroom.
 - e) D.W. struggled and yelled for help.
 - f) Mr. Walkus removed D.W.'s clothing and pinned her onto her bed.
 - g) The sexual intercourse lasted approximately half an hour.
 - h) Mr. Walkus left D.W.'s apartment after she said she was calling the police.
 - i) D.W. contacted the Port Hardy RCMP, who arrived at around 12:20 to 12:25 a.m. on October 21, 2021.
 - j) The police did not find Mr. Walkus on scene.
 - k) D.W. subsequently attended the Port McNeill Hospital, where she underwent a forensic examination by a Sexual Assault Nurse Examiner.
 - l) Mr. Walkus' DNA was recovered from D.W.'s vagina. The likely source of his DNA was sperm.

- [10] I agree with the Crown that all of these facts were proven by the evidence that was before the court. It should also be noted that counsel for Mr. Walkus made no assertion to the contrary.
- [11] However, counsel for Mr. Walkus did urge the court to find that five other facts were also proven, namely:
- a) D.W. and Mr. Walkus were acquainted with each other prior to the offences, and were in an intimate relationship.
 - b) Mr. Walkus was regularly using alcohol and crack cocaine during the months preceding and post-dating the offences, often resulting in blackouts where he would have no memory of what had occurred.
 - c) Mr. Walkus was not advised by police of these allegations until the spring of 2022, when police found him passed out in the pouring rain due to excessive alcohol consumption.
 - d) Mr. Walkus has no memory of these allegations happening, but accepts that he entered D.W.'s apartment without her permission and sexually assaulted her. He believes this would have occurred during a blackout caused by voluntary excessive consumption of alcohol and/or crack cocaine.
 - e) Along with accepting the jury's verdict, Mr. Walkus is remorseful and apologetic to [sic] any hurt his actions have caused D.W. and the wider community.
- [12] I will discuss Mr. Walkus' remorse for what occurred later in my reasons. With respect to the first four assertions, however, I do not accept that any of them have been proven for sentencing purposes.
- [13] I begin with counsel for Mr. Walkus' assertion that his client and D.W. knew each other and were in an intimate relationship prior to the offences. This is wholly contrary to D.W.'s trial testimony that she did not know Mr. Walkus personally. Furthermore, Mr. Walkus did not testify himself or call any other evidence. I therefore cannot, on a balance of probabilities, find that there was a prior relationship between D.W. and Mr. Walkus as alleged by his counsel.
- [14] I turn now to the remaining three assertions. They relate to the extent of Mr. Walkus' recollection of the offences. However, no evidence was presented at trial about Mr. Walkus' use of intoxicating substances, the circumstances in which the police informed Mr. Walkus of the charges against him, or the quality of Mr. Walkus' memory.
- [15] At the sentencing hearing, counsel for the Crown objected to counsel for Mr. Walkus' assertions on the basis that they are unsupported and disputed. Counsel for the Crown suggested that if they were going to be entertained, this should only be done further to a Gardiner hearing under s. 724(3) of the Code.

- [16] I agreed with the Crown's position. I indicated that I was prepared to hold a Gardiner hearing, and to adjourn the proceedings if necessary. However, after consulting with his client, counsel for Mr. Walkus declined this proposal and withdrew all three of the assertions the Crown had objected to. I therefore do not find, for the purposes of sentencing, that Mr. Walkus' memory of the circumstances of the offence was affected by intoxicants.

Impact on the Victim

- [17] In addition to D.W.'s testimony at trial regarding the sexual assault and the break and enter perpetrated upon her by Mr. Walkus, the court had the benefit of D.W.'s handwritten victim impact statement which was presented at the sentencing hearing.
- [18] While brief, D.W.'s statement is poignant. D.W. says she is always scared when out in public. She fears that Mr. Walkus might come to her work or to her place, which makes her fear for her safety as well as that of her son. She now feels the need to ask who is at the door before opening it. While the incident has not left any ongoing physical impacts, D.W. still struggles with anxiety and panic. She has undergone counselling to deal with these issues.

Circumstances of the Offender

- [19] At the sentencing hearing, information regarding Mr. Walkus' circumstances was provided through counsel submissions and various documents. The latter includes a pre-sentence report, documentation regarding Mr. Walkus' previous convictions, and a Gladue report.
- [20] Mr. Walkus is now 40 years old. He was 37 at the time of the offence.
- [21] He was born in and spent most of his life around Port Hardy, although he has also lived in Campbell River, Courtenay, and the Lower Mainland of British Columbia. He is a member of the Gwa'sala-'Nakwaxda'xw First Nations, and has lived on the Tsulquate Reserve. Mr. Walkus is currently detained at Vancouver Island Regional Correctional Centre ("VIRCC") and has been there since his arrest on May 30, 2023.
- [22] Mr. Walkus had a very difficult childhood. He was born with fetal alcohol spectrum disorder ("FASD"), and was raised in a household plagued by alcoholism, poverty, abuse, and neglect. Due to issues in his family home, Mr. Walkus and his siblings were placed in and out of foster care from an early age and well into their teenage years. While growing up, he experienced physical and sexual abuse personally and witnessed family violence by his father and uncles towards their spouses.
- [23] Mr. Walkus has a Grade 10 education. At the time of his arrest, he had been working as a cook for one year at a fast food restaurant in Port Hardy. His previous employment history was minimal and sporadic, involving odd jobs, working in the fishing industry, and doing construction jobs with his father.

- [24] Mr. Walkus had two long-term romantic relationships, one lasting three years and the other lasting five years, as well as others of a shorter duration with other partners. Some of these relationships involved intimate partner violence.
- [25] Mr. Walkus is the father of twins born in 2014. He separated from their mother shortly after their birth. It appears that Mr. Walkus has not had much contact with his children, although he would like to be more involved in their lives.
- [26] Mr. Walkus has struggled with serious alcohol addiction his entire adult life, along with chronic marijuana and periods of heavy crack cocaine use. While he has achieved sobriety while in detention, he admits that he will likely revert to substance use immediately if there is a lag between his release from jail and treatment.
- [27] Mr. Walkus' criminal record is particularly extensive and dates back to when he was 19 years old. His record contains 63 convictions since 2002. With only a few exceptions, Mr. Walkus was convicted of at least one offence every year over this 22-year period. The convictions relate to a wide variety of offences, including:
- a) administration of justice offences (e.g., breaching probation, breaching release documents, breaching court orders, failing to attend court, and obstruction);
 - b) property-related offences (e.g., theft, fraud, and possession of stolen property);
 - c) drug-related offences;
 - d) breaking and entering offences;
 - e) violent offences (e.g., assault, assault causing bodily harm, and uttering threats); and
 - f) sexual offences (e.g., sexual assault, sexual interference, and committing an indecent act in a public place).
- [28] This large number of convictions notwithstanding, the sentences imposed on Mr. Walkus have been relatively short. None of them have exceeded one year in duration.
- [29] Mr. Walkus' most recent conviction prior to the present one occurred on August 9, 2023. It was for another sexual assault involving another victim, S.H., that occurred on July 7, 2021, just three and a half months prior to the sexual assault of D.W. Mr. Walkus' May 30, 2023 arrest was effected in relation to both matters.
- [30] The Provincial Court sentenced Mr. Walkus to nine months imprisonment for the sexual assault of S.H. on February 13, 2024. The summary conviction was the subject of an appeal to this court which was dismissed just a few weeks ago in a decision indexed at R. v. Walkus, 2024 BCSC 1497.

[31] At the sentencing in this matter, Mr. Walkus was given an opportunity to address the court directly. He expressed remorse towards D.W. specifically, and apologized generally for his actions which have necessitated these proceedings. Mr. Walkus said he wants to be a better father to his twins and a better relative to the rest of his family. He recognizes that he needs to better himself so that he does not find himself back in "the system" after his eventual release from prison.

III. Principles of Sentencing

[32] The essential principles to be considered by the court in sentencing are set out in ss. 718 to 718.2 of the Code.

[33] 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 . . .

[34] This is done by reference to six objectives. They are:

- 1) denunciation of unlawful conduct;
- 2) deterrence of the offender and other persons from committing offences;
- 3) separation of offenders from society, where necessary;
- 4) assistance in the rehabilitation of offenders;
- 5) provision for reparations for harm done to victims or to the community; and
- 6) promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims or to the community.

[35] Pursuant to s. 718.1, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[36] Section 718.2 describes a number of specific principles to be considered in sentencing, including that the sentence should account for any relevant aggravating or mitigating circumstances. Of particular note in this case are subsections 718.2(b) and (e) of the Code. The former provides that sentences should be similar to those imposed on similar offenders committed in similar circumstances. The latter provides that all available sanctions, other than imprisonment, that are reasonable and consistent with the harm done should be considered for all offenders, with particular attention to the circumstances of Indigenous offenders.

[37] Because this case involved a home invasion, s. 348.1 applies to require the sentencing judge to consider this to be an aggravating circumstance, as follows:

348.1 If a person is convicted of an offence under section 98 or 98.1, subsection 279(2) or section 343, 346 or 348 in relation to a dwelling-house, the court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence,

- (a) knew that or was reckless as to whether the dwelling-house was occupied; and
- (b) used violence or threats of violence to a person or property.

[38] Section 718.04 is also relevant here because Mr. Walkus inflicted abuse upon D.W., a person who is vulnerable because of personal circumstances that include her Indigenous heritage and female gender. Accordingly, the court must give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

[39] As has already been noted, Mr. Walkus is Indigenous too. Therefore, the specific factors identified by the Supreme Court in *R. v. Gladue*, [1999] 1 S.C.R. 688, and *R. v. Ipeelee*, 2012 SCC 13, must be taken into account as well.

[40] They include consideration of the intergenerational and contemporary impacts of such matters as colonialism, displacement, and residential schools on Indigenous people and communities, and how that history continues to affect Indigenous peoples today: *Gladue* at paragraph 60. In particular, the court must consider: (a) the unique, systemic, or background factors which may have played a part in bringing the particular offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Indigenous heritage or connection: *Gladue* at paragraph 66.

[41] Furthermore, *Ipeelee* cautioned sentencing judges not to require an Indigenous offender to establish a causal link between background *Gladue* factors and the commission of the offence before being entitled to have those factors considered. However, the factors must be tied in some way to the particular offender and the offence. Unless the unique circumstances of the particular offender bear on his or her culpability for the offence or indicate which sentencing objectives can and should be actualized, they will not influence the ultimate sentence: *Ipeelee* at paragraphs 80 to 83.

[42] Of course, none of the *Gladue* or *Ipeelee* principles will necessarily lead to a reduced or a non-custodial sentence for Indigenous offenders. In *R. v. Wells*, 2000 SCC 10 at paragraph 44, Justice Iacobucci of the Supreme Court of Canada noted:

44 Let me emphasize that s. 718.2(e) requires a different methodology for assessing a fit sentence for an aboriginal offender; it does not mandate, necessarily, a different result. Section 718.2(e) does not alter the fundamental duty of the sentencing judge to impose a sentence that is fit for the offence and the offender. Furthermore, in *Gladue*, as mentioned the Court stressed that the application of s. 718.2(e) does not mean that aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice and less weight to goals such as deterrence, denunciation, and separation (at para. 78). As a result, it will generally

be the case, as a practical matter, that particularly violent and serious offences will result in imprisonment for aboriginal offenders as often as for non-aboriginal offenders (Gladue, at para. 33). Accordingly, I conclude that it was open to the trial judge to give primacy to the principles of denunciation and deterrence in this case on the basis that the crime involved was a serious one.

[Emphasis in original]

[43] Ultimately "the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a 'just and appropriate' sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender": R. v. M. (C.A.), [1996] 1 S.C.R. 500.

IV. Position of the Crown

[44] Counsel for the Crown takes the position that the duration of Mr. Walkus' custodial sentence should be from six to eight years for each of the two counts for which he was convicted: (1) breaking and entering and committing sexual assault; and (2) sexual assault simpliciter. The Crown says that the two sentences should be served concurrently.

[45] In addition, the Crown submits that there are four aggravating factors in this case, namely:

- a) Mr. Walkus' lengthy and significant criminal record that includes violent offences, break and enter offences, and sexual offences;
- b) the vulnerability of D.W., the victim of Mr. Walkus' crimes;
- c) Mr. Walkus' knowledge that D.W.'s home was occupied and his commission of a violent act against her in the home, as per s. 348.1 of the Code; and
- d) the significant negative impact that Mr. Walkus' actions have had on D.W.

[46] The Crown says that the only mitigating factor in this case is Mr. Walkus' personal history that discloses the presence of Gladue factors that bear on his overall moral culpability.

V. Position of the Defence

[47] Counsel for the defence does not dispute the existence of the four aggravating factors cited by the Crown and agrees that Mr. Walkus' personal history must be taken into account as a mitigating factor in accordance with Gladue.

[48] Counsel for the defence also says that there are five additional mitigating factors in this case. They are Mr. Walkus':

- a) FASD condition;
- b) intoxication at the time of the offences;
- c) acceptance of and remorse for having committed the offences;

- d) engagement with programming at the VIRCC; and
- e) period of pro-social living prior to his May 2023 arrest.

[49] Accordingly, counsel for the defence urges the court to sentence Mr. Walkus to a custodial sentence of between four years and five and a half years for each count on which he was convicted, to be served concurrently.

VI. Analysis

[50] The maximum sentence for breaking and entering a dwelling house and committing a sexual assault in that house is life imprisonment. For sexual assault simpliciter it is 10 years imprisonment.

[51] The decision of this court in *R. v. England*, 2022 BCSC 919 at paras. 45, 62 to 70, and 85, contains a thorough and helpful review of the accepted sentencing range for an offender convicted of breaking and entering and committing sexual assault. That range is between five and 10 years' imprisonment. This is considerably longer than the accepted range for cases of sexual assault simpliciter involving sexual intercourse, which is two to six years imprisonment: *R. v. G.M.*, 2015 BCCA 165 at paragraph 22.

[52] The reason for this is because the trauma of unwanted sexual contact is compounded when it occurs following a home invasion in the sanctity of one's residence. When the victim is female, this notion can be expressed as "a woman's home is her castle." This was noted by Justice Saunders of our Court of Appeal in *R. v. Meigs*, 2007 BCCA 394 at paragraph 25:

[25] This case has four features that I consider particularly grave. First, it involved the breaking and entering into two homes, the basement suite of T.S. and the residence above it of J.'s. In her submissions Ms. Duncan quoted that a woman's home is her castle. This is a paraphrase from the 6th century "One's home is the safest refuge to everyone", famously rephrased by Sir Edward Coke as "a man's house is his castle" and then restated in *Semayne's Case* (1604), [1558 -1774] All E.R. Rep. 62 (K.B.): "The house of everyone is to him as his castle and fortress, as well for his defence against injury and violence as for his repose." In a crowded world the sanctuary of the home is even more important. In other words, it is a grave offence to enter another person's home without permission, and graver to enter the home and violate the occupant. The courts must and do impose stern sanctions for such crimes.

[53] I therefore will proceed on the basis that the appropriate sentencing range for the crime of breaking and entering into someone's home and then sexually assaulting them is between five and 10 years. However, I acknowledge that this range is merely a guideline and that I must ensure that a proportionate sentence be given that reflects not just the gravity of the offence, but also the moral blameworthiness of the offender: *R. v. Slizak*, 2017 BCCA 279 at paragraph 18.

[54] Counsel for the Crown and the defence cited several sentencing cases involving charges of break and enter and sexual assault. Not surprisingly, none involved circumstances identical to those in the case at bar. That said, I found five of them to be of assistance, which I will discuss in reverse chronological order.

R. v. Barr, [1984] B.C.J. No. 2076 (CA) - eight-year sentence imposed

[55] The 24-year-old offender broke into the home of a victim, who was a single parent living with her twin boys who were five and a half years old. He threatened to kill the victim with a knife unless she complied with his demand for sexual intercourse, which she did. The offender had a criminal record, including breaking and entering. However, the offender did plead guilty to the offence prior to trial.

R. v. Lund, 2006 BCSC 917 - eight-year sentence imposed

[56] The 40-year-old cocaine-addicted offender knocked on the front door of the victim's duplex looking for the victim's roommate because he felt the roommate owed him money. He was armed with a knife. The offender forced the duplex door open and searched for the roommate. She was not there. The offender then forced the victim to undress, perform oral sex on him, and submit to sexual intercourse. She used a ruse to escape. The offender had one previous conviction, for manslaughter, which occurred 21 years earlier. While he denied committing the offence and expressed no remorse, the offender had the support of his family, including his marital partner, to aid with his rehabilitation.

R. v. Parsons, 2010 BCCA 377 - five-year sentence imposed

[57] The 40-year-old offender broke down the door of the house of the victim, knowing that her partner was not there. The offender had been in a relationship with the victim previously. He sexually assaulted the victim after having threatened to kill her cat unless she complied. He denied committing the offence but was not believed. His criminal record involved just one conviction for an assault that took place over 20 years earlier. He had the support of his mother and stepfather, and it did not appear that there was any likelihood of a repetition of the offence.

c - four-year sentence imposed

[58] The 32-year-old offender threw a rock through a window of the home of his victim, a seven-year-old girl, while his mother was absent. The offender licked the girl's vagina and placed his penis against her without penetration. The offender's criminal record included two prior sexual assaults involving adult females. At the same time he was convicted of this offence against the child, the offender was also convicted of sexually assaulting the child's mother on another occasion by touching her sexually on the exterior of her clothing. An additional six months was added to the sentence for the offence against the mother. Mitigating factors included the offender's guilty plea, Gladue considerations, his work

towards achieving sobriety, and his attendance at programs while in custody.

R. v. England, 2022 BCSC 919 - seven-year sentence imposed

- [59] The 42-year-old offender broke into the home of his former romantic partner by climbing through a window over her objection. He then forced sexual intercourse upon the victim, during which he choked and threatened to come back and kill her if she went to the police. The offender had a number of prior convictions for matters that included assault and property crimes, but not sexual offences. While his record dated back approximately 30 years, there were also three substantial gaps within this period. The court accepted that mitigating factors included the offender's commitment to recovery from his past alcohol abuse, his tumultuous upbringing, his supportive new intimate relationship, and compliance with his most recent release order.
- [60] Turning to the case at bar, I agree with counsel for the Crown that all of the aggravating factors he identified are present here.
- [61] The most significant are those that relate to the circumstances of the offences. Mr. Walkus deliberately came to D.W.'s apartment. He knew that she did not want him to come inside. He did so anyways, for the sole purpose of obtaining sexual gratification. He forced himself on D.W. in her home where she was entitled to feel safe and secure. D.W. was already vulnerable, and she now feels even more so as a result of Mr. Walkus' actions. Mr. Walkus' conduct must be denounced in the strongest terms, and he must be deterred from engaging in such abhorrent behaviour in the future.
- [62] Mr. Walkus' very extensive and continuous criminal history is also troubling. It is apparent from the frequency and recurring nature of his convictions that the relatively short custodial sentences that he has received to date have not dissuaded him from committing additional crimes.
- [63] With respect to mitigating factors, I accept the conclusions set out in the Gladue report that the factors that are present in the concentric circles of Mr. Walkus's community, family, and personal life include the following:
- (a) Intergenerational impacts of colonialism and displacement
- [64] Mr. Walkus and his family are members of the Gwa'sala-'Nakwaxda'xw Nations who were forcibly displaced to the Tsulquate Reserve, where living conditions were deplorable and most community members lived in abject poverty.
- (b) Physical, sexual, and institutional abuse
- [65] Mr. Walkus' father was physically and sexually abused at St. Michael's Indian Residential School. Mr. Walkus himself was sexually abused by two different family members and was spanked throughout his childhood.

(c) Loss of parenting skills and familial composition

[66] The parenting abilities of Mr. Walkus' parents were impacted by attendance at Indian Residential School.

(d) Normalization of violence and neglect

[67] Mr. Walkus witnessed violence in many adult relationships as a child, and experienced verbal and physical violence in his foster care homes.

(e) Substance abuse addiction and mental health issues

[68] Mr. Walkus' grandfather and his parents struggled with alcohol use and exposed Mr. Walkus to heavy drinking in his childhood. Mr. Walkus and his siblings have also struggled with addiction to intoxicants. Mr. Walkus began drinking and smoking marijuana in his teens to cope with his childhood trauma, and has been addicted to alcohol and crack cocaine as an adult.

(f) High rates of unemployment and poverty

[69] The Tsulquate Reserve to which the Walkus family was relocated had very poor infrastructure and the family lived in poverty.

(g) Low levels of educational attainment

[70] Mr. Walkus did not attend school past Grade 10.

(h) Loneliness, abandonment, and dislocation from culture, community, and family

[71] The Gwa'sala-'Nakwaxda'xw Nations were disconnected from their land, traditional practices, and knowledge when they were forcibly amalgamated and relocated to the Tsulquate Reserve. Mr. Walkus became disconnected from his culture and community as he got older, in part because he spent most of his childhood in non-Indigenous foster care homes.

(i) Forced attendance at Indian residential school and impacts of the Sixties Scoop

[72] Mr. Walkus' father, paternal aunts and uncles, and paternal grandparents all attended St. Michael's Indian Residential School. Mr. Walkus' father and six of his siblings were apprehended into foster care during the Sixties Scoop.

(j) Over-representation of Indigenous peoples in the child welfare and criminal justice system

[73] Mr. Walkus, his father, and his children have all been involved in the child welfare system. Mr. Walkus has a long history of involvement with the criminal justice system since he was 19.

(k) FASD and other related ailments

- [74] Mr. Walkus has been diagnosed with FASD, which afflicts five other children of Mr. Walkus' father as well.
- [75] I also accept that Mr. Walkus' direct expression to the court of regret and remorse for his actions and their impact on D.W. and the greater community is a mitigating factor. However, his apology does not carry the same weight as it would have if it had been delivered following a guilty plea that would have spared D.W. the further trauma of testifying about her ordeal before a jury.
- [76] In addition, I recognize that Mr. Walkus has followed some programming at VIRCC and received a somewhat positive assessment from his former employer for the work he was doing prior to his arrest. As noted by his counsel, these are indicators of Mr. Walkus' desire to pursue a more pro-social life. On the other hand, as discussed previously, there is no evidence that Mr. Walkus was intoxicated at the time of the offences, and I reject counsel for Mr. Walkus' request this be considered as a mitigating factor.
- [77] Because of the mitigating factors that are present, particularly those identified in Mr. Walkus' Gladue report, I have given consideration to whether a non-custodial sentence such as a conditional sentencing order (CSO) might be appropriate, even though this was not suggested by either counsel for Mr. Walkus or counsel for the Crown. However, as was recently reiterated by our Court of Appeal in *R. v. Maslehati*, 2024 BCCA 207, it is only in the rarest of cases that a CSO will be appropriate following a conviction for sexual assault with aggravating circumstances. This is not one of those exceptional cases.
- [78] Instead, I will account for Mr. Walkus' mitigating factors when considering where the length of his custodial sentence should fall within the applicable five to 10-year range.
- [79] All that said, I am required by s. 718.04 of the Code to give primary consideration to the objectives of denunciation and deterrence given that the victim of Mr. Walkus' conduct, D.W., is a vulnerable person. There can be no doubt that Mr. Walkus' traumatic invasion of D.W.'s home and aggressive sexual assault of D.W. inside that home must be denounced in no uncertain terms. Mr. Walkus and others who could conceivably consider engaging in such reprehensible conduct must be deterred from doing so.
- [80] In addition, as was acknowledged by counsel for Mr. Walkus, there is some risk of recidivism in his case that must be addressed. I so find because Mr. Walkus was convicted of sexually assaulting another victim just a few months before he sexually assaulted D.W. In my view, this requires Mr. Walkus to be separated from society for a time, and that rehabilitative assistance be provided within a custodial setting. This, I understand, will likely be facilitated by Correctional Services.
- [81] In sum, weighing all of the aggravating and mitigating factors just discussed, I find that a fit and just sentence for Mr. Walkus is a custodial one with a duration of six years.

VII. Sentence

- [82] Mr. Walkus, will you please stand.
- [83] I sentence you to imprisonment for a period of six years.
- [84] You will receive credit for 449 days towards this sentence, which is approximately one year and three months. This is because you have been in custody since your May 30, 2023, arrest, a period of 479 days. You have been given credit for 180 of those days that has already been applied to your Provincial Court sentence for having sexually assaulted S.H. That leaves 299 days in custody for which you will be credited at a rate of 1.5 to one, amounting to 449 days. What this means is that once your pre-sentence credit is factored in, the remaining balance of the sentence you must serve will be approximately four years and nine months.
- [85] In addition, I make three ancillary orders.
- [86] First, you must comply with the Sex Offender Information Registration Act, S.C. 2004, c. 10, for the rest of your life. This follows from ss. 490.012(1) and 490.013(2.1) of the Code, because you have been convicted of offences designated under s. 490.011 of the Code.
- [87] Second, you are prohibited from possessing firearms, cross-bows, restricted weapons, ammunition, and explosive substances in accordance with s. 109 of the Code. This is a lifetime prohibition. It is justified because you have been convicted of an offence involving the use of violence for which a sentence of imprisonment of over 10 years may be issued.
- [88] Third, you will be required to provide a DNA sample in accordance with s. 487.051(3) of the Code, as I am satisfied that it is in the best interests of justice that you do so, given the nature of your offence, your criminal record and the impact this will have on your privacy and security of the person.
- [89] Mr. Walkus, you may be seated now.
- [90] THE ACCUSED: Thank you.
- [91] THE COURT: That concludes my reasons for sentence. Unless there are any other matters, we are adjourned. Counsel? Mr. Petty?
- [92] CNSL J. PETTY: No, I don't think so, My Lord, other than just to clarify that the sentence is on both counts, concurrent one to the other, is that my understanding?
- [93] THE COURT: Yes, I should have mentioned that. Yes, they are concurrent --
- [94] CNSL J. PETTY: Thank you.
- [95] THE COURT: -- and with respect to both offences. Mr. Spettigue?
- [96] CNSL T. SPETTIGUE: And Justice, just the victim fine surcharge, given he will be in custody, I am hopeful that can be waived.
- [97] THE COURT: What is your position on that, Mr. Petty?

- [98] CNSL J. PETTY: The Crown's not opposed to that, My Lord.
- [99] THE COURT: The victim surcharge will be so waived, as requested.
- [100] CNSL T. SPETTIGUE: Many thanks, Justice.
- [101] THE COURT: Anything else?
- [102] THE CLERK: Mr. Justice, I just wanted to clarify for the warrant of committal, is it to reflect his new time as four months -- or four years and nine months?
- [103] THE COURT: The exact math, I do not have. So it would be -- do you have that, Mr. Spettigue? You prepared a very helpful statement.
- [104] CNSL T. SPETTIGUE: Well, I think -- all I have is the time in custody already, Justice, so I think it would just be the number of days, which is -- which is six years, subtracted the 449.
- [105] THE COURT: Yes, so I suppose we could do six times 365 minus 449. Let's see if I have a calculator -- one moment. 365 times six is 2,190 days, minus 449, means a total sentence of 1,741 days.
- [106] THE CLERK: Thank you, Mr. Justice, and it was a DNA secondary designated?
- [107] THE COURT: I am sorry?
- [108] THE CLERK: Was the DNA secondary or mandatory?
- [109] THE COURT: No, it is mandatory.
- [110] THE CLERK: Okay, thank you.
- [111] THE COURT: Thank you. Anything else, Registrar, no?
- [112] THE CLERK: No, Mr. Justice, thank you.
- [113] THE COURT: Thank you again, everyone, and best of luck to you, Mr. Walkus. We are adjourned.
- [114] THE ACCUSED: Thank you.
- [115] CNSL J. PETTY: Thank you.
- [116] CNSL T. SPETTIGUE: Thank you.

"Brongers J."

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