PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Simpson*, 2017 NSPC 25

Date: 2017-05-23
Docket: 2713670
Registry: Dartmouth

Between:

Her Majesty the Queen

v.

Paul Simpson

Restriction on Publication: Any information that could identify the complainants in this matter shall not be published in any document or broadcast or transmitted in any way.

Judge:	The Honourable Judge Theodore Tax,
Heard:	October 6, 2015; October 8, 2015; October 30, 2015; June 21, 2016; June 22, 2016; June 23, 2016; January 16, 2017; January 17, 2017; February 27, 2017; May 10, 2017 in Dartmouth, Nova Scotia
Decision on Sentence	May 23, 2017
Charge:	Section 271(1) of the **Criminal Code**
Counsel:	William Mathers, for the Nova Scotia Public Prosecution Service Laura McCarthy, & Luke Craggs for Paul Simpson

NOTICE OF BAN ON PUBLICATION

Name of Case: R. v. Paul Simpson

Case No.: 2713670

By Order of: The Honourable Judge Theodore Tax

Date: April 23, 2014

Court Reporter or Clerk: Erin Stark

A Ban on Publication of the contents of this file has been placed subject to the following conditions:

☑ Section 486.4 & 486.5: Bans ordered under these Sections direct that any information that will identify the complainant, victim or witness shall not be published in any document or broadcast or transmitted in any way. **No end date for the Ban stipulated in these Sections.**

Reporting of this proceeding in any manner that would identify the name of any individual whose name is covered by the Ban is strictly prohibited without leave of the court. The intent of the foregoing is to protect the welfare of any children or victims referred to in the proceeding and/or avoid prejudice to any persons facing criminal charges

By the Court:

INTRODUCTION:

[1] Mr. Paul Simpson was convicted of a sexual assault contrary to Section 271(1) of the **Criminal Code** of Ms. A. L., whom I will refer throughout this decision because of the Ban on Publication, as Ms. AL, following a trial. The Crown proceeded by indictment on the charge before the court.

[2] Since the Crown proceeded by indictment, the maximum sentence that Mr. Simpson is facing on the sentencing hearing is a term of imprisonment not exceeding 10 years. As a result, by virtue of Section 742.1(f)(iii) of the **Criminal Code**, the imposition of a Conditional Sentence Order of imprisonment in the community is not one of the available sentencing options for the Court to consider.

[3] The issue before the Court is to determine a just and appropriate sanction taking into account all purposes and principles of sentencing found in Sections 718-718.2 of the **Criminal Code**.

POSITIONS OF THE PARTIES:

[4] It is the position of the Crown Attorney that the fit and appropriate sentence, taking into account the aggravating and mitigating factors and the purpose and

principles of sentencing, which ought to stress specific and general deterrence as well as denunciation of the unlawful conduct is a sentence of three years in custody in a federal penitentiary. The Crown Attorney also seeks ancillary orders pursuant to Section 487.4 of the **Criminal Code** for a DNA sample to be provided as a this is primary designated offence, as well as a 20-year SOIRA order.

[5] Defence Counsel acknowledges that a Conditional Sentence Order of imprisonment in the community is not an available option, but submits that a just and appropriate sentence in the circumstances of the offence and this offender would be a sentence in the range of 15-18 months of imprisonment in a provincial correctional center. Defence Counsel submits that the Court's decision did not include any findings of gratuitous or physical violence, such as choking the victim to overcome resistance, and therefore, the just and appropriate sanction should be at the lower end of the range, given the positive nature of the Pre-Sentence Report.

CIRCUMSTANCES OF THE OFFENCE:

[6] The Court delivered its decision in this trial, which found Mr. Simpson guilty of the charge before the Court on February 27, 2017. The full details of the circumstances of the offence, the findings of fact and reasons were outlined in that decision. However, for the purposes of outlining the circumstances of the offence

for this sentencing hearing, the Court will provide this brief overview of the trial decision.

[7] Mr. Simpson and Ms. AL met during an exchange of Facebook messages in late December, 2013, which invited people to attend a New Year's Eve party at Mr. Simpson's house. Ms. AL did not know Mr. Simpson prior to receiving this message from him, but in late December, 2013, she decided to go on a date with him. Although they had different impressions as to how this first date went, Mr. Simpson and Ms. AL agreed that she consensually performed oral sex on him that evening.

[8] Ms. AL did not hear from Mr. Simpson until February 23, 2014 when he called to see if she wanted to go out for dinner. Ms. AL agreed and they went out to dinner and decided to go back to Mr. Simpson's house. Ms. AL stated that Mr. Simpson was "very affectionate" at the restaurant, holding her hands while they talked. During their conversation, Ms. AL confirmed that she was not in a relationship with anybody, was not having sexual intercourse with anyone and did not plan to do so until she met someone with whom she saw a potential for the future.

[9] After dinner, Mr. Simpson and Ms. AL returned to his house in Middle Sackville, where they began dancing and kissing in the kitchen area and continued to do so as they moved into his bedroom. Ms. AL maintained that, prior to going into Mr. Simpson's house and his bedroom, she told him that there would be "no sex", meaning that she would not engage in any sexual intercourse with him.

[10] As they danced and kissed in the bedroom, at one point, Ms. AL ended up lying on her back on his bed. Ms. AL confirmed that while she was lying on the bed, she consented to her cropped jacket and bra being removed and her breasts being exposed. Then, Mr. Simpson removed his own clothing, stood completely naked beside her and did some bodybuilding poses, before he laid down on the bed beside her. Ms. AL maintained that, once again, she told Mr. Simpson that she was not going to have sex with him, but she did consensually perform oral sex on him while he was lying on his back, on the bed. Thereafter, the testimony of Ms. AL and Mr. Simpson differed.

[11] The Court accepted Ms. AL's evidence that Mr. Simpson was "very calm" when he rolled over, got on top of her and began to remove her pants and underwear. Ms. AL insisted that she told Mr. Simpson to stop and that she did not want him to touch her, nor did she want to have sex with him. She maintained that Mr. Simpson forced her hands and arms over her head while he took off one leg of

her pants, moved her underwear down and then inserted his penis, without wearing a condom, into her vagina. She maintained that she kept saying “no, stop it and get it out” and was crying, but Mr. Simpson continued until he “finished inside” of her.

[12] For his part, Mr. Simpson testified that, after the consensual oral sex, Ms. AL removed her own pants, but did not want her shirt taken off. He maintained that Ms. AL wanted him to continue and never said “no.” In addition, Mr. Simpson maintained that he did not have sexual intercourse with Ms. AL, that he simply placed his penis near her vagina and that Ms. AL had consented to that action. He denied that he ever penetrated Ms. AL’s vagina, and stated that he used his hand to masturbate and ejaculated externally in the area near Ms. AL’s vagina.

[13] Although their evidence differed on how and where Mr. Simpson ejaculated, immediately thereafter, there was substantial agreement in the evidence that they related to the Court. Ms. AL maintained that she was still crying and shaking when Mr. Simpson asked her what was wrong, to which she replied “you just raped me and I don’t know what you might have,” because he had not used a condom. While Mr. Simpson stated that Ms. AL had not made those statements, he did confirm that she became “visibly upset” and that there was “a drastic change in her personality.” Mr. Simpson offered to drive Ms. AL home, but she asked for money to pay for a taxicab. Their evidence did not differ with respect to Mr. Simpson

receiving some cash from the tenant residing in the lower level of his house, him calling the taxicab, two taxicabs coming to the house, the second one arriving because the first did not have a machine to prepay the fare by credit or debit card and that Mr. Simpson pre-paid the fare of the second taxicab with a card.

[14] After Ms. AL left Mr. Simpson's house on February 23, 2014, her testimony with respect to statements made to the cab driver that she had just been raped were confirmed by the cab driver. The cab driver also confirmed his discussions with Mr. Simpson relating to the payment of the taxicab fare and that Ms. AL was crying when he arrived and continued crying and sobbing as he drove away. He also confirmed that Ms. AL reported the incident to the police while he drove her directly to the QE II Hospital.

[15] At the QE II Hospital, SANE nurses performed a sexual assault examination on Ms. AL during the early morning hours of February 24, 2014. The nurse's evidence and an Agreed Admissions of Fact [Exhibit 2] confirmed that a swab was inserted into Ms. AL's vagina, the swab was analyzed to contain human semen which matched a biological sample obtained from Mr. Simpson.

VICTIM IMPACT STATEMENT:

[16] Ms. AL's Victim Impact Statement was read into the record by the Crown Attorney. In that statement, Ms. AL outlined the fact that, before this incident, she had active social life, lots of friends and confidence. As a result of sexual assault by Mr. Simpson, she felt that everything in her life had changed, she was left "broken, ashamed, and humiliated", and had lost all of her friends and social life. She had struggled in the past with self-hatred, but had made improvements prior to the incident, however after the incident, she went back to self-mutilation. The sexual assault has made her ashamed of being a woman, of being "sexual" in any way and that she has felt degraded.

[17] Since the incident, she has experienced social anxiety which has been physically and emotionally draining. This has resulted in the sense of loss which she has taken out through self-mutilation. Since the incident, she has been diagnosed with PTSD and prescribed strong medication for it. Ms. AL has felt that her dignity has been stripped, along with her pride and privacy. Over the past three years, her life has changed and been turned inside out, filled with despair and depression on a daily basis.

[18] Ms. AL has stated that she does not believe she will ever have closure, because she cannot change what was done. Ms. AL stated that she used to be a very affectionate person, but now does not believe that she can do so without fear

or doubt. She is now seeing a psychiatrist and a counselor as she continues to experience depression and nightmares which leave her feeling alone, sad, helpless and weak.

CIRCUMSTANCES OF THE OFFENDER:

[19] Mr. Simpson is presently 43 years old, married and is the father of a young daughter. He had a good upbringing by his mother, as his father left the family when he was only four years old. Mr. Simpson was married previously, for a short time, when he was 37 years old, but they separated and then divorced. There were no children from that prior marriage.

[20] Mr. Simpson's wife describes him as a gentle, calm and patient person who is a dedicated family man and that everyone speaks of him "very highly". Mr. Simpson's brother, who is a correctional officer in Ontario, stated that his brother is a family man, and would never be abusive to a woman.

[21] Mr. Simpson has a grade 12 education and completed two years of a Business Administration Diploma at Humber College in Toronto. Mr. Simpson joined the Canadian Armed Forces at age 36 and is currently a member of the Royal Canadian Navy with the rank of Leading Seamen in the sonar technician trade. One of his colleagues at the Canadian Navy has stated that he is a very

reliable, focused person who readily works outside his area of responsibility. Mr. Simpson is at risk of losing his career in the Navy, as his position is under administrative review, and, in the interim, he has done moving and janitorial work to provide additional income for his family.

[22] Mr. Simpson has no prior criminal record of any nature and has been under release conditions for approximately three years without incident.

SENTENCING PRINCIPLES:

[23] In all sentencing decisions, determining a fit and proper sentence is highly contextual and is necessarily an individualized process which depends upon the circumstances of the offence and the circumstances of the specific offender. On this point, the Supreme Court of Canada stated, in **R. v. M.(C.A.),** [1996] 1 SCR 500 at paras. 91 and 92, that the determination of a just and appropriate sentence requires the trial judge to do a careful balancing of the societal goals of sentencing against the moral blameworthiness of the offender and the gravity of the offence while at the same time taking into account the victim or victims and the needs of and current conditions in the community.

[24] Given the circumstances of the offence, I find that denunciation of the unlawful conduct and specific and general deterrence are important purposes of

sentencing in Section 718 of the **Criminal Code** which must be considered in the context of this sexual assault, which I regard as being a serious crime of violence. However, given Mr. Simpson's lack of any prior criminal record and his present circumstances, I find that the sentencing decision should also consider his rehabilitation, promoting a sense of responsibility in him and acknowledging the harm done to the victim, in determining the just and appropriate sentence.

[25] In the sentencing decision, the court must also consider the fundamental sentencing principle found in Section 718.1 of the **Code** that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Given the fact that I have found that the sexual assault included non-consensual, unprotected vaginal intercourse, I find that this was a serious sexual assault which was a very significant violation of Ms. AL's physical and psychological integrity as well as her self-esteem. The Victim Impact Statement provides first-hand information relating to the significant psychological and psychiatric impacts on Ms. AL. As a result, I find that the gravity of the offence is at the higher end of a continuum of sexual assaults.

[26] In terms of the issue of moral blameworthiness, I find that Mr. Simpson's degree of responsibility is also very high. While there is no doubt that the evening had started as an enjoyable date which progressed to some consensual sexual

activity at Mr. Simpson's house, I have found that Mr. Simpson imposed his will and much larger physical stature on Ms. AL, despite her protestations not to do so, for his selfish gratification without any regard for Ms. AL's personal integrity. In doing so, I found that Mr. Simpson had proceeded to perform non-consensual, unprotected vaginal intercourse with her.

[27] In terms of other sentencing principles which are to be considered by the Court in imposing a sentence, Section 718.2(a) of the **Criminal Code** mandates that the Sentencing Court must also take into consideration any relevant aggravating or mitigating circumstances relating to the offence or to the offender in considering whether or not the sentence should be increased or reduced.

[28] Section 718.2(b) of the **Criminal Code** stipulates that the judge imposing a sentence is reminded to consider the so-called "parity" principle which reminds judges that the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. On this point, I note that it is often difficult to find those similar cases, as the sentencing process is highly individualized and it is based upon the circumstances of the offence and on the circumstances of the particular offender.

[29] In addition, Sections 718.2(d) and (e) of the **Criminal Code**, Parliament has reminded sentencing judges that an offender should not be deprived of liberty, if a less restrictive sanction may be appropriate in the circumstances. Furthermore, the sentencing judge is required to consider all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of aboriginal offenders.

AGGRAVATING AND MITIGATING CIRCUMSTANCES:

[30] I find that the following are the aggravating circumstances:

1. The offence involved full vaginal intercourse;
2. Mr. Simpson did not wear a condom in committing the offence and therefore pregnancy or transmission of disease were possibilities.
3. The emotional impact on Ms. AL as a result of the sexual assault has been devastating and I have no doubt that she will feel the impact of this assault for a long time.

[31] I find that the following are the mitigating circumstances:

1. The offender has no prior criminal record;

2. There is a relatively positive Pre-Sentence Report, which outlines strong family support, being a dedicated family man, who is acknowledged to be a capable and reliable work colleague.

THE JUST AND APPROPRIATE SANCTION:

[32] In terms of the parity principle, that is, that a similar sentence be imposed for similar offender who has committed similar offences in similar circumstances, the jurisprudence relied upon by the Crown Attorney to establish a sentencing range of two to three years was discussed in **R. v. J.J.W**, 2012 NSCA 96, at paras 17-22. In that case, our Court of Appeal summarized several Court of Appeal decisions from other provinces where sentencing ranges or starting points have been established.

[33] In Alberta, the starting point for nonconsensual vaginal intercourse and other equally serious sexual assaults is three years, presuming a mature person with no criminal record and without pleading guilty: see **R. v. Sandercock** (1985) 22 CCC (3rd) 79. Our Court of Appeal also noted that Saskatchewan has adopted a similar starting point for major sexual assaults: see **R. v. Iron**, 2005 SKCA 4, at para. 12.

[34] Our Court of Appeal also referred to decisions of the Newfoundland and Labrador Court of Appeal where the range for serious sexual assault with

intercourse was stated to be three to five years: see **R. v. Vokey**, 2000 NLCA 14 and **R. v. Freake**, 2012 NLCA 10.

[35] However, in **R v. W. (JJ)**, supra, at para. 21, Justice Oland noted that Nova Scotia has not adopted a starting point approach for so-called “serious” or “major” sexual assaults which involved vaginal intercourse. Instead, Oland JA pointed out that “this Court has chosen to remain focused on the principles of sentencing as set out in the **Criminal Code** and the Supreme Court of Canada’s affirmations that the approach on review of sentencing appeals is one of deference to the decisions of the sentencing judge.” Justice Oland also observed, at para. 22, that “since sentencing is such an individualized process, done in the context of the particular circumstances of each case, it is notoriously difficult to find cases that are factually similar.”

[36] Defence Counsel’s submissions on the parity principle to establish an appropriate range of sentence in this case were based primarily upon several Nova Scotia decisions which involved sexual assaults committed by an offender who stood in a position of trust to the child. In essence, Defence Counsel submitted that the vulnerability of the children and the position of trust occupied by the offender established that the offence committed was one where the gravity of the offence was very high and the moral blameworthiness of the offender was equally high.

[37] In particular, Defence Counsel referred to the following cases:

1. **R. v. Farler**, 2013 NSCA 13, which involved allegations of sexual assaults of three complainants, over an extended period of time, about 30 years before the trial date. The accused was acquitted of the charges which involved the other two complainants, but was convicted of sexual assault of BKT over a six-year period, which started when BKT was 12 or 13 years old. The offender had groomed the young boy as he was that boy's Big Brother and repeatedly sodomized him over several years. The offender was convicted of the sexual assault of BKT following a trial and sentenced to two years in jail, which was upheld on appeal;

2. **R. v. GKN**, 2014 NSSC 150, which involved a sentence of sexual interference with the offender's stepdaughter over a six-year period. The offender, who was 60 years old had masturbated in the presence of his stepdaughter and had touched her inappropriately with his lips, penis and hands. The offender was convicted following a trial before a jury. He had a dated prior conviction for a related offence and was ordered to serve a sentence of 18 months of imprisonment followed by three years on probation;

3. **R. v. WRM**, 2013 NSSC 392, which involved a 22-year-old offender who pled guilty to a sexual interference charge. He had a sexual relationship with the 14-year-old victim, which included sexual intercourse. He had several prior convictions as well as a Youth Court conviction for a sexual assault. The sentence imposed was five months of imprisonment and two years on probation;

4. **R. v. Hutchinson**, 2011 NSSC 462, which involved consensual sexual intercourse between intimate partners with contraception, which consent was vitiated by the offender poking holes in condoms for the victim to become pregnant, although he knew that she did not want to become pregnant. In those circumstances, while he was not in a position of trust, the relationship between the offender and the complainant was based upon trust and confidence. The offender, who was 41 years old, was found guilty following a trial. He had no prior record and was sentenced to incarceration for 18 months;

5. **R. v. RRI**, 2016 NSPC 66, in which the offender, who was 52 years old, and unemployed as a result of a stroke, pled guilty to committing sexual assaults of his teenage biological daughter over a period of seven years. The young girl was groomed by the offender, who

> fondled the victim's breasts and genitals while giving her massages as well as inciting her to send nude pictures of herself to him. The Court concurred with the Crown's recommendation and ordered one year of imprisonment, followed by three years on probation.

[38] As I indicated previously, sentencing is a highly-individualized process which is considered in the context of the particular circumstances of the offence and the offender, which must take into account the fundamental purpose and principles of sentencing. Finding cases that are factually similar is a difficult exercise. Moreover, I find that cases which are "outliers" from a significant body of jurisprudence of similar offenders who have committed similar offences in similar circumstances, are not overly helpful to establish an appropriate range of sentence, but they do highlight the individualized nature of the sentencing decision.

[39] From my own review of the case law, I find that sexual assault sentences in so-called "date rape" cases are the closest cases factually to the circumstances of the offence in this case. In those cases, there were some consensual aspects to the sexual contact, similar to the facts of the instant case, but at a certain point, the victim did not consent to that contact continuing to vaginal or anal intercourse. Like the present case, the offender did not inflict any physical injuries on the

victim, however, those victims reported being psychologically traumatized, becoming reclusive, being in therapy and on medication.

[40] In **R. v. Stankovic**, 2015 ONSC 6246, the accused was convicted following a jury trial. The complainant had visited the offender at his home to purchase crack cocaine. While there, the offender and the complainant engaged in consensual touching and kissing while fully clothed on a couch. They moved into a bedroom where the offender undressed and then took off the victim's clothes even though she told him not to do so. Then, the offender pushed the complainant onto a bed, put on a condom and proceeded to have nonconsensual vaginal intercourse with her and nonconsensual anal intercourse with her for a short period of time. The complainant had told him to stop several times.

[41] Mr. Stankovic was 39 years old, separated and the father of a young daughter, who had a normal upbringing and family support and was self-employed in the general maintenance of commercial buildings. He had one prior conviction for impaired driving and a conviction for a threats charge to his ex-wife which occurred subsequent to the charge before the court, but before the sentence was imposed. The offender had maintained his innocence and stated that all of the events during the evening were consensual. The Court sentenced the offender to a term of imprisonment of three years.

[42] More recently, in **R. v. Diaz**, 2017 ONSC 1883, the offender was convicted by a jury of a sexual assault of a younger woman. The offender had met the victim through a website called “Seeking Arrangement” which offered young women the prospect of meeting older men seeking a relationship with a younger woman. The offender arranged to meet the complainant after exchanging text messages with her. In those messages, the complainant agreed to have sex on their first date and the offender agreed to pay the complainant a sum of money for that encounter, but they did not discuss how much.

[43] A short time later, the offender picked up the complainant and drove her back to his residence where they got undressed, she performed fellatio on him and then they had consensual sexual intercourse. Following that, the offender partially inserted his penis into the complainant’s anus. At this point, the evidence of the complainant and Mr. Diaz differed significantly. The complainant testified that she repeatedly told the offender to stop but he continued to have anal intercourse with her. The offender stated that he asked the complainant if it was okay to do so and that she told him it was fine. The jury convicted the offender of sexual assault.

[44] In that case, the incident had a profound effect on the complainant who had become withdrawn and distrustful of members of the opposite sex, affecting her

sense of dignity and self-respect. She had not been able to have a romantic relationship since the incident and had lost a significant amount of time from work.

[45] In that case, the offender was well-educated with a Bachelor of Science degree, Master of Science in Management Engineering and a Master of Business Administration. He had emigrated to Canada in 2012 and was an Operations Manager in a major company and a productive member of the community since his arrival in Canada. He had no prior criminal record and, as a mitigating factor, Defence Counsel submitted that the offender was facing the certainty of being deported after serving his sentence.

[46] Defence Counsel had submitted that the absence of gratuitous violence was a mitigating factor, and that the immigration consequences of a sentence should be given serious consideration in determining a fit sentence. However, in referring to the case of **R. v. Stuckless**, 1998 Canlii 7143 (ONCA), the trial judge noted that a sexual assault is an inherently violent act perpetrated on a defenseless victim and that the absence of gratuitous violence is not a mitigating factor deserving of a more lenient punishment.

[47] In the final analysis, the Court considered the appropriate range of sentence was between 20 months of imprisonment in a correctional center to three years of

incarceration in a federal penitentiary. The Court held that the mitigating factors justifying the sentence towards lower end of the range were that the offender had an exemplary education and employment history, he enjoyed a significant amount of support in the community and faced deportation upon completion of the sentence. The offender was ordered to serve a term of imprisonment of 20 months.

[48] Finally, I find that the case of **R. v. Garrett**, 2014 ONCA 734, is, in many respects, similar to the instant case. Mr. Garrett and the complainant had known each other for many years, but met by chance and decided to go out on a date. On the date, they had a good time and the complainant invited him back to her apartment where they sat on the sofa and began kissing. Up to that point, it was common ground that their activity was consensual, but thereafter, the testimony of the complainant and Mr. Garrett differed.

[49] The complainant stated that Mr. Garrett's kissing became too aggressive and she asked him to stop. While they were still seated on the sofa, Mr. Garrett got on top of her and continued kissing her. When the complainant fell to the floor in an effort to get out from under him, Mr. Garrett pulled off her top and bra, licked her breasts and pinned her down. Despite her telling him to stop, he took off her leggings and put his penis in her vagina. The complainant was upset, left her own

apartment and waited in her car until Mr. Garrett left in his car. The complainant reported the incident to the police and a sexual assault examination took place.

[50] For his part, Mr. Garrett testified that the sex was consensual throughout. He stated that the complainant had initiated the kissing, that the sex was “high energy” but denied that he was either aggressive or extremely physical.

[51] Mr. Garrett was found guilty of sexual assault and the trial judge sentenced him to a term of imprisonment for 90 days served on intermittent basis, followed by two years on probation. The trial judge reasoned that the case presented “exceptional and unique circumstances” as the offender had a long life with exemplary conduct, his reputation in the community had been destroyed, there was a very low risk of reoffending and he had glowing character letters.

[52] On the sentence appeal, the Crown submitted that the appropriate range was two to three years, however, the trial Crown had submitted that the range was 18 months to three years. The Crown Attorney submitted that the case was neither exceptional nor unique, rather, it represented a classic “date rape” scenario. The Court of Appeal agreed that the sentence was outside the “usual range” and was manifestly unfit.

[53] In **Garrett**, supra, at para. 19-20, Watt JA held that the facts were neither exceptional nor unique. The complainant repeatedly told Mr. Garrett to stop, but he did not. This constituted demeaning behavior and contemptuous disregard for the personal integrity of the complainant and engaged the predominant sentencing principles of denunciation and deterrence. In addition, the Court noted that the complainant's initial consent to kissing did not render the subsequent non-consensual intercourse, less serious.

[54] The Court of Appeal set aside the trial sentence and ordered a term of imprisonment of 18 months, with the probation order and other ancillary orders to remain in place. The sentencing judge had overemphasized the mitigating factors. The Court of Appeal also noted in **Garrett**, at para. 23 that "The sentence imposed by this Court should not be taken as a sentence within the appropriate or usual range. We are constrained in this regard by the Crown's position at trial."

[55] Based upon my review of relevant jurisprudence to establish a range of sentence for the parity principle, I find that the range of sentence for a sexual assault involving full intercourse is two to three years in a federal penitentiary. As the brief review of relevant jurisprudence has indicated, sentences at the lower end of that range usually have significant mitigating factors, such as an early guilty plea which spares the victim from testifying, an expression of remorse and

acceptance of full responsibility or the Court taking into account the totality principle following consecutive sentences.

[56] In this case, there are relatively few of those mitigating factors present, however, I wish to clearly state that I do not regard the absence of a mitigating factor, somehow becomes an aggravating factor. However, in this case, there are also several significant aggravating factors which would tend to increase the sentence towards the upper end of the range of just and appropriate sanctions.

[57] I agree with the Crown Attorney that, in a case like this, the primary purpose and principles of sentencing are specific and general deterrence as well as denunciation of the unlawful conduct. I have already determined that, in terms of the proportionality principle found in Section 718.1 of the **Criminal Code** that Mr. Simpson's moral blameworthiness or degree of responsibility for the offence is very high and that I consider the gravity of this offence also to be very high, given the very significant violation of Ms. AL's physical and psychological integrity as well as her self-esteem.

[58] As Justice Cory stated for the Supreme Court of Canada in **R. v. McCraw**, [1991] 3 SCR 72; 1991 CarswellOnt 113 at paragraphs 30 and 33, but in particular at para. 33:

> "[33] The psychological trauma suffered by rape victims has been well documented. It leaves symptoms of depression, sleeplessness, a sense of defilement, a loss of sexual desire, fear and distrust of others, strong feelings of guilt, shame, and loss of self-esteem. It is a crime committed against women which has a dramatic, traumatic impact."

[59] Indeed, it is readily apparent from a review of Ms. AL's Victim Impact Statement that all of the psychological trauma which was described by Cory J in **McCraw** case, over 25 years ago, are the very same physical, emotional and psychological impacts that have been experienced by Ms. AL in this case. As Cory J pointed out in **McCraw**, supra, at para. 30, women who have been forced to have sexual intercourse have suffered grave and serious violence which constitutes a profound interference with their physical integrity as it has denied their right to exercise freedom of choice as to their partner for sexual relations and the timing of those relations.

[60] Having considered the relevant purposes and principles of sentencing and considering the relevant aggravating and mitigating circumstances, I find, in this case, the just and appropriate sanction for Mr. Simpson's conviction in relation to the sexual assault of Ms. AL, is to order Mr. Simpson to serve a sentence of imprisonment of three years in a federal penitentiary.

[61] In addition, I am prepared to order the ancillary orders which were sought by the Crown Attorney in this case. In particular, there will be a DNA order pursuant

to Section 487.051(2) of the **Criminal Code** which will authorize the taking of the DNA sample, as this is a primary designated offence.

[62] Furthermore, pursuant to Section 490.012(1) and Section 490.013(2)(b) of the **Criminal Code**, there will be an order made in form 52 that your name be added to the Sex Offender Registry and that you comply with the **Sex Offender Information Registration Act (SOIRA)** for 20 years.

[63] Finally, there is the imposition of the surcharge for victims, pursuant to Section 737 of the **Criminal Code** which at the time of this offence, was $100 for an offence prosecuted by indictment. I am prepared to extend the time for payment of that surcharge for victims, given the sentence I have imposed, until October 31, 2020.

T.K.Tax, JPC