SUPREME COURT OF NOVA SCOTIA
Citation: *R v. Rancourt*, 2017 NSSC 158

Date: 20170531
Docket: Syd No. 458601 459592
Registry: Sydney

Between:

Her Majesty the Queen

v.

Dale Rancourt

Restriction on Publication: Section 486.4

Editorial Notice: The electronic version of this decision has been modified to remove identifying information.

Judge:	The Honourable Justice Patrick J. Murray
Heard:	May 31, 2017 in Sydney, Nova Scotia
Subject:	Criminal Law
Summary:	Accused charged with sexual assault contrary to section 271 of the *Criminal Code*.
Issues:	Sentencing
Result:	Joint recommendation of two (2) year federal prison term accepted by the Court. Offence involved Accused having intercourse with 15 year old victim who was particularly vulnerable.

Accused pled guilty, had no prior record and a positive Pre-Sentence Report.

Court concluded acceptance of sentence imposed would not bring administration of justice into disrepute, nor would accepting the joint recommendation be contrary to the public interest.

Sentence imposed was in addition to 7 months Accused spent in custody prior to sentencing.

Principles of sentencing discussed including those set out by the Supreme Court of Canada decision in ***R v. Anthony-Cook***.

Caselaw: ***R v. Anthony-Cook***, 2016 SCC 43; ***R v. Collins***, 2008 NSSC 34; ***R v. D.V.R.***, 124 N.S.R. (2d) 302; and ***R v. D.W.B.***, 169 N.S.R. (2d) 94.

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Sentencing Decision:	May 31, 2017 in Sydney, Nova Scotia
Counsel:	Shane Russell and Peter Harrison, for Her Majesty the Queen Tony Mozvik, Q.C., for the Defendant, Dale Rancourt

Section 486.4 - Order restricting publication — sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 346 or 347,

(ii) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or

(iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in any of subparagraphs (a)(i) to (iii).

Mandatory order on application

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the complainant of the right to make an application for the order; and

(b) on application made by the complainant, the prosecutor or any such witness, make the order.

Child pornography

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

Limitation

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

By the Court (Orally):

[1] The Accused, Dale Rancourt, is before me for sentence having pled guilty to the offence of sexual assault contrary to s. 271 of the *Criminal Code* and having pled guilty to failing to comply with a condition of his Recognizance contrary to s. 145(3) of the *Criminal Code*.

[2] Sexual assault by its very nature is a violent offence. In this case the victim was under the age of 16 and therefore particularly vulnerable.

[3] The offence appears to have impacted the victim psychologically and emotionally. […] She had a child, an infant son born earlier that year […] from a separate teenage relationship.

[4] The offence was committed between the 15th of July and […] September, 2016 while the victim was 15 years of age. She turned 16 on September […], 2016.

[5] The facts of this case have been agreed upon and read into the record. I do not intend to repeat those facts verbatim.

[6] Essentially the Accused was the owner of a children's entertainment business known as Klutzy Clown Inc. The Accused would perform and entertain at various functions for adults and children.

[7] The victim's family had been known to the Accused years prior […]. The victim met the Accused through volunteer work […].

[8] The facts deal with the progression of the relationship between the Accused and the victim and the nature of the sexual contact they had. The sexual relationship had quickly advanced to sexual intercourse.

[9] It should be mentioned at the outset that the Accused, has accepted responsibility for his actions by entering a guilty plea. The Crown's brief mentions specifically, that the young victim was relieved to know that she would not have to testify at trial.

[10] These are among other factors that must be considered in applying the principles of sentence, which I will now touch upon.

Principles of Sentencing

[11] Sentencing is an individual exercise. The Court must consider a number of factors in arriving at a fit and proper sentence. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Deterrence and denunciation are often important factors in cases such as this.

[12] Sentencing principles mention as one objective the need to provide reparation for harm to victims, and to impose sentences that will contribute to respect for the law and deter others from committing similar offences. In addition, the Court should attempt to impose a sentence that is similar to those imposed for similar offences in similar circumstances.

[13] In this case, I have been presented with a joint recommendation from counsel with respect to the sentence that I should impose. Crown and Defence believe the joint recommendation of two years incarceration, coupled with a period of probation for two years is appropriate and reflects those principles and values I have referred to, including the principles of sentencing under the *Criminal Code* in section 718 and 718.2.

[14] I have considered the cases provided to me by the Crown. Those cases reflect that the range of sentence suggested here is in keeping with the principles of sentencing for these types of offences. I will later refer to these in more detail.

[15] In Nova Scotia our Court of Appeal has has not adopted a starting point approach. Rather, the appeal court has chosen to remain focused on the principles of sentencing as set out in the *Criminal Code* and with the Supreme Court of Canada's guidance.

[16] In the recent Supreme Court of Canada case of ***R v. Anthony-Cook***, 2016 SCC 43, the court held that the proper test here is the public interest test. That is the test in determining whether to accept a joint recommendation. The court held it is a stringent test that best reflects the many benefits that joint submissions bring to the criminal justice system.

[17] Applying this test, I should only depart from a joint submission on sentence if what is proposed would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

Purpose of Sentencing s. 718

[18] Under Section 718 the fundamental purpose of sentencing is 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 that have one or more objectives including:

> (a) to denounce unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;
>
> (c) to separate offenders from society, where necessary;
>
> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Fundamental Principle s. 718.1

[19] Under Section 718.1 a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Pre-Sentence Report

[20] The pre-sentence report indicates that Mr. Rancourt was born in Etobicoke, Ontario and his family resided in Espanola, Ontario. His parents separated when he was 10, and his mother died young at age 48. His is very close to his father who is age 78 and in poor health. He has an older sister who like others is taken back by these events. He has had other relationships including two marriages. Most recently he had a lengthy common law relationship for 2 ½ years and his former common law spouse, Ms. Bonnie Adams thought these events must have been a mistake. She described the Accused as a caring person who worked hard to support the community.

[21] His sister, Debora LaCasse, who is two years older than him, was "dumbfounded" by these incidents and while the situation has been hard she stands by her brother.

[22] Mr. Rancourt had planned to relocate to Ontario to be with and care for his father, who is said also to be his closest friend, but that will no longer be possible.

[23] But for the offence itself, Mr. Rancourt's pre-sentence report is generally positive. The events appear to be very much out of character for him.

Caselaw Summary

[24] The offence of sexual assault as expressed in s. 271(a) of the *Criminal Code* is among the most serious offences involving violence to persons. Its gravity is signified by the potential maximum penalty of fourteen (14) years imprisonment if the victim is under the age of sixteen (16) years.

[25] The Crown provided caselaw to offer some assistance to the Court in determining an appropriate sentence in the case before me.

[26] In ***R v. Collins***, 2008 NSSC 34, the victim was young at age 12. There were frequent acts of sexual intercourse and the accused denied any moral responsibility the Court. The sentence imposed in ***Collins*** was a 2 ½ year federal sentence.

[27] In ***R v. D.V.R.***, 124 N.S.R. (2d) 302, the accused was 57 and the victim 14. There were frequent sexual acts including intercourse. The sentence imposed was 2 years federal custody. As noted by the Crown there are similarities between ***D.V.R.*** and the case before me.

[28] In ***R v. D.W.B.***, 169 N.S.R. (2d) 94, the accused was known to and familiar with the victims family. The victim was abused between the ages of 11 – 14 years by frequent sexual acts including intercourse. There were no mitigating circumstances and the sentence imposed was 3 years.

[29] In the cases provided the courts have recognized that while denunciation and deterrence are the primary factors, they are not the only factors. Rehabilitation must be considered.

[30] The cases also reiterate that the expectations of the community must be considered. The Court must seek to impose a sentence that is just and reasonable.

Decision

[31] I have considered the principles of sentencing in the *Criminal Code* as mentioned, as they relate to the circumstances of this offence and this Offender. I have also considered the Pre-sentence Report and the Victim Impact Statement given to Court by the victim. In that statement the victim said she has been

affected for life, suffers from depression and requires therapy. She stated she was a victim to the Accused's power and what happened destroyed her emotionally. It is also her belief that these events caused her to lose her son.

[32] Among the aggravating factors here are the age of the victim, the level of invasiveness, and the position of authority held by the Accused. According to the agreed statement of facts Mr. Rancourt had intercourse with the young victim while she was still under the age of 16. Under the *Criminal Code*, in section 718.2(a) evidence that an accused abused a position of authority is deemed to be aggravating.

[33] The mitigating factors include the Accused's guilty plea, which spared the victim from having to testify at trial. There is also the pre-sentence report, Mr. Rancourt has contributed to charitable causes in a significant way and to the community as indicated by the report at page 6.

[34] I too had a concern as to the statement in the pre-sentence report that Mr. Rancourt felt he was manipulated by the victim.

[35] Read as a whole the Accused states he got wrapped up in a bad situation and is not trying to put the blame on anyone else. I think it needs to be made clear that this is no one's fault but Mr. Rancourt's and his alone.

[36] The facts bear that out. He was 51, she was 15. At that tender age she was in no position under the laws of Canada to participate willingly. The Accused has acknowledged that his guilty plea is an admission to the essential elements of the offence of sexual assault. He further acknowledged this in the pre-sentence report stating that he made a mistake and takes responsibility for same.

[37] Mr. Rancourt is a first time offender with no criminal record. With this type of offence that factor is not to be given undue weight. In terms of deterrence, I have previously held in sentencing for this type of offence, that a federal term of imprisonment for a first time offender is a significant sentence and one that carries with it significant deterrence.

[38] In the present case I find that counsel have jointly presented a recommendation to the Court that comes with a good deal of thought, time and effort. The plea bargain process is something the court must respect in the same way as counsel must respect the Courts obligation to impose a fit and proper sentence in accordance with sentencing principles.

[39] The Supreme Court of Canada in ***Anthony-Cook*** has recognized this when it said in the recent decision that:

> Joint submissions on sentence — that is, when Crown and Defence counsel agree to recommend a particular sentence to the trial judge, are vitally important to the well-being of the criminal justice system, as well as the justice system at large.

[40] I find that counsel here have taken a realistic view of this case in the recommendation they have made. It is being made by senior counsel who are familiar with the law and the principles of sentencing. I am quite prepared to endorse it.

[41] They have recognized the need for deterrence combined with a rehabilitative aspect. The facts here support that approach in my respectful view.

[42] It is clear from the facts that the Accused took advantage of his position as […] to take advantage of a fifteen year old child, for his own sexual gratification. I agree with the Crown, there is a high degree of culpability.

[43] The principles of sentencing call for this type of behaviour to be addressed with a sentence that emphasizes specific and general deterrence.

[44] The Court must also denounce such egregious behaviour in strong terms. In my respectful view it calls for a period of incarceration to reflect society's condemnation and to contribute to respect for the law, and to provide for reparations for the harm done to a young child.

[45] The proper test is the public interest test as confirmed by the Supreme Court of Canada.

[46] In ***Anthony-Cook*** the court summarized the test in the following terms:

> The public interest test, by being more stringent than the other tests proposed, best reflects the many benefits that joint submissions bring to the criminal justice system and the corresponding need for a high degree of certainty in them.

[47] I am satisfied that the sentence recommended is just and reasonable. In these circumstances a 2 year federal period of incarceration for a man 51, never before the law, is a substantial sentence.

[48] For someone of Mr. Rancourt’s standing as a business owner, the sentence is both of general and specific deterrence. It sends the message to like minded

individuals that significant consequences await those who choose to abuse children, especially given that the 2 years is in addition to the 7 months the Accused has already served. In effect the total sentence is in excess of 2 ½ years.

[49] The sentence is also in keeping with the caselaw provided to me by the Crown. Defence counsel has stated that these cases are a fair representation of the sentencing range in these types of offences.

[50] In addition to the go forward sentence of 2 years, as part of the recommendation, there will be a 2 year period of probation with conditions, as amended.

[51] On the s. 145 charge of breaching a recognizance, I will impose a period of 40 days in custody to be served concurrent with the 2 year sentence.

[52] Finally in terms of the other orders that are sought, they are part of the joint submission including the SOIRA Order of 20 years; the DNA Order; and a lifetime firearms prohibition pursuant to s. 109(3). I will impose those orders and sign them when they are presented to me.

[53] This concludes my sentencing decision.

Murray, J.