SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. A.F.G.*, 2017 NSSC 66

Date: 2017 03 08
Docket: CRH No. 442317
Registry: Halifax

Between:

Her Majesty the Queen

v.

A.F.G.

Restriction on Publication: S. 486.4 and 539 CC

Judge:	The Honourable Justice Joshua Arnold
Heard:	March 8, 2017, in Halifax, Nova Scotia
Written Decision:	March 9, 2017
Counsel:	Eric Taylor and Robert Kennedy, for the Crown Drew Rogers, for the Defence

By the Court:

[1] On October 11, 2016, A.F.G. plead guilty to two offences:

1. that he between the 31st day of July, 2013 and the 1st day of January, 2014 at, or near Sheet Harbour, in the County of Halifax in the Province of Nova Scotia, did unlawfully commit a sexual assault on E.L., contrary to Section 271(1) of the *Criminal Code*.

2. and further that he at he same time and place aforesaid, being in a position of trust or authority towards E.L., a young person, or being a person with whom E.L. was in a relationship of dependency, did for a sexual purpose, touch directly the body of E.L., with a part of his body, to wit., "his hands and penis", contrary to Section 153(a) of the *Criminal Code*.

[2] Today A.F.G. will be sentenced for his crimes.

[3] The Crown and A.F.G. have presented the court with an agreed statement of facts:

Overview

1. J.L.W. (DOB: September 6, 1976) and A.F.G. (DOB: November 7, 1964) commenced an intimate relationship during the summer of 2013;

2. In early September 2013, J.L.W. and her three daughters (E.L. (DOB: […]), V.L., and E.W.) moved into A.F.G. residence located at […], Nova Scotia;

3. Shortly after moving into A.F.G.'s house, A.F.G.'s son began supplying E.L. with marijuana. She used her savings accumulated from her summer employment to purchase marijuana from A.F.G.'s son. When E.L. ran out of money, A.F.G. supplied her with marijuana on a regular basis. A.F.G. was not a marijuana user, but had a supply of marijuana in the house. E.L. never paid money to A.F.G. in exchange for this marijuana; she believed that A.F.G. was supplying her with marijuana in consideration for sex. While A.F.G. did not believe there was a quid pro quo of this nature, he was willfully blind as to E.L.'s belief that she was receiving marijuana from A.F.G. in exchange for sexual acts;

4. E.L. lived in A.F.G.'s residence from early September 2013 until January 6th, 2014. During this period of time, A.F.G. engaged in mutual oral sex, manual stimulation, sexual touching, and unprotected vaginal intercourse on multiple occasions with E.L. These incidents are estimated to have occurred on a weekly basis. All of these incidents occurred while E.L. was living in A.F.G.'s house. On at least two occasions, E.L.'s mother, J.L.W., was present while A.F.G. was having sexual intercourse with E.L.;

5. A.F.G. previously had a vasectomy operation and advised E.L. that “he can’t get people pregnant”;

Specific Incidents

6. E.L. recalls specific details regarding some of the incidents involving A.F.G.. However, due to the frequency of her sexual contact with A.F.G., she does not recall the details of every incident;

7. Shortly after E.L.’s 16th birthday, which was on […], while E.L. was standing in the kitchen of A.F.G.’s house, A.F.G. approached E.L. from behind and touched her crotch and breasts in a rubbing motion on the outside of her clothing. E.L. did not resist as she was scared. Prior to this incident, there was no discussion about A.F.G. touching E.L. in this manner. Afterwards, E.L. went to the bathroom and cried;

8. On another occasion, A.F.G. approached E.L. in the porch area, adjacent to the kitchen, and asked E.L. to perform oral sex on him, stating “suck my dick”. A.F.G. provided E.L. with marijuana. E.L. performed oral sex on A.F.G.;

9. On another occasion, A.F.G. and J.L.W. were in their shared bedroom. E.L. came upstairs to watch a movie, as there was a television in this bedroom and the downstairs television was not working. J.L.W. was laying in between E.L. and A.F.G.. In E.L.’s presence, J.L.W. manually stimulated A.F.G. and performed oral sex on him, and then they had vaginal intercourse. Afterwards, J.L.W. moved to the foot of the bed and A.F.G. began to feel E.L.’s leg, then stated “get on your side”, pulled her pants down and had vaginal intercourse with her in the presence of J.L.W. E.L. did not say anything at this time because she did not want to get “bitched at” or “get kicked out” of the house. Afterwards, E.L. went to the bathroom and cried. This incident was described by E.L. as “the worst incident” in relation to the others;

10. On another occasion, E.L. stayed home from school. E.L. asked A.F.G. if he had any “dope”. A.F.G. gave E.L. marijuana. A.F.G. and E.L. ended up going to A.F.G.’s bedroom and had vaginal intercourse. There was a ring of the doorbell. A.F.G. told E.L. to go to the next room while he answered the door. E.L. grabbed her clothing and went to the next room;

11. On another occasion, E.L. was seated at the kitchen table. A.F.G. provided her with nylon pantyhose to put on her leg up to her knee so he could rub her leg over the nylons. E.L. “did not want to get bitched at”, so she put the nylons on as requested. A.F.G. proceeded to rub her leg over the nylons. A.F.G. had previously asked E.L. to put nylons on during sexual intercourse;

12. In the porch area, there were at least 5 times when E.L. performed oral sex on A.F.G. or provided him with manual stimulation;

13. E.L. and A.F.G. engaged in vaginal sexual intercourse on multiple occasions in A.F.G.’s bedroom;

14. On another occasion, E.L. was in the kitchen eating a popsicle. A.F.G. entered and asked her to "suck his dick". E.L. declined;

15. On another occasion, A.F.G. drove to a friend's house in Sheet Harbour with J.L.W. and E.L. Beforehand, J.L.W. and E.L. dressed provocatively; E.L. believed that they were going to a party "to meet boys". When they arrived, J.L.W. entered the bedroom and had sexual intercourse with A.F.G.'s friend (55 years old). When they were finished, E.L. entered the bedroom and had sexual intercourse with A.F.G.'s friend. A.F.G. entered the bedroom several times during this time. A.F.G. fondled his friend until he was erect and directed some of the sexual activity between E.L. and A.F.G.'s friend. When A.F.G.'s friend and E.L. were done, A.F.G.'s friend went into the washroom, at which point A.F.G. proceeded to digitally penetrate E.L.;

16. On another occasion, A.F.G. performed oral sex on E.L. in A.F.G.'s bedroom;

Living Arrangements

17. A.F.G. enforced "house rules" while E.L. was living with him, including helping out around the house, bringing in firewood, and cleaning. A.F.G. also cooked for E.L. and her sisters. A.F.G. had threatened to kick E.L. out of the house, take away her cell phone, and send her to her room, if she did not comply with the house rules. A.F.G. and E.L. would argue from time to time. E.L. would listen to A.F.G. to avoid getting "kicked out" or "bitched at";

18. On two occasions, E.L. was kicked out of the house by A.F.G.. On the first occasion, E.L. slept in the car for the evening. On the second occasion, E.L. stayed at a friend's house for one week, later returning to A.F.G.'s house;

19. E.L. disclosed these incidents to several friends over the Christmas holidays in December 2013. Upon her return to school on January 6th, 2014, E.L. disclosed these incidents to her school guidance counsellor, who in turn contacted the Department of Community Services and the police. At this time, E.L. was having suicidal thoughts and exhibiting self-harm as a result of these incidents;

20. E.L. moved out of A.F.G.'s house that day. She lived with a friend until January 14th, 2014, and then was admitted to the IWK Hospital due to mental health issues she was experiencing. She subsequently resided at a youth shelter in Halifax. E.L. is currently homeless, occasionally "couch surfing";

21. A.F.G. was subsequently arrested and charged on January 27th, 2014.

[4] There is no joint recommendation between the Crown and A.F.G. in this case. The Crown recommends a sentence of between five and seven years in prison. They also request the following ancillary orders:

1. DNA Order, in accordance with Section 487.051 C.C.;
2. Firearms Prohibition Order for 10 years after A.F.G.'s release from imprisonment, in accordance with Section 109 C.C.;
3. Lifetime SOIRA Order in accordance with Section 490.013(2.1) C.C.; and
4. Order prohibiting contact or communication with E.L. during any custodial sentence, pursuant to Section 743.21 C.C.

[5] A.F.G. agrees that a penitentiary sentence is appropriate, but argues that the sentencing range is between two and three years in prison.

Sentencing Provisions

[6] At the time of these offences both s. 271 and s. 153 carried with them a ten-year maximum sentence. Section 153 had a one-year minimum sentence.

[7] Section 718 provides:

> 718 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 that have one or more of the following objectives:
>
> (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by 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 or to the community.

[8] Section 718.01 provides:

> 718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

[9] Section 718.1 provides:

> 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[10] Section 718.2 provides:

> 718.2 **A court that imposes a sentence shall also take into consideration the following principles:**
>
> > **(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing**,
> >
> > > (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,
> > >
> > > (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
> > >
> > > **(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,**
> > >
> > > **(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,**
> > >
> > > **(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,**
> > >
> > > (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
> > >
> > > (v) evidence that the offence was a terrorism offence, or
> > >
> > > (vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the Corrections and Conditional Release Act
> >
> > **shall be deemed to be aggravating circumstances;**
> >
> > **(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;**
> >
> > (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders. [Emphasis added]

Cases

[11] Between Crown and defence, I was provided with more than 40 sentencing cases. Crown and defence each rely on various of these cases to support their respective position on sentencing. What is clear from a review of these cases is that a broad range of sentences have been imposed across the country for related offences. This makes perfect sense considering our appellate courts consistent message that judges should not take a cookie cutter approach to sentencing. Sentencing is an individualized process. The facts of each case and the circumstances of each offender are unique. Nonetheless, as s. 718.2(b) states:

> 718.2 (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances…

[12] In *R. v. G.O.H.*, [1995] N.S.J. No. 316, affirmed [1996] N.S.J. No. 61 (C.A.), Kelly J. stated:

> [39] I believe our society places crimes against the defenceless, particularly children, to be most serious crimes, perhaps falling in a separate category. When these crimes are committed by persons in authority over those children, people who have responsibility to care for those children, the breach of trust makes the offences and its effects much more serious. When it's committed by one of the parents of the child it is perhaps one of the most horrific acts and offences to come before our courts. Such an offence committed by the person that the child looks to for succour, support and protection is the greatest breach of trust and one which often deprives the child of a normal childhood and may have devastating long term effects on the future life of that victim. To a significant extent, this result has occurred to each of these victims.

[13] In *R. v. A.N.*, 2009 NSSC 186, Beveridge J. (as he was then), stated:

> [64] The last case I want to refer to is from the Ontario Court of Appeal, *R. v. D.D.*, 2002 CanLII 44915 (ON CA), [2002] O.J. No. 1061 where Justice Moldaver dealt with an appeal from the imposition of a global sentence of nine years and one month, which had been reduced by virtue of time spent in pre-trial custody to eight years, one month. There were four victims involved. The accused was a close and

> trusted family friend and in one instance described as being akin to a stepfather. Not nearly the position of trust that Mr. N. was in in relation to his daughters, but none the less serious. In addition, in the case before Justice Moldaver there was some indication of violence, both actual and threats of violence. Although it appears from the report to be quite low level. The assaults had impact on the victims.
>
> [65] What I think is important to reflect on is what Justice Moldaver concluded. He said:
>
> > 44 To summarize, I am of the view that as a general rule, when adult offenders, in a position of trust, sexually abuse innocent young children on a regular and persistent basis over substantial periods of time, they can expect to receive mid to upper single digit penitentiary terms. When the abuse involves full intercourse, anal or vaginal, and it is accompanied by other acts of physical violence, threats of physical violence, or other forms of extortion, upper single digit to low double digit penitentiary terms will generally be appropriate. Finally, in cases where these elements are accompanied by a pattern of severe psychological, emotional and physical brutalization, still higher penalties will be warranted...

[14] In *R. v. M.(D).*, 2012 ONCA 520, Feldman J.A., speaking for the court, stated:

> 44 To conclude on the issue of the proper range of sentence, although sentencing is always an individualized process of decision-making, where there is prolonged sexual abuse and assault of a child, including penetration, by an adult in a position of trust, the minimum sentence will be five or six years in the penitentiary.

[15] There are two cases provided to me by the Crown that are particularly instructive in crafting the appropriate sentence for A.F.G.. In *R. v. Murphy*, 2015 NBCA 10, Green J.A. delivered the decision for the court and wrote:

> 3 At the time the relationship in question began in September of 2011, the victim was sixteen years old and beginning grade eleven. The appellant's age will be discussed later in these reasons. The victim had recently spent several months in a rehabilitation facility known as Portage for young people with addictions. Her entry into the rehab program was precipitated by drug issues and being suicidal. There is no more compelling description of her situation than the victim's own words, when she testified that "if I didn't go there, I thought that I wasn't going to make it past sixteen" [transcript, page 7].
>
> 4 After classes one day, the victim was standing at a bus stop located outside her high school, waiting for a city bus, when she was approached by the appellant. He boarded the bus with her and engaged her in conversation, asking if she worked in a local strip club. The evidence established that the appellant quickly learned the

> following points about the victim: she was a high school student; she had drug addiction issues; and, she had recently been in a drug rehabilitation program. Her testimony further indicated that the appellant later admitted he did not need to take that particular bus on the day they met, but did so in order to talk to her. He would eventually learn she was sixteen years of age, was in grade eleven, and engaged in self-harm by cutting herself on her arms.

[16] The offender then groomed the victim in preparation for sex and eventually traded drugs, money and very briefly food and shelter, for sex, including unprotected sexual intercourse. The court noted:

> 49 On one side of the scale, we have a man in his fifties with considerable life experience and access to money and drugs, who lives in his own apartment. On the other, we have a sixteen-year-old unemployed high school student who initially lived with her parents, subsequently had no home, and then lived with a boyfriend, is addicted to drugs, has unsuccessfully undergone an intensive drug rehabilitation program, has no meaningful access to money and therefore no access to drugs, and has self-esteem and mental health issues. Given these parameters, I am comfortable in concluding a power imbalance did exist in this relationship, and that the scales were tipped heavily in favour of the appellant.
>
> 50 First of all, the relationship began in the absence of sexual activity, although the appellant's intentions in this regard were abundantly clear, and the relationship quickly evolved to that point. The appellant identified and exploited the victim's drug addiction and her need to fuel or feed that addiction. He found a vulnerable person, and aggressively and repeatedly took advantage of that vulnerability for his own purposes. This fact scenario, given the circumstances of the two players, is what constituted an exploitative relationship. The fact that the appellant's objective was sexual in nature is of no moment.

[17] The New Brunswick Court of Appeal upheld the conviction (so there was a trial, not a guilty plea as in the instant case) and upheld a six year sentence in *Murphy*.

[18] In *R. v. P.M.*, [2002] N.B.J. No. 144 (N.B.Q.B.), Riordon J. described the crimes:

> 3 The crimes were committed between June 1st, 1999 and March 8th, 2000 at Beaverbrook, Northumberland County. Most of the incidents in question took place in the residence of the accused, Mr. P.M. over a period of some 9 to 10 months.
>
> 4 The victim, C.M. is a young girl born on September 22nd, 1985, at the relevant period of time she would have been between 13 years and 9 months of age or thereabouts and 14 years and 6 months of age. At all material times she lived at the home of Mr. P.M. and was the best friend of his step-daughter.

> 5 In late June of 1999 C.M. who is the first cousin of Mrs. M.M. and her daughter's best friend began residing at the home of Mr. and Mrs. M. C.M. attended the same school, was in the same grade and was the same age as Mrs. M.M.'s daughter. These two young girls and Mr. P.M.'s son from an earlier marriage lived at the home in Beaverbrook with Mr. and Mrs. M.M. C.M. was considered to be a member of the family. She was a child of a couple who had separated a year or so before she came to live at the M. household. It appears that her mother left her father and she and her brother remained with their father who from what I can gather was not entirely attentive of the needs of his children. He spent a lot of time away from the home and this young girl was more or less looking after the household, cooking meals and providing for her brother. In that situation her good friend asked her to stay with her. The victim had known Mr. P.M. for some years prior to this time and as I stated she began living at his residence about a year after her parents had separated. The victim had spent a number of prior weekends at the M. residence.
>
> 6 According to the evidence and representations that have been made,the victim became the subject of inappropriate behaviour on the part of Mr. P.M. in or about the month of May, 1999, prior to her beginning to live at his home. It is indicated that at that time Mr. P.M. began kissing her on the lips and making what I would interpret to be sexual advances towards her when no-one was around. Over time these advances progressed to touching of a sexual nature, touching her breasts and her vagina. About a week after she began living in the M. residence, Mr. P.M. began to have sexual intercourse with this young girl. This sexual intercourse continued on a regular basis, it is said to have occurred two, three and four times a weeks. In addition there was at least one incident of felatio or oral sex. The sexual intercourse and sexual activity continued until Mr. P.M. was caught by his wife in the victim's bedroom in her bed and in the course of inappropriate sexual activity. This occurred in early March of 2000. It led to the investigation, the subsequent charges and the pleas of guilty to the offences with which Mr. P.M. was charged and for which I must now sentence Mr. P.M.

[19] The circumstances of P.M. were discussed in detail and described someone who had lived a pro-social life in most respects other than the offences for which he was being sentenced. Justice Riordon then described a life-altering injury to P.M. that impacted the sentencing decision:

> 12 As a result of the accident Mr. P.M. has suffered a spinal injury which is described in the Pre-Sentence Report as a burst fracture of T-4 in the spinal column. This unfortunately and tragically has resulted in complete paralysis of his lower extremities and he is paralyzed I am led to believe and according to the documentation before me, from the chest down. He is confined to a wheelchair and requires catheterizations four times day. He suffers from severe spasms in his lower extremities and this causes difficulty in sitting for extended periods of time. In addition he suffered severe trauma to both hands, two fingers had to be amputated

> from his left hand, skin grafts were necessary for both hands and I understand he still has serious problems with his hands as a result.

[20] Justice Riordon went on to explain:

> 30 Mr. P.M. has expressed his sorrow for what he has done. He points out that he has had a lot of time to think about his actions and that he will live with his guilt for his inappropriate acts. He stated on a couple of occasions that he was deeply sorry and I accept that he was sincere. He briefly outlined the severe impact of the injury and the accident and how it has changed his life and changed the relationship with his wife and that his relationship with his wife is now a very positive one and that she has been very supportive. Mr. P.M. summarized the medication that he must take, difficulties with the use of a catheter and other difficulties with bowel movements when suppositories must be used regularly. He told how his wife must help him and help him daily to move about in the house, transfer him from bed to commode and so on and that it would not be possible to carry on with his lifestyle without her assistance. In addition Mrs. M.M. helps him with exercise and he points out that he must be very careful of an injury to his lower body in that he has no feeling in his lower extremities. He gave examples of problems that he has encountered and he concluded by expressing his sincere sorrow and outlining how in this environment and in this time of adversity that he and his wife have grown closer together. He acknowledges that his wife has been his rock and has stood beside him and has been providing him with the care and support that he needs. Without question his wife has demonstrated a high degree of responsibility in providing care and support to Mr. P.M. in his circumstances.

[21] In concluding that a three-year prison term was appropriate for P.M., considering the complicating factor of his catastrophic injury, Riordon J. stated:

> 40 In the Springer decision the Court of Appeal referred to the decision of *R. v. Irwin*, 48 C.C.C. (2d) 423 of the Alberta Supreme Court where the following was stated with respect to general deterrence:
>
> > "General deterrence is effected in part by imposing a sentence which affirms that certain conduct which strikes at the core values in our society is unacceptable. The sentence imposed is also directed at like minded individuals that is to persons who might otherwise be inclined to embark upon a similar calculated course of conduct involving young children."
>
> 41 There are a number of important factors in the present case and they of course include the sincere remorse of Mr. P.M., his plea of guilty and the prospect of rehabilitation which I think would be positive. He has followed counseling. His health condition without question has to be considered. He has suffered a devastating injury with permanent consequences. The risk of re-offending is a factor and it is not a high risk in the present circumstances. The very serious crimes and the circumstances under which they were committed are factors of great

> significance. These were acts of sexual exploitation of a young female over an extended period of time and a high frequency of sexual activity took place and I think the nature of the sexual abuse must be considered. These were crimes of violence against a young, vulnerable person committed by an individual who was in a position of trust, an individual who abused his position of trust. The impact on the victim is a consideration and it has had a serious and I would expect long-term consequences. Compassion is of course a consideration.
>
> 42 When one considers the principles of sentencing and the authorities and the very serious sexual offences that were committed here I have come to the conclusion that a conditional sentence is not appropriate. Such a sentence would not reflect the principles of sentencing nor the objectives of sentencing. It is my conclusion from all of the unique circumstances of the present matter that an appropriate sentence would be as follows:
>
> > With regard to count 1 imprisonment for a term of 3 years.
> >
> > With respect to Count 2 imprisonment also for a term of 3 years and it is my conclusion that the sentences be served concurrently.

Analysis

[22] The facts in this case are disturbing.

[23] E.L. was only 16 years old when the sexual abuse occurred. Her mother started a relationship with A.F.G. who was fifty years old. She moved her children, including E.L., into A.F.G.'s home to live as a family. E.L., as a young person, therefore moved into A.F.G.'s home under his care. A.F.G. put a roof over E.L.'s head, fed her and had house rules:

> 17. A.F.G. enforced "house rules" while E.L. was living with him, including helping out around the house, bringing in firewood, and cleaning. A.F.G. also cooked for E.L. and her sisters. A.F.G. had threatened to kick E.L. out of the house, take away her cell phone, and send her to her room, if she did not comply with the house rules. A.F.G. and E.L. would argue from time to time. E.L. would listen to A.F.G. to avoid getting "kicked out" or "bitched at".

[24] A.F.G. provided E.L. with marijuana. She believed the drugs were provided in exchange for her participation in sex. A.F.G. was willfully blind as to the situation. Either way, considering his position of trust in relation to E.L., she could not consent to sexual activity with him. Nonetheless, A.F.G. touched E.L. sexually. He had her stimulate him manually. He had her perform oral sex on him on multiple occasions. He performed oral sex on E.L. They had unprotected vaginal intercourse on multiple occasions. He had her watch while her mother performed oral sex on him, had vaginal intercourse with him and then A.F.G. had vaginal intercourse with

E.L. while her mother watched. A.F.G. had E.L. participate in vaginal intercourse with his 55 year old friend immediately after E.L.'s mother had intercourse with him. A.F.G. participated in this activity by manually stimulating his friend, directing the sexual activity between his friend and E.L. and by digitally penetrating E.L. A.F.G. treated E.L. as nothing more than a sexual vessel and a sexual commodity.

[25] These activities on the part of A.F.G. were criminal, repulsive and wrong.

[26] E.L. provided a Victim Impact Statement that says:

> This whole incident has impacted me ever since the day I have meet him, let alone the things that happened. Homelessness, lack of family, thoughts of death, choices I'd never thought I'd have to make, triggers I'd never thought I'd have, flashbacks, amongst other things. Emotions it ranges from anger to happiness, from I'm on top of the world to I want to crawl in a hole and never come out. With working on the fair during the summer it has triggered me in ways I didn't think could. Families, the happiness you see, to teenagers joking around with their friends. This incident has created triggers, some I'm aware of, and others I don't know about until it hits me. Some times I can just be sitting in bed and then my mind will drift off to space and I'll be randomly thinking about the incident. I'm not in counselling but have tried in the past.

[27] As noted in the agreed statement of facts:

> 19. E.L. disclosed these incidents to several friends over the Christmas holidays in December 2013. Upon her return to school on January 6th, 2014, E.L. disclosed these incidents to her school guidance counsellor, who in turn contacted the Department of Community Services and the police. At this time, E.L. was having suicidal thoughts and exhibiting self-harm as a result of these incidents.
>
> 20. E.L. moved out of A.F.G.'s house that day. She lived with a friend until January 14th, 2014, and then was admitted to the IWK Hospital due to mental health issues she was experiencing. She subsequently resided at a youth shelter in Halifax. E.L. is currently homeless, occasionally "couch surfing".

[28] A.F.G.'s pre-sentence report illuminates the vile family situation E.L. was exposed to:

> J.L.W., partner of the offender, was contacted for the purpose of this report. J.L.W. stated she and the offender have been in a relationship for approximately three and a half years. Same advised she is aware of the offences before the Court as the victim is her daughter. J.L.W. stated she was aware of the sexual acts between the accused and her daughter and the times she was aware of she felt it was consensual. J.L.W. stated she plans to remain in the relationship with the subject.

[29] According to the pre-sentence report author, following her interview with A.F.G., she concluded:

> The subject (A.F.G.) did not express any remorse or compassion for the victim of the offence offering she was 16 years of age and it was consensual sex acts, adding she "kept hitting on him." Same advised he is ashamed and embarrassed of himself as his behaviours have impacted his family.

[30] The only mitigating factor brought to my attention is that A.F.G. entered a guilty plea. Even if a guilty plea arrives on the doorstep of the trial, as is the case here, A.F.G. is entitled to a reduction or discount in sentence. E.L. was spared the need to testify at trial.

[31] Prior to today, there was a complete lack of insight or remorse on the part of A.F.G. In court today he offered an apology to the victim.

[32] A.F.G.'s employment, education, financial situation and health are described in the pre-sentence report as follows:

> The offender reported he completed grade 7, but left school and went to work in a sawmill. Same advised when in school his area of concern was he had difficulty with reading. The subject reported he did not return to school or attend any other academic programs.
>
> The subject reported he is not currently employed. Having been in receipt of Income Assistance for the past three years. The offender reported he finds it difficult to work due to his heath as he experiences carpal tunnel and arthritis. Same advised he has always worked as a manual labourer. The offender noted he would like to start his own small business where he would cut and sell firewood.
>
> The subject reported he is currently in receipt of income assistance and receives $691.00 a month. Same advised after expenses he and his partner are left with $191.00 a month to live on. The offender reported he resides in his own home which he has a mortgage on. A.F.G. stated his partner does not work and the above mentioned amount is the only income they have.
>
> The offender reported in respect to his physical health he has high blood pressure, irritable bowel syndrome, problems with his thyroid, gout along with arthritis in his back and hands. Same offered he takes medication for some of the issues and indicated it makes it difficult for him to work with the pain he has. In respect to his mental health the subject stated he has been experiencing anxiety and depression due to the current situation before the Court.
>
> The offender reported he does not use drugs and does not drink on a regular basis and due to his income, there is no money for alcohol.

[33] Deterrence and denunciation are of paramount importance in determining the appropriate sentence for A.F.G.. Of course, rehabilitation and reformation also play a role in crafting the correct disposition.

[34] The psychological damage inflicted on E.L. by A.F.G.'s selfish, deviant and criminal behavior is significant and impossible to quantify. According to the author of the pre-sentence report, during his interview A.F.G. was devoid of remorse other than feeling sorry for himself because of being caught and the criminal repercussions attached to his guilty plea. Nonetheless, he has pled guilty.

[35] In my opinion, but for the guilty plea, a sentence in the range of five to seven years as requested by the Crown would be appropriate. The sentence proposed by A.F.G. of two to three years is not adequate considering all of the aggravating features, not the least of which is A.F.G.'s involving E.L.'s mother and his 55 year old friend in the sexual activities, along with the frequency of all the sexual activity, including repeated unprotected intercourse. A.F.G. was supposed to be looking after E.L. Instead he harmed her to her very core.

Conclusion

[36] Considering the significant mitigating feature of the guilty plea, I believe that a sentence of four years in prison is appropriate. A.F.G. will receive a sentence of four years custody on the s. 153 charge and four years concurrent custody on the s. 271 charge.

[37] Additionally, I impose the following orders:

1. DNA Order, in accordance with Section 487.051 C.C.;
2. Firearms Prohibition Order for 10 years after A.F.G.'s release from imprisonment, in accordance with Section 109 C.C.;
3. Lifetime SOIRA Order in accordance with Section 490.013(2.1) C.C.; and

4. Order prohibiting contact or communication with E.L. during any custodial sentence, pursuant to Section 743.21 C.C.

Arnold, J.