SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Willis*, 2018 NSSC 238

Date: 20180823
Docket: CRH No. 460343
Registry: Halifax

Between:

Her Majesty the Queen

v.

Carie Dexter Willis

Restriction on Publication: S. 486.4 CC

Judge:	The Honourable Justice Suzanne Hood
Heard:	April 3, 4, 5, 6, 9, 10, 11, 2018, in Halifax, Nova Scotia
Date of Oral Sentencing Decision:	August 23, 2018
Written Release of Oral Decision:	September 27, 2018
Counsel:	Cheryl Schurman, for the Crown Thomas J. Singleton, for the Defence

By the Court (Orally):

Introduction

[1] This is the date to which I adjourned my decision is the matter of *Her Majesty the Queen v. Carie Dexter Willis*. I note for the record that there is a publication ban on anything that would identify the complainant.

[2] Carie Willis was found guilty of three counts: sexual assault under Section 271 of the *Criminal Code*, extortion pursuant to Section 346(1.1)(b) of the *Criminal Code*, and breach of trust by a public official Section 122 of the *Criminal Code*.

Facts

[3] Carie Willis was a CBSA officer. His duty was to find, arrest and deport persons illegally in Canada. The CBSA information found on the Internet refers to its mission, vision, motto. What the CBSA does includes investigating, detecting and apprehending violators of the *Immigration and Refugee Protection Act*. Its responsibilities include removing people who are inadmissible to Canada. The motto of the CBSA is “Protection ● Service ● Integrity”.

[4] I will refer to the complainant as A.A. because of the publication ban. A.A. came to Canada as a student in 1996. She dropped out of Dalhousie and another program and her student visa expired in 2001. At that point she applied for refugee status, which was denied in early 2003. She worked at Convergys. As a result of the denial of her refugee claim, she was without status.

[5] In January 2003, she met with Carie Willis with respect to the Pre-Removal Risk Assessment. Around February or March of that year, Carie Willis called her, told her that her application had been denied, and that she should meet with him. When she did, she was told the deportation process would begin. She subsequently had a call from Carie Willis and met at a Tim Horton's to discuss her options. He called again subsequently to give her the deportation date.

[6] Then he called on June 23 and she asked him to come to her apartment. He said that if she decided not to go to the airport, he would not look for her for about two weeks. She subsequently did not appear for deportation. She moved to a new apartment and, because she had a concern for her job because of what Mr. Willis had said about looking for her, she called him. He gave her his private cell phone number and eventually they met again at Tim Horton's. She gave him her phone number. He called that evening and she asked him to come to her new address. At that time, she asked him not to come to her place of employment and he then said,

"Show me how much you want that." He kissed her. She did not say stop because she wanted to keep her job. He said, "It looks like you'll be staying in Canada for a long time." It was a 45 minute visit during which time they discussed his family, previous jobs and other things.

[7] About a week later he came by and he was kissing her. Then he kept coming over one or two times a week, and he kept trying to kiss her. In October one morning, she was still in her bedroom. He arrived and said he could no longer keep not executing the warrant for her deportation. He said he would have to turn the file over, but if they were together he could put the file away for five years. He then performed oral sex on A.A.

[8] The next day he returned and they had intercourse with a condom. This continued one or two times a week and there was sexual intercourse on each occasion. At one point she said to him that she was not consenting and he said she did, but because of the power imbalance she said she did it to stay in Canada. Otherwise she knew she would be deported. She last saw Carie Willis in December 2003.

[9] The warrant was issued for her deportation in December 2003. Guy Lawrence was an immigration officer at the same time with the CBSA and he

testified he would issue a warrant immediately if someone did not show at the airport to be deported. He said the priority was to deport within two weeks. He said if the person did not show at the airport, they would try to locate that person immediately and only if they exhausted all efforts to find the person was the file put away for six months to a year. In this case Carie Willis put the file away for three years, not to be brought forward again December 2006.

[10] Carie Willis is 58 years old. He is a member of a minority community in Nova Scotia. He had a 14 to 15 year career with CBSA and lost his job. He has no previous record. He has a good work history and is now working in the Montreal area. He has had a number of significant relationships and, although separated for a time, he resides now with his wife and children in Montreal.

[11] There is little information to be gleaned from the pre-sentence report. His counsel pointed out that there were language difficulties. Also Mr. Willis refused to discuss the offences, he maintained his innocence, and said he planned to appeal his conviction.

Sentencing Provisions in the Criminal Code

[12] There are a number of provisions of the *Criminal Code* which apply to sentencing matters.

[13] Section 718 sets out the purpose of sentencing as follows:

Purpose

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 acknowledgement of the harm done to victims or to the community.

[14] Section 718.1 sets out a fundamental principle:

Fundamental principle

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

[15] Section 718.2 contains other sentencing principles:

Other sentencing principles

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.

…

(iii) evidence that the offender, in committing the offence, abused a position of authority in relation to the victim,

> (iii.1) evidence of the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
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> …
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> shall be deemed to be aggravating circumstances;
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> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
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> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

[16] The role of the sentencing judge is to determine a just and appropriate sentence. As Lamer, C.J.C. said at paragraph 91 of *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500:

> 91 … The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community.

[17] In *R. v. B.(B.S.)*, [2008] B.C.J. No. 2227 (S.C.) 1526, S.R. Romilly, J. in paragraph 27 referred to *M.(C.A.)* where Lebel, J. referred to "the individualized nature of the sentencing process …".

[18] In *M. (C.A.)*, Lamer, C.J.C. discussed retribution and its importance as a principle of sentencing (para. 77). He continued in paragraph 79:

> 79 Retribution, as an objective of sentencing, represents nothing less than the hallowed principle that criminal punishment, in addition to advancing utilitarian considerations related to deterrence and rehabilitation, should also be imposed to sanction the moral culpability of the offender. In my view, retribution is integrally woven into the existing principles of sentencing in Canadian law through the fundamental requirement that a sentence imposed be "just and appropriate" under

> the circumstances. Indeed, it is my profound belief that retribution represent an important unifying principle of our penal law by offering an essential conceptual link between the attribution of *criminal liability* and the imposition of *criminal sanctions*.

[19] He took care to distinguish it from vengeance (para. 80) and from denunciation, in paragraph 81, where he said:

> 81 … Retribution requires that a judicial sentence properly reflect the moral blameworthiness of that particular *offender*. The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's *conduct*.

[20] The paramount principles in a case such as this are denunciation and deterrence, although the possibility of rehabilitation is not to be overlooked. As Lamer, C.J.C. said, as quoted above, denunciation communicates society's condemnation of the offender's conduct.

[21] In *R. v. Greenhalgh*, [2011] B.C.J. No. 745 (S.C.), Verhoeven, J. sentenced a border guard. He said in paragraphs 72 and 73:

> 72 In the case of Mr. Greenhalgh, the principles of general deterrence and denunciation are paramount. In terms of deterrence, there must be a clear and unmistakable message from this court to all persons who have been entrusted with state authority, such as border guards, police officers and peace officers generally, that crimes of the nature committed here, involving gross abuse of trust and authority, will attract severe penalties.
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> 73 Arguably, however, denunciation is even more important than deterrence in this case. As noted, instances such as this are rare in Canada. Overwhelmingly, peace officers and others respect their responsibilities and do not abuse their positions. The public expects and demands no less. In that context, Mr. Greenhalgh's offences would shock and appal nearly every Canadian. The sentence imposed must clearly denounce and condemn Mr. Greenhalgh's unlawful conduct.

[22] Similarly in *Doodnaught*, [2014] O.J. No. 870 (S.C.J.), McCombs, J. in paragraph 27 referred to the overriding principles of denunciation and deterrence. His words were quoted in *R. v. Kandola*, [2012] B.C.J. No. 1471 (S.C.) by Romilly, J.

[23] The court must denounce the conduct which occurred here. A sentencing decision must also deter others in positions of authority from overstepping the bounds of their duty or face serious consequences.

Proportionality

[24] Section 718.1 requires the sentencing judge to impose a sentence which is proportionate to the gravity of the offence and the degree of the offender's culpability.

[25] Romilly, J. in *B.(S.B.)*, supra, in paragraph 25, quoted from Lamer, C.J.C. in *M.(C.A.)*, supra, at paragraph 40. He said:

> 25 As weighty as these pronouncements in the *Criminal Code* are those of the Supreme Court of Canada. In *R. v. M.(C.A.)* … at para. 40, the Court, referring to the proportionality principle, stated:
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> > It is a well-established tenet of our criminal law that the quantum of sentence imposed should be broadly commensurate with the gravity of the offence committed and the moral blameworthiness of the offender.

[26] In this case, not only did Carie Willis sexually assault A.A. but he used his position as a CBSA officer to do so and extorted sex from her to gain his objective. A.A. had no ability to say no because he had power over her and her ability to stay in Canada.

Parity

[27] The *Criminal Code* in s. 718.2(b) sets out the requirement for parity in sentences.

[28] In *R. v. Roks*, 2011 ONCA 618, the Ontario Court of Appeal referred to the principle of parity. Watt, J.A. in paragraph 16 said what parity is and is not and what happens when similar offences, similar offenders and similar circumstances are not present. He said:

> 16 Parity is not equivalence, nor is similar, identical. Crucial to the parity principle expressed in s. 718.2(b) are the cumulative requirements of
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> · similar offences
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> · similar offenders
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> · similar circumstances
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> Similar offenders should receive similar sentences for similar offences committed in similar circumstances. When the similarities begin to fall away, however, so does the principle.

[29] The Crown urges me to consider this case as one of first impression since she could not find any case where sexual assault, breach of trust and extortion were the offences.

[30] The defence, on the other hand, says the offences were so entwined that it is possible to consider sexual assault and breach of trust sentences as similar for purposes of parity.

[31] In my view, the additional element of extortion was only possible because of Carie Willis' role as a border services officer.

Mitigating and Aggravating Circumstances

[32] I must consider mitigating and aggravating circumstances according to s. 718.2(a).

[33] The only mitigating circumstance is Carie Willis' status as a first time offender. However, he would not have been able to work for the CBSA otherwise and it was that position that enabled him to commit these offences. In my view, that lessens the significance of his first time offender status.

[34] On the other hand, there are a number of aggravating circumstances:

1. Carie Willis planned his actions, gaining A.A.'s trust and waiting until she failed to show for deportation.

2. A.A. was in a vulnerable position. She was a failed refugee claimant and in the country without status. She felt Canada was her home and did not want to return to Nigeria.

3. A.A. expressed at trial the effects of Carie Willis' actions on her. She said being sexually assaulted changed her and nothing can reverse that.

4. Carie Willis abused his position of trust and authority over A.A.

[35] In *R. v. Kandola*, 2014 BCCA 443, the British Columbia Court of Appeal dealt with the submission that there was double counting in that Kandola was charged under s. 122 and as well his breach of trust was a factor in his sentence.

[36] Garson, J.A. responded to that submission in paragraphs 40 and 41. She concluded that different societal interests can give rise to consecutive sentences. She continued to say that the *actus reus* of the cocaine importing scheme involved the abuse of public office referred to in s. 122. She then pointed out that the sentencing judge made specific reference to the "special position of trust" border service officers hold in the community. She said in paragraph 41:

> 41 … When such officers abuse their power "all of Canadian society is put at risk". … The judge's reason show that the separate societal interest threatened by the bribery and breach of trust necessitated a separate, consecutive sentence. …

[37] I conclude in this case that the abuse of public office enabled Carie Willis to use the power of that office to extort sex from A.A. He had a special position of trust in the community which he breached.

[38] I note that Carie Willis maintains his innocence, and the lack of remorse and refusal to take responsibility for his offences is not a factor I can consider as aggravating. If present, as they were not in this case, they could be considered as mitigating.

Sexual offences and breach of trust (children)

[39] The defence provided a number of authorities where sexual offences occurred in situations where the offender was in a position of trust with respect to a victim or victims who were children. The offences varied with respect to the number of victims and the period of the sexual offences.

[40] In *R. v. Leroux*, [2015] S.J. No. 231 (C.A.), the sentence was eight years for many years of serious sexual offences with respect to eight victims at a time when the offender was a supervisor of a boys dormitory at an Indian Residential School. He was in a position of trust as a parental figure.

[41] In *R. v. N.(A.)*, 2011 NSCA 21, the Nova Scotia Court of Appeal upheld a sentence of eight years for sexual assaults of A.N.'s daughters. The sentences were five years and three years, to be served consecutively.

[42] In *R. v. Dimmick*, [2015] O.J. No. 2916 (C.A.), the offender was a hockey coach in a position of trust with respect to the players, who, over a 10 year period, sexually abused four victims. The sentence of seven years was upheld on appeal.

[43] In *R. v. S.R.L.*, [2013] N.S.J. No. 83 (S.C.), the offender was sentenced to six and a half years for over 100 incidents of sexual abuse of his stepdaughter over a period of over seven years.

[44] In *R. v. K.(P.V.)*, 1992, 116 N.S.R. (2d) 110 (S.C.), Saunders, J. (as he then was) sentenced a father to five years for sexual assault of his daughter over a five year period.

[45] In *R. v. A..D.*, [2018] B.C.J. No. 1022 (S.C.), the offender was a coach of boys in baseball and hockey. He later became an RCMP officer. The boys were vulnerable and he was in a position of trust with respect to them. He was sentenced globally to six years.

[46] *R. v. A.F.G.*, [2017] N.S.J. No. 112, the offender was sentenced to four years for sexual assault of his partner's 16 year old daughter over a four month period.

Arnold, J. said in paragraph 22 that the facts of the case were disturbing. The victim impact statement set out the serious impact on the victim. Arnold, J. said that had there not been a guilty plea, a sentence of five to seven years would have been appropriate.

[47] In *R. v. C.(S.C.)*, 2004 NSPC 41 and in *R. v. Farler*, [2013] N.S.J. No. 31 (C.A.), the sentence was two years and in *R. v. L.R.L.*, [2000] N.S.J. No. 251 (C.A.) it was 30 months (reduced from 36 months on appeal).

[48] These authorities illustrate a wide range of sentences and the wide range of breaches of trust with respect to children. Some of the circumstances can only be described as egregious, both in the breach of trust and in the sexual abuse.

Sexual assaults (adults)

[49] In Nova Scotia, a starting point of three years for sexual assault sentencing has not been adopted. This was referred to by Tax, J. (Prov. Ct. J.) in *R. v. Simpson*, [2017] N.S.J. No. 222 in which he quoted from paragraph 35 of *R. v. W.(J.J.)*, 2012 NSCA 96.

[50] However, there have been Nova Scotia cases where three years imprisonment for sexual assault has been ordered. The *Simpson* matter was one.

The offender had sexual intercourse without a condom with a young woman he met at a party. Her Victim Impact Statement set out the profound impact of the offence on her including having PTSD.

[51] In *B.(B.S.)*, supra, the offender was sentenced to two years less a day for non-consensual sex with a young woman he met on an internet chat site. She contracted a sexually transmitted disease from him. Romilly, J. canvassed a series of sexual assault sentencing cases in paragraph 35, and the range, he concluded, was two to six years where sexual intercourse occurred.

Persons in position of authority – CBSA (2), IRB, police, M.D., RCMP

[52] The Crown has provided me with a number of authorities where the offender breached either a statutory trust or was in a position of trust by virtue of the offender's job or role.

[53] B.S.B. was a corrections officer; Ellis was a member of the Refugee Protection Division of the Immigration and Refugee Board*;* Greenhalgh was a border guard employed by the CBSA as was Kandola; Cook was a police officer; A.D. was a member of the RCMP; Doodnaught was an anesthesiologist. Each used his position of trust and/or authority to perpetrate his crimes.

[54] In sentencing B.S.B., Romilly, J. referred to the victim's vulnerability, the insidious nature of the offence (sexual assault), B.S.B.'s high degree of moral responsibility for the offence and the requirements of denunciation and deterrence (refer to para. 48). In paragraph 10, the court referred to how B.S.B. had used his position as a corrections officer to gain the victim's trust.

[55] Ellis was convicted of breach of trust contrary to s. 122. The Court of Appeal, (2013 ONCA 739), quoted from the trial judge's sentencing decision, (2010 ONSC 2390), dealing with the breach of trust. I repeat those paragraphs here as they are applicable to this matter.

> 90 …
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> It is my opinion, however, that Mr. Ellis' conduct was of comparable blameworthiness [to cases involving fraud or sexual assault by persons in a position of trust]. Mr. Ellis had enormous power over Ms. Kim: her entire future rested on his decision. She told Mr. Ellis that a positive decision was like "saving my life". Any consent that she might have given to a sexual relationship in these circumstances could hardly have been voluntary.
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> Not all breaches of trust are equally grave. The position that Mr. Ellis had is an important factor in determining the seriousness. As an adjudicator in a quasi-judicial position, he stood near the top of the spectrum. …
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> Mr. Ellis held a position of prestige, privilege and power. His acts not only harmed Ms. Kim. Individuals appearing before the IRB and members of the public are entitled to expect only the highest standards of conduct. In particular, they are entitled to expect that decisions will be rendered fairly and impartially, without reference to any extraneous considerations.
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> Mr. Ellis breached the significant trust that had been placed in him and the obligations that he bore to the people who appeared before him and to the Canadian public. His actions undermined public confidence in the

> integrity of the Canadian immigration and refugee system and in the administration of justice.
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> The justice system is one of the pillars of the free and democratic society that we, as Canadians, enjoy. The cornerstone of that justice system is the rule of law and the values of fairness, integrity and respect. Mr. Ellis' actions struck at the core of those values. They call for denunciation in the strongest terms.
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> In my opinion, in these circumstances, and notwithstanding the significant mitigating factors, the principles of general deterrence and denunciation require a period of imprisonment.

[56] In that case, there was no sexual contact and the Court of Appeal reduced the sentence of 18 months imprisonment to a conditional sentence.

[57] Carie Willis, like Ellis, had enormous power over A.A. Like Ms. Kim, A.A.'s future rested on Carie Willis' ability to prevent her deportation. Similarly, her consent to sexual intercourse could not be considered voluntary.

[58] Although Carie Willis did not hold a position like that of Ellis, he had obligations to the people of Canada and his actions undermined public confidence in the immigration process. Carie Willis' conduct must be denounced.

[59] Greenhalgh was a border guard with the CBSA and carried out illegal strip searches of four young women and sexually touched three of them. He was convicted of sexual assault and breach of trust with respect to his duties with the CBSA. In his sentencing decision, the trial judge referred to "gross abuse of trust

and authority" and said how *Greenhalgh's* conduct would shock and appal nearly every Canadian. In his decision, Verhoeven, J. said at paragraphs 50 to 52:

> 50 … By virtue of his position he was entrusted with enormous power, authority and responsibility. In this case, Mr. Greenhalgh deliberately and repeatedly abused his power and authority. He was not merely dishonest. He did not merely breach his duties out of negligence. He knowingly, flagrantly and repeatedly betrayed the trust which he had been given and that he had voluntarily accepted. He used his power to humiliate and degrade his victims. Each victim endured hours of suffering as Mr. Greenhalgh used his powers to cruelly manipulate them, to break down their resistance and to force them to consent. Each victim then suffered a grave and traumatic assault on her person and on dignity by being forced to remove clothing in the presence of Mr. Greenhalgh, and in three cases being sexually assaulted by him. Mr. Greenhalgh appears to have been indifferent to the suffering of his victims. As the victim impact statements attest, they have all suffered lasting harm from their trauma.
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> 51 His crimes were not spontaneous or impulsive. They were calculated and deliberate. It appears that Mr. Greenhalgh selected his victims opportunistically, and then in a predatory manner, he carefully and methodically worked to force his victims to comply. No credible mitigating explanation or excuse for his conduct has been suggested.
>
> 52 The effects of Mr. Greenhalgh's crimes go well beyond the individual victims. The impact upon the broader community must be considered. …

[60] Those words apply equally, in my view, to the actions of Carie Willis. He deliberately and repeatedly abused his power and authority. Nor were his crimes spontaneous; he planned his actions. His actions had an adverse effect not only on A.A., but also the broader community and the reputation of the CBSA.

[61] The sentence of two years less a day for Greenhalgh was upheld on appeal. In his decision, Verhoeven, J. referred to *R. v. Cook*, 2010 ONSC 5016, the

sentencing of a police officer, saying the principles in sentencing a police officer applied to that case.

[62] In *Kandola*, supra, Romilly, J., in paragraph 73, referred to the s. 122 offence calling it a serious breach of trust and referring to the need for deterrence for the offence. Persons in positions of authority must be deterred from abusing their power and breaching the trust conferred on them.

[63] On appeal from that decision, the Court of Appeal said in paragraph 46:

> 46 … In my view, corruption by a public official, while thankfully rare, is indeed a crime deserving of a very severe sanction. As a border guard, Mr. Kandola occupied a special position of trust in his community and in his workplace. The type of corruption evidenced by this case has a corrosive effect not just on his former colleagues, but also on public trust in law enforcement. Public confidence in the administration of justice requires severe sanctions in the rare instances when a law enforcement officer does succumb to such temptation. …

Totality

[64] I must now consider a fit sentence for each offence. The offences are serious and Carie Willis' conduct was egregious. His moral blameworthiness is substantial.

[65] I refer to the words of Watt, J.A, quoted above, with respect to parity. The authorities to which I have been referred are not for similar offences occurring in similar circumstances. Although some of the offenders had the same trust

obligations as Carie Willis, I conclude the principle of parity is not applicable in this case.

[66] I agree with the Crown that this case is unlike anything previously before the courts because of the combination of sexual assault, breach of trust and extortion. There are no precedents which assist me in determining a fit sentence for all the offences. I will consider each offence individually and then determine if the sentences should be served consecutively or concurrently. All the offences are serious offences; however, I consider the sexual assault to be the most serious of the three. The extortion and breach of trust led to the sexual assault which is a serious crime against a person.

[67] In *R. v. McCraw*, [1991] S.C.J. No. 69, the Supreme Court of Canada referred to the violence inherent in sexual assault. Cory, J., in paragraph 31, writing for the court said:

> 31 It is difficult, if not impossible, to distinguish the sexual component of the act of rape from the context of violence in which it occurs. Rape throughout the ages has been synonymous with an act of forcibly imposing the will of the more powerful assailant upon the weaker victim. Necessarily implied in the act of rape is the imposition of the assailant's will on the victim through the use of force. Whether the victim is so overcome by fear that she submits, or whether she struggles violently, is of no consequence to determining whether the rape has actually been committed. In both situations the victim has been forced to undergo the ultimate violation of personal privacy by unwanted sexual intercourse. The assailant has imposed his will on the victim by means of actual violence or the threat of violence.

[68] One could substitute for the words “violence or threat of violence” in this case the words breach of trust and extortion. A.A. was forced to undergo the ultimate violation of personal privacy and personal integrity by Carie Willis.

[69] Although Nova Scotia has not adopted a three year sentence as a starting point, I conclude, after a review of the authorities to which I have referred, that the appropriate sentence for the sexual assault in this case is three years. It is within the range of two to six years to which Romilly, J. referred in *B.S.B.* where sexual intercourse occurred.

[70] As I have said, Carie Willis’ position as a CBSA officer enabled him to force A.A. to have intercourse with him on a number of occasions. He also performed oral sex on her and made her submit to unwanted kissing.

[71] Deterrence and denunciation of Carie Willis’ conduct is paramount. The court must show that it will not tolerate sexual assaults which have such a profound impact in victims.

[72] In the authorities to which I have referred above, breach of trust has been treated as a crime which calls for severe sanctions. It undermines the view of society that those entrusted with great power and authority will guard that power

vigorously and not overstep the bounds of their authority for their own gratification, whether sexual or out of greed.

[73] In *Ellis*, supra, there was no sexual contact but an invitation to engage in a sexual relationship in exchange for a favourable decision on the victim's refugee claim. There was also the mitigating factor of Ellis' bipolar disorder which led the Court of Appeal to reduce the 18 month sentence of imprisonment to an 18 month conditional sentence.

[74] Greenhalgh's breach of trust resulted in a sentence of two years less a day. He did sexually assault three of the victims, but it was in the nature of sexual touching and not intercourse or oral sex. The strip searches occurred once to each victim.

[75] This is very different from the breach of trust and resulting sexual assaults on A.A. In my view, a sentence of three years is appropriate to denounce Carie Willis' conduct and deter others in positions of trust from engaging in reprehensible conduct by virtue of their power and authority over people.

[76] Extortion carries a maximum sentence of life imprisonment. Without providing authorities, the Crown says this offence should attract a sentence of six years.

[77] I understand the Crown's difficulty in providing authorities in a situation such as this. Crown counsel said she was unable to find other authorities in circumstances such as these.

[78] In my view, the extortion offence is part and parcel of the breach of trust offence.

[79] Carie Willis was in a position where he could extort sexual favours because of his position as a CBSA officer. I conclude this offence, too, merits a three year sentence.

[80] In *N.(A.)*, supra, Fichaud, J.A. discussed the totality principle in paragraph 35. He referred to *M.(C.A.)* and *R. v. Adams*, (2010 NSCA 42), in saying there is no fixed ceiling on consecutive sentences. He then said:

> 35 … Rather the sentence are to be determined individually as appropriate for each offence, and made consecutive or concurrent in accordance with principles of consecutivity, then the total should be assessed, with a backward look, to determine whether the global sentence is either just and appropriate or unduly harsh for the aggregated criminal behaviour.

[81] In considering the totality of the three sentences, I conclude a nine year sentence is not fit. It is too harsh a sentence.

Conclusion

[82] I therefore conclude that the sentence of three years for extortion is to be served concurrently with the breach of trust sentence. With respect to the breach of trust sentence, I conclude it should be served consecutively to the sexual assault sentence.

[83] Mr. Willis, would you please stand.

[84] It is the sentence of this court that you serve a total term of imprisonment of six years.

[85] In addition, I grant a Firearms Prohibition Order. You are also ordered to provide a DNA sample and to comply with the Sex Offender Information Registration Act.

[86] There is to be a victim surcharge of $200 for each of the three offences, payable within two years after Mr. Willis' release.

[87] Furthermore, you are to have no contact directly, or indirectly, with A.A.

[88] I will grant the orders which the Crown has provided. The Firearms Prohibition Order should be today's date, August 23, 2018. The Sex Offender

Registration Act period should be 20 years, based upon my review of the sections of the *Criminal Code* dealing with the SOIRA. Those orders will be granted.

Hood, J.