

Citation: *R. v. Deuling*, 2023 YKTC 11

Date: 20230502
Docket: 19-00137C
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Neal

REX

v.

PAUL THOMAS DEULING

Publication, broadcast or transmission of any information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.

Appearances:
Neil Thomson
Richard S. Fowler KC

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

Introduction and Overview

[1] At the conclusion of a trial December 9, 2022, Mr. Paul Deuling was found guilty of Count 4 on Information 19-00137-C (the “Information”) being the sexual assault of D.M. between October 1, 1986, and October 31, 1986, contrary to s. 246.1 of the *Criminal Code*.

[2] Mr. Deuling was found not guilty of the other counts set out in the Information.

[3] Matters were adjourned for the preparation of a Pre-Sentence Report (“PSR”), to allow time for the submission of a Victim Impact Statement (“VIS”), and for the submissions of Counsel.

[4] On February 23, 2023, a PSR concerning Mr. Deuling was filed with the Court.

[5] On March 13, 2023, a redacted VIS was filed with the Court.

[6] On March 20, 2023, Crown submissions on sentence and relevant authorities were filed with the Court.

[7] On March 28, 2023, defence submissions on sentence, relevant authorities, and reference letters were filed with the Court.

[8] Oral argument on submissions was heard April 19, 2023. The decision on sentence was reserved to May 2, 2023.

Circumstances of the Offence

[9] The circumstances of the offence were set out in detail in the trial decision reported as *R. v. Deuling*, 2022 YKTC 49.

[10] In summary, Mr. Deuling was found to have committed two acts of sexual assault on D.M within the allegation set out in Count 4 of the Information. The specific facts found to be relevant to this Count are set out in paras. 371 to 375 of the trial decision and can be summarized as follows:

- (a) Mr. Deuling was found to be in a position of trust with respect to D.M. given her continuing status as a student, and Mr. Deuling's extensive history of dealings with her as a teacher, coach, and *de facto* mentor;
- (b) Mr. Deuling intentionally sexually assaulted D.M. twice, a vulnerable person;
- (c) The sexual assaults took place in an isolated location chosen by Mr. Deuling in circumstances amounting to a breach of trust;
- (d) Mr. Deuling was also found to be reckless as to whether or not D.M. was, in fact, consenting to his sexual acts.

Position of the Crown

[11] Crown's submission on sentence can be summarized as follows:

- (a) On the single count before the Court for sentencing, the Crown submits that Mr. Deuling should be sentenced to incarceration for four years in accordance with s. 246.1 of the *Criminal Code*;
- (b) The Crown also submits that the Court should impose a mandatory SOIRA order for 20 years, together with a mandatory order to provide a DNA sample. A 10-year firearms prohibition order under s. 109 of the *Criminal Code* is sought as well. However, Crown acknowledges that at the time of the offence, such orders were discretionary, not mandatory;

- (c) The Crown submits that any sentence of less than two years imprisonment is inappropriate in the circumstances of this case taking into account s. 718.01 and s. 718.04 of the *Criminal Code*. The Crown's position is, effectively, that the Court would lack jurisdiction to order that Mr. Deuling serve a conditional sentence;
- (d) The Crown further submits that the key sentencing objectives on the facts of this case are denunciation and deterrence;
- (e) The Crown notes that having proceeded by indictment, the maximum term of imprisonment under the provisions of the *Criminal Code* in effect at the time of the offence would be 10 years;
- (f) The Crown's position is that the principles applicable in *R. v. Friesen*, 2020 SCC 9, apply to the case at bar. The Crown submits the age of the victim, who was 17 at the time of the sexual assault, ought to be taken into consideration in sentencing. In this case in particular involves a victim who was in the care of a man 20 years her senior when the offence took place;
- (g) Crown submissions note the facts found to be proven after trial resulted in the determination that Mr. Deuling was guilty of a breach of trust, and the victim, D.M., was in a vulnerable position profoundly impacted by this breach of trust. On a fact-based analysis of the trial evidence, as well as statutorily pursuant to s. 718.01, the Crown submits that D.M. was legally a child and any sentencing must take

into consideration the principles and direction of the Court in *Friesen*. Crown further submits that as a young woman of 17 years of age, at the time of the offence, D.M. was a vulnerable person within the meaning of s. 718.04 of the *Criminal Code*. This warrants primary consideration of a denunciatory sentence to deter further such offending;

(h) In support of the Crown's submissions on the significance of *Friesen* on earlier and subsequent decisions involving sexual assaults on children, the Crown made reference to: *R. v. Alcorn*, 2021 MBCA 101; *R. v. Tracey*, 2023 YKTC 5; *R. v. White*, 2008 YKSC 34; and *R. v. Charlie*, 2021 YKTC 48. Crown also acknowledged that sentencing for sexual assaults of children in the Yukon has not yet been categorized, nor has a specific range of sentence been established for such cases. In the *White* decision, however, Crown submits that the Yukon Supreme Court considered an appropriate range of sentence for the sexual assault of a child that is sleeping to be between 12 and 30 months' imprisonment;

(i) With respect to aggravating circumstances relevant to sentencing, Crown submits that:

1. Both s. 718.01 and s. 718.04 of the *Criminal Code* apply as the victim, D.M. was 17 years of age and a vulnerable person;

2. The offence is one which can be categorized as “major” as it involves forcible sexual intercourse; and
 3. There was an intentional and clear breach of trust by Mr. Deuling with respect to D.M., a vulnerable person.
- (j) The sole mitigating factor raised by the Crown in submissions is the acknowledged lack of a criminal record relating to Mr. Deuling;
 - (k) Crown submissions acknowledge that the fundamental principle of proportionality under s. 781.1 is still paramount in determining a fit and appropriate sentence;
 - (l) Crown submissions note that the Supreme Court of Canada in *Friesen* was clear, mid-single digit penitentiary terms are normal for sexual offences against children, and that substantial sentences can be imposed where a single instance of sexual violence has been proven;
 - (m) Crown notes, in the written submissions, that there is no identified remorse and no display of insight or empathy by Mr. Deuling for the offence which he has committed. However, Crown also acknowledges that such is not under any circumstances to be considered as an aggravating factor in sentencing;
 - (n) Crown submissions acknowledge that in the PSR, Mr. Deuling was identified as very low risk on his criminogenic risk assessment.

However, it is submitted by Crown that given the aggravating factors, and the statutory obligation to give primary consideration to denunciation and deterrence on the facts of this case, rehabilitation of the offender ought to take a less significant role in sentencing;

- (o) Crown concluded its submissions by noting that in this case, the aggravating factors are numerous, and any mitigation is minimal.

Position of Counsel for Mr. Deuling

[12] The position advanced by Counsel on behalf of Mr. Deuling can be summarized as follows:

- (a) Counsel submits that a fit and appropriate sentence on the facts of this case would range between 30 and 36 months' incarceration;
- (b) It is submitted that such a sentence adequately addresses the need for denunciation and deterrence, while recognizing the significant mitigating factors that apply given Mr. Deuling's age and otherwise exemplary character;
- (c) Counsel notes that the passage of time may well have an impact on the determination of a fit and proper sentence: *R. v. Bremner*, 2000 BCCA 345. Given that the matters in issue took place over 36 years ago, Counsel submits such principles may have application to this case;

- (d) It is submitted that Mr. Deuling's apparent lack of expressed remorse is not an aggravating factor as he has denied the allegations and intends to appeal his conviction: *R. v. Thornton*, 2000 BCSC 1430;
- (e) Counsel submits that at 73, Mr. Deuling's age is a relevant consideration in determining a fit and appropriate sentence: *R. v. McNamara* (1981), 56 C.C.C. (2d) 516 (Ont. C.A.); *R. v. Slater*, 2014 ONSC 4017; *R. v. M. (CA)*, [1996] 1 S.C.R. 500; *R. v Swope*, 2015 BCCA 167; and *R. v. Gaglardi*, 2023 BCSC 96. Counsel specifically submits that time in jail will be particularly harsh for Mr. Deuling as an elderly offender, and that he is of an advanced age with health conditions. Counsel argues that a reduction in sentence may be required to avoid the injustice of a sentence that might approximate Mr. Deuling's life expectancy;
- (f) Counsel notes that Mr. Deuling has submitted 19 reference letters in the defence submissions. Counsel notes that the letters each speak to Mr. Deuling's good character and the positive impact he has had on his community as a teacher, hunter, nature enthusiast, father, friend, and mentor. Counsel notes that Mr. Deuling has a strong network of family and friends who rely on him for support. As well, it is noted that Mr. Deuling has no criminal record. Counsel submits that aside from this one conviction, Mr. Deuling has lived a long life of good character;

- (g) Although Counsel acknowledges that the preponderance of authority confirms the limited utility of reference letters on the issue of good character, it is submitted that Mr. Deuling's case is distinguishable, and the evidence of good character should be a relevant factor in determining a fit and appropriate sentence;
- (h) Counsel submits that the following mitigating factors apply to this case:
- (i) Mr. Deuling is 73 years old. He suffers from cardiac issues including ventricular tachycardia. Mr. Deuling recently had a medical episode that resulted in memory loss of the day. Doctors related the episode to stress following his conviction. It is clear that any time he spends incarcerated will be more severe than it would be for a younger offender;
 - (ii) Over 36 years has passed since the commission of the offence before the Court and Mr. Deuling has committed no similar offences, nor indeed, any offences;
 - (iii) Mr. Deuling's education and strong work history is relevant to sentencing. He was steadily employed as a teacher for 33 years from 1972 until his retirement in 2005. In retirement, he worked taking students on

historical tours through Europe from 2005 until travel was interrupted by COVID 19 in 2019. He also assists with his son's outfitting business;

- (iv) Mr. Deuling dedicated a large portion of his life to the betterment of his community. The reference letters attest to his dedication in serving and uplifting Whitehorse's young people, his leadership in the hunting community, and his repeated acts of kindness and support to others;
- (v) Mr. Deuling has support from his community and members of his family. He maintains many important supports in his community with people from all backgrounds. He is very close to, and keeps in contact with his family, including his children and grandchildren;
- (vi) The PSR was generally positive, including Mr. Deuling's score of "very low" on the LS/CMI and the probation officer's opinion that Mr. Deuling could be an appropriate subject to receive a community-based sentence that is therapeutic in nature;
- (vii) Mr. Deuling has no criminal record; and

(viii) Mr. Deuling is being sued by D.M. following his conviction.

[13] With respect to relevant sentencing authorities, Counsel acknowledges the importance of the principles set out by the Supreme Court of Canada in *Friesen*.

[14] Counsel specifically acknowledges that the Supreme Court in *Friesen* gave guidance to lower courts on three points when sentencing in relation to matters involving sexual offences against children as follows:

- (a) Upward departure from prior precedents and sentencing ranges may well be required to impose a proportionate sentence;
- (b) Sexual offences against children should generally be punished more severely than sexual offences against adults; and
- (c) Sexual interference with a child should not be treated as less serious than sexual assault of a child.

[15] Counsel provided several authorities, detailed in the filed written submissions, setting out the general range of sentences for matters involving sexual offences against children decided both before, and after, *Friesen*.

[16] Counsel further notes the decision in *R. v. Coban*, 2022 BCSC 1810, at para. 73, where the Court confirms that pre-*Friesen* sentencing ranges may be of limited relevance in considering a fit and proper sentence relating to sexual offences against children.

[17] Counsel submits, however, that the facts of the *Friesen* decision are materially distinguishable from those relating to this case.

Victim Impact

[18] The VIS of D.M. sets out in detail the profound and debilitating physical and emotional effects of the sexual assault committed by Mr. Deuling on the life of D.M. and her family. Much of the statement reflects and expands on the effects of actions described in detail by D.M. during her evidence at trial.

[19] D.M. provided her own oral submission with respect to the VIS which put into sharp and clear focus the devastating tragedy of the sexual assault that she endured at the hands of Mr. Deuling.

[20] The VIS, and D.M.'s oral submissions, confirm that before the sexual assault that took place, D.M. had enjoyed a strong and long-lasting relationship with Mr. Deuling during her childhood in his roles as teacher, coach, and mentor.

[21] D.M. confirmed that she was a vulnerable child when sexually assaulted. She had hoped for a bright future of further education with the promise of a better life. However, the result of the sexual assault reported by D.M. was an enduring feeling of shame and guilt in her community. As well, D.M. reports ongoing issues with depression, low self-esteem, and suicidal ideation.

[22] D.M.'s powerful written and oral submissions confirmed that she felt shamed and hated in her small community after the sexual assault. She further confirmed that she

felt there was no safe place for her and her child in the community and that all of her hopes for a brighter future and further education were dashed.

[23] D.M. explained that as a result of the sexual assault she endured, her relationship with her family was severely strained. She was preyed on by others, and her trust of all authority figures, particularly men, was lost forever. D.M. advised that one consequence of that loss of trust was a series of failed and abusive relationships with men extending over many years. Flashbacks were reported to continue repeatedly as D.M. felt re-victimized over and over again by the sexual assault that had taken place.

[24] By any measure, the effects of Mr. Deuling's sexual assault of D.M. were profound and have endured for more than 36 years. D.M. confirmed that ultimately, she accepted her status as a victim, a status that endured through childhood long into her adult life to the present.

Circumstances of the Offender

[25] Both the PSR and submissions of Counsel on behalf of Mr. Deuling detail the circumstances of the offender. The submissions of Counsel can be summarized as follows:

- (a) Mr. Deuling is a 73-year-old man born August 11, 1949, in Vancouver, British Columbia. His childhood did not include any significant trauma or abuse, and he felt loved and protected by his parents;
- (b) Growing up, Mr. Deuling's family moved in accordance with his father's job. After high school in 1968, Mr. Deuling attended

Washington State University. He graduated in 1972 with a Bachelor of Science degree. He completed a fifth year of university between 1990 and 1993 at the University of British Columbia;

- (c) After graduating from Washington State University, Mr. Deuling began his teaching career. He accepted a teaching job in Lumby, British Columbia and taught physical education, English, and social studies for seven-and one-half years. He then moved to Whitehorse, Yukon in 1980 to teach physical education, social studies, and law 12 at various schools until he retired in 2005;
- (d) After retirement, Mr. Deuling started taking students from Yukon, British Columbia, and Alberta on battlefield tours to Germany, France and Italy to learn about World War II;
- (e) Mr. Deuling is currently widowed and lives alone in Whitehorse, Yukon. He has been married twice, the first time for 18 years and the second time for 28 years to his late wife. With his first wife, Mr. Deuling has three children;
- (f) Mr. Deuling has a number of strong relationships and regularly connects with family, former teaching colleagues, former students, and hunting friends;
- (g) Mr. Deuling's conviction has caused him significant stress. He lost 22 pounds after being charged. His sleep has also been greatly

impacted, going from nine hours a night to three or four hours a night.

Mr. Deuling has cardiac issues and has previously been diagnosed with ventricular tachycardia.

Aggravating Circumstances

[26] Having considered the foregoing, together with the evidence at trial and submissions of Counsel, I am satisfied that the aggravating circumstances relevant to this sentencing are:

- (a) On the date of the offence, D.M. was a vulnerable child, 17 years of age;
- (b) The sexual assault has had profound, enduring, and debilitating effects on D.M., physically, financially, and emotionally;
- (c) Mr. Deuling was, at the time of the offence, 20 years D.M.'s senior and at all times in a position of trust as a person who had taught, coached, and mentored D.M.;
- (d) There were two acts of sexual assault by Mr. Deuling against D.M. which took place in an isolated location chosen by Mr. Deuling. Those acts of sexual assault are properly categorized as having been of

major significance as a result of the nature of the sexual assault that took place; and

- (e) Mr. Deuling's acts of sexual assault on D.M. were in all of the circumstances a breach of trust.

[27] I have considered whether or not the lack of remorse or contrition by Mr. Deuling has relevance as an aggravating factor. I note the submissions of Counsel for Mr. Deuling on this point, the comments of Mr. Deuling concerning his not guilty plea, and a planned conviction appeal reported in the PSR.

[28] In all of the circumstances, the lack of expressed remorse and the fact that Mr. Deuling elected to plead not guilty and proceed to trial, cannot be considered an additional aggravating circumstance in sentencing.

Mitigating Circumstances

[29] The mitigating factors are limited, but relevant:

- (a) Mr. Deuling has no criminal record;
- (b) Mr. Deuling is at a very low risk to reoffend, as confirmed in the PSR;
and
- (c) Mr. Deuling at 73 years of age has a number of significant health issues.

[30] Character references concerning Mr. Deuling in the reference letters are universally positive supporting the contention that, with the exception of the matter

currently before the Court, Mr. Deuling has lived a positive and constructive life in his community.

[31] However, I am not satisfied that such references have material relevance as a mitigating factor in relation to this sentencing. As Counsel for Mr. Deuling has noted in submissions, courts must be cautious in ascribing significant relevance to good conduct references of character in child sexual assaults that took place in private.

[32] I am not in agreement with the submission that Mr. Deuling's relationship with D.M. took place in the view of the public. The sexual assaults on D.M. relevant to these proceedings took place in private and outside any general public awareness of Mr. Deuling's relationship with D.M. who was, at that time, a vulnerable student.

Sentencing Objectives

[33] Having considered the foregoing, together with the evidence at trial and submissions of Counsel, I am satisfied that the sentencing objectives to be applied in this case are denunciation and general deterrence. I am not satisfied that sentencing of Mr. Deuling must give priority to either specific deterrence or rehabilitation. There is no evidence that Mr. Deuling requires any form of specific deterrence, nor are there any identifiable rehabilitation objectives of sentencing.

[34] I have come to that conclusion recognizing the statutory priority established by Parliament to the principles of denunciation and deterrence for offences that involve the abuse of children by enacting s. 718.01 and s. 718.04 of the *Criminal Code*.

[35] I am satisfied that denunciation is required to specifically address the conduct of Mr. Deuling as a prominent teacher and coach in a small community over an extended period of years. As the character references note, Mr. Deuling had positive effects on his community in many ways. However, what was not known to the community, at the time of the sexual assault on D.M., was the other face of Mr. Deuling, who acted in breach of trust as a result of his sexual assault of a vulnerable young woman, D.M., then a student. Such actions must be denounced clearly and unequivocally to support the principle of general deterrence.

[36] Notwithstanding that the primary sentencing considerations for the case at bar are denunciation and deterrence, the fundamental principle of proportionality under s. 781.1 is still paramount. The Court must consider the fit and proper sentence taking into consideration both the circumstances of the victim and offender.

[37] The Court must also consider parity in sentencing as well as the gravity of the offence, and the degree of responsibility of the offender.

[38] As noted in the Crown submissions referencing the *Charlie* decision, two issues which the Court must address when considering sentencing to arrive at a proportional sentence are as follows:

- (a) Applying the principles outlined by *Friesen* in the context of a major sexual assault against a child, and;

- (b) Determining how these principles interact with the pre-existing sentences for sexual assault of a child and the sentencing framework set out in *White* in the context of the Yukon Territory.

Analysis

[39] The evidence at trial, amplified by the PSR and reference letters, describes Mr. Deuling as a long-term senior teacher and coach in a small community. In that role, Mr. Deuling maintained a high profile in his community with significant influence over young people during the time the sexual assault of D.M. took place.

[40] There can be no doubt that the sexual assault of a child, such as D.M., has a devastating effect on that child, often for life.

[41] The aggravating circumstances are very serious and warrant consideration of a sentence reflecting the severity of Mr. Deuling's actions in light of the prominent role he held with respect to young people in his community. However, I have also taken into consideration the mitigating factors noted above.

[42] In terms of the law, it is clear that a reconsideration of pre-*Friesen* authorities that established ranges of fit and proper sentences for child sexual assaults is required to impose an appropriate and proportionate sentence for Mr. Deuling. This requires a refocus on the issue of sexual violence in relation to children and, may result in an upward departure from prior precedents and sentencing ranges to comply with the direction provided in *Friesen*.

[43] As noted by Counsel for Mr. Deuling, however, *Friesen* does not establish a fixed higher range for specific sentences on child sexual assault matters. Rather, the case directs sentencing courts to discharge their duty to consider all relevant factors in the context of a much more serious appreciation of the devastating impact of child sexual assaults and the need to denounce and deter such offending through more significant terms of imprisonment.

[44] With respect to the issue of a reconsideration of prior sentencing authorities in the Yukon, I have specifically taken into account para. 108 of the *Friesen* decision, reported as follows:

Courts can and sometimes need to depart from prior precedents and sentencing ranges in order to impose a proportionate sentence. ...

[45] It appears evident from submissions that the prior sentencing range for sexual assaults on children in the Yukon is generally set out in the *White, Charlie, and Tracey* although it is clear that the facts in each of those cases are, in part, distinguishable from those established in these proceedings.

[46] As noted above, with respect to the current appropriate range of sentences for sexual offences against children, the Court in *Friesen* was clear in its messaging at para. 114, that mid-single digit penitentiary terms for sexual offences are to be considered normal.

[47] In determining the appropriate sentence for Mr. Deuling, I have considered the foregoing principles together with the following significant factors highlighted by the Supreme Court of Canada in *Friesen*:

- (a) The facts of this case, as augmented by the VIS, and the oral submissions of D.M., confirm that the sexual assault on D.M. damaged her personal autonomy, her bodily integrity, and her sexual integrity. It also had profoundly negative impacts on D.M.'s relationship with her family and community;
- (b) The sexual assault on D.M. by Mr. Deuling, wrongfully exploited her weaker position as a 17-year-old student and vulnerable young woman. Such a major sexual assault was serious and had a disproportionate impact on D.M. as a young woman;
- (c) In considering the contemporary understanding of sexual violence against children, the sexual assault on D.M. was, in all of the circumstances, inherently wrong, subjecting D.M. to significant actual physical and emotional harm;
- (d) Mr. Deuling's degree of responsibility for the sexual assault on D.M. was at the highest levels as he occupied a critical position of trust in D.M.'s life, and had done so for many years; and
- (e) The PSR confirms that Mr. Deuling is at low risk to reoffend and has no prior criminal record.

[48] Considering all of the foregoing, including the noted aggravating and mitigating circumstances noted above, I am satisfied that the possible range of sentence applicable in this case is between 30 and 48 months, within the general ranges submitted by counsel.

[49] With that in mind, I have considered all of the foregoing noting, in particular, the devastating and tragic impact these sexual assaults have had on D.M. and Mr. Deuling's very low risk of further offending.

[50] As a result of that analysis, I have determined that a fit and proper sentence for Mr. Deuling on Count 4 of the Information is the imposition of a three-year term of imprisonment. Mr. Deuling is sentenced accordingly. I am satisfied that such a sentence meets the dual objectives of denunciation and general deterrence. It also specifically addresses the provisions set out in s. 718.01 and s. 718.04 of the *Criminal Code*.

[51] As the sentence to be imposed exceeds two years imprisonment, any consideration of a conditional sentence order is not lawful.

[52] In addition to the custodial sentence of three years, I must consider a number of ancillary orders, some mandatory, and some discretionary.

[53] Firstly, as this is a primary designated offence, I make the order that Mr. Deuling supply such samples of his blood as are necessary for DNA testing pursuant to s. 487.05(1) of the *Criminal Code*.

[54] Secondly, I order that Mr. Deuling comply with the provisions of the *Sex Offender Information Registration Act*, S.C. 2004, c. 10, for a period of 20 years.

[55] Thirdly, I have considered whether or not an order pursuant to s. 109 of the *Criminal Code* should be made prohibiting Mr. Deuling from possessing any firearms, ammunition, or explosive substances for a period of 10 years. In considering this matter, I have determined that at the time this offence occurred, a firearms prohibition order was discretionary. Having considered all of the circumstances, I am not satisfied that a firearms order under s. 109 is required to meet any of the sentencing objectives that I have identified. I therefore decline to make such an order.

[56] Finally, the victim surcharge will be waived in light of Mr. Deuling's custodial status.

NEAL T.C.J.