

SUPREME COURT OF YUKON

Citation: *R. v. J.J.P.*, 2018 YKSC 10

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16-01514A
16-01514B
16-01513
17-00700
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

J.J.P.

Publication of information that could disclose the identity of the complainant or witness has been prohibited by court order pursuant to s. 486.4 of the *Criminal Code*.

Before Mr. Justice R.S. Veale

Appearances:

Noel Sinclair
Susan E. Bogle
Vincent Larochelle

Counsel for the Crown

Counsel for the Defence

REASONS FOR JUDGMENT

[1] VEALE J. (Oral): This is an application by defence counsel to have certain statements struck from a victim impact statement, contained in *Voir Dire* Exhibit 1, and to be presented by the father of the victim.

[2] This is a sentencing proceeding. The offender has pled guilty to 16 offences, ranging from sexual assault of prepubescent girls to sexual interference with girls under

the age of 16 years, possession of child pornography, and a number of similar offences transferred in from British Columbia and Ontario.

[3] Section 722(1) of the *Criminal Code* provides that victim impact statements should describe:

... the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence and the impact of the offence on the victim.

[4] Section 722(8) indicates that:

... the court shall take into account the portions of the statement that it considers relevant to the determination referred to in subsection (1) and disregard any other portion.

[5] In my view, s. 722(8) should be employed as a last resort, where an inappropriate comment has been made during the reading of a victim impact statement. The preferable approach is for the Crown and defence to see if agreements can be reached on the contents of victim impact statements. Where agreement cannot be reached, submissions may be made and the sentencing judge in a *voir dire* will make a decision. That is where we are today.

[6] I agree with the observation made in *R. v. Berner*, 2013 BCCA 188, at para. 27:

... It is the responsibility of Crown counsel to communicate with victims and their families about the appropriate content of victim impact statements, vet the materials once received, and not seek to admit victim impact statements which go beyond these parameters.

[7] It appears that the Crown has done that in this case but, given the high level of legitimate emotion on the part of the victims and their families, this father has made a number of written statements that I must rule on.

[8] The *Berner* case also gives guidance at para. 25, which I adopt:

... While a sentencing judge must try to understand a victim's experience, he or she must do more than that. He or she must craft a fit sentence by taking into consideration all relevant legal principles, and the circumstances of the offence and the offender. In emotionally charged cases such as this, a sentencing judge must keep in mind his or her position of impartial decision maker. The sentencing judge must be wary of the risk of valuing victims, based on the strength of feelings expressed in the victim impact statement. ...

[9] I also point out that Form 34.2 gives very explicit direction:

... Your statement must not include

- any statement about the offence or the offender that is not relevant to the harm or loss you suffered;
- any unproven allegations;
- any comments about any offence for which the offender was not convicted;
- any complaint about any individual, other than the offender, who was involved in the investigation or prosecution of the offence; or
- except with the court's approval, an opinion or recommendation about the sentence. (my emphasis)

[10] I also rely on the following comments from *R. v. Gabriel* (1999), 137 C.C.C. (3d) 1, approved in *R. v. Bremner*, 2000 BCCA 345 and *R. v. Berner*, *supra*:

[2] ... The statements should not contain criticisms of the offender, assertions as to the facts of the offence, or recommendations as to the severity of punishment.

[11] There are certain circumstances where a victim's view about leniency in sentencing may be considered but, generally, the independent neutrality of the judiciary requires that the Court not react to opinion as to the severity of sentences. However,

the value of victim impact statements is considerable; one, to bring the consequences of the actions in a clear and substantial way to the attention of the offender; and two, to bring home to the trial judge the impact that the sexual offences have had on the victims and their families.

[12] To give some indication of the nature of the comments or statements made in *Voir Dire* Exhibit 1, I am going to set out a mild example and an extreme example, both of which will be redacted.

[13] The first, I read from page 3:

I can also tell you he is a very, very intelligent man. He is a man ruled by his ego. He is a man of pride. He is a man capable of creating an intricate and highly complex fabrication of lies. (as read)

[14] The second, I read from page 11:

The message needs to clearly signal that men like the offender are no longer safe to deprive our women and children of their basic right to safety. This Court needs to clearly say that men who behave like the offender will be dealt with harshly. Some men are waging a war of violence. It is a war against women and children. There can be no mitigating circumstances, no equivocation. This is a war crime, a crime against our humanity. He is a terrorist in the truest sense and needs to be dealt with accordingly. There is a difference, however. Even though he has pled to his crimes that does not mean that he takes responsibility. Militant terrorists are often very quick to take responsibility for their atrocities. (as read)

[15] These are but two examples.

[16] I order that all the paragraphs referred to by counsel for the offender on pages 3, 4, 5, 6, 8, 10, and 11 be redacted from the impact statement.

[17] That is the end of my judgment in the matter.

[18] Having said all of that, though, I want to say that the Court truly appreciates the victim impact statements that it has received and is paying attention to them. Those that have been made by the victims and parents have been well presented, emotionally presented — which is quite understandable — and they will assist the Court in coming to the appropriate sentence.

VEALE J.