

# SUPREME COURT OF YUKON

Citation: *R. v. Field*, 2020 YKSC 42

Date: 20201016  
S.C. Nos.: 18-01514  
18-01515  
18-01516  
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

BILLY EDWARD FIELD

**Publication of information that could disclose the identity of the victims or witnesses has been prohibited by court order pursuant to s. 486.4 and s. 486.5 of the *Criminal Code*.**

Before Madam Justice E.M. Campbell

Appearances:  
Noel Sinclair  
Vincent Larochelle

Counsel for the Crown  
Counsel for the Defence

## REASONS FOR SENTENCE

[1] CAMPBELL J. (Oral): This is an application by the Crown to have Mr. Billy Field designated as a long-term offender and for the sentencing of Mr. Field.

[2] Mr. Field has pleaded guilty to five counts of sexual assault, one count of producing child pornography, one count of robbery, and one count of breach of probation.

[3] Crown counsel and defence counsel agree that a long-term offender designation is appropriate in this case. While they jointly submit that a global sentence of 10 years of imprisonment, less time served, followed by a 10-year supervision order is appropriate, counsel did not reach an agreement with respect to the apportionment of that global sentence to each of the offences to which Mr. Field pleaded guilty.

[4] At the hearing, defence counsel and Crown counsel invited me to look at the appropriateness of the global sentence first, taking into account the principle of totality and restraints, before engaging in the exercise of apportioning that global sentence.

[5] In addition, the Crown seeks a number of ancillary orders, including a forfeiture order, which I will address later in my decision.

[6] I will first deal with the facts of the offences before me.

[7] The document entitled "Admissions of Fact #1" ("Admissions of Fact") was filed for the purpose of the guilty plea in this application and the sentencing of Mr. Field. I do not intend to go into every detail of the admissions, as they were filed as an exhibit for the purpose of this application; however, I think it is important to briefly go over the circumstances of each offence for the purpose of determining whether the joint submission is acceptable.

### **Supreme Court of Yukon Docket #18-01514: Sexual Assault (T.R.)**

[8] In early January 2018, T.R., a youth, reported to the RCMP that she had been sexually assaulted by Billy Field at his apartment in the late summer/early fall of 2017. T.R. had been drinking with two older women before all three went to Mr. Field's apartment, where T.R. continued to drink. T.R. lost consciousness as a result of her excessive consumption of alcohol. At some point, the other two women left the

apartment, leaving T.R., who was fully dressed and passed out, in Mr. Field's apartment alone with Mr. Field.

[9] I will turn to paras. 29 and 30 of the Admissions of Fact:

29) T.R. awoke later, briefly, in a daze. She realized that she was on Mr Field's bed, that Mr Field had removed her shorts and her orange Fruit of the Loom brand underwear and that Mr Field was having non-consensual, penetrative sexual intercourse with her. He also appeared to be recording this activity on a small computer device. She blacked-out again and awoke later. When she tried to move, her legs were unresponsive.

30) When T.R. finally regained her consciousness and mobility more fully she got off the bed, gathered up her belongings and went into the building hallway. ...

[10] T.R. was 16 years old at the time of the sexual assault.

**Supreme Court of Yukon Docket #18-01515: The Walmart Robbery (Count #1)**

[11] On January 24, 2018, Mr. Field attended the Walmart store in Whitehorse. He was observed filling a shopping basket with various items from the pharmacy section. Mr. Field transferred those items into a shopping bag and left the store without paying for them. A Walmart loss prevention officer followed Mr. Field to the parking lot in front of the store and demanded to see a receipt for the items that were in his bag. The officer grabbed Mr. Field. At that point, Mr. Field, who was close to the officer, turned towards him, and discharged a canister of what is believed to have been pepper spray directly into the officer's eyes and face. The officer retreated back into the store and Mr. Field fled the scene with the items he had stolen from the store. The officer did not suffer any permanent injuries as a result of the attack. From the Admissions of Fact, it seems that Mr. Field was masked for at least a portion of these events.

[12] On January 26, 2018, Mr. Field was arrested at his apartment for a number of alleged offences, including the sexual assault against T.R. and the Walmart robbery. At the time of his arrest, he requested and was permitted to pack and bring with him duffle bags containing personal belongings. The content of his bags were inventoried at the Whitehorse Correctional Centre. They were noted to include an Apple iPod equipped with a digital camera and 29 USB sticks.

### **Supreme Court of Yukon Docket #18-01516: Sexual Assaults on Identified and Unidentified Victims and Production of Child Pornography**

#### **Seized Digital Recordings**

[13] In the spring of 2018, the RCMP obtained judicial authorization to seize and examine the contents of Mr. Field's 29 USB sticks. The examination revealed that a number of the USB sticks contained multiple video recordings and still images of Mr. Field sexually assaulting five different female victims, including the sexual assault on T.R. One of the other four victims was identified as W.E. The other three remain to this day unidentified. The still images and video recordings show that all five victims were unconscious or passed out when they were sexually assaulted by Mr. Field.

#### **Production of Child Pornography - T.R. (Count #8)**

[14] The still images and video recordings that Mr. Field took of T.R. and of him sexually assaulting T.R., who was 16 years old at the time, constitute child pornography produced by Mr. Field pursuant to s. 163.1(2) of the *Criminal Code* (see paras. 65 to 69 of the Admissions of Fact).

#### **Sexual Assault on W.E. (Jane Doe #2) (Count #2)**

[15] The video recordings with respect to the sexual assault on W.E. were copied onto a USB stick on June 20 and June 23, 2017. The victim W.E. is an adult female.

W.E. and Mr. Field dated and engaged in a consensual sexual relationship for approximately one month beginning in May or June of 2017. At the time of the relationship, W.E. was an acknowledged alcoholic who was consuming alcohol every day to get drunk. Mr. Field, to her knowledge, did not drink or consume illicit drugs and she never saw him drunk. The video recordings and still images copied onto the USB stick depict Mr. Field sexually assaulting W.E. while she was clearly unconscious and unable to consent. W.E. confirmed that she never consented to the sexual activity depicted in the still images and video recording.

[16] I turn to paras. 54, 55, 56, and 57 of the Admissions of Fact:

54) Mr Field's video recordings of his sexual assault of W.E. depict Mr Field performing multiple sexual acts on W.E.'s unconscious body in her dormitory room at Yukon College.

55) W.E. is clearly visible in these videos lying face down on a bed, unconscious and audibly snoring.

56) Mr Field records himself fondling her bare breasts, masturbating his penis on her bare buttocks, penetrating her anus with his fingers and penetrating her anus with his penis.

57) The recordings include Mr Field's own voice in the background, saying to the unconscious victim, "baby, you got such a nice body", and, "I've enjoyed fucking you for the last two hours."

### **Sexual Assault on Jane Doe #3 (Count #3)**

[17] The recordings of the sexual assault against this unidentified female victim were copied onto a USB stick on May 16, 2017.

[18] I now turn to paras. 45 and 46 of the Admissions of Fact:

45) The video recordings involving Jane Doe #3 depict her in a unconscious condition while Mr Field touches her vaginal area with his fingers, penetrates her vagina with his fingers

and while he masturbates and ejaculates onto her vaginal area.

46) The total duration of the Jane Doe #3 video recordings is sixteen minutes and thirty-one seconds, comprised of four individual videos. ...

#### **Sexual Assault on Jane Doe #4 (Count #4)**

[19] The recordings of the sexual assault on Jane Doe #4, an unidentified female victim, were copied onto a USB stick on November 10, 2017.

[20] I now turn to paras. 71 and 72 of the Admissions of Fact:

71) The video recordings involving Jane Doe #4 depict her in a unconscious condition while Mr Field removes her clothes to expose her breasts and buttocks. He rubs her buttocks with his hand, attempts digital penetration of her anus or vagina (it is unclear from the recording which area he is attempting to probe). In another video recording Mr Field penetrates the victim's vagina with his fingers.

72) The total duration of the Jane Doe #4 video recordings is twenty-three minutes and nine seconds, comprised of eight individual recordings. ...

#### **Sexual Assault on Jane Doe #6 (Count #6)**

[21] The recordings of the sexual assault on Jane Doe #6 were copied onto a USB stick on June 27, 2017.

[22] I will now turn to paras. 62 to 64 of the Admission of Fact:

62) The video recordings involving Jane Doe #6 depict Mr Field and an unconscious woman naked from the waist down on his bed. Mr Field records himself kissing the victim's face, penetrating her vagina with his fingers, penetrating her anus with his fingers and penetrating her vagina with his penis.

63) The female is not moving during this activity and her eyes are closed. At the end of one of the videos the victim regains consciousness and mutters "Whoa! Stop it", at which point the recording cuts off.

64) The total duration of the Jane Doe #6 video recordings is thirty-seven minutes and thirty-five seconds, comprised of seven individual recordings. ...

[23] With respect to the images regarding the sexual assault of T.R., I do not intend to read them but the facts are found at paras. 65 to 69 of the Admissions of Fact.

**Supreme Court of Yukon Docket #18-01515: Breach of Probation (Count #5)**

[24] Mr. Field pleaded guilty to breaching the condition of his probation order that he keep the peace and be of good behaviour. The facts in relation to that guilty plea are as follows.

[25] On July 15, 2016, Mr. Field was sentenced for a domestic assault. He received a six-month custodial sentence followed by probation for two years. Mr. Field completed the custodial portion of his sentence on December 19, 2016, and was bound by the terms of his probation order until December 20, 2018.

[26] Mr. Field's probation order required him, among other things, to:

- (i) keep the peace and be of good behaviour;
- (ii) report to his probation officer upon his release from custody, and thereafter, as directed; and
- (iii) attend and participate in all assessment and counselling programs as directed by his probation officer.

[27] During his probation, Mr. Field failed on a number of occasions to report to his probation officer as directed. In addition, he was expelled from the Respectful Relationship Counselling Program for failing to attend the program as directed; however, he was later re-admitted and completed the program in October 2017.

[28] Mr. Field was charged with breaching the conditions of his probation order.

[29] On November 15, 2017, he failed to appear in court as scheduled or to give instructions to his counsel and a warrant was issued for his arrest.

[30] Furthermore, Mr. Field was on probation when he committed the five sexual assaults, produced child pornography, and committed the robbery, to which he pleaded guilty.

### **Mr. Field's Circumstances**

[31] Mr. Field is 49 years old. He is a citizen of the Tr'ondëk Hwëch'in First Nation. He grew up mainly in Dawson City, Yukon. Mr. Field is an intergenerational residential school survivor. Both of Mr. Field's parents attended residential school. Mr. Field indicated to the *Gladue* writer that both his parents avoided talking about their residential school experience.

[32] Mr. Field also reported to the *Gladue* writer that both of his parents drank heavily and that he was exposed early in his life to excessive drinking and physical violence around him. Also, Mr. Field indicated that his family moved often between homes. Mr. Field reported to the *Gladue* writer that he and his siblings were subjected to incidents of sexual abuse by older relatives and friends of the family during their childhood. Mr. Field further reported that the sexual abuse stopped when he was approximately 10 years old because he was old enough by then to either avoid the abuser and/or run away from them.

[33] Growing up, Mr. Field enjoyed school life and activities. It seems that he did well enough in school up until the time he started to drink and party. It is at that point that he started losing interest in school and having attendance issues. It is unclear from the



documents filed for the purpose of this application if Mr. Field completed high school or if he later obtained his high school diploma through upgrading.

[34] Mr. Field was gainfully employed with the Yukon Liquor Corporation for over 10 years. He then continued to be gainfully employed for other companies for a number of years.

[35] In or around 2008, Mr. Field suffered a serious fall at work. He reported to the *Gladue* writer that he has suffered from headaches, memory loss, and trouble controlling his anger and other emotions since then.

[36] It appears that Mr. Field was unemployed at the time of the commission of the offences before the Court.

[37] Mr. Field was married once. He has two adult daughters from that relationship. He also has a son, who would now be approximately 15 years old, from another relationship. Mr. Field does not appear to have been in contact with his children for, at least, the past few years.

### **Mr. Field's Criminal Record**

[38] Mr. Field has a criminal record that dates back to 2002, with a number of convictions for offences of violence against women.

[39] In 2002, he was convicted of criminal harassment of a former girlfriend. He received a sentence of nine days of imprisonment, followed by one year of probation.

[40] In 2010, Mr. Field was found guilty after trial of overcoming resistance by administering a noxious substance and of sexual assault of a former girlfriend with whom he still had a casual intimate relationship. He was sentenced to three years of imprisonment to be served concurrently on both charges.

[41] I note that Mr. Field was not given access to sex offender treatment or counselling while serving his sentence in the federal system.

[42] On July 15, 2016, Mr. Field was sentenced for a number of offences of violence against his then girlfriend. He was sentenced to six months of imprisonment, followed by a period of probation of two years on a simple assault charge considering credit given for 136 days of pre-sentence custody. He was also sentenced to six months of imprisonment concurrent on a charge of uttering threats and one of failing to comply with a recognizance. On the same day, Mr. Field was sentenced to three months of imprisonment for another charge of uttering threats, three months concurrent on two simple assault charges, and three months consecutive on a charge of assault with a weapon.

[43] I note that Mr. Field has not incurred any institutional charges and has not been placed in segregation while on remand at the Whitehorse Correctional Centre for the charges before the Court. (This information comes from Dr. Lohrasbe's report.)

[44] In addition, since being incarcerated or detained, Mr. Field has taken advantage of programming and counselling available at the Whitehorse Correctional Centre. Mr. Field has attended counselling sessions with a therapist and has gained some insight with respect to self-regulation. He practices yoga and meditation to help him cope with, among other things, stress and his difficulty concentrating.

[45] Also, I note that he attended a four-week violence prevention program and a four-week program focused on examining intimate relationships in 2018-2019. (This information also comes from Dr. Lohrasbe's report.)

[46] Mr. Field addressed the Court at the end of the hearing. He reiterated that he is genuinely committed to change and that he intends to pursue and participate in programming that will help him better understand his behaviour, better himself, and help others.

### **Victim impact statement**

[47] No victim impact statement was filed. However, Crown counsel indicated that at least one victim, T.R., has remained in contact with Victim Services and has asked to be informed of the proceedings and outcome of the sentencing of Mr. Field.

### **Long-term Offender Designation**

[48] On July 16, 2019, pursuant to s. 752.1 of the *Criminal Code* and with the consent of the accused, I ordered that Mr. Field be remanded in custody for a period not exceeding 60 days to have an expert, Dr. Lohrasbe, perform an assessment with respect to a dangerous or a long-term offender application.

[49] Dr. Lohrasbe conducted the psychiatric assessment. Dr. Lohrasbe's extensive and comprehensive report dated October 7, 2019 was filed as an exhibit in this proceeding with the consent of Mr. Field.

[50] In summary, Dr. Lohrasbe found that:

... as things stand and in the foreseeable future:

- a) Mr. Field poses a high risk for further acts of sexual violence.
- b) High intensity treatment programs available through CSC may assist in lowering risk; in addition, individualized treatment utilizing the principles of DBT may assist.
- c) Current sentencing proceedings may have a salutary effect on risk, at least in the short term.
- d) In the longer term, his risk is likely to decline with age.

e) Risk management in the community will depend heavily on his willingness to cooperate with monitoring and supervision.

f) At the point that he is released into the community, a lengthy period of follow up is crucial for ongoing risk reduction and risk management. (pp. 33 and 34 of Dr. Lohrasbe's report)

[51] Dr. Lohrasbe also pointed out in his report that:

Risk assessment is not a one-time endeavour, since changes are inevitable as a person ages and his circumstances alter. Periodic risk assessments will assist in specific planning for safe management in the community. (p. 34 of Dr. Lohrasbe's report)

[52] Section 753.1(1) of the *Criminal Code* sets out the criteria that must be met in order for the Court to find an offender to be a long-term offender. During the hearing, I indicated to Crown counsel and defence counsel that I agreed with them that those criteria were met in Mr. Field's case, based on the following.

[53] Section 753.1 states that:

753.1 (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that,

With respect to the first criterion:

(a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;

...

[54] During the hearing, I indicated that considering the number of offences before the Court to which Mr. Field pleaded guilty and, in particular, the number of sexual assault charges to which he pleaded guilty; his prior convictions and the sentences imposed on him for those prior convictions for offences of violence and sexual violence; the fact that

Mr. Field was on probation at the time of committing the offences before the Court; also considering the case law with respect to the range of sentences in sexual assault cases, I agreed that this is a case where, globally, Mr. Field would be sentenced to a term of imprisonment of two years or more.

[55] With respect to the second criterion, which is that:

b) there is a substantial risk that the offender will reoffend; ...

[56] Defence counsel does not dispute the conclusion of Dr. Lohrasbe, who is a well-respected expert, that Mr. Field poses a high risk for future acts of sexual violence. Considering the Admissions of Fact, Mr. Field's criminal record, coupled with the conclusions of Dr. Lohrasbe, I am also of the view — and that is what I indicated at the hearing — that this factor is met.

[57] With respect to the third criterion, which is that:

(c) there is a reasonable possibility of eventual control of the risk in the community.

[58] Considering Dr. Lohrasbe's stated impressions at pp. 14 and 15 of his report that:

By the end of the interview it was my impression that Mr. Field was genuinely remorseful.

and also:

... by the end of the interview it was my impression that he was being sincere in describing his efforts at seeking out programming, counseling, contact with people in the community, and a renewed interest in Christianity.

Considering as well that, even though Dr. Lohrasbe's concluded that:

Risk management in the community will depend heavily on Mr. Field's willingness to cooperate with monitoring and supervision (p. 34 of Dr. Lohrasbe's report),

overall, there is information in the report and before the Court, including the fact that Mr. Field has been engaged in counselling since he was incarcerated in January of 2018, upon which I can conclude that there is a reasonable possibility of eventual control of the risk in the community.

[59] Therefore, as per what I indicated at the hearing and my finding that the criteria set out at para. 753.1(1) are met, I find Mr. Field to be a long-term offender.

[60] Section 753.1(3) of the *Criminal Code* provides that:

(3) If the court finds an offender to be a long-term offender, it shall

(a) impose a sentence for the offence for which the offender has been convicted, which must be a minimum punishment of imprisonment for a term of two years; and

(b) order that the offender be subject to long-term supervision for a period that does not exceed 10 years.

### **Length of the Sentence**

[61] Crown and defence jointly submit that a global sentence of 10 years of imprisonment, less credit for time served at a ratio of 1.5:1 is appropriate in this case. Mr. Field has served 995 days, including today's date, in pre-sentence custody in this matter. Applying this ratio, he should be given credit for 1,493 days, which I round off to four years and one month.

[62] Pursuant to s. 271 of the *Criminal Code*, the offence of sexual assault is punishable by a maximum of 10 years of imprisonment when the Crown proceeds by Indictment and the victim is 16 years and older.

[63] Pursuant to s. 163.1 of the *Criminal Code*, the offence of production of child pornography is punishable by a maximum term of imprisonment of 14 years.

[64] Pursuant to s. 344(1)(b) of the *Criminal Code*, robbery is punishable by a maximum of imprisonment for life.

[65] Pursuant to s. 733.1(1)(a) of the *Criminal Code*, a breach of probation is punishable by a maximum of four years of imprisonment when the Crown proceeds by Indictment.

### **Case Law**

[66] I now turn to the sentencing precedents filed by Crown counsel in this case.

[67] In *R. v. White*, 2008 YKSC 34, after an extensive review of the case law, Gower J. found that the range in Yukon for non-consensual intercourse with a sleeping or unconscious victim was one year to 30 months of imprisonment.

[68] The Crown also filed the decision of *R. v. Rosenthal*, 2015 YKCA 1. In that case, the Court of Appeal concluded that there was no reason not to apply the range of 12 to 30 months identified by Gower J. in *White* in cases of sexual assaults involving digital penetration on a sleeping victim as it is, "a serious and invasive form of sexual assault" (see *Rosenthal* at para. 8). The Court allowed the Crown's sentence appeal and imposed a sentence of 14 months of imprisonment on the offender. The Court of Appeal also stated that the principles of denunciation and deterrence were "especially important given the prevalence in Yukon of sexual assaults on sleeping or unconscious victims" (see *Rosenthal* at para. 12).

[69] With respect to the offence of robbery, the Crown filed the decision of *R. v. Jackson-Bullshields*, 2019 BCSC 1960. In that case, the sentencing judge reviewed a number of decisions for the offence of robbery in which the sentences imposed fell between three and four years of imprisonment.

[70] The Crown filed the decision of *R. v. Missions*, 2005 NSCA 82 with respect to cases involving child pornography. In *Missions*, the Court of Appeal of Nova Scotia upheld a sentence of 12 months of imprisonment, followed by three years of probation for a charge of possession of child pornography involving young children.

[71] The Court noted that the sentencing judge had relied on the decision of *R. v. Oliver*, [2002] E.W.J. No. 5441, where the English Court of Appeal categorized levels of child pornography as follows:

[14] . . .

- (1) images depicting erotic posing with no sexual activity;
- (2) sexual activity between children, or solo masturbation by a child;
- (3) non-penetrative sexual activity between adults and children;
- (4) penetrative sexual activity between children and adults;
- (5) sadism or bestiality.

[72] The Crown also filed the decision of *R. v. J.J.P.*, 2018 YKSC 30, in which Chief Justice Veale, as he then was, found the accused to be a long-term offender; sentenced him to a global sentence of 16 years of imprisonment for multiple charges of sexual assault on young female victims and production of child pornography; and made a 10-year supervision order.

[73] Chief Justice Veale's global sentence was upheld on appeal.

[74] Justice Veale also referred to the five categories of child pornography as identified in *Missions*, which reflect the different degrees of seriousness of that offence.



## Sentencing Principles

[75] The principle of proportionality enunciated at s. 718.1 of the *Criminal Code*, which requires that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender" plays a central role in the sentencing process.

[76] Also, in sentencing Mr. Field, I need to take into account the principle of parity, which provides that offenders in similar circumstances who commit similar offences should receive similar sentences.

[77] However, sentencing remains an individualized process and a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence and/or the offender.

[78] Additionally, in the case at bar, other specific statutory principles and objectives apply.

[79] With respect to the charge of sexual assault against T.R. and production of child pornography, I must consider s. 718.01 of the *Criminal Code*, which provides that denunciation and deterrence are of primary consideration when sentencing an offender for an offence that involves the abuse of a person under the age of 18 years old. Sexual assault and production of child pornography clearly constitute offences that involve the abuse of a young victim. Therefore, denunciation and deterrence must be of primary concern in sentencing Mr. Field for those two offences.

[80] Nonetheless, even in cases where legislation mandates that certain objectives, such as denunciation and deterrence, be given primary consideration, other objectives

such as rehabilitation may still be considered by the sentencing judge. (see *R. v. Friesen*, 2020 SCC 9, at para. 104)

[81] In addition, I must pay particular attention to the personal circumstances of Mr. Field as an Indigenous offender and to the *Gladue* factors present in this case (see s. 718.2(e) of the *Criminal Code*). *Gladue* factors must be considered and given effect by sentencing judges even in cases of serious offences, such as the ones before the Court. In addition, *Gladue* factors may have a mitigating effect on the moral blameworthiness of the offender (see para. 92 of *Friesen*).

[82] With respect to the four charges of sexual assault committed on adult victims, considering the nature and circumstances surrounding the commission of the offences, and the decision of the Court of Appeal in *Rosenthal*, I am of the view that the principles of denunciation and deterrence are an important consideration in sentencing Mr. Field.

[83] Denunciation and deterrence are principles that also need to be considered with respect to Mr. Field's conviction for robbery.

[84] Rehabilitation also has to be given weight in sentencing Mr. Field.

[85] Finally, considering that Mr. Field is being sentenced on eight different charges, I must take the principle of restraint and totality into consideration.

### **Aggravating factors**

[86] I will now turn to the aggravating factors in this case:

- Mr. Field's criminal record, which contains prior convictions for violence and sexual violence against women;
- the fact that Mr. Field committed the offences while he was bound by a probation order;

- the fact that the victim of one of the sexual assaults was only 16 years old at the time of the offence, which constitutes a statutory aggravating factor pursuant to s. 718.2(a)(ii.1) of the *Criminal Code*.

### **Mitigating factors**

[87] I will now turn to the mitigating factors:

- Mr. Field's guilty plea;
- the fact that Mr. Field takes responsibility and is remorseful for his actions;
- the fact that Mr. Field has been proactive in attending courses and counselling at the Whitehorse Correctional Centre; and
- the fact that there are a number of *Gladue* factors at play in Mr. Field's case. I find that those external *Gladue* factors have a mitigating impact on Mr. Field's moral blameworthiness.

[88] Having considered the circumstances of the offence; the personal circumstances of the offender, including the *Gladue* factors present in this case; the principles of sentencing applicable to this matter, including the principle of restraint and totality; the case law filed by Crown counsel, I find that the joint submission put forward by Crown counsel and defence counsel for a global sentence of 10 years of imprisonment, less time served is appropriate.

[89] Considering credit given for 4 years and 1 month (49 months of imprisonment) spent in pre-sentence custody, I sentence Mr. Field to an additional 5 years and 11 months of imprisonment (71 months of imprisonment).

[90] I will distribute the global sentence as follows.

[91] With respect to Supreme Court file number S.C. 18-01516 and S.C. 18-01514, I am mindful of the range of sentences identified in *White* and affirmed in *Rosenthal*. I am also mindful of the recent decision of the Supreme Court of Canada in *Friesen*, which specifically addresses the principles of sentencing applicable to cases of sexual assault involving children.

[92] In addition, I am of the view that the sentences imposed in this case should generally run consecutive to one another except for the breach of probation, as Mr. Field's offences are distinct and involve different victims.

[93] In addition, as indicated by Chief Justice Veale in *J.J.P.*:

[214] . . . although [the sexual offences] reflect a pattern of behaviour, each should be recognized and specifically addressed.

[94] I also note that in *J.J.P.*, Chief Justice Veale found that the sentence imposed on the charges of making child pornography should be served concurrently to one another but consecutively to the charges of sexual assault. Justice Veale sentenced *J.J.P.* to two years of imprisonment on each count of making child pornography before applying the principle of proportionality.

[95] As a result, on file no. S.C. 18-01515, I sentence Mr. Field to:

- on Count #1, the robbery at Walmart: 18 months of imprisonment (time served)
- on Count #5, the breach of probation: two months of imprisonment concurrent (time served).

[96] On file no. S.C. 18-01516, I sentence Mr. Field to:

- on Count #3, the sexual assault on Jane Doe #3: 16 months of imprisonment consecutive (time served)
- on Count #4, the sexual assault on Jane Doe #4: one month of imprisonment consecutive (considering 15 months time served)
- on Count #6, the sexual assault on Jane Doe #6: 16 months of imprisonment consecutive
- on Count #2, the sexual assault on W.E.: 16 months of imprisonment consecutive
- on Count #8, production of child pornography: 14 months of imprisonment consecutive

[97] On S.C. file no. 18-01514:

- on Count #1, the sexual assault on T.R.: 24 months of imprisonment consecutive

[98] For a total of: 49 months of imprisonment already served and 71 months of imprisonment that remains to be served by Mr. Field.

### **Long-Term Supervision Order**

[99] Section 753.1(3)(b) of the *Criminal Code* provides that after imposing sentence on the offender who has been found to be a long-term offender, the Court shall:

- (b) order that the offender be subject to long-term supervision for a period that does not exceed 10 years.

[100] Crown counsel and defence counsel jointly submit that an order of long-term supervision of 10 years is appropriate in this case.

[101] Considering:

- (i) the circumstances of the sexual assaults Mr. Field committed on five different unconscious women;
  - (ii) the fact that one of them was only 16 years old;
  - (iii) the fact that he recorded the sexual assaults and that the recording of him sexually assaulting T.R. and other images of her constitute child pornography;
  - (iv) the fact that he was on probation at the time of committing the offences before the Court;
  - (v) Mr. Field's previous convictions of violence and sexual violence against women;
  - (vi) the conclusions of Dr. Lohrasbe's report, at page 34, to the effect that:
    - (f) At the point that he [Mr. Field] is released into the community, a lengthy period of follow-up will be crucial for ongoing risk reduction and risk management;
  - (vii) that at page 33 of his report, Dr. Lohrasbe stated that:
    - ...Decades of research and clinical experience inform us that close monitoring and supervision are essential for risk management. The longest possible period of supervision is likely to maximize the possibility of effectively managing his risk in the community;
- and
- (viii) the global custodial sentence of 10 years less time served I just imposed on Mr. Field.

[102] I agree with Crown counsel and defence counsel that the maximum period of supervision provided by the *Criminal Code* is warranted in this case. Therefore, I order that Mr. Field be subject to long-term supervision for a period of 10 years.

## **Ancillary Orders**

[103] The Crown seeks a number of ancillary orders:

### **(i) DNA Order**

[104] A DNA order is mandatory in cases of primary designated offences, such as sexual assault, pursuant to s. 271 of the *Criminal Code*, and production of child pornography, pursuant to s. 163.1 of the *Criminal Code*.

[105] Therefore, I am prepared to make an order, pursuant to s. 487.051 of the *Criminal Code*, authorizing the taking of the number of samples of bodily substances that is reasonably required for DNA analysis from Mr. Field.

### **(ii) An Order to comply with the requirements of the Sex Offender Information Registry Act for life (SOIRA Order)**

[106] This is a mandatory order pursuant to s. 490.012 of the *Criminal Code*, considering the nature of the offences before the Court (sexual assault and production of child pornography).

[107] In addition, as Mr. Field has been convicted and is being sentenced for more than one sexual assault, which is a designated offence, the order shall be in effect for life pursuant to s. 490.013(3) of the *Criminal Code*.

[108] Also, as Mr. Field is still subject to the order made by Gower J. in 2010, pursuant to s. 490.012 of the *Criminal Code*, which was for a period of 20 years, s. 490.013(4) of the *Criminal Code*, provides also that the order shall be in effect for life.

[109] Therefore, I order that Mr. Field comply with the requirements of the Sex Offender Information Registry Act for his lifetime pursuant to ss. 490.012 and 490.013 of the *Criminal Code*.

**(iii) Order for the disclosure of Mr. Field's records to the Correctional Service of Canada pursuant to s. 760 of the *Criminal Code***

[110] An order pursuant to s. 760 of the *Criminal Code* is mandatory in this case.

[111] Therefore, I order that a copy of all reports and testimony given by psychiatrists, psychologists, criminologists and other experts, and any observations of the Court with respect to the reasons for the long-term offender finding together with a transcript of the trial of the offender, including the sentencing proceedings and exhibits filed be forwarded to the Correctional Service of Canada for information and case management purposes pursuant to s. 760 of the *Criminal Code*.

**(iv) Non-Communication Order while Mr. Field is serving the custodial period of his sentence, pursuant to s. 743.21(1) of the *Criminal Code***

[112] The defence did not oppose the Crown's application for a non-communication order with the known victims of Mr. Field's offences while he is serving the custodial period of his sentence. Also, I find that such an order is appropriate in this case.

[113] Therefore, pursuant to s. 743.21(1) of the *Criminal Code*, I order that during the custodial period of his sentence, Mr. Field shall be prohibited from communicating directly or indirectly with T.R., W.E., and E.M, the victim of the Walmart robbery.

**(v) Firearms Prohibition Order pursuant to s. 109 of the *Criminal Code***

[114] Crown counsel seeks a firearms prohibition order pursuant to s. 109 of the *Criminal Code*. A firearms prohibition order is mandatory in this case, considering the fact that Mr. Field was convicted of indictable offences (sexual assault and robbery) in the commission of which violence against a person was used and for which Mr. Field may be sentenced to 10 years of imprisonment or more. I note that the offence of child pornography in this case would also qualify under that definition.



[115] Defence does not oppose the Crown's application.

[116] Despite the Court's inquiry, the Crown did not indicate the length of time it seeks for this order.

[117] I note that in 2010, Justice Gower made a firearms prohibition order for a period of 10 years against Mr. Field. However, the Crown did not file a notice of intention to seek a mandatory lifetime prohibition, pursuant to s. 109(3) of the *Criminal Code*, based on that previous order. Nonetheless, Crown counsel indicated that it was within the Court's discretion to impose a lifetime firearms prohibition.

[118] Finally, I note that the minimum duration of the mandatory prohibition order pursuant to s. 109(2)(a) of the *Criminal Code*, is 10 years. Defence did not make any submissions with respect to the duration of the firearms prohibition order.

[119] Considering the previous order for a period of 10 years that Justice Gower made in 2010, Mr. Field's prior convictions for offences of violence, the fact that Mr. Field used a canister of what was believed to be pepper spray during the Walmart robbery, I am of the view that the firearms prohibition order pursuant to s. 109(2)(a) of the *Criminal Code*, should be for a period of 20 years.

[120] I therefore order, pursuant to s. 109(2)(a) of the *Criminal Code*, that Mr. Field be prohibited from possessing any firearm other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition, and explosive substance for a period of 20 years after Mr. Field's release from imprisonment.

[121] In addition, I order, pursuant to s. 109(2)(b) of the *Criminal Code*, that Mr. Field be prohibited from possessing any prohibited firearm, restricted firearm, prohibited

weapon, prohibited device, and prohibited ammunition, for life (as provided by s. 109(2)(b) of the *Criminal Code*).

### **Forfeiture Order**

[122] The Crown seeks the forfeiture of a number of items which, Crown counsel submits, were used to produce child pornography, including Mr. Field's Apple iPod camera, computer, and USB sticks, pursuant to s. 164.1 of the *Criminal Code*. At the hearing, Crown counsel indicated that the Crown is also seeking the forfeiture of the USB sticks which contain images or video recordings of Mr. Field's sexual assaults on the adult victims as well as otherwise legal pornographic materials.

[123] In addition, the Crown is seeking the forfeiture of the USB sticks containing materials either downloaded from the Internet or recorded by Mr. Field depicting women and girls posing in bathing suits, shorts, halter tops, *et cetera*, as well as girls involved in gymnastics, yoga, swimming, and dancing.

[124] The Crown is willing to return eight USB sticks that are empty or unreadable or contain other types of materials belonging to Mr. Field.

[125] The defence does not oppose the forfeiture of the USB sticks containing the images or video recordings pertaining to the sexual assaults.

[126] In addition, as I understand it, the defence does not oppose the forfeiture of the Apple iPod which was used to capture the images and videos of the sexual assaults.

[127] However, at the hearing, defence counsel indicated that Mr. Field was opposed to the forfeiture of his computer, as it contains, among other things, family photos.

[128] Defence counsel also indicated that USB sticks containing images and videos unrelated to the sexual assaults should also be returned to Mr. Field, including those

containing legal pornographic images, as, he submits, they do not constitute offence-related property.

[129] It is my understanding that the RCMP did not examine the hard drive of Mr. Field's computer.

[130] I will now turn to the relevant sections of the *Criminal Code*.

[131] Section 164.2 of the *Criminal Code*, provides that:

(1) On application of the Attorney General, a court that convicts a person of an offence under section 162.1, 163.1 [which is the case here] 172.1 or 172.2, in addition to any other punishment that it may impose, may order that anything — other than real property — be forfeited to Her Majesty and disposed of as the Attorney General directs if it is satisfied, on a balance of probabilities, that the thing

(a) was used in the commission of the offence;  
and

(b) is the property of

(i) the convicted person or  
another person who was a party  
to the offence

...

[132] Also, s. 490.1 of the *Criminal Code* provides that:

(1) Subject to sections 490.3 to 490.41, if a person is convicted, or discharged under section 730, of an indictable offence under this Act or the *Corruption of Foreign Public Officials Act* and, on application of the Attorney General, the court is satisfied, on a balance of probabilities, that offence-related property is related to the commission of the offence, the court shall

...

(b) in any other case, order that the property be forfeited to Her Majesty in right of Canada to be disposed of or otherwise dealt with in accordance with the law by the member of the

Queen's Privy Council for Canada that is designated by the Governor in Council for the purpose of this paragraph.

[133] I also note the definition of the term "offence-related property" at s. 2 of the

*Criminal Code*:

*offence-related property* means any property, within or outside Canada,

(a) by means or in respect of which an indictable offence under this Act or the *Corruption of Foreign Public Officials Act* is committed,

(b) that is used in any manner in connection with the commission of such an offence, or

(c) that is intended to be used for committing such an offence;

[134] I have no hesitation in concluding that the USB sticks containing the images and/or video recordings of the sexual assaults committed against T.R. and related child pornography images and recordings of T.R., as well as Mr. Field's Apple iPod, which was used to capture these images and videos, constitute property used in the commission of the offence of production of child pornography, pursuant to s. 163.1 of the *Criminal Code*, for which Mr. Field was convicted.

[135] As a result, they shall be forfeited to Her Majesty pursuant to s. 164.2 of the *Criminal Code*.

[136] In the same vein, the USB sticks containing the images and video recordings of Mr. Field sexually assaulting the four adult female victims constitute offence-related property and should be forfeited to Her Majesty pursuant to s.490.1(1) of the *Criminal Code*.

[137] The eight USB sticks that are either empty, unreadable, or containing other innocuous records shall be returned to Mr. Field.

[138] This leaves Mr. Field's computer and a number of USB sticks which contain either legal pornography and/or, as described at, paras. 77 to 80 of the Admissions of Fact:

77) Many of the still images depict women or girls posing in bathing suits, shorts, halter tops, *etc...* and girls involved in activities such as gymnastics, yoga, swimming and dancing.

78) Most of the short video recordings are also from the internet. Again many of these videos are lawful videos depicting exercise routines, parkour videos, and gymnastics activity. Many depict girls involved in gymnastics and talking about gymnastics. Some of the other video recordings from the internet depict teenage girls shaking their hips, dancing and showing-off their bodies.

79) One of the USB storage devices includes twenty-eight still images of the Yukon girls' gymnastics team, apparently downloaded from Facebook. These images are dated March 27<sup>th</sup>, 2018, at which time Mr Field was on probation and was also charged and on judicial interim release for the sexual assault of sixteen-year-old T.R.

80) Among the video recordings are segments of legal 'commercial' pornography. Mr Field can be observed in the reflection from the screen of his laptop computer as he records some of these segments from the screen of his laptop computer onto another portable recording device he is holding in his hand, e.g. his Apple iPod.

[139] These items were in the possession of Mr. Field at the time of his arrest. The evidence is to the effect that Mr. Field recorded his sexual assault of T.R. and of the other victims with his Apple iPod.

[140] In addition, the evidence is to the effect that those images were transferred or uploaded onto USB sticks. There is no evidence as to how the images or videos were

transferred from the iPod to the USB sticks and I am not prepared to speculate in that regard.

[141] While Crown counsel indicated in his submissions that in some of the video recordings Mr. Field is seen using his computer to project pornographic images while sexually assaulting his victims, those facts are not contained in the Admissions of Fact filed for the purpose of this application. In addition, the Crown did not seek to have the video recordings entered as an exhibit for the purpose of this application. Based on those facts, I would have had no hesitation in finding that the computer constitutes offence-related property. However, those facts are not properly in evidence before me. The only admitted facts with respect to Mr. Field's computer are found at para. 80 of the Admissions of Fact, which I have already referred to.

[142] Crown and defence did not file case law on the issue of forfeiture or the meaning of the expression "offence-related property". However, I have considered the decision of *R. v. Trac*, (2013) O.J. No. 1788, in which the Ontario Court of Appeal considered the meaning of the term "offence-related property".

[143] At para. 80 of *Trac*, the Court of Appeal stated that:

[80] "Offence-related property" reaches property used in any manner in connection with the commission of an indictable offence. The section is aimed at the means, devices or instrumentalities used to commit offences. ...

[144] There are passages of Dr. Lohrasbe's report that touch upon the issue of videos and images of a sexual nature found on the USB sticks.

[145] At p. 22 of the report, Dr. Lohrasbe writes:

From those and similar comments it is evident that Mr. Field has some insight into some of the dynamic factors that contributed to his offending. He acknowledges that some of his other videos (i.e. not of his sexual assaults and not

involving pornography) may indicate preoccupation with sexual themes but he also points out that his interests were not limited to sexual matters.

For instance he also made films of people going about their activities that he missed, and envied their normalcy; "*... so when I watched it later it was like an escape, out of my world and into the people doing things I missed, of athletics, of the countryside. I used to do yoga, skydiving, parkour, and then I was doing nothing. So, it would give me escape, I'd film people stretching, exercising, running, hiking ... normal things that I was not doing*".

[146] Dr. Lohrasbe also writes at p. 27 of his report that the images and videos of pre-pubescent girls described in paras. 76 to 79 of the Admissions of Fact are of concern.

Dr. Lohrasbe's report was admitted by the defence as an exhibit in this proceeding.

Defence counsel indicated during the hearing that the report is an admitted statement of facts.

[147] Overall, based on all the evidence before me, I am of the view that there is a sufficient link between the multiple images of sexual nature or sexual connotation contained on the USB sticks and/or seen by Mr. Field on his computer and the factors that contributed to him committing the offences before the Court. I am therefore satisfied, on a balance of probabilities, that Mr. Field's computer and the USB sticks containing legal pornography and/or images of pre-pubescent girls, teenage girls, and women posing in bathing suits, shorts, halter tops, or wearing gymnastics suits, as well as teenage girls shaking their hips, dancing, and showing-off their bodies constitute offence-related property pursuant to s. 490.1 of the *Criminal Code* and shall be forfeited to Her Majesty the Queen.

[148] However, I do recognize the importance for Mr. Field of his family photos, which he says are stored on the hard drive of his computer. Crown counsel conceded at the

hearing that I could make a management order pursuant to s. 490.81 of the *Criminal Code* to allow and/or order the RCMP to retrieve Mr. Field's family photos from his computer. Even though defence counsel maintained at the hearing that the Crown did not meet its burden to being granted an order for the forfeiture of Mr. Field's computer and other USB sticks, he also indicated that his client has nothing to hide and is not worried about the RCMP accessing his computer for the purpose of retrieving his family photos.

[149] Therefore, pursuant to s. 490.81 of the *Criminal Code*, I order that and authorize the RCMP to examine Mr. Field's computer for the purpose of retrieving and providing to Mr. Field an electronic copy of his family photos stored on the hard drive of his computer. The RCMP has 120 days from today's date to make "best efforts" to examine the computer, retrieve, and provide to Mr. Field's counsel in an electronic format all family photos they find or identify on Mr. Field's computer.

[150] I believe I dealt with all of the ancillary orders sought by the Crown.

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CAMPBELL J.