

sentence report, a book of letters of reference or support for the defendant, a copy of a letter of apology written by the defendant in 1999, and victim impact statements.

2. The Facts:

(a) Circumstances of the offences

[3] All of the offences occurred while the victims were altar boys assisting the defendant with his pastoral duties as a Catholic priest assigned to Renfrew County. The defendant was involved with the families of the victims as a counsellor and priest. All but one of the offences occurred in the upstairs bedroom of the defendant's mother's home in Renfrew, where the defendant took the victims for an overnight stay, and while each victim was alone with the defendant. One of the offences occurred in a bed in the rectory behind the church in Golden Lake. All except one of the offences occurred once with each victim; with the other victim the assaults occurred multiple times. Throughout, the defendant befriended the victims, their parents and families. He took the victims alone to movies, dinners and other events. Each of the victims was aware of their family's close friendship with the defendant which had been encouraged by the defendant.

[4] Count #2 (DC): One offence included touching by the defendant who after getting into bed with the victim asked, "Do you want to try something that will feel good?" He then told the victim to take down his underwear and said, "This is going to feel good". The defendant then rubbed his groin area including his testicles. The victim briefly touched the defendant's genitalia. The victim stopped going to church after the assault.

[5] Count #4 (MG): Another offence occurred when the defendant took a victim to Ottawa, and stopped at his mother's home in Renfrew. They stayed overnight together in the bed upstairs. The defendant touched the victim across his back, then pulled his underwear down and touched his penis. This lasted for several minutes. Then the defendant asked the victim to touch him. The victim did not touch the defendant. This occurred on between three and seven separate occasions.

[6] Count #6 (DS): Another offence occurred when the defendant took a victim to Renfrew to his mother's for an overnight stay. In the morning the victim awoke to find the defendant's hand cupped over his penis under his clothing, and said, "Oh, we have a little tent thing going there, and I was trying to push it down". The victim tried to push the defendant away, and finally the defendant stopped. The defendant had befriended the victim's family and had given counselling to them. They were very poor. The defendant had taken the victim on various outings including skiing. The offence occurred while the

defendant had taken the victim to Renfrew shopping, dinner and a movie. The victim had never been there before.

[7] Count #7 (CH): A further offence occurred when the defendant took a victim to Renfrew and stayed overnight at his mother's house. The defendant had taken the victim with his brothers three times before but on this occasion he only took the victim who slept with the defendant. On the other occasions, one of his brothers slept with the defendant. The victim awoke to find the defendant's arm around his waist. He then started to tickle him on his chest and down to his scrotum. The victim began to feel very uncomfortable. The defendant stopped after more than a few minutes. On the drive back to his home, the defendant told him that he, (the defendant), could get into a lot of trouble and asked that he not tell anyone. The victim promised not to tell anyone.

[8] Count #9 (SH): The final offence also occurred in Renfrew at the defendant's mother's home, and involved a brother of the previous victim. He was taken there by the defendant. While in bed, the defendant told the victim that he wanted to play a game of drawing on his back and then his stomach with his finger. His hand then moved down to the victim's testicles which he fondled, and said, "What are these?" Then the defendant asked the victim to do the same with him. The victim refused. The defendant had befriended the family and had counselled the victim's mother. Several years later when the victim refused to marry in the church, and when his mother learned the reason was the assault by the defendant, she made a complaint to the bishop. The defendant was, as a consequence, relieved of his duties.

[9] The defendant told the police when he was arrested that while he admits he touched the victims' genitalia, it had been only part of a tickling game.

(b) Circumstances of the offender

[10] The defendant is 73 years old and resides at the Sisters of St Joseph Mother House in Pembroke. He helps out as much as possible since the sisters are in their 80's and 90's. He has lived there since the current charges were laid. Before that, and after the Bishop was informed of these incidents some twenty years ago by the mother of one of the victims, the defendant lived at Our Lady of Lourdes Rectory in Pembroke. He had been at the time relieved of his parish duties.

[11] During questioning by the police on his arrest, while the defendant admitted the incidents occurred, he said they only occurred as part of a tickling game. The defendant pleaded guilty to these offences but not until after the victims had given their evidence at an examination for discovery. During his interview for the PSR, the defendant again, said that he had not at the time really appreciated the significance of

what he had done. Yet after the assaults on two of the victims the defendant told them he could get in a lot of trouble and had them promise that they would keep the assaults secret. In 1999, the defendant wrote an apology letter to the mother who had reported him to the bishop, and who had requested a written apology. The supervisor in the pre-sentence report notes that while the defendant regrets the effect of his actions, he did not see his actions at the time as inappropriate, even though he received negative reactions from each of the boys. The supervisor described this as minimizing his culpability. But at the same time the defendant reported that when he was quite young, a neighbour touched him inappropriately, he reported it to his mother who told him not to go back. Later when he was about eleven during a walk with an adult male, the man put his hand down his shorts, so the defendant pulled away and stopped spending time with him. He reported that at the time, he recognized the behaviour was inappropriate and he felt uncomfortable. In fact the behaviour was almost identical to the behaviours to which the defendant pleaded guilty. Otherwise, the pre-sentence report describes the defendant's early family life, education and entry into the priesthood in unremarkable terms.

[12] The pre-sentence report recommends a period of community supervision following or in lieu of a period of incarceration with reporting conditions.

[13] Dr. Federoff's report of March 18, 2013, describes the defendant as being at low risk for recidivism, that he does not suffer from pedophilia, but has sexual interest in other males.

[14] The defendant took a 6 month treatment program in March 2000, and some counselling sessions which were initiated by the church. These counselling sessions apparently helped the defendant come to grips with his own sexuality. The defendant seeks credit in the sentencing process for the 6 month course.

[15] The defendant filed a bound book of references, cards and letters (dated from December, 2012 to the present) from parishioners attesting in glowing terms to the defendant's good character and service as a priest. It appears that several of the correspondents were unaware of the defendant's letter of apology for his actions in 1999, and unaware that he intended to plead guilty to these offences, since they questioned the defendant's culpability.

[16] I was advised that the defendant has committed no further offences, and that he is otherwise of good character. He has no criminal record.

(c) Impact on the Victim and/or Community

[17] It goes without saying, as demonstrated by the letters of support that at the time of these offences and when the first report by a parent had been made to the Bishop, the defendant had been held in very high regard and was essential to the lives of the parishioners and the life of the community. By virtue of committing these offences against very young boys, he not only betrayed the trust of the community but permanently undermined the confidence of the victims and their families in the church which had been an integral part of their lives, and to which they had turned for comfort. That comfort was no longer available to them. Ironically, while the church provided support for the defendant, I heard no evidence of any support offered by the church to support the victims or their families. The letter of apology by the defendant to one of the parents was only written at her insistence. These charges were laid over ten years later.

[18] Victim impact statements were filed and some read by each of the victims, and in three cases, a close family member. Most speak of relationship problems as adults because of the loss of trust created by the defendant. They all speak of an angry visceral disgust with the defendant, priests, and the church. Most also speak of behavioural problems they experienced which undoubtedly reflected their own feelings of self-loathing because of the events with the defendant. The statements are a reminder of the tragic consequences that have been visited on all of these people as a result of the defendant's betrayal of his trust through the illegal pursuit of his own sexual gratification. These statements stand in stark contrast to the absence of expressions of concern or reporting by the young boys at the time of the assaults. In fact two of the victims continued to see the defendant even after being assaulted. Nothing can be inferred from their conduct at the time. We have been cautioned repeatedly by the Supreme Court of Canada not to apply the same principles that we would expect of adults to children in sexual assault cases.

3. Legal Parameters:

[19] The maximum sentence for a conviction under s. 156 CCC is 10 years, and in 1959 during the period of these offences, also allowed for an order for the imposition of whipping.

4. Positions of Crown and Defence:

[20] The Crown seeks a jail sentence in the range of 7 to 9 months plus 3 years of probation and other ancillary orders. The defendant seeks a conditional sentence with electronic monitoring.

5. Case Law:

[21] The relevant authorities include: *R. v Woodward*¹, *R. v R.T.M.*², *R. v D.D.*³, *R. v Q.W.*⁴, *R. v D.*, *R. W.*⁵ and *R. v Hagen*⁶. These authorities recognize the seriousness of sexual offences on very young children by persons in a position of trust through the imposition of penitentiary terms even for first offences.

6. Mitigating and Aggravating Factors:

[22] A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances.

[23] Mitigating factors are to be found on a balance of probabilities, while aggravating factors are to be considered after a finding beyond a reasonable doubt. Mitigating and aggravating factors are only those that are related to the gravity of the offence or the moral blameworthiness of the offender.⁷

[24] Evidence that the offender abused someone under the age of 18 is deemed to be an aggravating circumstance, as is abuse of someone in a position of trust. Expert evidence has been accepted that abuse by a priest is particularly egregious:

*“Abuse by a priest may be one of the most damaging forms of abuse because of the influence of the church on families and schools within the community. The priest as the spiritual leader of the individual Catholic Church, school and community represents the ultimate betrayal of trust for individual victims. There is an extremely high potential for long term consequences in terms of faith, intimacy and trust relationships, mental health problems and overall adjustment problems.”*⁸

[25] True remorse and acceptance of responsibility is a mitigating factor. While a lack of remorse is not an aggravating factor, an absence of remorse is not a ground for leniency.

¹ 2011 ONCA 610

² 2008 ONCA 47,

³ (2002), 157 O.A.C.323

⁴ *Ontario Court of Appeal Judgments*, June 22, 2006

⁵ *Ontario Court of Appeal Judgments*, June 13, 2005),

⁶ 2011 ONCA 749

⁷ s. 718.2 CCC.

⁸ Note #1, Dr. Peter Jaffe, quoted in *R. v. Sylvestre*, [2006] O.J. No. 5382 (OCJ) @ paragraph 43

7. Principles of Sentencing:

[26] The fundamental purpose of sentencing and its objectives are denunciation, general and specific deterrence, separation of offenders from society, rehabilitation, making reparations and promotion of a sense of responsibility in the offender.⁹

[27] When trial judges are sentencing adult sexual predators who have exploited innocent children, the focus of the sentencing hearing should be on the harm caused to the child by the offender's conduct and the life-altering consequences that can and often do flow from it. While the effects of a conviction on the offender and the offender's prospects for rehabilitation will always warrant consideration, the objectives of denunciation, deterrence, and the need to separate sexual predators from society for society's well-being and the well-being of our children must take precedence.¹⁰

[28] A conditional sentence should rarely be imposed in cases involving the sexual touching of children by adults, particularly where the sexual violation was of a vulnerable victim by a person in a position of trust¹¹.

[29] A sentence must be proportionate to the gravity of the offence and the moral blameworthiness of the offender.¹²

[30] Consideration must be given to similar sentences for similar offenders for similar offences in similar circumstances.¹³

[31] The process of analysis requires that the offence first be placed in a category. Secondly, the range of sentences is identified for that category with reference to texts and judicial decisions. Lastly, the sentence is placed at the appropriate point according to all of the circumstances.

8. Reasons:

[32] The defence referred me to *R. v Forsyth*¹⁴, as authority for granting pre-trial credit for time spent in rehabilitation. While I accept that his 6 months of counselling provided by the church is relevant, and I should consider it, I don't accept that the

⁹ s. 718 CCC.

¹⁰ *R v Woodward*, 2011 ONCA 610 @ paragraph 76).

¹¹ *R v D.R.*, (2003) 169 OAC 55 (OCA), *R v G.C.F.* (2004) 188 C.C.C (3d) 68.

¹² s. 718.1 CCC.

¹³ s. 718.2 (b) CCC.

¹⁴ [1995] O.J. No. 4173

defendant should be given time credit. He attended the counselling because he was required to by the church-- and presumably paid for by the church. He also referred me to *R. v. Larveniz*¹⁵, a decision of the Court of Appeal which held that the trial judge in that case had given insufficient attention to rehabilitation as a factor in sentencing an importer of cocaine, and too much attention to deterrence. That was not a sexual assault case against young children and therefore it is of limited value. As noted above, the law is well settled that in sexual assault cases against young children, while rehabilitation should be considered, deterrence and denunciation are the predominating principles.

[33] This is not a case for a conditional sentence. Firstly this case falls squarely within the very type of case that has been held to be unavailable for a conditional sentence.¹⁶ Secondly the offences are "serious personal injury offences" as defined in s. 752 CCC, and thus, a conditional sentence is not available.¹⁷ In any event, a conditional sentence in this case would in my view be inconsistent with the principles of deterrence and denunciation.

[34] While the defendant pleaded guilty and thereby avoided requiring the victims having to relive these terrible occurrences, he did so only after they were required to give their evidence under oath at an examination for discovery. When questioned by the police, and again when he was interviewed for the pre-sentence report, the defendant qualified his admission of guilt by suggesting that he had not really planned anything with these young boys, and that it just happened following a tickling episode. He also denied understanding the importance of what he had done to these young boys until years later, yet at the time he had at least two of the victims promise not to tell anyone because he would get in trouble. One of the very young victims recalled being told by the defendant not to tell anyone. Even then at his young age he understood that the defendant ought not to have done what he did. The offences clearly took place after extensive grooming and planning. He befriended the families and therefore gained access and the trust of the families and the young boys. The actual assaults were planned carefully by promising an outing or activity of some kind that he knew they would enjoy; then the defendant planned an overnight with the young boys at his mother's home-- the assaults taking place in her upstairs bedroom. With one of the boys it was repetitive – three to seven times. While I do not ignore the defendant's guilty plea, he has never unqualifiedly accepted responsibility and demonstrated insight into his

¹⁵ [1999] O.J. No. 3681 (OCA),

¹⁶ Note #5.

¹⁷ *R. v. Stuckless* (1998), 127 C.C.C. (3d) 225 at para. 44 (OCA).

conduct. I do acknowledge however that his guilty pleas saved the victims from having to relive these terrible events.

[35] Sentencing of the defendant requires that great emphasis be placed on the harm done to the victims. The victims, their families and the extended community have all suffered harm. The victims and their families have seen life altering and tragic consequences with their faith having been seriously undermined.

[36] The defendant did not have sexual intercourse or attempt sexual intercourse with any of the victim s. That would have warranted a penitentiary term. However these were multiple offences of touching and fondling; and in one case the victim was assaulted multiple times. They were all very young boys who were entirely under his control and alone either in the defendant's mother's house or in the rectory bedroom at Golden Lake.

[37] I accept the Crown's submission that the appropriate sentence is in the range of 7 to 9 months incarceration and impose a sentence of 9 months followed by 3 years of probation. Anything less fails to recognize the seriousness of the harm done to the victims, their families and the community.

9. Sentence

[38] Following are the sentences which are imposed consecutively; followed by three years of probation:

Count #2: 40 days.

Count #4: 4 months.

Count #6: 40 days.

Count #7: 40 days.

Count #9: 40 days.

[39] The conditions of probation are to include: reporting; to avoid contact with males under the age of 18; avoid contact with the victims or their families unless expressly initiated by a family member; any other conditions, counselling, or testing the supervisor recommends.

10. Ancillary Orders:

[40] Ancillary orders to be imposed:

- i. SOIRA order for life.

- ii. S. 109 order for life.
- iii. S. 161 order – 20 years.
- iv. DNA order.

Honourable Justice Timothy Ray

Released: November 28, 2013