

R. v. O'Connor, 1996 CanLII 8458 (BC SC)

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No. CC920617
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

September 13, 1996
Vancouver, B.C.

HER MAJESTY THE QUEEN) SENTENCING
)
)
AGAINST) OF THE HONOURABLE
)
)
HUBERT PATRICK O'CONNOR) MR. JUSTICE OPPAL
M. Macaulay, Esq.) Appearing for the Crown
C. Considine, Esq.) Appearing for the Accused
D. McDonagh

* * * * *

THE COURT: (Oral) The accused has been found guilty of one charge of indecent assault on a female person and of a second charge of rape. Both incidents took place approximately 35 years ago when the accused, who is a Roman Catholic Bishop, was a priest and principal of the Cariboo Indian residential school near Williams Lake. Both complainants were former students of the school. At the time of the offences, they were employees of the school. It will not be necessary to make reference to the evidence in any detail except where it is relevant to the sentencing.

The accused is 68 years old. He entered the priesthood in 1955. In the 1960s he was the principal of the residential school. In 1971 he

was ordained as a bishop. As a bishop, he served in Whitehorse and in Prince George. He voluntarily resigned as a bishop of the Diocese of Prince George in 1991 when these charges were laid.

The evidence is that he has had a splendid record of public service. A number of letters extolling his character have been filed on his behalf. One such reference comes from Reverend Francis Morrissey, a priest and professor of canon law at the University of Ottawa. He writes:

I have always found him to be fair in his dealings with others. I have always found him concerned for persons for doing what is right. For this reason I was very surprised and saddened when I first heard of the charges brought against him. The actions in question are certainly shocking and out of character. I would hope that they not negate the good he had done for more than 30 years as a priest and later as a bishop in Western Canada. These past five years have been most trying for him and also for the church community which he served. The process has been long and difficult with inevitable effects on his physical and psychological health. While in no way condoning what has happened, I would not want him to become a broken man. He deserves understanding and compassion at this difficult time in his life. In fact, because of the publicity surrounding this case and the time that has elapsed, he has already more than paid his debt to society.

Another such letter comes from Bishop Remi DeRoo of the Diocese of Victoria. Bishop DeRoo writes:

Hub O'Connor has always impressed me as a gentle, quiet and unassuming person. He has constantly been a reliable and trustworthy administrator and to the best of my knowledge was held in high esteem ... Please allow me to respectfully submit that the actions for which he is about to be sentenced appear to me as having been completely out of character with what I have experienced of Hub O'Connor as a person. I was astounded to allow that there might have been such conduct in his past. His relationships with people in a variety of situations always appear to me as above reproach, reflecting a person of complete

integrity.

Another such letter came from Louie Frank, who writes:

Bishop Hubert O'Connor has always shown respect and kindness to myself and to my family. This was especially apparent to us when my son Gilbert was very sick with cancer in a hospital in Vancouver. The spiritual support and love that was shared with us by Bishop Hubert O'Connor will always be deeply appreciated.

Bishop O'Connor suffers from ill health. I am advised that he was in good health in 1991 when these charges were laid. However, a number of medical reports which have been filed before me indicate that he now suffers from heart disease. I must consider those factors in imposing sentence.

The Crown has filed victim impact statements on behalf of each complainant. I must take those into account in imposing sentence. In her statement Ms. B., who was the complainant in the rape conviction, states:

The effects of this trauma have had a devastating impact on my emotional well-being. As a young woman during my twenties and thirties, I had little esteem after this tragic event. I felt I could trust no one. I felt helpless and I could not tell anyone what happened. I thought they would not believe me or that they would not understand the shame I carried for years. Many times I felt vulnerable and I was an object and not a person.

Ms. R., who was a complainant in the indecent assault conviction, has supplied a statement which is similar in content.

Obviously, in imposing sentence the court must consider the effects of the offences upon the victims. I must also consider it a fact that each of the victims has felt betrayed by the events that have taken place.

I will now deal with the general principles which are applicable to all criminal cases and specifically the principles which are applicable to this case.

In the sentencing process courts are guided by well established principles. These include:

1. The protection of society;
2. General deterrence; that is to say a sentence, if

possible, must deter other persons from committing similar offences;

3. Specific deterrence; that is the specific individual must be deterred from similar conduct in the future;

4. Rehabilitation;

5. Denunciation.

Obviously, not all of the aforementioned principles are applicable to the circumstances of any given case.

Sentencing is an evolving process. Most recently, Parliament has codified the purpose and principles of sentencing. The codified principles generally restate and expand upon the principles which have been established by the courts. It is useful to refer to these codified principles which went into effect on September 3rd, 1996. Section 718 of the [Criminal Code](#) sets forth the basic principles which are applicable to the sentencing process. That section reads as follows:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and maintenance of a just, peaceful and safe society by imposing just sanction that have one or more of the following objectives.

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Section 718.1 states:

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

Section 718.2 states:

A court that imposes a sentence shall take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender and without limiting the generality of the foregoing;
- (iii) the evidence that the offender, in

committing the offence, abused a position of trust or authority in relation to the victim shall be deemed to be aggravating circumstances.

The amendments to the [Criminal Code](#) are also intended to introduce alternative measures to conventional sentencing methods. Thus, the concept of a conditional sentence has been introduced.

Section 742.1 of the code provides for a conditional sentence. That section reads:

Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court

- (a) imposes a sentence of imprisonment less than two years, and
- (b) is satisfied that serving the sentence in the community would not endanger the safety of the community, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

Thus, conditional sentences are available when:

1. There is no minimum term of imprisonment; and
2. Where the term of imprisonment that otherwise would be imposed would be less than two years;
3. The court is satisfied that serving a sentence in the community would not endanger the safety of the community.
4. A judge can impose certain conditions upon the offender.

It is apparent that the intent of the conditional sentencing provisions is to promote protection of the public by seeking to separate more serious offenders from the community while providing less serious offenders with effective community-based alternatives. A conditional sentence may be imposed if, in light of the aggravating or mitigating factors and having regard to the principles enunciated in Section 718, a court would otherwise impose a sentence of less than two years. The provision would also be applicable if a court believes that it is in the public interest to have the offender not serve any or all of his sentence in prison.

The specific law relating to sexual assault cases is clear. The courts have consistently stated that a person who is convicted of sexual

assault involving a young person should, in the absence of compelling or exceptional circumstances, go to jail.

In *R v. Gallacher*, a decision of the British Columbia Court of Appeal, Registry No. CAV01323, April 3rd, 1991, Hinds J.A. at page 4 stated:

This court has frequently stated that the general principle to be applied in sentencing for this type of offence: that in the absence of special circumstances a person convicted of a sexual offence involving a young person should receive a sentence of imprisonment. The length of imprisonment would depend upon the circumstances of the particular case.

Both the Crown and the defence have relied on this case. It is the Crown's position that this is an appropriate case for a term of incarceration, while the defence has argued that there are exceptional circumstances relating primarily to the background of the accused and to the manner in which the offences were committed.

In *R v. C.A.M.* (1996) [1996 CanLII 230 \(SCC\)](#), 105 C.C.C. (3d)

327,

Supreme Court of Canada stated that a sentence ought to be "just and appropriate in the circumstances." The court also spoke of a need for the sentence to reflect "just sanctions."

Mr. Macaulay, on behalf of the Crown, has argued that an appropriate sentence in this case is a term of imprisonment of between three and five years.

Mr. Considine on behalf of the defence has argued that this is an appropriate case for a suspended sentence and a term of probation, or, in the alternative, a conditional sentence under Section 742.1.

I have no difficulty in concluding that, having regard to the circumstances of this case, this is not an appropriate case for a suspended sentence.

I must now go on to consider whether a conditional sentence is appropriate, that is to say whether the accused ought to be permitted to serve his sentence in the community as opposed to a prison. Section 742.1 is permissive. It states that a court "may order that an offender serve the sentence in the community." Thus, a court has a discretion to impose such a sentence in the appropriate circumstances. Section 742.1 must be read in conjunction with Section 718, in that a conditional sentence must nevertheless comply with accepted principles and objectives of sentencing.

Perhaps I am stating the obvious when I state

that the decision in this case has been agonizing and difficult. On the one hand, the accused is a person of otherwise good character, he is in failing health and the public need not be protected from him. The Crown has agreed that he does not pose a danger to the public at this stage. On the other hand, he has committed acts involving serious breaches of trust and thereby caused immeasurable harm to his victims whom he violated in a deeply offensive and personal manner.

I want to address the question of the lapse in time between the offence and these proceedings. It has been approximately 30 years since these acts were committed. The general rule is that a sentence, if it is to be effective, ought to be imposed at the time closest to the date of the offence. The question which arises is what significance, if any, should be placed upon the length of the passage of time in this case?

In R v. Spence (1992) 1992 ABCA 352 (CanLII), 78 C.C.C. 3rd 451, the Alberta Court of Appeal held that a lapse in time in sexual assault cases does not render inoperable the general principles of deterrence and denunciation.

I think that in the circumstances I must consider the lapse in time, however, I must also consider the balancing factor that the offences which were committed in this case are offences which involved a concealment, in that the accused was in a position of trust and the victims invariably were in a position where they were, through shame and embarrassment through no fault of their own, unable to speak out on the crimes which were committed against them.

I agree that while the utility of any term of incarceration at this time may be seriously questioned, it must be kept in mind that the offence that the accused, particularly the rape offence, was an offence which was highly offensive.

After careful consideration I have concluded that a conditional sentence is not appropriate for the following reasons: The accused was in a position of trust. He held an exalted position in the community where he committed these offences. His victims were helpless. They were young native persons who attended a residential school and who held him in high esteem. He was a priest, a school principal and an employer. The complainants in the circumstances were extremely vulnerable.

It should also be noted that the accused has been convicted of rape and indecent assault. The offence of rape as such is no longer known to our law. The offence has now been redefined and categorized into various forms of sexual assault.

Rape was one of the most serious offences in the [Criminal Code](#). The maximum sentence for rape was life imprisonment. The range of sentence for rape was between four and six years. The act of rape was most degrading and offensive to a victim. The circumstances under which the rape was committed in this case was most offensive.

While some of the overt acts of violence that we see in other cases were not present in the circumstances of this case, I must keep in mind that the act itself is inherently violent. I must also keep in mind that the victims were in no position to resist. It would not be in the public interest to impose a conditional sentence.

The maximum sentence for indecent assault on a female person was five years. As well, the offender could be subjected to a whipping under the provisions of the [Criminal Code](#) as it stood at that time. Obviously, the accused as a first offender would not be subject to the maximum sentences. However, in any sentence a court must consider the minimum and maximum sentences as prescribed by law for the particular offence for which an accused is being sentenced.

I must now go on to consider the appropriate length of the custodial sentence which I plan to impose in the circumstances of this case. After careful consideration of all of the relevant circumstances, including the background of the accused, the effect upon the victims, the manner in which the offences were committed, and in particular the provisions of Sections 718.1 and 718.2 of the [Criminal Code](#), an appropriate term of imprisonment for the charge of rape is two-and-one-half years. Upon the charge of indecent assault, an appropriate sentence is one of three months. The sentence will be served concurrently. I appreciate that while in a technical sense the sentences here ought to be imposed consecutively, the intent of the court is to deal with this matter by way of a global sentence. Accordingly, the sentences will be served concurrently, one with the other. In addition to that, there will be an order made under [Section 100](#) of the [Criminal Code](#).

(CONCLUDED)

THE REGISTRAR: Order in court. Court stands adjourned.