Court of Queen's Bench of Alberta

Citation: R v Sheppard, 2021 ABQB 705

Date: 20210903
Docket: 191147966Q1
Registry: Wetaskiwin

Between:

Her Majesty the Queen

- and -

Paul Sheppard

Accused

Reasons for Decision
of the
Honourable Madam Justice D.A. Yungwirth

This sentencing decision was delivered orally on August 27, 2021. There are no changes to the substantive decision, with the changes relating to the addition of case citations and Criminal Code references, and the correction of spelling errors and grammar errors. Where there are discrepancies between this written decision and the oral decision, this written decision takes precedence. I also note that on application by the Complainant, supported by the Crown, the publication ban in this case was removed on August 27, 2021 before this decision was given.

Introduction

[1] Paul Sheppard was found guilty by a jury on March 30, 2021, of sexual interference (Count 1), invitation to sexual touching (Count 2), and sexual assault (Count 3) against Steacy Easton, a person under the age of 14 years. The offences occurred in 1993 and 1994.

[2] The Crown submits that the conviction for sexual assault should be stayed pursuant to the principle in ***Kienapple v R***, 1974 CanLII 14 (SCC), [1975] 1 SCR 729, and that a conviction

should be entered on Counts 1 and 2. Counsel for Paul Sheppard submits that the Court should sentence on only one count due to the overlap between Counts 1 and 2. Though Counts 1 and 2 do have similarities, they are different offences. Count 1 involves the accused touching the complainant and Count 2 involves the accused inviting the complainant to touch the accused, the complainant or a third party. In view of the multiple incidents in this case I am satisfied that it is appropriate to sentence Dr. Sheppard on Counts 1 and 2. The conviction for sexual assault is stayed and convictions will be entered on Counts 1 and 2.

[3] In addition to the evidence at trial, the evidence provided to the Court for this sentencing includes a Psychosexual Assessment of Paul Sheppard completed by Dr. Marc Nesca and 16 character references. When asked if he wished to make a statement pursuant to s 726 of the *Criminal Code*, Paul Sheppard indicated that he was relying on the submissions of his Counsel.

Facts

[4] For the purposes of this sentencing, it was necessary for the Court, pursuant to s 724(2)(b) of the *Criminal Code of Canada*, to accept certain facts as proven. Those facts, which I am satisfied were proven beyond a reasonable doubt at trial, are as follows:

[5] Between September 1, 1993 and June 30 1994, Steacy Easton, was a grade 7 student at St. John's School of Alberta, an all-male boarding school with an outdoor focus that used corporal punishment as one of the methods of disciplining the students.

[6] Steacy Easton, who prefers the pronouns they/them, was born on January 14, 1981, so they were 12 years of age when they started grade 7 and 13 when they finished grade 7.

[7] The Accused, Paul Sheppard, was a teacher at the school and was one of the Duty Masters to the grade 7 students.

[8] In his role as Duty Master, the Accused administered discipline, which included spanking or "swatting" the students on the buttocks in his office with the door closed and the blinds drawn.

[9] During their time at St. John's School, Steacy Easton was picked on by the other students. This included physical and verbal abuse. They also had issues with personal hygiene. The Accused took on a paternal role to Steacy Easton and showed an interest in them.

[10] In addition to administering discipline to Steacy Easton, including the spankings, Paul Sheppard had Steacy Easton frequently use student showers with no privacy. Paul Sheppard would watch Steacy Easton shower on more than a few occasions.

[11] During the administration of corporal punishment by spanking, Paul Sheppard had the opportunity to be alone with Steacy Eason. After the first two or three spanking incidents, in October of 1993, Paul Sheppard asked Steacy Easton to remove his pants and underwear and Paul Sheppard touched Steacy Easton's penis.

[12] Thereafter, on an ongoing basis, approximately every third spanking incident involved the Accused sexually violating Steacy Easton. Most of these incidents occurred in the Duty Master's office during dinner or study hall, but they also occurred in the woods outside the school on two occasions.

[13] Between October of 1993 and the spring of 1994, Paul Sheppard sexually violated Steacy Easton approximately 10 times. The assaults included the following:

- Paul Sheppard taught Steacy Easton how to masturbate and would watch Steacy Easton masturbate and comment on how Steacy Easton was doing;
- Toward the end of the school year, Paul Sheppard masturbated Steacy Easton as well;
- Paul Sheppard asked Steacy Easton to masturbate Paul Sheppard and Steacy Eason touched Paul Sheppard's penis.
- On one occasion in the woods, Paul Sheppard took out his penis, and asked Steacy Easton to take out their penis. Paul Sheppard put his hand on Steacy Easton's penis and took Steacy Easton's hand and put it on Paul Sheppard's penis.
- On another occasion in the woods, Paul Sheppard took out his penis and asked Steacy Easton to kiss it, which Steacy Easton did. The evidence does not establish beyond a reasonable doubt, that Paul Sheppard put his penis into Steacy Easton's mouth but that Steacy Easton put their mouth on Paul Sheppard's penis.

Personal Circumstances of Paul Sheppard

[14] Paul Sheppard is 58 years old. He was raised by his parents in Niagara Falls, Ontario. He has one sister. Dr. Sheppard has one child.

[15] Between 1986 and 2012, Dr. Sheppard obtained five degrees and an EMT Certificate. From 1989 to 2015, he worked as a teacher and educational administrator in Canada and internationally.

[16] Dr. Sheppard is a member of the LGBTQ2+ community. He has no criminal record. He is now semi-retired and lives in St. Catharines, Ontario with his partner of eight years.

[17] Counsel for Dr. Sheppard said that the character references were tendered to highlight the absence of a risk of re-offending in the future. The character references were provided by Dr. Sheppard's current partner, his cousins, teachers who taught with him at St. John's School, his sister, his brother-in-law, two former students from St. John's School, parents of students who attended St. John's School, friends, and a Judge of the Provincial Court of Alberta. The references indicate that they are aware of Dr. Sheppard's current legal difficulties. They describe Dr. Sheppard as reliable, trustworthy and of good character; a fine person and professional full of kindness and compassion – exemplary in every way; a caring person who supports family and friends; a person with upright character, who is honest, dependable and truthful; a man of virtue and integrity; a person who is stable, calm, compassionate, loving and giving.

[18] Overall, the sentiments expressed in these character references can best be described using the words from the reference letter of PCJ Fradsham:

> To say that such offending behavior is contrary to my positive assessment of Dr. Sheppard's character is self-evident. I can only say that it is conduct completely at odds with the character which I have seen him consistently display over the years. Upon reflection, and based on knowing Dr. Sheppard for over 25 years, the conclusion I have arrived at for myself is that his fundamental positive attributes remain, and that for me, those attributes, on the whole, continue to better define the man than does the egregious act of which he has been convicted.

[19] It is clear that Dr. Sheppard has many supportive family members and friends.

Psychosexual Assessment Prepared by Dr. Marc Nesca

[20] The Psychosexual Assessment of Dr. Marc Nesca indicates that Dr. Nesca administered two psychological tests – a Personality Assessment Inventory and a Multiphasic Sex Inventory.

[21] The report states that the Personality Assessment Inventory indicated a clinical profile within normal limits, though the validity scale findings indicated that the clinical findings may under-represent the presence of emotional distress and negative personality traits.

[22] The report also states that the Multiphasic Sex Inventory was entirely within normal limits with no indication of any form of sexual disfunction or desire disorder. Dr. Sheppard's profile was indicated as unremarkable for sexual deviance.

[23] The Assessment concluded that Paul Sheppard is experiencing thoughts of self-harm and that profound personal setbacks should be seen as escalating his risk of self-harm. It also concluded that Paul Sheppard's sexual interests are non-deviant and that "it is likely that the current test results provide an accurate depiction of Dr. Sheppard's adult sexual preferences."

[24] At the beginning of the report, Dr. Nesca indicates that his assessment had an exclusively clinical focus and that Paul Sheppard's current legal difficulties were not explored. During submissions, Counsel for Dr. Sheppard advised that Dr. Nesca was aware of the present convictions but the facts were not explored because of the testing focus and the fact that this Court had not set the facts for sentencing purposes. There is no indication in the Report, that there were any discussions about Paul Sheppard's history as a teacher/administrator or his intentions for the future.

[25] For the Court, the very clinical nature of the testing, without exploration of the circumstances that brought Paul Sheppard before the Court, or of his teaching history, contact with children and adolescents previously, at present and anticipated in the future, provides the Court with limited assistance in terms of the assessment of Paul Sheppard's risk of re-offending. The Court is unable to draw any meaningful conclusions about Paul Sheppard's risk of re-offending, based on the very limited clinical nature of this Report.

Positions of Crown and Defence on Appropriate Sentence

[26] The Crown is seeking a sentence of 6 to 8 years incarceration. The Accused seeks a sentence of 2 years incarceration followed by 3 years of probation.

R v Friesen **and Sentencing for Sexual Offences Against Children**

[27] On April 2, 2020, the Supreme Court of Canada released the decision of ***R v Friesen***, 2020 SCC 9 [***Friesen***]. In the first paragraph of the decision, the Court states: "This case is about how to impose sentences that fully reflect and give effect to the profound wrongfulness and harmfulness of sexual offences against children."

[28] The Court indicated that they were sending a strong message that sexual offences against children are violent crimes that wrongfully exploit children's vulnerability and cause profound harm to children, families, and communities: ***Friesen*** at para 5. The Court was very clear that sentences for these crimes must increase.

[29] The Court indicated that "mid-single digit penitentiary terms for sexual offences against children are normal and that upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances": ***Friesen*** at para 114.

[30] I am guided by the principles set out in ***Friesen*** in assessing a fit and proper sentence for Paul Sheppard.

Sentencing – General Principles

[31] The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of several objectives: s. 718, *Criminal Code.*

[32] Section 718.01 of the *Criminal Code* provides that when a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct. The prioritization of denunciation and deterrence also confirms the need for the courts to impose more severe sanctions for sexual offences against children: ***Friesen*** at para 101.

a) The objective of denunciation is to show society's condemnation of the offender's conduct. This objective also embodies the communicative and educative role of the law: ***Friesen*** at para 105, citing ***R v Proulx***, 2000 SCC 5 at para 102.

b) The objective of deterrence is to deter the accused, as an offender, from this type of conduct and to deter other persons from this type of behavior.

[33] The objective of separating an offender from society is closely related to and reinforces and gives practical effect to deterrence and denunciation: ***Friesen*** at para 103.

[34] Another important objective in this case is to promote in the offender, a sense of responsibility, and acknowledgement of the harm done to the victim and to the community.

[35] The most important principle in sentencing, including in crimes of a sexual nature, is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[36] A sentencing judge must also consider the principle of parity – that is, that similar offenders who commit similar offences in similar circumstances should receive similar sentences. Parity is an expression of and gives meaning to proportionality.

Gravity of the Offences

[37] The offences here are serious. They involve the violation of the sexual integrity of a child victim by a person in a position of trust and authority. The maximum penalties for each of these offences, at the time they were committed, was 10 years in prison – they have since been increased to 14 years in prison, with a minimum sentence of 1 year. These maximum and minimum penalties are an indication of the seriousness that Parliament has attached to each of these offences both in 1993 and 1994 and at the present time.

[38] As indicated in ***Friesen***, courts should give effect to the gravity of the sexual offences against children by considering the inherent wrongfulness of applying force of a sexual nature to

a child (which interferes with child's sexual integrity, bodily integrity, and psychological integrity), the potential harm (which includes harm that manifests itself during childhood and harm that only becomes evident during adulthood and includes reasonably foreseeable potential harm) and the actual harm (which can usually be determined by considering the victim impact statement).

[39] Steacy Easton, who is now 40 years old, read their Victim Impact Statement in court. It did not go into great detail about the impact of these offences on them. What they did say is that the damage that Dr. Sheppard did was to betray their trust. They described Dr. Sheppard's abuse as feeling "different, quieter and more tender" than what Steacy Easton obviously felt was an abusive environment generally at St. John's School. They state "the damage was not understanding how to be tender and about how that tenderness betrayed the appropriate boundary between teacher and student." It is clear from the Victim Impact Statement that Steacy Easton has had difficulty with the demands of the justice system and its impact on them. Steacy Easton says that if these proceedings had happened in 1999 or 2007 when they tried to go the police, "it feels like I would have had to wait less, to mourn better and to have less damage done by the waiting and the mourning." Their statement says that they want to "unlearn the lessons of Saint Johns."

Degree of Responsibility of the Offender

[40] I consider Paul Sheppard's degree of moral blameworthiness to be very high. He used his position of power as Duty Master and his paternal role, to take advantage of a child who was very vulnerable. Steacy Eason was living away from home in a boarding school, and was picked on by the other children. The Accused showed Steacy Easton attention and even affection and used his position to get close to and then isolate Steacy Easton for the purpose of satisfying the Accused's sexual desires. Paul Sheppard was or ought to have been aware that his actions could profoundly harm the child because they involved the wrongful exploitation of a vulnerable child.

[41] The fact that the victim was a child when the offence was committed, increases Dr. Sheppard's degree of responsibility: ***Friesen*** at para 90.

Aggravating and Mitigating Circumstances (s. 718.2 of the *Criminal Code*)

[42] In this case, the statutory aggravating factors are as follows:

- Paul Sheppard, in committing the offence, abused a person under the age of 18 years: s 718.2(a)(ii.1);
- Paul Sheppard, in committing the offence, abused a position of trust or authority in relation to Steacy Easton: s 718.2(a)(iii);
- the offences had a significant impact on the victim: s 718.2(a)(iii.1).

[43] The Court also considers as an aggravating factor, the duration and frequency of the sexual assaults. They occurred throughout Steacy Easton's grade 7 school year – approximately 10 incidents of sexual violence occurred between September 1, 1993 and June 30, 1994.

Mitigating Factors

[44] The Crown argued that there were no mitigating factors.

[45] The only mitigating factor submitted by the Accused, is the submission that he is a low risk to re-offend. That is further addressed below.

[46] I find that there were no mitigating factors.

Determination of a Fit Sentence

[47] In determining a fit sentence for sexual offences against children, the Supreme Court of Canada in ***Friesen*** (paras 121-154) set out a non-exhaustive list of factors for the Court to consider:

- THE RISK OF REOFFENDING: The higher the risk of reoffending, the greater the need to separate the offender from society. The increased likelihood to reoffend affects separating the offender from society and rehabilitation becomes more important. It protects children during the period of incarceration.

[48] As indicated earlier, the Court is not able to conclude that Paul Sheppard is or is not a high risk to re-offend based on the limited very clinical Assessment of Dr. Nesca.

- WHETHER THE OFFENDER ABUSED A POSITION OF TRUST: An Offender who abuses a position of trust to commit a sexual offence against a child should receive a lengthier sentence than an offender who is a stranger to a child: ***Friesen*** at para 126. Any breach of trust is likely to increase the harm to the victim and thus the gravity of the offence. The focus should be on the extent to which the relationship of trust was violated. The Supreme Court of Canada in ***Friesen*** referred to a spectrum of relationships. Teachers are specifically mentioned as the type of relationship where there is a closer relationship and a higher degree of trust, which causes the child to suffer more harm from sexual violence. Abuse of a position of trust is also aggravating because it increases the offender's degree of responsibility: ***Friesen*** at para 129.

[49] In this case, not only was Paul Sheppard a teacher of Steacy Easton, he was teaching at a boarding school and took on a parental role to Steacy Easton, who was being picked on by other children. The fact that Steacy Easton was effectively living at the school magnifies the potential damage that Paul Sheppard should have foreseen because Steacy Easton was in the charge of the teaching staff at all times.

- WHETHER THE SEXUAL VIOLENCE WAS COMMITTED ON MULTIPLE OCCASIONS AND FOR A LONGER PERIOD OF TIME: Sexual violence against children that is committed on multiple occasions and for a longer period of time should attract significantly higher sentences that reflect the full cumulative gravity of the crime and the offender's increased degree of responsibility: ***Friesen*** at para 131. The duration and frequency make the offences more serious than single instance cases (even if there is only 1 charge for multiple instances). These multiple occasion cases should attract significantly higher sentences: ***Friesen*** at para 132-133.

[50] As indicated above, there were approximately 10 instances of sexual violence by Paul Sheppard against Steacy Eason while Steacy Easton was in grade 7.

- THE AGE OF THE VICTIM - The age of the victim is a significant aggravating factor – the younger the child, the more the moral blameworthiness of the offender is enhanced: ***Friesen*** at paras 134-136.

[51] Steacy Easton was not a young child when these offences occurred. They were an adolescent child. As confirmed at para 153 of ***Friesen***, adolescence can be a confusing and challenging time for young people as they grow and mature, navigate friendships and peer groups, and discover their sexuality. "As Feldman J.A. wrote in *P.M.*, to exploit young teenagers during this period by leading them to believe that they are in a love relationship with an adult 'reveals a level of amorality that is of great concern'": ***Friesen*** at para 153.

- DO NOT DEFINE A SENTENCING RANGE BASED ON THE SPECIFIC TYPE OF SEXUAL VIOLENCE: In ***Friesen***, at paras 137-147, the Supreme Court of Canada cautions Courts against defining a sentencing range based on the specific type of sexual activity at issue or using a type of hierarchy of physical acts. The Court stated at para 138, that "we acknowledge that the degree of physical interference is a recognized aggravating factor which reflects the degree of violation of the victim's bodily integrity." The Court said to avoid 4 errors: 1) do not make the presence or absence of penetration the cornerstone of a sentencing range; 2) don't assume a clear correlation between the type of physical act and the harm to the victim – distinctions are not determinative of the seriousness of the offence. Don't downgrade the wrongfulness of the offence or the harm to the victim where the sexually violent conduct does not involve penetration, fellatio, or cunnilingus but instead touching or masturbation; 3) courts must recognize the wrongfulness of sexual violence even in cases where the degree of physical interference is less pronounced; 4) there is no type of hierarchy of physical acts for the purposes of determining the degree of physical interference.

[52] I note here, the 3-year starting point set out at para 53 of ***R v Hajar***, 2016 ABCA 222, for what the Court defined as major sexual interference, was based on a reference to defined specific acts. The Alberta Court of Appeal had previously also established a 4-year starting point for major sexual assaults on children committed by a person in a trust position: ***R v WBS***, 1992 CanLII 2761, confirmed in ***R v DPH***, 2019 ABCA 448. Though these starting points have been a useful guide, I am considering them through the lens of ***Friesen*** and in light of the Court's comments that "an upward departure from prior precedents and sentencing ranges may well be required to impose a proportionate sentence": ***Friesen*** at para 107.

[53] I approach with caution, the Defence submission that the reference in ***Friesen*** to the sentencing ranges for sexual offences in Alberta means that the Court in this case must first make a finding on whether the assaults were "major" or not. As the impact on the child is now the focus, what constitutes a "major sexual assault" must also consider the impact on the child, if that can be determined. Acts that previously were not considered to be "major" in the context of a sexual assault against a child, may well be "major" for an individual child. This approach finds support in the comments at para 140 of ***Friesen***, where the Court said:

> We would not go so far in this case as to hold that defining a range or starting point according to the type of physical acts that it captures necessarily amounts to an error of law. However, we would strongly caution provincial appellate courts

> about the dangers of defining a sentencing range based on penetration or the specific type of sexual activity at issue.

[54] In this case, the type of sexual activity involved touching and masturbation, including mutual touching and mutual masturbation. While the type of activity is certainly a consideration for this Court, it does not define the sentencing range and must be considered in the context of all of the other factors and sentencing principles when sentencing this offender.

- THE PARTICIPATION OF THE CHILD – The Court in ***Friesen*** indicated at para 148, that a child's participation is not a mitigating factor, nor should it be a legally relevant consideration at sentencing. The Court stated that it is an error in law to treat "de facto consent" as a mitigating factor and that this factor is not a legally relevant consideration at sentencing.

Defence Submission that Friesen Did Not Address the Approach to be Taken in Historic Sexual Offences Involving Children

[55] Before proceeding further, I wish to address the Accused's submission that ***Friesen*** did not address the approach to be taken in historical sexual offences involving children. This is tied to the issue of the proper interpretation of s 11(i) of the *Charter*.

[56] The Accused relies on the case of ***R v WGL***, 2020 NSSC 323. That case involved sexual touching, including digital penetration of a child by her step-father. The offences occurred between January of 1995 and December of 2000. The sentencing took place in 2020, after the judgement in ***Friesen*** was rendered. The Nova Scotia Supreme Court found that some but not all of the ***Friesen*** reasoning applied to the sentence. At paras 17-18, that Court said:

> [18] I conclude that WGL is entitled to be sentenced according to the sentencing provisions (statutory principles of sentencing; maximum sentences available) that existed during the time of the commission of the offences – and the statutory-revisions rationale for increasing sentences for sexual offences against children per *Friesen* is not applicable in WGL's circumstances (see *Friesen* para 169).

[57] In proceeding to sentence ***WGL***, the Court applied the law, including not only the punishment provisions of the *Criminal Code* but also the case precedents on sentencing ranges that existed at the time of the offence.

[58] With respect, I reject the approach taken by the Court in ***WGL***.

[59] There is no issue that s. 11(i) of the *Charter* applies to Paul Sheppard and that he therefore gets the benefit of the lesser **punishment** indicated by Parliament when these offences were committed. The maximum penalties for the offences at issue here were 10 years at that time, with no minimum penalty specified.

[60] The case of ***R v D(R)***, 1996 CanLII 4973, 144 Sask R 21 (SK CA), was an historical sexual offences case where the trial judge held that the respondent should be sentenced according to the range of sentences in effect at the time of commission of these offences. The Saskatchewan Court of Appeal disagreed and confirmed that under s 11(i) of the *Charter* "punishment" must be construed to mean the punishment fixed by Parliament rather than any range of sentences that may emerge in court decisions within the controlling statutory provisions.

[61] This position is supported by the Ontario Court of Appeal in the case of ***R v Stuckless***, 2019 ONCA 504 [***Stuckless***] at para 61, referring to ***R v Lacasse,*** 2015 SCC 64.

[62] Accordingly, though the Accused is entitled to the benefit of the "punishment" fixed by Parliament at the time the offences were committed, "it [is] incumbent on the sentencing judge to impose a sentence with regard to the jurisprudence and understanding of sexual offending as it exists today" (at the time of sentencing): ***Stuckless*** at para 61.

[63] This concept is consistent with the Court's caution in para 110 of ***Friesen***, about relying on precedents that may be dated and fail to reflect society's **current** awareness of the impact of sexual abuse on children *(emphasis added).* Applying sentencing ranges and principles that existed at the time the historical sexual offence took place would be inconsistent with that direction.

[64] I move now to a consideration of pre and post offence factors.

Pre and Post Offence Factors

[65] Dr. Sheppard was not a youthful offender. He has no criminal record. He has provided reference letters supporting a conclusion that he was of good character both before and since the offences were committed. I accept that to the people who know him best, Dr. Sheppard has been a kind and compassionate person and a good friend and teacher both before and after these offences were committed.

[66] However, I note the comments of Jeffrey J in ***R v Hepburn***, 2013 ABQB 520, which are applicable in this case:

> These crimes are committed by people from all walks of life, out of public eye, clandestinely and secretly, often to the surprise of people who thought they knew the perpetrator best. It cannot be that because of a person's abundant good deeds and potential for societal contribution that they are given a free pass on a crime against another, that they can in a secret double life victimize the vulnerable of our society with impunity.

[67] This also applies to post offence factors, related to Dr. Sheppard's good character during the period since the offences were committed. The character references do little to mitigate the gravity of the offences or Dr. Sheppard's moral blameworthiness at the time these offences were committed. They do, however, confirm that Dr. Sheppard has significant support in his community and this goes to the rehabilitative objective of sentencing. I also note that Dr. Sheppard has complied with his bail conditions for 2 years without incident, and I consider this to be a neutral factor on sentencing.

Parity

[68] I agree with Renke J as set out in ***R v Misay***, 2021 ABQB 485, that appropriate sentencing comparator cases for sentences imposed on similar offenders for similar offences involving sexual violence against children should be post-2015 and post-***Friesen*** for the reasons indicated in paras 181 through 186 of ***Misay***.

[69] In the recent case of ***R v EF***, 2021 ABQB 272, Burrows J reviewed the cases post-***Friesen*** and summarized them. I rely on his summary (with a few changes) as set out below:

a. ***R v Friesen,*** 2020 SCC 9:

- four-year-old victim
- accused acted in concert with another abuser (the child's mother)
- offence occurred in victim's home
- relatively youthful accused who had himself been the victim of childhood physical emotional and sexual abuse
- guilty plea – but only in face of an overwhelming Crown case
- expressions of remorse not genuine
- Sentence: 6 years

[70] I note the accused was not in a position of trust (though he exploited the mother's position of trust) and it was one incident of sexual violence. I also note that the Supreme Court of Canada said the 6 year sentence was on the lenient side.

b. ***R v Boucher,*** 2020 ABCA 208:

- accused committed more than 90 sexual assaults over 7 months on a 14 year-old-girl who considered him a father figure
- guilty plea
- assaults involved penile vaginal penetration
- Trial Judge found there was a breach of a position of trust
- mitigating factors included guilty plea, low risk to re-offend, community and family support, cooperation with police and providing a full confession on arrest
- Trial Judge imposed global sentence of 8 years – 6 years for sexual interference, 1 year for making child pornography, and 1 year for child luring
- ABCA noted that the number of assaults, duration of offence (4 months), and intensity of assaults were all relevant factors on sentencing and noted that the key factor is harm to the child; the sentence was upheld

c. ***R v O,*** 2020 ABQB 497:

- father sexually abused his 14-year-old daughter many times over about four years – charged with sexual interference and invitation to sexual touching and incest
- abuse included penile vaginal penetration and threats

- victim impact statement provided showing significant impact on child of abuse
- profound and potentially long lasting harm
- conviction after trial
- Sentence: 14 years

d. ***R v Lemay***, 2020 ABCA 365:

- 35-year-old accused sexually interfered with 15-year-old daughter of his friend
- accused charged with sexual interference and luring
- sexual interference consisted of five instances over the course of five months
- sexual interference involved digital penetration, forced fellatio, and attempted penile vaginal penetration
- victim described the harm she suffered as including trust issues, depression and self-harm
- accused was a victim of sexual abuse as a child and suffered from depression, anxiety, PTSD and panic attacks – extensive history of self harm and suicide attempts
- assessment of low to medium risk of sexual recidivism
- guilty plea
- Trial Judge – 42 months (3.5 years – 30 months for sexual interference and 12 months for luring) – Gladue factors were applied – Crown appealed and sought 6 to 8 years.
- Sentence as per ABCA: 4 years for sexual interference and 18 months for luring, to be served consecutively – 5.5 years in total

[71] I note that the sentencing judge found no position of trust but the Alberta Court of Appeal found that the offender was in a position of trust to the victim.

[72] It appears from the Crown's submissions, that he was unable to find any cases since ***Friesen*** that have similar circumstances to this case. The Accused relied on sentencing ranges in place at the time the offences were committed. For the reasons provided above, I am not relying on those outdated decisions to determine a fit sentence for Dr. Sheppard.

Sentence

[73] After considering the principles of sentencing, the aggravating factors and the absence of mitigating factors in this case, the principles set out in ***Friesen***, the factors the Court must consider to determine a fit sentence for sexual offences against children as outlined in ***Friesen*** and reviewed above, the personal circumstances of Dr. Sheppard, the submissions of Counsel, and the above referenced cases in Alberta since ***Friesen***, I find that a fair and fit sentence for

Dr. Sheppard is a sentence of 6 years incarceration on Count 1, sexual interference, and 6 years incarceration on count 2, invitation to sexual touching, to be served concurrently. As indicated earlier, there will be a conditional stay of the conviction on Count 3, sexual assault, pursuant to ***Kienapple***.

[74] Dr. Sheppard will receive a credit of 11 days for the pre-trial custody period of 7 days.

[75] There will also be the following additional orders:

a) an order pursuant to s 743.21 of the *Criminal Code*, that Dr. Sheppard have no contact, direct or indirect, with Steacy Easton;

b) in relation to Counts 1 and 2, a DNA Order pursuant to s. 487.051 of the *Criminal Code*;

c) in relation to Counts 1 and 2, a 10 year firearm prohibition pursuant to s 109 of the *Criminal Code*;

d) in relation to Counts 1 and 2, a lifetime Sex Offender Information Registration Act order pursuant to s 490.012 and 490.013 of the *Criminal Code*.

Delivered Orally on the 27th day of August, 2021.
Dated at the City of Wetaskiwin, Alberta, this 3rd day of September, 2021.

D.A. Yungwirth
J.C.Q.B.A.

Appearances:

Drew Gillespie
for the Crown

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