R. v. D.C.M.

Ontario Judgments

Ontario Court of Justice

K.E. McGowan J.

Heard: June 9, 2015.

Judgment: November 13, 2015.

London Court File Nos.: 14-11366, 14-11568 and 15-5395

[2015] O.J. No. 6231 | 2015 ONCJ 672

Between Her Majesty the Queen, and D.C.M., and D.W.M.

(62 paras.)

Case Summary

Criminal Law — Sentencing — Criminal Code offences — Weapons offences — Possession of prohibited or restricted weapon or ammunition — Offences against the administration of law and justice — Escapes and rescues — Breach of undertaking or recognizance — Sexual offences, public morals, disorderly conduct and nuisances — Sexual offences — Sexual interference — Sexual exploitation — Offences tending to corrupt morals — Child pornography — Non-Criminal Code and regulatory offences — Controlled drugs and substances — Possession — Other substances — Particular sanctions — Concurrent sentences — Consecutive sentences — Sentencing considerations — Aggravating factors — Mitigating factors — Deterrence — Specific deterrence — Denunciation — Time already served — Submissions — Submission by Crown — Submissions by accused and counsel for accused — No previous record — Guilty plea — Sexual offences against children — Breach of recognizance — Accused abused as a child — Addicts — Drugs — Seriousness of offence — Accused sentenced to five years and three months' imprisonment on charges of possessing, making available and making child pornography, making arrangements to obtain a young female child, sexual assault and interference, attempted bestiality, possession of prohibited weapons, possession of drugs and breaching court order — Accused were husband and wife — Accused started using drugs — Their conduct escalated to downloading child pornography and then making pornography involving two-year-old niece — Crimes were serious — Strong denunciatory sentence was necessary — Each accused sentenced to seven years' imprisonment less credit of 21 months for time already served — Criminal Code, ss. 91, 151, 152, 153, 160, 163.1, 172, 718, 718.01, 718.1.

Sentencing of the accused, DWM and DCM on charges of possessing, making available and making child pornography, making arrangements to obtain a young female child, sexual assault and interference, attempted

bestiality, possession of prohibited weapons, possession of drugs and breaching court orders. The accused were husband and wife. They were married for 20 years. In 2013 they became involved in child pornography. A police investigation traced child pornography to their computer and to a neighbour's computer to which they had access. DWM's cell phone was found to contain 107 images of his two-year-old niece in various pornographic situations. There were references in texts to involving their son. The search of the home also produced a set of nanchuka sticks and a small amount of crystal meth. The accused were arrested and remanded into custody. They were ordered not to contact their own children, but on two occasions, prior to retaining counsel, each of them called home and attempted to speak with one of the children. The accused pleaded guilty. They were first time offenders and, until the commission of the offences, raised their children without state intervention, were gainfully employed and not a danger to the community. Their lives went on a tailspin into debauchery when circumstances brought them to the brink of bankruptcy and they started abusing drugs. Both accused were survivors of childhood sexual abuse. The defence submitted that a range of four to five years, less credit for the 14 months the accused spent in pre-trial custody, was consistent with the case law. The Crown sought a sentence of 12 years in the penitentiary.
HELD: Accused sentenced to five years and three months' imprisonment.

The offences were extremely serious. They were not victimless crimes. The children exposed in these images range in age from pre-school to pre-pubescent. The behaviour of the accused escalated from downloading and sharing the material to sexually abusing their two-year-old niece on at least one or two occasions, to photographing her and plotting to groom and abuse other children to whom they had access. They talked about a desire to watch their son in intimate acts of personal privacy and discussed involving the family dog. A strong denunciatory sentence was necessary. Each of the accused was sentenced to seven years imprisonment less credit of 21 months for time spent in custody. Sentence: Five years and three months imprisonment.

Statutes, Regulations and Rules Cited:

Controlled Drugs and Substances Act, *S.C. 1996, c. 19, s. 4*, s. 4(1)

Criminal Code, *R.S.C. 1985, c. C-46, s. 91*, s. 151, s. 152, s. 153, s. 160, s. 163.1, s. 163.1(3), s. 163.1(4), s. 172, s. 172.2, s. 271, s. 463, s. 718, s. 718.01, s. 718.1

Counsel

Elizabeth Maguire, counsel for the Crown.

Ron Ellis, counsel for the accused D.W.M.

Christopher Dobson, counsel for the accused D.C.M.

Reasons for Sentence

K.E. McGOWAN J.

1 The defendants, D.W.M. and D.C.M., have pled guilty to the following offences:

- Possess child pornography (3 counts)
- Make child pornography available (1 count)
- Make child pornography (1 count)
  - Make arrangements to obtain a young female child (1 count contrary to s.172.2)
- Sexual assault (1 count)
- Sexual interference (s.151 and s.152 x2)
- Attempted bestiality
- Possession of prohibited weapon (nanchaku sticks)
- Possession of Crystal Meth (CDSA S. 4)
- Breach court order (2counts)

2 Defence counsel have urged the Court to impose a sentence in a total range of four to five years. The Crown has argued forcefully for a strong denunciatory sentence of 12 years. Such disparity in the positions of Crown and Defence is rare and for this, among other obvious reasons, the case requires a careful analysis.

3 The facts are disturbing. The M.'s have been married for 20 years, but it is only since 2013 that they appear to have become involved in the seedy and depraved world of child pornography. A police investigation traced child pornography to their computer and to a neighbour's computer to which they had access. A search warrant was executed and the computers seized. One of the computers was found on the couple's bed and child pornography was being searched and downloaded and a child pornography file was being made available at the time of the police search.

4 D.W.M.'s cell phone was found to contain 107 images of Mr. D.W.M.'s two year old niece in various pornographic situations. In some, a toothbrush is so close to her vagina that it appears to be inserted. In another, the child is on top of a naked male with an erect penis. Two hands are spreading the vagina apart as the penis is being pushed toward it. Mrs. D.C.M.'s cell phone was examined and found to contain numerous sexually explicit text messages between her and her husband. The texts describe events that have happened as well as fantasies involving their son B. and two female karate students of Mr. D.W.M., who they are plotting to groom for their sexual delight. Alarmingly, there are texts in which they talk about bringing a "little one" home. There are also references to the two year old victim, including a plan to bring the family dog, Boost and the child together. Reference is made to sexually abusing the dog, and four videos were located depicting Mrs. D.C.M. trying to have sex with the dog. Taken

together the text messages reflect a highly sexually charged environment that centred on a mutual attraction to children and is devoid of any sensitivity toward the suffering of the children they abused or watched being abused. At one point Mr. D.W.M. communicated to his wife that he was watching a "five year old get fucked hard".

5 A search of the computers seized found hundreds of videos and thousands of still images of prepubescent boys and girls in erotic poses or actually being sexually assaulted. A sampling of the videos and images was filed with the Court. They are all very upsetting to watch. For example, one depicts a child being anally raped.

6 The search of the home also produced a set of nanchuka sticks and a small amount of crystal meth. The defendants were arrested and remanded into custody. They were ordered by the Justice of the Peace not to contact their own children, but on two occasions, prior to retaining counsel, each of them called home and attempted to speak with one of the children.

The Victim Impact

7 Statements from the child's parents, grandparents and aunt were filed, as well as a commentary on the effects of abuse on very small children. The Crown also indicated that the parents of children attending the accused persons' martial arts academy provided input expressing their shock and dismay and fear for their children.

8 The two year old victim, A., is now three and a half. Her mother, C.D., was allowed to read her statement in to the record after some moderate editing. The statement is nine pages long. It leaves no doubt about the anguish she feels for both herself and her child. She feels she somehow failed A.. She describes how the accused persons were allowed to care for her "baby girl" on one or two occasions, but were frequently asking to mind her so they could "bond" with her. She described the horror she felt when asked by the police to view the 107 pornographic pictures of her child. She talked about the changes she observed in A.'s behaviour which, until the abuse was uncovered, puzzled her family. Better than the commentary filed by the Crown on behalf of the child, these observations depict a child who has been traumatized and is too young to express how or why except through her behaviour.

9 A.'s Dad filed a statement that needed editing, but his anger still comes through. He became visibly upset when he attempted to read the statement in court and diverted briefly from the script. He could not finish but he clearly wants a measure of retributive justice. That is a totally understandable reaction from a parent.

10 A.'s grandparents are the father and step-mother of D.W.M.. They, too, cannot fathom how two people they loved and trusted and who are the parents of their beloved grandsons could engage in this repulsive and immoral conduct. They have done their best help the M.'s during hard times and feel very betrayed. And so it is with each family member. I am left with a picture of a decent family that has been rocked to its core. As Mr. Dobson commented in his submissions, they appear to be very resilient and one can only hope that they are able to recover

and continue to nurture the M.'s two sons. I urge the family to continue to cocoon A. in their love so that she may again feel safe and cherished.

Background of the Offenders

D.W.M.

11 Mr. D.W.M. is 46 years of age. The information about his background is contained in the report of Dr. Mark Pearce who provided a psychological assessment of the defendant. His mother died at the age of 44 from cancer. His stepfather, whose name he bears, was an abusive alcoholic. His father, E.D., did not have much contact with D.W.M. as he was growing up but he and his wife, J., have developed a relationship with him and his children. The children have been with him since their parents were arrested. Mr. D.W.M. and the co-accused have been partners since they were teenagers. They have two boys ages 16 and 19. There is no evidence that he abused his own children.

12 Mr. D.W.M. completed high school. He was diagnosed with ADHD, but never took the prescribed medication. He described a history of juvenile delinquency but was never arrested. He completed two years of college and became gainfully employed. However, his work history has been interrupted from time to time by illness, as he suffers from ulcerative colitis. Eventually he opened the karate academy and claims he was doing well until his arrest ended his business.

13 Mr. D.W.M. had a vague recollection of being sexually abused by his own karate instructor between the ages of 14 and 16. In fact, the perpetrator was prosecuted and punished. He denies any improprieties with children prior to the offences before the Court.

14 In 2013, he and his wife began abusing illicit drugs, including Cocaine, crack cocaine, ecstasy, percocets and crystal methamphetamine, although Mrs. D.C.M. preferred the crystal meth. He was also drinking heavily. He attributed his behaviour to the intoxicants and claimed that his wife was responsible for downloading the pornography while looking for evidence of his cheating. He said she was psychotic at the time. He said he does not know how the photos of A. got on his phone.

15 Dr. Pearce took a thorough history from the defendant, and oversaw some forensic testing including phallometric and risk analysis tests. Dr. Pearce found Mr. D.W.M. to have limited insight and diagnosed him as a pedophiliac and substance abuser. He observed that most female sexual offenders do so at the suggestion of their paraphilic partners, which is not consistent with Mr. D.W.M.'s position that his wife downloaded the images. He also noted that Mr. D.W.M. does not meet the criteria for a personality disorder.

16 After taking into account the diagnosis, the risk assessment testing, criminogenic factors as well as positive

factors, Dr. Pearce came to the conclusion that Mr. D.W.M. was a moderate risk to reoffend. He recommended sexual offender treatment and substance abuse treatment. Sensibly, he also recommended that he should not have unsupervised access to children and the internet.

D.C.M.

17 Mrs. D.C.M. was assessed by Dr. Brian Daly, a forensic psychiatrist. His report follows the defendant's background. She is now 43 years old. She became involved with her co-accused at age 16 and left high school with only one credit to achieve before graduation. She was reportedly a good student. Her childhood was normal but it appears that her mother was often ill with suspected mental health problems. She reported that she was sexually abused by her father but never complained in order to avoid upsetting her mother.

18 She has been employed throughout her adult life with some success although she was fired from one job for stealing and from another due to absenteeism, a result of her addictions.

19 Mrs. D.C.M. initially lied to Dr. Daly about her involvement in the offences in an attempt to support her husband. However, she later became more forthright and clarified her involvement. She also admitted lying to other doctors by failing to disclose her drug addiction as she did not want her episodes of psychosis to be blamed on drugs.

20 Dr. Daly diagnosed her as having a substance abuse disorder. He found that, although there were some criteria for paraphilia, he felt there was insufficient evidence to support that diagnosis and suggested that her "behaviours are best understood in the context of her circumstances and are likely not enduring or recurrent". He had determined that she was more a "participant than an instigator" (report of Dr. Daly, page 10). He discounted the suggestion (made by Mr. D.W.M.) that she was acting under a delusion and opined that if she did suffer any delusion it was drug related and not part of a depressive disorder.

21 Dr. Daly conducted a risk analysis and concluded that Mrs. D.C.M. was in the low percentile range for reoffending based on SORAG testing and static risk factors. In his opinion, her drug abuse and her relationship with her husband were the significant contributing factors leading to the commission of these offences.

22 Notwithstanding the objection of Crown Counsel, I find that the reports of both psychiatrists are reliable. There are no contrary reports; the Crown did not seek to cross examine the doctors and merely suggests that the opinions are based on information self-reported from the defendants. In particular, Mrs. D.C.M. is an admitted liar and opinions based on her reporting should be looked upon with scepticism. Both of these doctors are well qualified to assess the veracity of their patients and were alive to the pitfalls. Dr. Daly gave cogent reasons for accepting Mrs. D.C.M.'s attempts to clarify the record and tell the truth and I accept his opinions for the purpose of the sentencing hearing.

The Position of Defence

23 Both counsel, quite properly, reminded the Court that, regardless of how disturbing the facts are, vengeance should have no place in the determination of a just and fit sentence. They agree with each other that a range of four to five years, less credit for the 14 months they have spent in pre-trial custody, is consistent with the case law. It has also been submitted that Mrs. D.C.M. should be treated with more leniency than her husband as she was not diagnosed with any paraphilia and has greater potential for rehabilitation.

24 Both defendants are first offenders and, until the commission of these offences, they raised their children without state intervention, were gainfully employed and not a danger to the community. Their lives went on a tailspin into debauchery when circumstances brought them to the brink of bankruptcy and they started abusing drugs. I am reminded they are both survivors of childhood sexual abuse and it should be noted that, paradoxically, many victims become perpetrators later in life. These two appear to be following that pattern.

25 Both defendants pled guilty, having spent the past year with their counsel sorting through the complexities of Crown disclosure, resolution meetings and Judicial Pre-trials. They have accepted full responsibility for their conduct and are remorseful. Whatever penalty the Court imposes will not affect their efforts to rehabilitate themselves. They will be monitored intensively when released into the community. They have already paid the highest penalty possible in the loss of their liberty and, more importantly, in the loss of their family, especially their sons. For the past 14 months they have been in the local detention centre, isolated from each other and society, facing numerous lock-downs and without any resources or programs to kick start their rehabilitation.

The Crown

26 The Crown filed a chart of cases setting out sentences ranging from maximum reformatory to 18 years in the penitentiary. In addition, the Crown adopts the reasoning of appellate cases noted in the defence briefs.

27 The Crown seeks a sentence of 12 years in the penitentiary, arguing that only a very lengthy sentence can achieve the necessary denunciation of the offences and the deterrence of like-minded persons. The Crown's position is that the conduct of these defendants is so reprehensible and repulsive that it speaks of personalities who have no regard for the children being abused. They are persons who have little insight into the immorality of their conduct and are so self-centred that they are blind to the consequences suffered by their victims and so are not likely to be rehabilitated other than by a strong deterrent statement from the court.

The Law

28 Occasionally judges have to deal with offences that are repulsive and disturbing and which raise the anger of

the community. The abuse of children through the making and distribution of child pornography is one of those occasions. Viewing photos and videos such as those filed here is upsetting. The cases filed by counsel are replete with judicial expressions of the revulsion felt by judges who have viewed the content of some of the pornography and heard the facts of abuse. It is tempting to give primacy to punishment and retribution in sentencing. However, there is more to imposing a just sentence than merely reacting viscerally to odious facts.

29 As a starting point, it is important to look at the statutory requirements set out in Section 718 of the *Criminal Code*, which states:

> ***718.*** *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 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 to the community; and*
>
> *(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.*
>
> ***718.01*** *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.*

30 The most important principle of sentencing is set out in Section **718.1:** *A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.*

31 The *Code* goes on to set out a number of factors which must be considered by the court, including aggravating and mitigating circumstances such as whether a person under the age of 18 was abused, whether a position of trust was abused and the impact of the offence on the victim. Where there are multiple offences the court is obliged to consider the totality of sentence.

32 These provisions are clearly comprehensive but they have been cited and interpreted in every major sentencing decision. Let me begin, then with a look to the Supreme Court of Canada for guidance. In *R. v. Nur, [2015] 1 SCR 773*, *2015 SCC 15*, the Supreme Court was dealing primarily with the issue of mandatory minimum sentences. In referring to the principles set out in Section 718, the Court noted at paragraphs 42 to 44:

In reconciling these different goals, the fundamental principle of sentencing under s. 718.1 of the Criminal Code is that "[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

It is no surprise, in view of the constraints on sentencing, that imposing a proportionate sentence is a highly individualized exercise, tailored to the gravity of the offence, the blameworthiness of the offender, and the harm caused by the crime: R. v. M. (C.A.), 1996 CanLII 230 (SCC), [1996] 1 S.C.R. 500, at para. 80. "Only if this is so can the public be satisfied that the offender 'deserved' the punishment he received and feel a confidence in the fairness and rationality of the system": Re B.C. Motor Vehicle Act, 1985 CanLII 81 (SCC), [1985] 2 S.C.R. 486, at p. 533, per Wilson J. As LeBel J. explained in R. v. Ipeelee, 2012 SCC 13 (CanLII), [2012] 1 S.C.R. 433:

Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system.

. . . *Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender.*

33 The cases cited by all counsel deal with proportionality in attempting to arrive at a fit sentence. In other words, the courts have attempted to balance the seriousness of the offences against the offender's degree of responsibility. This was so in *R. v. D. (D.), 2002 CanLII 44915 (ON CA)*, where the Appellant asked the court to set the sentence range for sexual assaults on children in *R. v. Stuckless, [1997] O.J. No. 6367* as the high water mark for sexual assault on children. The court declined to do so, but did engage in a detailed comparison of the two cases. It ultimately found that the degree of responsibility of *D* was actually greater than *Stuckless*. It concluded at paragraph 44:

To summarize, I am of the view that as a general rule, when adult offenders, in a position of trust, sexually abuse innocent young children on a regular and persistent basis over substantial periods of time, they can expect to receive mid to upper single digit penitentiary terms. When the abuse involves full intercourse, anal or vaginal, and it is accompanied by other acts of physical violence, threats of physical violence, or other forms of extortion, upper single digit to low double digit penitentiary terms will generally be appropriate. Finally, in cases where these elements are accompanied by a pattern of severe psychological, emotional and physical brutalization, still higher penalties will be warranted.

34 In the child pornography case of *R. v. D.G.F., 2010 ONCA 27*, the court noted that too much emphasis was placed by the trial judge on the principle of totality. As summarized in the headnote:

In focusing on the totality principle, the trial judge failed to give sufficient weight or effect to the overall gravity of the accused's course of conduct, the interrelation of the crimes and the cumulative circumstances that put the offences at the high end of moral culpability.

35 In considering the fundamental principle of proportionality all of the other principles come into play. In dealing with cases involving the abuse of children, whether through assaultive behaviour or possession and distribution of pornography, the overriding consideration is general deterrence and the protection of vulnerable children. Weighing the degree of responsibility of the offender must be clearly assessed against society's view that the abuse of innocent children, and in particular the sexual abuse and exploitation of children, causes grievous harm and must result in grave consequences.

36 In *R. v. D.*, supra, Moldaver J. (as he then was) noted that society is much more knowledgeable concerning the harmful effects of sexual abuse on children and the need to protect innocent children from these effects. The need to deter offenders and denounce such conduct must be given precedence over other considerations. It follows then that in considering proportionality as the fundamental principle the degree of responsibility thrust on the offender is heightened. It is not sufficient to claim that paraphilia is an excuse or that one's own victimization is somehow the cause of the conduct. I don't mean to say that considerations such as these should be excluded from a proper assessment of the offender's degree of responsibility, but they take on less significance when weighed against society's perception of the gravamen of the offences.

37 It is the ultimate responsibility of the Court to weigh all of the circumstances and arrive at a quantum of sentence that reflects the jurisprudence and is fair and fit. Here, all counsel agree that the sentences imposed must be in the penitentiary. Any sentence in the penitentiary range is considered serious because of its length and society's view that "pen time is hard time". The bottom line for all concerned here is really how long in the penitentiary is sufficient to give effect to deterrence and denunciation and yet not crush any hope of rehabilitation.

38 Attached to this judgment is an index of the cases submitted by defence counsel as well as the chart filed by the Crown. It is clear that as time marches on and child pornography and child sexual abuse cases do not seem to diminish, the effect of sentencing has not really been visible. Whether this is a result of easy access to the internet or some other cause we may never know. The reality is that police forces around the world combine efforts to stem the tide of brutalization of children and still we see cases like this one before the courts wherein it is obvious that the offenders gave absolutely no heed to the consequences of being found out.

39 I want to pause here to encourage the police in their endeavours to stop the traffic of child pornography. Police officers who investigate these cases must have tremendous fortitude to carry on in spite of the ugliness of the videos and pictures they see by the hundreds and thousands every day. To have to view the tormented little faces of the many victims must weigh heavily on their hearts. In the whole system of justice there is no job more important for the protection of children.

40 We have to assume that strong deterrent sentences will eventually be successful in signalling to child predators that they will be separated from society for so long that indulging in these crimes will no longer seem like a

worthwhile effort. I don't know what the M.'s thought would happen to them if caught, but I venture to say that if they thought for a moment that they would be going to the penitentiary for a long time they would not have committed these crimes. They would have understood that we condemn these crimes and punish the people who commit them.

41 In summary, then, the law quite simply says that a fit and just sentence is one that takes into account the need to protect vulnerable children from serious and long lasting harm at the hands of sexual predators and balance that against the personal circumstances of the offender and his or her degree of moral culpability.

Application of the Law to the Specific Offences

42 The offences before the Court are extremely serious. They involve the downloading and file sharing of child pornography that has become too readily available on the internet. These are not victimless crimes. The children exposed in these images range in age from pre-school to pre-pubescent. These children have been terribly abused and each time their pictures are downloaded for the lascivious pleasure of another adult, the abuse is repeated. These are real kids whose real childhood has been stolen and ravished. We do not know where they live so they are hard to rescue. The only hope society has lies in the annihilation of child pornography as a commercial trade. The offenders here were mature people who suddenly decided in mid-life to engage in this perversion and they did so for approximately one and a half years before being stopped by the police.

43 Their behaviour escalated from downloading and sharing the material to sexually abusing their two year old niece on at least one or two occasions, to photographing her and plotting to groom and abuse other children to whom they had access. So depraved was their desire for sexual perversion that they also turned their attention to the family dog. The text messages which they sent to each other are replete with lewd comments that leave the impression that they enjoyed their sexual perversions. It almost sounds like a game as they plotted to groom children and get access to their little niece and to the dog. They talked about a desire to watch their son in intimate acts of personal privacy.

44 I have to ask myself how perfectly normal, previously law abiding, self-sufficient people can descend into such depths of indecency and cruelty. For if these two can do it, how many other like-minded people are out there and not suspected of any criminal behaviour?

45 The only explanation offered is that they both became involved in illicit drugs and this somehow led to the behaviour complained of. Frankly, I fail to see how drug addiction leads to this conduct. It can certainly lead to other offences as we see every day, but never have I heard or read of it leading to the possession of child pornography or the planned sexual abuse of a two year old. It makes no sense at all, unless one theorizes that the ingestion of drugs released their inhibitions and they fed off each other.

46 As Justice Moldaver noted in *R. v. D, supra*, paraphilia is no defence to this crime. It is not even an excuse when the offender has been able to avoid criminality for most of his life. Both the M.'s were abused as children, although only the crime against Mr. D.W.M. was documented. Again, this is no explanation for the behaviour. All we know is that some victims do become predators later in life, a fact for which there is no explanation.

47 Both offenders have pled guilty and by their pleas they have taken responsibility for their behaviour. However, they did so in light of a successful police investigation. The tangible evidence found on their computers and cell phones was overwhelming. I am obliged to note, though, that their pleas have spared the Province an ugly trial and the family the trauma that necessarily follows with a full trial.

48 I am troubled by the attitude of Mr. D.W.M. as set out in Dr. Pearce's report. Mr. D.W.M. has claimed that his wife was the one who downloaded the pornography and he denies knowledge of the 107 photos on his cell phone. He does not have clear insight into his wrongful behaviour. Nonetheless, the fact remains that he has pleaded guilty and expressed a willingness to accept counselling and treatment.

49 Mrs. D.C.M. has not been diagnosed with any disorder. She has accepted her own culpability and poses less threat to society than her husband. She seems to recognize that there is a danger in re-establishing any contact with her husband and indicated to the Court, through her counsel, her intention to end the marriage. I remain concerned that she was too easily involved in this behaviour. The text messages clearly show that she was more than a follower, that these two were involved in a joint venture.

50 In terms of their respective culpability and responsibility, I find very little distinction between them. There is nothing to excuse or rationally explain their behaviour or the fact that the conduct continued over a protracted period of time. They had plans to increase their predatory ways and did not stop of their own accord. There is nothing in the facts before me that can be construed as a factor which diminishes their responsibility. Their collective degree of culpability and responsibility is high and they must be dealt with accordingly.

51 In all of the material before me there are few positive factors in their behaviour. I am aware and do take into account that they have no criminal background, that they have never been a charge on society, and have not victimized their own sons. I must interpret these circumstances in a positive light and express hope that they are indicators of an ability to reform.

52 In terms of the offences, contrary to sections 163.1, 172, 151 and 152 and s. 160, the law is clear that a strong denunciatory sentence is necessary. The remaining offences are much less serious and if they were the only matters before the Court it is possible that they would have resulted in non-custodial dispositions.

53 What constitutes a strong denunciatory sentence is the last arm of any sentencing analysis. I have been helped

by the comments of other judges dealing with similar crimes. It is worth noting that while the crimes described in these cases are similar, the offenders are not. That is why the Supreme Court acknowledges that every sentence is, to some extent, individualized. Repeat offenders are generally dealt with more harshly. Those prone to violence are also punished more severely.

54 In arriving at a fair sentence for these offenders I have considered the following aggravating factors:

- The extent of the pornography collection and its ongoing nature
- The length of time they were engaged in the behaviour
- The very young age of the victim of the abuse
- The uncertainty that her family was left in as a result of not know how extensive the abuse was or what the future holds
- The breach of trust
- That they were to some extent motivated by the pleasure they derived jointly in the conduct
- The plan to groom other children
- The plan to bring the dog and the child together (although it remains unclear where that plan would lead)

55 I have considered as mitigating the following:

- The guilty pleas
- The previous lack of criminal record
- The risk assessments. Mrs. D.C.M. is a low risk and Mr. D.W.M. is a moderate risk (as opposed to high risk)
- Their expressions of an intention to comply with any rehabilitation program
- The consequences already suffered including the loss of liberty and alienation of their family

56 The following factors are more neutral in that they do not, in my opinion, aggravate or mitigate:

- The psychological diagnosis of Mr. D.W.M. as paraphilia
- The drug dependency of Mrs. D.C.M.
- They were feeling challenged by financial problems and Mr. D.W.M.'s health issues

57 In the end I am left with the impression that this couple completely lost their moral compass in mid-life and engaged in this conduct for the pleasure they derived from it. That makes the crimes more serious and a denunciatory sentence more imperative so that others who engage in this behaviour and prey upon innocent

children without regard to their suffering will understand that ultimately there will be no pleasurable reward, that the pleasure is perverse and the consequences severe.

58 Now, the Crown has asked the Court to impose sentences totalling 12 years less credit for the time in custody. There is no doubt that 12 years is a deterrent sentence, especially when the maximum sentence for offences under Sections 151, 153 and 163.1 is 10 years. (Parliament has recently increased the maximum but these offences predate the amendment).

59 When all of the factors are balanced together I find that all of the principles of sentence that I have discussed can be achieved in sentences totalling 7 years. The offenders have been in pretrial detention for 14 months. It is well acknowledged in this community that the conditions at the detention centre are grim, marked by frequent lock-downs, violence and labour unrest. The offenders would not have had access to any rehabilitation programs. I am quite satisfied that they should receive credit at time and a half or 21 months.

60 The actual sentences are as follows:

On Information number 15-6165:

Count 1, Section 163.1 (3): 2 years in jail

Count 6, Section 163.1 (4): 2 years concurrent

Count 7, Section 163.1 (4): 2 years concurrent

Count 8, Section 163.1 (4) 2 years concurrent

Count 11, Section s.172.2: 15 months consecutive

Count 12, Section 271: 3 years consecutive

Count 13, Section 163.1: (2) 3 years concurrent

Count 14, Section 152: 3 years concurrent

Count 15, Section 151: 3 years concurrent

Count 16, Section 151: 3 years concurrent

Count 18, Section 91: 1 month consecutive

Count 19, Section 463: 6 months consecutive

On information's 14-11568 and 15-5395:

Each count 1 month consecutive

On information 14-11366

Count 1: Section 4(1) CDSA: 1 month concurrent

Counts 1, 6, 7, 8 will be reduced by 21 months as credit for time served

The balance of the total sentence to be served is 63 months or 5 years and 3 months

61 Appendix A: Cases referred to by Defence Counsel.

62 Appendix B: Crown chart. [Editor's note: Appendices A and B were not attached to the copy received by LexisNexis Canada and therefore are not included in the judgment.]

K.E. McGOWAN J.

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