

WARNING

The President of the panel hearing this appeal directs that the following should be attached to the file:

An order restricting publication in this proceeding under ss. 486.4(1), (2), (3) or (4) or 486.6(1) or (2) of the *Criminal Code* shall continue. These sections of the *Criminal Code* provide:

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences;

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 172, 172.1, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.02, 279.03, 346 or 347,

(ii) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or

(iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in any of subparagraphs (a)(i) to (iii).

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the complainant of the right to make an application for the order; and

(b) on application made by the complainant, the prosecutor or any such witness, make the order.

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community. 2005, c. 32, s. 15; 2005, c. 43, s. 8(3)(b).

486.6 (1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

(2) For greater certainty, an order referred to in subsection (1) applies to prohibit, in relation to proceedings taken against any person who fails to comply with the order, the publication in any document or the broadcasting or transmission in any way of information that could identify a victim, witness or justice system participant whose identity is protected by the order. 2005, c. 32, s. 15.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. C.L., 2012 ONCA 835

DATE: 20121129

DOCKET: C54508

O'Connor A.C.J.O., Weiler and Hoy JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

C.L.

Appellant

M. Dineen, for the appellant

K. Crosbie, for the respondent

Heard: September 8, 2012

On appeal from the sentence imposed by Justice M.A. Code of the Superior Court of Justice, dated July 2, 2010.

ENDORSEMENT

[1] The appellant was convicted of one count of sexual assault and one count of incest arising out of a single incident. He was sentenced to 3 ½ years' imprisonment with credit for approximately 18 months pretrial custody on a 1:1 basis.

[2] In reasons released on November 7, 2012, we dismissed the appellant's appeal against conviction.

[3] The appellant also appealed his sentence. This endorsement addresses the sentence appeal. The appellant concedes that the sentence of 3 ½ years was fit. His sole ground of appeal is that the sentencing judge erred in only giving him credit for the pretrial custody on a 1:1 basis.

[4] At the sentencing hearing, the appellant led evidence that he had been held in administrative segregation for the entire pretrial period. Because of the nature of the charges against him, he would have been in physical danger if he had been held with the general jail population. Thus, he spent 23 hours a day in his cell. The appellant's pretrial custody predated the recent amendments to the *Criminal Code* limiting the credit that may be given for pretrial custody.

[5] At the sentencing hearing, the defence asked that the appellant be given 2:1 credit. The Crown submitted 1.5:1 was appropriate.

[6] The appellant argues that in giving 1:1 credit, the sentencing judge failed to attach sufficient weight to the harsh conditions in which he was held and to the Crown's position.

[7] We see no error. In our view, the sentencing judge acted within his discretion. He gave detailed and careful reasons for imposing the sentence of 3 ½ years. As to pretrial custody, he considered the harsh "administrative segregation" conditions. However, he also took into account other factors that weighed against enhanced credit. At the time the appellant committed the present offences he had outstanding charges and was in breach of the terms of his bail. In addition, the appellant's significant criminal record, pending deportation order, and conviction for sexual assault made it unlikely he would receive early parole.

[8] In our view, the sentencing judge considered the appropriate factors and was entitled to give credit on a 1:1 basis.

[9] We grant leave to appeal the sentence, but dismiss that appeal.

"D. O'Connor A.C.J.O."
"K.M. Weiler J.A."
"Alexandra Hoy J.A."