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or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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. R.C., 2015 ONCA 313
DATE: 20150505
DOCKET: C57267

Watt, Pepall and Benotto JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

R.C.

Appellant

Daniel Santoro, for the appellant

Hannah Freeman, for the respondent

Heard and released orally: April 29, 2015

On appeal from the sentence imposed on September 24, 2013 by Justice Jane E. Kelly of the Superior Court of Justice, sitting without a jury.

ENDORSEMENT

[1] R.C. appeals concurrent sentences of imprisonment for 12 months imposed on convictions entered by a judge of the Superior Court of Justice on counts of sexual assault, interference and exploitation.

[2] The offences were alleged to have occurred during a period of seven years, beginning when the complainant was four or five years old and concluding

when she was 11. The conduct alleged and established to the satisfaction of the trial judge, included fondling, digital penetration, and two incidents of oral sex.

[3] The offences involved a breach of trust. The complainant is R.C.'s granddaughter. The offences began when R.C. was in his mid-sixties and continued until he was in his early seventies. The offences have had a devastating impact on the complainant and have split apart an otherwise closely knit family unit.

[4] R.C. is an octogenarian, who suffers from a variety of physical diseases and conditions that require ongoing medical attention, medication and other forms of treatment. Most of these conditions were brought to the attention of the trial judge and advanced in support of a submission that the sentence to be imposed should be served conditionally, rather than in prison.

[5] Despite Mr. Santoro's able submissions, we would not interfere with the sentence imposed at trial, in particular, that it should be served in the community, rather than in prison.

[6] The quantum of sentence imposed in this case, which replicated that sought by the trial Crown, sits well below the range of sentence regularly endorsed by this court in cases of prolonged sexual abuse by a person in a position of trust, like this appellant.

[7] The contested ground before the trial judge as well as here, was and remains the manner in which the sentence should be served. Although, shorn of context, one sentence of the sentencing judge's reasons reflects error, the reasons, read as a whole, reflect, in our view, a proper consideration of the factors relevant to a determination of whether the sentence should be served in prison or in the community.

[8] While we do not for a moment wish to diminish the medical difficulties the appellant faces, or the difficulties that correctional authorities may encounter in his management, we are not persuaded that they warrant the imposition of a conditional sentence. There was no evidence before the sentencing judge and none before us that accommodations cannot or will not be made in accordance with the statutory obligations imposed upon provincial correctional authorities.

[9] The trial judge recognized, and we agree, that the predominant principles of sentencing – denunciation and deterrence – would not be achieved in the circumstances of this case by the imposition of a conditional sentence.

[10] The appeal is dismissed.

"David Watt J.A."
"S.E. Pepall J.A."
"M.L. Benotto J.A."