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), (2.1), (2.2), (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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or
>
> (ii) any offence under this Act, as it read at any time before the day on which this subparagraph comes into force, if the conduct alleged involves a violation of the complainant's sexual integrity and that conduct would be an offence referred to in subparagraph (i) if it occurred on or after that day; or
>
> (iii) REPEALED: S.C. 2014, c. 25, s. 22(2), effective December 6, 2014 (Act, s. 49).
>
> (b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).
>
> (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 victim of the right to make an application for the order; and
>
> (b) on application made by the victim, the prosecutor or any such witness, make the order.

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

(a) as soon as feasible, inform the victim of their right to make an application for the order; and

(b) on application of the victim or the prosecutor, 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); 2010, c. 3, s. 5; 2012, c. 1, s. 29; 2014, c. 25, ss. 22, 48; 2015, c. 13, s. 18.

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. Leung, 2018 ONCA 298
DATE: 20180323
DOCKET: C62694

MacFarland, Huscroft and Nordheimer JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Daryn Leung

Appellant

Jennifer Penman, for the appellant

Avene Derwa, for the respondent

Heard and released orally: March 22, 2018

On appeal from the conviction entered on December 15, 2015 and the sentence imposed on February 24, 2016 by Justice Minden of the Superior Court of Justice, sitting without a jury.

REASONS FOR DECISION

[1] The appellant was convicted on 16 of 17 charges, including exercising control, procuring, receive material benefit from procuring, sexual assault, robbery, theft under $5,000, fraud under $5,000, utter threats, and assault. He was sentenced to 8.5 years imprisonment less 3 years pre-trial custody.

[2] The appellant appeals against conviction and seeks leave to appeal his sentence.

[3] This was primarily a credibility case. The trial judge accepted the evidence of the two complainants, L.S. and M.B.S. He found the appellant to be incredible and unreliable and rejected his evidence on all matters of significance. The trial judge accepted the evidence of both complainants where it conflicted with that of the appellant. Counsel for the appellant pointed to specific text messages suggesting that L.S. was not under the control of the appellant, but we note that there were an equal if not greater number of messages that demonstrated the contrary. The trial judge's findings were open on the record before him and there is no basis to interfere with them. Nor is there any basis to conclude that the trial judge misapprehended the evidence of M.B.S.

[4] The trial judge did not apply different levels of scrutiny to the evidence of the complainants and the appellant. The appellant's complaint is, in essence, that his evidence was not believed. However, the trial judge had ample basis for rejecting his evidence. He found the appellant's testimony self-serving, illogical, and occasionally nonsensical; furthermore, it was contrived, calculated to deceive, and in some instances completely fabricated. He carefully considered all of the evidence and found that the appellant's evidence did not give rise to a reasonable doubt, and that the Crown had proven the charges beyond a reasonable doubt.

[5] The trial judge made no error in granting the cross-count similar fact application. It was not contested that the complainants did not know each other and that there was no possibility of collusion. The trial judge found that the appellant took advantage of the complainants' vulnerability to co-opt each of them in order to obtain money from them for their performance of sexual services. His decision that the probative value of the evidence outweighed its prejudicial effect is entitled to deference. In any event, the trial judge found that the cross-count evidence was not essential to the appellant's convictions.

[6] The trial judge's sentencing decision is also entitled to deference. This court may intervene only if the trial judge made an error in law or principle that had an impact on the sentence, or imposed a sentence that is demonstrably unfit.

[7] We see no such error. The circumstances of this case were egregious. The appellant preyed upon vulnerable young women who had feelings for him and used them for his benefit. He committed several acts of assault and sexual assault. He has a lengthy criminal record and the seriousness of his crimes had escalated. There were few mitigating factors, and the trial judge found that the appellant's prospects for rehabilitation were uncertain.

[8] In all of these circumstances, it was appropriate to emphasize denunciation, deterrence, and protection of the public. In our view, although the sentence is high it cannot be said to be demonstrably unfit.

[9] The appeal from conviction is dismissed. Leave to appeal sentence is granted, but the sentence appeal is dismissed.

"J. MacFarland J.A."
"Grant Huscroft J.A."
"I.V.B. Nordheimer J.A."