

## 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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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(iii) REPEALED: S.C. 2014, c. 25, s. 22(2), effective December 6, 2014 (Act, s. 49).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the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

6. (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

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

8. (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. Rojas, 2020 ONCA 593

DATE: 20200918

DOCKET: C67252

Roberts, Miller and Trotter JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Ariel Rojas

Appellant

Amy Ohler, for the appellant

Hannah Freeman, for the respondent

Heard and released orally: August 13, 2020 by videoconference

On appeal from the sentence imposed on July 10, 2019 by Justice P.H. Marjoh Agro of the Ontario Court of Justice.

## REASONS FOR DECISION

[1] The appellant appeals his sentence from his adult convictions. He was convicted of criminal harassment, uttering threats, and breach of two probation orders. He received a three-year global sentence. The appellant submits that the sentence was excessive and demonstrably unfit.

[2] We disagree.

[3] While towards the high end, the sentence is within the range for like offences and reflects the serious and aggravating features of the appellant's crimes. Although he was warned by the police to stop, the appellant sent hundreds of threatening messages of a sexually violent nature to his former domestic partner for over two years. The experienced trial judge characterized these messages as perverse and stated that "The threats he made to her and the graphic description of the sexual activities he intended to inflict were depraved." There is no basis to intervene with the sentence which was fit in all the circumstances.

[4] The appeal from sentence is dismissed.

"L.B. Roberts J.A."

"B.W. Miller J.A."

"Gary Trotter J.A."