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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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 (iii) REPEALED: S.C. 2014, c. 25, s. 22(2), effective December 6, 2014 (Act, s. 49).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an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.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. Solomon, 2022 ONCA 706
DATE: 20221018
DOCKET: C69121

Doherty, van Rensburg and Benotto JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Sunday Solomon

Appellant

Philip Norton, for the appellant

Nicholas Hay, for the respondent

Heard: October 13, 2022

On appeal from the conviction entered by Justice Wailan Low of the Superior Court of Justice on November 13, 2020, and from the sentence imposed on March 5, 2021.

REASONS FOR DECISION

[1] The appellant was convicted of sexual exploitation, sexual assault and uttering a threat of death or bodily harm. He was sentenced to five years for the sexual exploitation, six months for the assault, and 90 days for uttering a death

threat, all to be served concurrently. While the appellant has abandoned the appeal of his convictions, he appeals the sentence imposed.

[2] The appellant was variously referred to as a “reverend”, “shepherd”, and “prophet” of the Celestial Church of Christ. When he met the complainant, he was a “prayer warrior” in one of the Celestial Churches and was eventually put in charge of his own church.

[3] The complainant was 15 years old when she and her mother took refuge in the Church. The appellant was assigned the task of providing her with guidance. He began a sexual relationship with her lasting until she was 21 years old. At age 16, she gave birth to the appellant’s daughter, following which she began living with the appellant. The complainant subsequently gave birth to two more daughters during the time that the two cohabited.

[4] In sentencing the appellant, the trial judge identified the mitigating factors as the support of the church community, and a stable occupation. The appellant had no history of substance abuse, mental illness, or of being a victim of abuse. However, while noting that the appellant has no criminal record, the sentencing judge identified that he had previously been given a conditional discharge with probation after being found guilty of assault against his children.

[5] When considering the aggravating circumstances, the trial judge looked to the manner and circumstances of the commission of the offence. The trial judge

found that the nature of the sexual exploitation fell at the serious end of the spectrum. While there was no violence or threats involved, there was recurrent intercourse. Relying on *R. v. D. (D.)*, (2002) 58 O.R. (3d) 788 (C.A.), she concluded that the appropriate sentence was mid to upper single digit imprisonment.

[6] The appellant submits that the trial judge made two errors in principle upon sentencing, which require this court to intervene: (1) she misapprehended the evidence as to when the first pregnancy occurred; and (2) she relied on the appellant's lack of remorse as an aggravating factor. The appellant proposes that an appropriate sentence would be 24-36 months.

[7] The Crown agrees that the trial judge misapprehended the evidence when she stated that the appellant impregnated the complainant during the exploitation, when, in fact, she became pregnant after the period of exploitation had ended:

> In considering whether there are any aggravating circumstances, I look at the manner and circumstances of the commission of the offence. First, I find that the nature of the sexual exploitation lies at the serious end of the spectrum. While there was no violence or threat of violence involved, there was recurrent sexual intercourse and Mr. Solomon impregnated the victim. While the victim testified, and I accept her evidence on this point, that at 15 she did not even know the facts of life and was therefore shocked to discover at 16 that she was pregnant, there is no suggestion that Mr. Solomon was equally ignorant. In terms of the consequences to Ms T., the pregnancy was the tipping point, sending her first to an attempt at suicide and then from an already precarious existence as a live in babysitter without education or parental guidance to a life of emotional

> isolation, drudgery and premature motherhood without supports, education or prospects. [Emphasis added.]

[8] The appellant submits that this paragraph raises two issues. First, the sentencing judge misunderstood the duration of the exploitation and this expanded timeframe caused her to increase the sentence. Second, she relied on the effects of the pregnancy, not the exploitation, when considering the impact on the victim. Thus, the appellant submits, he was punished for a crime he did not commit.

[9] We accept neither submission.

[10] The trial judge was well aware of the duration of the exploitation. She did not rely on the pregnancy to locate the appellant's culpability on the range of sentence. When re-stating why she believed the appellant's crime to be at the severe end of the spectrum, she held as follows:

> The gravity of the offence against Ms T. lies, in my view, at the more severe end of the spectrum. While no violence or threat of violence was involved, there was a repeated intercourse. I do not consider the breach of trust to be an aggravating factor in the commission of the offence because it is an element of the offence itself, and as may be expected in cases where a person in a position of trust or authority has obtained the acquiescence to sexual acts from a young person, such acquiescence will have been obtained through grooming rather than by duress.

[11] As to the appellant's second issue, we do not accept that the pregnancy is detached from the exploitation. Even if the pregnancy did not occur during the exact time that the exploitation took place, it is naïve to submit that the subsequent

pregnancy was not intrinsically connected to the exploitation. The impact of the exploitation, like the pregnancy, contributed to a lost youth and years of misery and "ongoing trauma". The effects of the exploitation did not stop when the exploitation period ended.

[12] The sentence would not have been different had the misstatement about the timing of the pregnancy not occurred: see *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 45-46. It does not justify this court's intervention.

[13] Further, we do not agree that the sentencing judge considered the appellant's lack of remorse to be an aggravating factor. She addressed his comments at the close of sentencing submissions and simply commented that he showed neither insight nor remorse. This was an accurate description, given what he said.

[14] Overall, the sentence imposed was fit. The range articulated in *D. (D.)* is now understood to be the norm for sexual offences against children, even when there is only a single instance of sexual violence: *R. v. Friesen*, 2020 SCC 9, 444 D.L.R. (4th) 1, at para. 114.

[15] The appellant seeks to rely on fresh evidence outlining his health issues, and that he "will most probably require surgery" for ongoing ambulatory issues. We note two points. First, the sentencing judge was aware of his physical afflictions. Second, correctional authorities have a statutory duty to care for inmates and to

provide essential health care: *Corrections and Conditional Release Act*, S.C. 1992, c. 20, ss. 86-87. While we admit the fresh evidence, we do not agree that this evidence could reasonably have affected the result of the sentence.

[16] The conviction appeal is dismissed as abandoned. The sentence appeal is dismissed.

"Doherty J.A."
"K. van Rensburg J.A."
"M.L. Benotto J.A."