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COURT OF APPEAL FOR ONTARIO

ABELLA, MOLDAVER and BORINS JJ.A.

B E T W E E N :	)	
	)	
HER MAJESTY THE QUEEN	)	**Karey Katzsch**
	)	**for the appellant**
	)	
Appellant	)	
	)	
- and -	)	
	)	
G. C. F.	)	**Paul Slocombe**
	)	**for the respondent**
	)	
Respondent	)	
	)	
	)	**Heard: June 10, 2004**

Appeal by the Crown of the sentence imposed on October 15, 2002 by Justice Paul G. M. Hermiston of the Superior Court of Justice.

BORINS J.A.:

I

[1] The Crown seeks leave to appeal the 12 month conditional sentence imposed on the respondent G. F. following his conviction on charges of sexual assault and sexual interference involving two thirteen year old girls and asks this court to impose a custodial reformatory sentence of 18-24 months.

[2] The Crown submits that the sentence imposed is demonstrably unfit on the ground that it is not within the acceptable range of sentences imposed for offences of this nature. In addition, the Crown submits that in imposing sentence the trial judge failed to address adequately the principles of denunciation and deterrence. Moreover, he erred in law in determining that the complainants' apparent compliance with the sexual conduct engaged in by the respondent mitigated the gravity of the offences.

[3] For the reasons that follow, I agree with the Crown that the conditional sentence of 12 months was a demonstrably unfit sentence. In my view, an appropriate sentence is two years less one day to be served in a reformatory. However, the respondent has served his conditional sentence. It was completed on October 15, 2003, almost eight months before the hearing of this appeal. Given that the respondent has served the conditional sentence, it would be unfair for this court to impose an effective custodial sentence of two years to commence at this time. Consequently, the issue in this appeal is what reduction, or discount, of the two year sentence should be given consequent to the respondent's completion of the conditional sentence.

[4] Before considering this issue, it is necessary to explain why the sentence should be varied from a 12 month conditional sentence to a maximum reformatory sentence.

II

[5] The respondent, who was age 31 at the time, was the assistant superintendent of an apartment building in which the complainant S.R. lived with her mother. He was a friend of S.R.'s family who lived alone in an apartment in the same building. He developed a friendship with S.R. and her girlfriend, the complainant S.C. At the relevant time, he was aware that S.R. and S.C. were 13 years old and in grade eight. Over a period of about two months, the respondent groomed the girls to become sex objects by inviting them to visit him in his apartment and supplying them with alcohol. Throughout this time, the sexual conduct included kissing, hugging and fondling the girls' breasts. In addition, S.R. fondled the respondent's penis and engaged in many acts of fellatio with him. Ultimately, S.R. and the respondent had sexual intercourse. (Under s. 150.1(1) of the *Criminal Code*, because S.R. and S.C. were under the age of 14, they were not legally capable of consenting to the sexual conduct.) Approximately three weeks later, when S.R. missed her menstrual period and believed that she had become pregnant, she told her mother that she had had sexual intercourse with the respondent. As a result, her mother contacted a social worker, who in turn notified the police.

III

[6] At the sentencing hearing, in seeking a custodial sentence in the range of 18 to 24 months, the Crown emphasized the many aggravating features of the case including the significant disparity in the respective ages of the complainants and the respondent, the ongoing serious nature of the sexual acts and elements of breach of trust.

[7] As an additional aggravating feature, the Crown relied upon the compliance of the thirteen year old complainants to engage in sexual conduct induced by the respondent. As the *Criminal Code* provides that a child under the age of 14 is not capable of consenting to sexual conduct, Crown counsel contended that the complainants' belief that they were involved in a consensual sexual relationship heightened the breach of trust

aspect and the manipulative nature of the respondent's conduct. From a discussion between the Crown and the trial judge, it is apparent that the trial judge failed to appreciate the significance of the Crown's position. Rather, it appears that he viewed the complainants' apparent willingness to participate in the sexual activity as helpful to the defence, commenting that the complainant S.R. had flirted with the respondent, led him on and ultimately told him that she was ready to have sex with him. In his brief sentencing reasons, the trial judge made no reference to the complainants' compliance with the sexual conduct, as induced by the respondent.

[8] Although defence counsel agreed with the range of the sentence requested by the Crown, he submitted that the respondent should be permitted to serve the sentence in the community. In support of his submission, he relied on a positive pre-sentence report, nine letters that spoke to the respondent's general good character and the absence of any related criminal record.

[9] The trial judge agreed with the position of defence counsel. In brief reasons, he rejected without explanation the Crown's contention that in the circumstances of this case specific and general deterrence, together with denunciation of the respondent's behaviour, required a custodial sentence. Being of the view that as "the risk of the offender re-offending [was] slight and … the risk of the offender endangering the public safety [was] equally slight", the trial judge was "satisfied that the imposition of a prison sentence of less than two years [was] proper in these circumstances". Consequently, the trial judge imposed a conditional sentence of 12 months. The conditions imposed included requiring the respondent to live at his parents' home under house arrest except for one hour each day, to attend counselling and not to associate with any person under the age of 16 years.

[10] The sentence was imposed on October 15, 2002. The Crown's notice of appeal from sentence was filed on November 12, 2002. The respondent then decided to appeal his conviction. However, he did not file his notice of appeal until May 13, 2003, having obtained the leave of this court to do so. In argument before us, his counsel explained that the delay was caused by problems encountered by the respondent in obtaining legal aid. Because of the length of the trial – 18 days – it took several months to prepare a transcript of the evidence required for the conviction appeal. However, on the evening before the date scheduled for the hearing of the sentence and conviction appeals, the respondent abandoned his conviction appeal. By that time, eight months had passed since the respondent had completed serving his conditional sentence. Absent the appeal from conviction, I have no doubt that the sentence appeal would have been heard before the conditional sentence had been served fully. There is no suggestion that the Crown failed to pursue the sentence appeal with diligence.

IV

[11] Before this court, the Crown submits that the sentence was demonstrably unfit as being outside the acceptable range of sentences for offences of this nature. She referred to several cases in which custodial sentences in the range of 12 to 24 months had been imposed. The Crown further contends that the trial judge erred in principle in failing to address adequately, and in failing to attach sufficient weight to the principles of denunciation and deterrence in his analysis of the appropriateness of a conditional sentence. In addition, he failed to appreciate that the gravity of the offence could not be diminished by the complainants' compliance. In asking this court to impose a custodial sentence of 18 to 24 months, the Crown submits that the respondent should be given a discount of 12 months based on the 12 month conditional sentence that he has served.

[12] The respondent, while not disputing that a sentence of 18 to 24 months is within the acceptable range, contends that this court should not interfere with the trial judge's disposition. He states that the trial judge made no error in principle as his 12 month conditional sentence satisfies the sentencing principles in the *Criminal Code*, particularly because the conditions of his sentence, in imposing house arrest, were strict. He submits that if this court decides that a custodial sentence is warranted, the imposition of the sentence should be stayed because it would be harsh to imprison the respondent eight months after he has served his conditional sentence. Finally, the respondent contends that if we decline to stay the imposition of the sentence, that he should receive a discount, or credit, for the entire 12 month conditional sentence that has been served.

V

[13] The position of this court with respect to the suitability of conditional sentences in cases that involve sexual assault of children is clear. It was repeated recently by this court in *R. v. L. (G.)* (2003), 175 C.C.C. (3d) 564 at para. 7:

> This court has repeatedly stressed both the serious nature of sexual abuse against children and the importance of sentencing sexual offenders with the principles of denunciation and deterrence in mind. See *R. v. Palmer* (1985), 7 O.A.C. 348 (C.A.) and *R. v. D. (D.)* (2002), 58 O.R. (3d) 788 at 797 (C.A.). In *R. v. D. R.*, an unreported decision, released February 24, 2003, this court said at para. 8:
>
> > This court has repeatedly indicated that a conditional sentence should rarely be imposed in cases involving the sexual touching of children by adults, particularly where, as here,

> the sexual violation is of a vulnerable victim by a person in a position of trust. In addition, circumstances that involve multiple sexual acts over an extended period of time and escalating in intrusiveness generally warrant a severe sentence.

[14] Moreover, cases that involve multiple sexual activity over an extended period of time and escalating in obtrusiveness generally warrant a severe sentence: *R. v. Stuckless* (1998), 127 C.C.C. (3d) 225 (Ont. C.A.); *R. v. Cromien* (2002), 155 O.A.C. 128 (C.A.); *R. v. G. O.* (1997), 99 O.A.C. 234 (C.A.); *R. v. Alfred* (1998), 122 C.C.C. (3d) 213 (Ont. C.A.); *R. v. D. (P.)* (1999), 139 C.C.C. (3d) 274; *R. v. Roy* (1999), 127 O.A.C. 270 (C.A.). The principle of denunciation weighs particularly heavily in cases of offences perpetrated against children by adults in positions of trust: *R. v. L. F. W.*, [2000] 1 S.C.R. 132 *per* L'Heureux-Dubé, at para. 29.

[15] The deference accorded to sentences imposed by trial judges is well-established. An appellate court is not justified in interfering unless the sentence imposed reflects an error in principle or is otherwise "demonstrably unfit". In this case, I agree with the Crown that the trial judge both erred in principle and imposed a sentence that was demonstrably unfit.

[16] As I read the reasons of the trial judge, the principle ground on which he imposed a conditional sentence was his opinion that as the risk of the respondent re-offending was slight, the risk of the respondent endangering public safety was equally slight. He was also of the view that permitting the respondent to serve the sentence in the community would assist in his rehabilitation by enabling him to take advantage of sexual abuse programs that would be available.

[17] Although the trial judge made reference to the Crown's position that the principles of deterrence and denunciation required a custodial sentence, he failed to explain why they did not apply to the circumstances of this case. Moreover, he failed to take into consideration the fundamental sentencing principle in s. 718.1 of the *Criminal Code* that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. As well, it would appear that the trial judge failed to consider the caselaw to which I have referred pertaining to the appropriate disposition in offences of this nature.

[18] The circumstances of this case are similar to those in *R. v. P.M.* (2002), 155 O.A.C. 242 (C.A.) in which the defendant had been given a conditional sentence for sexually assaulting the two daughters of a family friend, one of whom was 11 years old.

This court substituted a sentence of two years less a day. The comments of Feldman J.A. at para. 19 are relevant to this appeal.

> This conduct is also frightening because as a 26 year-old man, the respondent induced a vulnerable child into an ongoing sexual relationship by leading her to believe that they were boyfriend and girlfriend. This is exploitation of the worst order. Young women entering their teenage years face a myriad of confusing feelings regarding their bodies, their emotions, and their sexuality. It is difficult enough to deal with these issues with a judgmental and often cruel peer group. To exploit a young teenager as this man did reveals a level of amorality that is of great concern. The fact that the conduct was consensual on the part of C, who believed she was in a love relationship with a boyfriend, is far from being a mitigating factor as suggested by the defence and instead is an aggravating factor as part of the gross breach of trust involved in this offence.

[19] While the trial judge stated that he considered principles of deterrence and denunciation in determining the sentence, in my view, the decision to impose a conditional sentence in the circumstances of this case indicates a failure to give appropriate weight to these principles. Nor did he give sufficient weight to the moral blameworthiness of the respondent who engaged in offensive behaviour with two 13 year old girls over whom he had significant power as an older person, who was a family friend, who held the position of assistant superintendent of the apartment building in which one of the girls lived, and who showed no insight into the gravity of his crimes. The trial judge's failure to consider these factors offends the proportionality principle in s. 718.1 of the *Criminal Code*. In addition, the length of the sentence imposed was inadequate as it was below what is appropriate for these offences and this offender. Thus, it is permissible for this court to interfere with the sentence imposed at trial, and to impose a fit sentence.

VI

[20] Recognizing that the sentencing principles to which I have referred can be satisfied in appropriate circumstances by a conditional sentence, and recognizing that there is no presumption in favour of incarceration for certain types of crimes, and notwithstanding the trial judge's opinion that the respondent did not constitute a continuing danger to the public, I am unable to accept that the principles and objectives of sentencing can be met in this case by a conditional sentence. Although it may be implicit in the trial judge's reasons that he concluded that "house arrest" with certain

liberties would be sufficient to communicate society's condemnation of the appellant's conduct, I do not agree. Although I am of the opinion that the circumstances of this case warrant a low range penitentiary sentence, as the Crown sought only a 18 - 24 month reformatory sentence I would substitute a sentence of two years less one day. This sentence is warranted as this is a case of serious sexual abuse of vulnerable children by an adult in a position of trust over an extended period of time that escalated in obtrusiveness. As apparent from the victim impact statements, the effect of the offences upon the complainants was serious.

[21] Although earlier I referred to the aggravating features of the respondent's conduct that require a custodial sentence, I find it helpful to summarize them:

- the serious nature of the sexual abuse, specifically, kissing, fondling, fellatio and sexual intercourse with the complainant S.R.;
- the complainants were 13 year old girls whereas the respondent was 31;
- the respondent's grooming of the complainants as sexual objects by befriending them, in particular S.R., inviting them to his apartment and supplying them with alcohol;
- the apparent compliance of the complainants to have a sexual relationship with the respondent, in particular, S.R., who engaged in sexual intercourse with the respondent;
- respondent's breach of trust;
- respondent's lack of insight into the gravity of the offences.

VII

[22] This brings me to consider whether the imposition of the sentence should be stayed on the ground that to incarcerate the respondent eight months after the completion of his conditional sentence would constitute hardship, and if it is not stayed, what credit, or discount, respecting the two year sentence should be given in consideration of the respondent's service of a 12 month conditional sentence.

[23] I will consider the question of credit or discount first. A survey of appellate court decisions in British Columbia, Alberta, Nova Scotia and this province discloses that in every case where a conditional sentence order was set aside and a custodial sentence was ordered, the defendant received a discount, or credit, for the time spent serving the conditional sentence. For the most part, the credit was on a 1:1 basis for the portion of the conditional sentence served. In some cases, depending on the circumstances, a

greater or lesser credit has been given. However, as most of the appellate decisions are in the form of endorsements, there is very little discussion around the issue. At the conclusion of my reasons, I have attached an appendix of appellate decisions allowing a credit where a custodial sentence was substituted for a conditional sentence, the majority of which allowed a 1:1 credit.

[24] In a few cases there is some discussion of the issue. The principle articulated by this court appears to be that there is no set formula and the credit given will vary with the circumstances of each case. For example, in *R. v. MacLaren* (1999), 122 O.A.C. 177 (C.A.) the Crown successfully appealed an 18 month conditional sentence. This court held that while the total length of the sentence was appropriate, it should have been a custodial sentence. At paras. 18 and 19, the court considered how to craft the sentence given that it had been partially served at the time the appeal was heard:

> In our view, the length of the total sentence, 18 months, imposed by the trial judge was appropriate. In cases where this court is substituting a custodial sentence for a conditional sentence, *the amount of credit to be given for that part of the conditional sentence that has been served will vary depending on the particular circumstances of each case*. The respondent in this case has served over 7 months of a conditional sentence that has few restrictions on his freedom and has performed 68½ hours of community service. *There is no doubt that incarceration at this point in time brings an additional hardship* and, in addition, we recognize that the respondent will not receive credit for statutory remission or parole eligibility for the time that has been served on the conditional sentence. Having regard to these factors, we consider that a custodial term of imprisonment of 12 months from the present to be the appropriate sentence at this time.
>
> The question then arises whether we should impose this sentence by crafting a sentence that commences on the date that the original sentence was imposed or whether we can simply impose the custodial sentence to commence from the date on which the respondent is taken into custody. The answer is not readily apparent from the wording of the relevant sections in the *Criminal Code* – ss. 687(2), 719(4) and 742.1. Simplicity and clarity argue in favour of the latter approach and that is what we propose to do. If there is any difficulty in implementing our decision we may be spoken to [emphasis added].

[25] In *R. v. Alfred* (1998), 122 C.C.C. (3d) 213 (Ont. C.A.) the Crown appealed from a sentence of nine months imprisonment and a conditional sentence of two years less one day imposed upon the defendant's conviction on nine charges of indecent assault and three charges of sexual assault. The defendant was a physician and the complainants were his patients. The trial judge was of the opinion that the proper sentence was 33 months, but concluded that part of the sentence could be served as a conditional sentence. This court held that the trial judge had erred in principle by imposing a penitentiary sentence, a portion of which was to be served as a conditional sentence. However, this court concluded that a fit sentence was a 33 month custodial sentence.

[26] At the time the appeal was heard, the appellant had served his custodial sentence and part of his conditional sentence, including 40 hours of the 240 hours of community service ordered by the trial judge. As it stated in para. 11, the court was faced with "considerable difficulty" in deciding the proper disposition of the appeal in light of these circumstances. In deciding the length of the custodial sentence to be served, the court said that all of the circumstances relating to the service of the custodial and conditional sentence should be taken into account, as well as "the additional hardship of reincarcerating the respondent at this time". In the result, a 16 month custodial sentence was imposed.

[27] Although the court in *MacLaren* noted the additional hardship associated with the conversion of a conditional sentence into a custodial sentence, it gave credit of 6 months for the 7 months of conditional sentence served toward the appropriate 18 month custodial sentence that should have been imposed. In the result something less than a 1:1 credit was given. Although not entirely clear, in *Alfred* it appears that a 1:1 credit was given in respect to the portion of the conditional sentence that had been served. In *R. v. Demchuk* (2003), 68 O.R. (3d) 17 (C.A.), without discussion this court gave considerably less than a 1:1 credit in substituting a 12 month custodial sentence for a conditional sentence. It gave a 6 month credit where 14 months of a conditional sentence had been served that included 8 months house arrest. On the other hand, there are some cases in which credit of more than 1:1 has been given: *R. v. Roy* (1999), 127 O.A.C. 270 (C.A.).

[28] In contrast to what I would characterize as the flexible approach advocated by this court in *MacLaren* and *Alfred* in giving credit for the service of all, or part, of a conditional sentence that has been served on substituting a custodial sentence, a more rigid approach was taken by a majority of the British Columbia Court of Appeal in *R. v. Birchall* (2001), 158 C.C.C. (3d) 340 (B.C.C.A.). In that case the defendant had served a 12 month conditional sentence at the time the Court of Appeal substituted the mandatory four year prison sentence that should have been imposed by the trial judge. At issue was the credit to be given for the 12 month conditional sentence. Lambert J.A. analyzed several sections of the *Criminal Code* and observed that on the language of s. 742.1(a) it

is clear that a conditional sentence is a sentence, but one that is served in the community. Based on his analysis, he was of the view that in all cases the credit to be given for the service of a conditional sentence, in whole or in part, should be 1:1. He stated his conclusion in para. 37:

> The time served under the conditional community custodial sentence, prior to the sentence being varied by this Court, *is the precise amount of time that may be deducted from the balance of the sentence to be served in prison*. There is no statutory authority for allowing additional time to be deducted. The conditional custodial sentence that was served in the community is part of the sentence, and time runs in its remorseless way at its constant speed for conditional and non-conditional sentences alike [emphasis added].

[29] In my view, the flexible approach suggested in *MacLaren* and *Alfred* is preferable to the precise formula suggested in *Birchall* because it permits the court to consider all relevant factors. What is clear, however, is that in all cases in which a conditional sentence order has been set aside and a custodial sentence has been substituted, some credit or discount was incorporated in the custodial sentence based on the length of the conditional sentence served at the time of the appeal. Although, generally, the credit is expressed as a 1:1 ratio, there is no precise formula. Included in the factors that have been considered in determining the appropriate credit to be given to the conditional sentence that has been served are the conditions attached to the conditional sentence, whether the imposition of a custodial sentence will result in hardship to the defendant on being incarcerated or re-incarcerated, the defendant's success in rehabilitation and any delay in the hearing of the appeal and the cause of the delay. Whether the delay has been caused by the Crown or the defendant may have a bearing on the degree of the credit. There will, of course, be other factors. In the end, fairness should govern in crafting the appropriate sentence when a custodial sentence is substituted for a conditional sentence. In this case, as there is no reason to depart from the credit of 1:1 generally applied in the cases that I have surveyed, the respondent is to be credited with the 12 month conditional sentence that he has served.

[30] This brings me to the respondent's argument that the enforcement of any custodial sentence imposed by this court should be stayed on the ground that as no purpose would be served by incarcerating him eight months after he has served his conditional sentence, it would be harsh to do so.

[31] There are some cases in which the court has declined to incarcerate a defendant even though the court was of the opinion that a conditional sentence was demonstrably unfit. As in the cases in which credit was given for service of all or part of a conditional

sentence on the substitution of a custodial sentence, there is little discussion around the issue. In *R. v. Fox*, [2002] O.J. No. 2496 the Crown appealed a conditional sentence for arson, contending that a custodial sentence was required. Although this court agreed with the Crown's position, it declined to substitute a custodial sentence, stating in para. 3:

> In our view, the sentence imposed by the trial judge was unfit for such a serious offence. However, we are of the view that in light of the respondent's current employment situation (a good full time position in British Columbia that pays $6000-$8000 per month), no good purpose would be served by converting the conditional sentence to a custodial one at this juncture.

However, the court allowed the appeal and increased the duration of the conditional sentence and as well as the amount of restitution ordered by the trial judge.

[32] In *R. v. Hirnshall* (2003), 176 C.C.C. (3d) 311 (Ont. C.A.) the Crown appealed an 18 month conditional sentence for arson. Although this court concluded that the sentence was demonstrably unfit and that a custodial sentence of unspecified duration should have been imposed by the trial judge, it nevertheless dismissed the appeal for the reasons stated in para. 30:

> Giving him full credit for having served his sentence and bearing in mind the trial Crown sought no more than a reformatory term, I do not consider it now in the public interest to incarcerate Mr. Hirnschall. I would, therefore, not give effect to this part of the Crown's sentence appeal.

[33] In *R. v. L. F. W.*, *supra*, L'Heureux-Dubé J., on behalf of four members of the Supreme Court, being of the opinion that a conditional sentence of 21 months was demonstrably unfit for indecent assault and gross indecency, concluded that a custodial sentence should have been imposed. Consequently, she allowed the appeal. However, "as the offender [had] served his 21-month conditional sentence in full", she stayed the passing of the custodial sentence.

[34] Although it clearly is a hardship on the defendant to be incarcerated or reincarcerated, generally this is not a sufficient reason for the court to stay the operation of a custodial sentence which the offence requires and which ought to have been imposed by the trial judge. However, I do not rule out a stay if there are special circumstances, where, for example, incarceration or re-incarceration may have a harmful effect on a defendant's rehabilitation: *R. v. Symes* (1989), 49 C.C.C. (3d) 81 (Ont. C.A.). In this

case, given that he is to receive a 1:1 credit for the conditional sentence that he has served, the respondent has not pointed to any cogent reasons why the imposition of his sentence should be stayed or why he should receive a credit greater than the actual 12 month conditional sentence that he served.

[35] The above cases illustrate that different approaches have been taken where an appellate court is of the opinion that although the trial judge erred in imposing a demonstrably unfit sentence, it would be inappropriate to incarcerate the defendant. One approach is to dismiss the appeal notwithstanding that the trial judge committed reversible error. Another, is to allow the appeal, impose the custodial sentence that should have been imposed and stay the enforcement of the sentence. In circumstances such as those that exist in this case, where the offender has served the whole of a conditional sentence, the second approach may be preferable. First, it corrects the reversible error arising from the imposition of a demonstrably unfit sentence by imposing the custodial sentence that should have been imposed. Second, to dismiss the appeal notwithstanding the trial judge's reversible error, the defendant's record would not reflect the penalty that in the opinion of the appellate court the trial judge should have imposed. As I have indicated, whether the court will stay the enforcement of the sentence will depend on the presence of special circumstances.

VIII

[36] In the result, I would grant leave to appeal sentence and allow the appeal. I would vary the conditional sentence of twelve months to be a sentence of two years less a day to be served in a reformatory, credit the respondent with the 12 month conditional sentence that he served, with the result that his effective sentence of 12 months will commence when the respondent surrenders or is arrested.

RELEASED: July 28, 2004 ("RSA")

"S. Borins J.A."
"I agree R. S. Abella J.A."
"I agree M. J. Moldaver J.A."

Appendix:
Appellate Decisions Allowing Credit when a Custodial Sentence was Substituted for a Conditional Sentence

British Columbia Court of Appeal	
R. v. Birchall (2001), 158 C.C.C. (3d) 340	1:1
R. v. J.A.F. (1998), 50 B.C.L.R. (3d) 312	1:1
R. v. Julson (2001), 152 B.C.A.C. 161	1:1
R. v. MacDougall (2001), 156 B.C.A.C. 208	1:1
R. v. Tran (2001), 158 B.C.A.C. 178	1:1
R. v. Walcot [2001] B.C.J. No. 974	1:1
Alberta Court of Appeal	
R v. Bordula (2003), 181 C.C.C. (3d) 104	1:1
R. v. F.E.H. (2000), 250 A.R. 184	1:1
R. v. Foreman (2000), 271 A.R. 381	1:1
R. v. King (1998), 212 A.R. 44	1:1
R. v. Kostner [2000] A.J. No. 204	Less then 1:1
R. v. Ma (2003), 330 A.R. 142	1:1
R. v. McClelland (2001), 154 C.C.C. (3d) 385	Less then 1:1
Nova Scotia Court of Appeal	
R. v. C.V.M. (2003), N.S.J. No. 99	1:1
R. v. Henry (2002), 164 C.C.C. (3d) 167	1:1
R. v. Jones (2003), 214 N.S.R. (2d) 289	1:1
R. v. MacLeod [2004] N.S.J. No. 58	1:1
Ontario Court of Appeal	
R. v. Alfred (1998), 122 C.C.C. (3d) 213	1:1 (not clear)
R. v. A. P. [2002] O.J. No. 981	1:1
R. v. Blakeley (1998), 127 C.C.C. (3d) 271	1:1
R. v. Bhatoo [2000] O.J. No. 445	Less then 1:1
R. v. Bogart (2002), 61 O.R. (3d) 75	1:1
R. v. Boston (2002), 58 O.R. (3d) 460	1:1
R. v. B.M.B. [1999] O.J. No. 3732	1:1
R. v. Cromien (2002), 155 O.A.C. 128	1:1 (for portion of conditional sentence)
R. v. Demchuk (2003), 68 O.R. (3d) 17	Less then 1:1
R. v. Dobis (2002), 58 O.R. (3d) 536	1:1

R. v. D.R. (2003), 169 O.A.C. 55	1:1 (not clear – credit for a portion of the conditional sentence)
R. v. Haidar (1999), 125 O.A.C. 70	1:1 (not clear, taken into consideration)
R. v. J.B. [1998] O.J. No. 3701	1:1 (not clear, taken into consideration)
R. v. MacLearn (1999), 122 O.A.C. 177	Less then
R. v. Reid [1999] O.J. No. 828	3:1
R. v. Roy (1999), 127 O.A.C. 270	More then 1:1 (not clear)
R. v. Russo (1998), 130 C.C.C. (3d) 339	More then 1:1
R. v. S.L. (2003), 168 O.A.C. 163	1:1
R. v. Smith (1999), 123 O.A.C. 228	1:1
R. v. Tasker [2003] O.J. No. 4550	1:1
R. v. W.(E.) (1998), 42 O.R. (3d) 455	1:1