CITATION: R. v. M.S. 2024 ONSC 1776
COURT FILE NO.: CRIMJ(P)1726/16
DATE: 2024-03-25

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
HIS MAJESTY THE KING	Sarah Burton and Madeline Lisus, for the Crown
– and –	
M.S.	Trevin David, for the offender
	HEARD: January 12, 2024

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REASONS FOR SENTENCE[1]

RAHMAN, J.

1. Introduction

[1] The offender, MS, was found guilty by a jury of sexual assault. The Crown alleged that the offender sexually assaulted his stepdaughter, SLF, on two occasions when she was a teenager. This is the second time that the offender has been found guilty of sexually assaulting SLF. The offender was tried without a jury in 2017. He was found guilty of sexual assault and sexual interference and

[1] I read these reasons orally on March 21, 2024, omitting headings, citations, footnotes, and most block quotations. I reserved the right to edit the reasons, as read, for grammatical and stylistic reasons. These written reasons take precedence over the oral reasons in the event of any discrepancy between the two.

sentenced to four years' imprisonment. His convictions were overturned by the Court of Appeal and a new trial was ordered. It was at that new trial, in July 2023, that the jury found him guilty of one count of sexual assault.[2]

[2] There are two disputed issues that I must decide in sentencing the offender. The first issue is whether the Crown has established beyond a reasonable doubt that the offender committed both acts covered by the single count of sexual assault. Because the jury was instructed that they only needed to find one of the acts occurred, the jury's verdict is ambiguous on this question. The second issue is whether the Supreme Court of Canada's decision in *R. v. Friesen,* 2020 SCC 9, released after the offender's first trial, justifies a departure from the sentence imposed at the first trial.

[3] The Crown seeks a sentence of eight years' imprisonment. The Crown argues that the offender should be sentenced for both incidents it had alleged at trial. The Crown argues that this court should be satisfied beyond a reasonable doubt by SLF's evidence that the offender attempted to have intercourse with her during the "apartment incident" and that he did have intercourse with her during the "house incident." The Crown says that the evidence of a defence witness – a pastor – does not undermine the credibility of SLF's testimony as the defence contends. The Crown contends that the pastor's testimony is problematic and that this court should reject it. On the issue of the deference owed to the sentence at the first trial, the Crown argues that *Friesen* justifies a higher sentence than that imposed at the offender's first trial. The Crown submits that the original sentencing judge used a sentencing range that has been significantly modified by *Friesen*. The Crown argues that *Friesen* recognized the significant harm that sexual offences have on children and gave effect to this recognition of harm by increasing the range of sentences for sexual offences against children. The Crown argues that even though the offender's moral culpability has not changed, the courts' recognition of the significant harm caused by sexual offences against children has changed.

[2] The offender was also arraigned before the jury on a count of sexual interference. During the Crown's case, I alerted the parties to the fact that the age of consent under s. 151 was 14 years of age during the period set out in the indictment. Consequently, the Crown stayed that count and I instructed the jury that it was going to be removed from their consideration.

[4] The offender argues that the court should not be satisfied beyond a reasonable doubt about the apartment incident. The offender acknowledges that the jury's verdict makes clear that they did not accept the offender's testimony denying that both incidents happened. He does not challenge the Crown's position that it proved the house incident beyond a reasonable doubt. However, he argues that it is open to this court to find that the jury did not reject the pastor's testimony that SLF denied that the apartment incident happened. He contends that the pastor's testimony provides a basis for this court to have a reasonable doubt about the apartment incident. Therefore, the offender should only be sentenced for the house incident. On the question of departing from the sentence imposed at the first trial, the offender argues that it would be unfair to increase his sentence because he successfully appealed his conviction. This court should give due deference to that sentence to prevent the "sense of grievance" that the offender will feel for being "penalized for successfully appealing" his conviction. In any event, the offender says that *Friesen* did not alter the sentencing range that was followed by the original sentencing judge – set out in *R. v. D.(D.*) (2002), 58 O.R. (3d) 788 (C.A.) – and that the original sentencing judge recognized the harm caused by sexual offences against children in the same way that the Supreme Court ultimately did in *Friesen*. Alternatively, the offender argues that if this court does consider imposing a higher sentence than imposed at the first trial, the appropriate sentence is five years' imprisonment.

[5] I will first explain the facts that I find the offender must be sentenced on. I will then explain whether the sentence from the first trial should play a role in fixing the offender's sentence. Finally, I will explain how I arrive at the sentence that I have decided to impose.

2. Findings of fact

2.1. The allegations about the apartment incident

[6] The offender was SLF's stepfather. He was married to her mother and lived in the same home with SLF. During the time of the allegations, SLF lived with her family in both an apartment and a house. While living in the apartment, SLF lived there with her brother, her stepbrother (the offender's son), and her mother's friend, SDH, whom SLF referred to as her aunt.

[7] SLF testified that the offender sexually assaulted her on two occasions. The first incident happened when SLF lived with her family in their apartment. The second incident happened when they lived in their house.

[8] SLF testified that the first incident took place when SLF was lying on a bunk bed in her brother's room. SLF was in grade 9 at the time. SLF's mother and aunt were not home because they had gone to church, as they regularly did on Tuesday and Wednesday evenings. The offender got into the bed SLF was sleeping in. The offender touched SLF's breasts and vaginal area. He forced open her legs and moved her shorts and underwear aside to expose her vagina. SLF testified that she saw the offender's erect penis sticking out of the elastic waistband of his pants. The offender tried to force his penis into SLF's vagina. SLF testified that she was "bracing" against the offender with her arm, trying to push him off her. SLF said that when she heard a key turning in the front door, the offender jumped off the bed and ran from the bedroom.

[9] SLF went into the living room area of the apartment to find her aunt, SDH, had just come home. SLF disclosed the incident to her. SLF's aunt told SLF that she had to tell her mother what had happened. SDH testified at trial and confirmed that one evening when she came home from church, SLF approached her as she entered the apartment. SDH testified that SLF told her never to leave her alone with the offender again, and that the offender tried to have sex with her. SDH testified that when SLF told her this she looked frightened.

[10] SLF testified that SDH went outside of the apartment. SLF inferred that SDH told her mother what SLF had said because her mother came into the apartment yelling. SLF said that her mother asked her to physically demonstrate what the offender had done to her, because SLF was having difficulty explaining it to her verbally. SLF's mother was on the phone with the pastor from the family's church at the time.

[11] At some point after the night of the apartment incident, SLF was ultimately taken by her mother to meet with the pastor. SLF testified that she was unaware that a meeting had been arranged and that her mother picked her up after school one day and took her to the meeting with the pastor at the pastor's home. The offender drove to the meeting in a separate car. The meeting took place in the master bedroom of the pastor's home. SLF recalled that the pastor met with the

offender first while SLF waited downstairs and talked to the pastor's children. SLF then met with the pastor together with her mother. SLF testified that she felt as though the pastor was talking at her. She also said that her mother was finishing her answers to questions that she had been asked. SLF testified that the pastor did not believe her and told her mother she was lying. SLF believed that her mother did not believe her because of this.

[12] The pastor testified for the defence at trial. Her evidence about what took place at the meeting differed significantly from SLF's.

[13] The pastor testified that she received a call from SLF's mother alleging that the offender had molested SLF. A day or two later, the pastor met with SLF, her mother, and the offender at her home in Markham. The pastor said that, after SLF's mother told her what SLF told her, the pastor asked SLF if it was true. The pastor testified that SLF said she did not know why her mother was saying that. The pastor said that she asked SLF again if the offender had done anything to her as her mother had said. The pastor testified that SLF "kept saying no." The pastor then asked the offender and SLF's mother to go downstairs so she could speak to SLF alone. After being left alone, the pastor said that she asked SLF again whether the offender had touched her or had sexual contact with her. SLF again said no. The pastor testified that at no time during the conversation did SLF say the offender had sexually assaulted her. I should note that SLF denied that that she met with the pastor alone or told the pastor that nothing had happened. After meeting with SLF alone, the pastor called the offender and SLF's mother back into the bedroom. The pastor told them that SLF said that the offender had not done anything and there was nothing the pastor could do. She told the family they would have to work it out themselves. The pastor said that if SLF had told her that the offender had sexually touched her, she would have reported it to the police and would have told SLF's mother to do the same.

[14] The pastor testified about being contacted by police in 2014 about SLF's allegations. She testified that she remembered getting a phone call from police on December 4. She remembered the day because it was her birthday. The pastor testified that when the police called, she thought it was someone pulling a prank on her. She explained that she was over excited because it was her birthday and she said to the police on the phone that she believed they were joking with her. She testified that she realized it was serious, and took it seriously, when the police came to her door.

The pastor testified that she told police she did not want to speak to them at that point. She testified that the first thing she thought about was confidentiality, because she was a pastor. She told the police that day that she could not speak to them at the time. In cross-examination, the pastor acknowledged that, in addition to confidentiality, she told police that she wanted to know what her rights were. The pastor also agreed that the police had told her that SLF had already spoken to them. When the pastor was shown her trial court testimony from 2017, she agreed that she had earlier testified that one of the reasons she did not speak to police when they came to her home was that she wanted to speak to the offender first. The pastor ultimately did give a statement to police.

2.2. Findings regarding the apartment incident

[15] Section 724 of the *Criminal Code* sets out what facts a trial court may consider when sentencing an offender. Where an offender has been tried by a jury, a judge imposing the sentence is required to accept as proven all express or implied facts that are essential to the guilty verdict. In this case, because the jury was instructed that they could find the offender guilty even if they only found he committed one act of sexual assault, the jury's verdict does not automatically imply that they found that the offender committed both acts of touching. It falls to me, as the sentencing judge, to decide whether both incidents have been proven beyond a reasonable doubt. The Supreme Court made clear in *R. v. Ferguson*, 2008 SCC 6, at para. 15, that "when the factual implications of the jury's verdict are ambiguous," a judge engaging in this fact-finding exercise "should not attempt to follow the logical process of the jury, but should come to his or her own independent determination of the relevant facts."

[16] I cannot agree with the offender's submission that the pastor's testimony creates any doubt about the apartment incident. I disbelieve the pastor's evidence about what occurred during her questioning of SLF. The pastor was not a credible witness. I agree with the Crown that her testimony is not believable. I do not share the Crown's concern that the pastor's credibility is affected by her initially thinking that the police call to her was a prank. What concerns me is the pastor's testimony about her interaction with the police when they came to her home. At that point, she understood it was not a prank – the police were investigating a serious offence. She initially testified that she told the police she could not speak to them right away because she had concerns

about confidentiality. In cross-examination, she agreed that she also told police she could not speak to them because she wanted to know what her rights were. She also acknowledged testifying at the first trial that another reason she did not speak to the police at first was that she wanted to speak to the offender first. The fact that the pastor's mind turned to her own rights and to wanting to speak to the offender first supports the Crown's submission that she was concerned about not having reported SLF's allegations when they happened. I find that the pastor's revisionist account of what took place was an attempt to deny that she had not helped SLF when she made her allegations. I believe SLF's testimony about the incident – that she told the pastor what had happened and that the pastor did not believe her. The pastor's testimony about SLF denying the allegations is not credible and does not leave me with any doubt that the apartment incident happened as SLF described it.

2.3. The house incident

[17] The offender takes no issue that the second incident of sexual assault – the house incident – was proven beyond a reasonable doubt. I will describe those allegations briefly so the facts upon which the offender is being sentenced are clear.

[18] SLF testified that the second incident took place in 2007 when SLF was 16 or 17 years old. SLF's mother and aunt SDH were out of the country. SLF was left in the home with her brother, her uncle, and the offender. SLF fell asleep on her mother's bed while holding her young brother, who was two or three years old at the time. SLF awoke when she felt the offender behind her in the bed. The offender moved SLF's shorts and underwear aside and penetrated her vagina with his penis. SLF said that she froze in fear while the offender had forced intercourse with her. After the offender finished having intercourse with her, SLF got up and went to her own room. The offender followed her, apologized, and told her not to tell anyone. SLF took a knife from under her pillow and showed it to the offender to make him leave her room. SLF did not tell anyone about this incident because nobody believed her the first time she had reported the offender having assaulted her.

[19] I will next consider the Crown's submission that the sentence at the first trial is unfit because of the Supreme Court's decision in *Friesen*.

3. Is the original sentence unfit?

[20] At the offender's first trial, the Crown sought a five-year sentence. The offender argued that a two to three-year sentence was appropriate. The trial judge determined that the appropriate sentencing range was three to eight years. The trial judge explained that he relied on the Court of Appeal's comments in *D.D.* in fixing this range. The trial judge found that *D.(D.)* set the range for mid to high single digit penitentiary sentences "when adult offenders, in a position of trust, sexually abuse innocent young children on a regular and persistent basis over substantial periods of time." The trial judge observed that *D.(D.)* "sets the high end of the range" and that the offender's case was distinguishable from the more serious facts of *D.(D.)* The trial judge referred to the fact that the abuse in *D.(D.)* included more and younger victims and more instances of abuse.

[21] It has long been the law in Ontario that a court sentencing an offender after a re-trial should generally impose the same sentence imposed at the first trial unless the sentence at the first trial was unfit, or new facts have emerged: *R. v. B. (L.)* (1997), 35 OR (3d) 35 (C.A.); *R. v. Harriott* (2002), 58 O.R. (3d) 1 (C.A.) at para. 52. The rationale for imposing the same sentence is to prevent the offender from having "a sense of grievance," and to prevent the appearance that the offender is being penalized for a successful appeal: *R. v. Precup*, 2016 ONCA 669 at para. 3; *R. v. R.S.W.* (1992), 74 C.C.C. (3d) 1 (Man. C.A.) at p. 26. The sense of grievance may arise "if, without apparent reason, the second judge imposes a much longer sentence than the first": *R.S.W.* at p. 25; *B.(L.)* at paras. 70-71 (emphasis added).

[22] I agree with the Crown that the original sentence imposed after the offender's first trial is unfit. I do not find that it was unfit at the time it was imposed. The judge at the first trial was relying on the pre-*Friesen* case law. As the trial judge observed, that case law suggested that a mid to upper single-digit penitentiary sentence was appropriate where there was persistent abuse over a substantial period of time. I agree that the trial judge's comments quoting *D.(D.)* recognized the serious harms suffered by young victims of sexual abuse. But the range the trial judge relied on was ultimately one that was lower than what the Supreme Court has set out in *Friesen*.

[23] The Supreme Court made clear in *Friesen* that courts should approach dated sentencing cases with caution. The trial judge at the offender's first trial relied on older caselaw. While the main case he mentioned, (*D.D.*), did set out quite clearly the impact of sexual abuse against

children, it still maintained a range of sentence that is now outdated. As the court observed, at para. 110:

> Courts should accordingly be cautious about relying on precedents that may be "dated" and fail to reflect "society's current awareness of the impact of sexual abuse on children." Even more recent precedents may be treated with caution if they simply follow more dated precedents that inadequately recognize the gravity of sexual violence against children. Courts are thus justified in departing from precedents in imposing a fit sentence; such precedents should not be seen as imposing a cap on sentences. [Citations omitted.]

[24] Although the Supreme Court made clear, at para. 114,[3] that it was not setting out "binding or inflexible quantitative guidance," the court also stressed that it was incumbent on it to "provide an overall message that is clear." The court's message was that mid-single digit penitentiary sentences should be the norm and that upper-single digit and double-digit sentences should not be unusual or reserved for rare or exceptional cases. The court also stressed that "substantial sentences" are available even for a single instance of sexual assault against a single victim.

[25] The court in *Friesen* also emphasized that sexual offences against children must be punished more severely than offences committed against adults: *Friesen*, at para. 116. This observation also supports a higher range than the one used at the offender's first trial. The range of sentence for the second incident involving forced intercourse, on its own, would have warranted a sentence in the range of three to five years if SLF were an adult: see *R. v. K. (A.J.)*, 2022 ONCA 487 at para. 77. It seems inappropriate to impose a sentence within that range given SLF's age and the fact that she was subjected to two invasive sexual assaults.

[26] Finally, *Friesen* makes clear that the seriousness of sexual offences against children does not just apply to very young children. The court emphasized that courts have historically imposed disproportionate sentences in cases of adolescent victims, even though adolescents (especially girls) may be disproportionately victimized by sexual violence. As the court stated at para. 136:

> At the same time, courts must also be particularly careful to impose proportionate sentences in cases where the victim is an adolescent. Historically, disproportionately low sentences have been imposed in these cases, particularly in cases involving adolescent girls, even though adolescents may be an age group that is disproportionately

[3] All subsequent references in this paragraph are from paragraph 114 of *Friesen*.

> victimized by sexual violence. In particular, sexual violence by adult men against adolescent girls is associated with higher rates of physical injury, suicide, substance abuse, and unwanted pregnancy [Citations omitted.]

[27] The release of *Friesen* is a valid reason to depart from the sentence imposed after the offender's original trial. Based on the current guidance from the Supreme Court, the original four-year sentence is now unfit. Relying on this current guidance does not offend the rationale for the usual rule that an offender should receive the same sentence after a re-trial. It is important to consider what the Court of Appeal said in *B.(L.)* when it set out the circumstances in which a sentencing judge could impose a different sentence at a re-trial. The court's main concern appears to have been a *de novo* consideration of the sentence, and an upward departure with "no apparent reason." In the case at bar, there is a reason.

[28] The imposition of a higher sentence on the offender now is also justified by the important sentencing objective of denunciation. The Supreme Court emphasized the primacy of denunciation and deterrence in mandating exemplary sentences for offenders who abuse children. Denunciation plays an important communicative role, by condemning offenders for violating Canadian society's basic values. As the Supreme Court stated in *Friesen*, at para. 105:

> The sentencing objective of denunciation embodies the communicative and educative role of law. It reflects the fact that Canadian criminal law is a "system of values". A sentence that expresses denunciation thus condemns the offender "for encroaching on our society's basic code of values"; it "instills the basic set of communal values shared by all Canadians." The protection of children is one of the most basic values of Canadian society. As L'Heureux-Dubé J. reasoned in *L.F.W.*, "sexual assault of a child is a crime that is abhorrent to Canadian society and society's condemnation of those who commit such offences must be communicated in the clearest of terms." [Citations omitted.]

[29] Based on the very strong message the Supreme Court has sent in *Friesen*, it would be improper to default to the sentence imposed at the first trial. I am imposing a sentence on the offender today. That sentence must fulfil the objective of denunciation according to the court's communicative and educative function today. That is the reason the original sentence is now unfit and the reason I am not imposing that sentence. I agree with the Crown's position as set out in its written submissions that imposing a higher sentence than that imposed at his first trial "reflects society's contemporary understanding of the harmfulness of his actions and adheres to the

principle that sentencing judges should impose sentences which society considers just at the precise moment that the sentence is passed."

[30] I will now consider the appropriate sentence to be imposed in this case.

4. The appropriate sentence

[31] The offender committed two very serious sexual assaults against SLF. It would be an understatement to say that the offender's crimes had a significant impact on SLF. While she lived in the same home as the offender, she felt unsafe and scared to the point that she slept with a knife under her pillow to protect herself. Like many victims of sexual offences, she has difficulty trusting people, and she is especially cautious about who she allows around her daughter. She has difficulty having what she describes as "proper relationships" with others because she is not quick to open up and is not trusting. She described the impact of the offences on her as follows: "It's like having a white t-shirt and you can never get the stain out. It just becomes you. I feel destroyed. I don't feel like a whole person. I feel like a black hole that swallows all the light."

[32] The two very serious sexual assaults committed by the offender involve the following aggravating factors:

1) The offender was in a position of trust towards SLF.

2) The offences happened in SLF's home, a place where she should have felt safe.

3) The assaults were intrusive.

4) The second assault was committed in the presence of a 2 to 3-year-old child.

[33] The breach of trust in this case is a very significant aggravating factor. The offender stood in a position of trust towards SLF. He was her stepfather. As the Supreme Court observed in *Friesen*, at para. 127,

> The presence of a trust relationship may inhibit children from reporting sexual violence. The breach of trust may produce "feelings of fear and shame" that further discourage reporting. [Citations omitted.]

[34] In this case, the breach of trust was made worse by the shameful response of the adults in SLF's life – including her own mother – who should have helped her the first time she was assaulted. Instead, they disbelieved her. That first incident shook SLF's faith in the very people she should have been able to trust, and the very people who should have kept her safe. It exacerbated the harm that she suffered from the assaults themselves. When she was assaulted a second time, she could not trust that they would help her. To add insult to injury, she had to keep living in the same home as her abuser after both assaults.

[35] There are some mitigating factors in the offender's case. He has no criminal record. He is gainfully employed and has the support of his family and friends, including members of his church. These factors bode well for his rehabilitation. I cannot agree with the defence that the passage of time between his arrest and this sentencing is a mitigating factor that can lower his sentence. General deterrence and denunciation are not affected by the passage of time: *R. v. H.S.*, 2014 ONCA 323 at para. 54. And the Court of Appeal has made clear that "in the absence of a demonstration of remorse and acceptance of responsibility, the passage of time cannot mitigate in cases of historical sexual abuse": *R. v. Brown*, 2006 CanLII 60340 (C.A.), at para. 14; *R. v. W.W.M.*, (2006) 206 OAC 342, at para. 24.

[36] The Crown has provided a thorough sentencing chart in its materials. The cases in the chart cover sexual offences of varying frequency, degrees of invasiveness, and duration against victims of various ages. The Crown has also included sentencing decisions involving sexual assaults against adult victims. No case is identical, and it would be improper to try to parse out precisely what aggravating and mitigating factors in each case led to the particular sentence. What is clear from the cases is that mid to high single-digit penitentiary sentences are no longer reserved only for offenders who commit regular and persistent abuse over a substantial period.

[37] For example, in *R. v. A.W.* 2023 ONSC 4073, the court imposed an eight-year sentence on an offender for two instances of historical anal intercourse. The offender was the victim's great-great-uncle who would babysit the victim. Similarly, in *R. v. J.D.W.*, 2021 MBCA 49, the Manitoba Court of Appeal upheld a nine-year sentence for an offender for one act of anal penetration. The offender was the victim's biological father. Finally, in *R. v. R.V.*, 2022 ONSC 2332, the court sentenced the offender to eight years' imprisonment for sexually assaulting the

victim on three occasions. The offender was family friend and the assaults involve vaginal intercourse or attempted intercourse on three occasions.

[38] To be sure, there are also cases that support the offender's position of a five-year sentence. In *R v. G.S.*, 2022 ONSC 120, the court imposed a sentence of five years and six months imprisonment on an offender for three incidents of sexual assault against a victim who was between 13 and 16 years of age. The offence involved a breach of trust because the offender was the victim's work supervisor. In *R. v. Audet*, 2020 ONSC 5039, the court imposed a four-year sentence on an offender for one instance of forced intercourse against a 15-year-old victim. Finally, in *R. v. R.F.*, 2020 ONSC 7931, the court sentenced the offender to five years' imprisonment for one incident of forced vaginal intercourse against a victim who was between seven and nine years of age. The offender was the victim's uncle and had a prior conviction for sexual assault.

[39] In the end, fixing a sentence is not a mathematical exercise. It is an exercise of discretion based on the range of sentences set out in the case law. In my view, the sentence of five years requested by the defence is too low, considering the circumstances of this case, and the increased sentences suggested by the Supreme Court in *Friesen*. Denunciation and general deterrence remain the paramount sentencing principles here. The offender's crimes involved a significant breach of trust. He abused his stepdaughter. The assaults were intrusive. And the assaults had a very serious impact on SLF, an impact that she still carries with her to this day as an adult. The gravity of these offences, and the offender's blameworthiness if high. The mid to high single-digit sentence suggested by the Supreme Court is appropriate in this case, and a sentence that is higher than the equivalent sentence for an adult victim must be imposed. A fit sentence in this case is one of seven years' imprisonment. I should also add that I was not asked to subtract any credit for pre-sentence custody from the ultimate sentence, so there is no difference between the effective sentence and the actual sentence imposed today.

5. Sentence and ancillary orders

[40] The offender is sentenced to seven years' imprisonment in the penitentiary.

[41] I am also imposing the following ancillary orders:

1) An order under s. 490.012(1) of the *Criminal Code* requiring him to comply with the *Sex Offender Information Registration Act* for 20 years.

2) An order under s. 109(2) of the *Criminal Code* prohibiting him from possessing the items list in paragraph (a) for 10 years from his release from imprisonment, and paragraph (b) for life.

3) An order under s. 161 of the *Criminal Code* prohibiting him from the following for 5 years from the date the offender is released from imprisonment for the offence as defined in s. 161(2)(b):

    i. Being within 100 metres of anywhere SLF lives, works, goes to school, or frequents, or anywhere the offender knows SLF to be.

4) An order under s. 487.051 of the *Criminal Code* authorizing the taking of a bodily sample, reasonably required for the purpose of forensic DNA analysis, for inclusion in the National DNA Databank.

5) An order under s. 743.21 of the *Criminal Code* prohibiting the offender from communicating, directly or indirectly, with SLF while he is serving his sentence.

[42] There is no victim fine surcharge payable as the offence was committed before s. 737 of the *Criminal Code* came into force.

Rahman, J.

Released: March 25, 2024

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