In the Provincial Court of Alberta

Citation: R. v. D.J.D., 2009 ABPC 216

Date:20090716
Docket: 090058017P1-01-002
Registry: Lethbridge

Between:

Her Majesty the Queen

- and -

D.J.D.

Restriction on Publication: By Court Order, information that may identify the complainant, and the accused described in this judgment as D.J.D.may not be published, broadcast, or transmitted in any manner. There is also a ban on publishing the contents of the application for the publication ban or the evidence, information or submissions at the hearing of the application. See the *Criminal Code*, s. 486.5.

Sentencing Judgment of the Honourable Judge J.N. LeGrandeur

Factual Background

[1] The accused, D.J.D., was charged before this Court with sexually assaulting his then wife, the complainant, on two occasions which in fact occurred on the same day, that is the 18th day of June, 2007 and one further occasion on the 25th day of December, 2007. The Court acquitted him on the first two counts of the Information and convicted him of sexually assaulting the complainant on the 25th day of December, 2007.

[2] On the night of December 25th, an act of anal intercourse was imposed by D.J.D. on the complainant in circumstances where she had previously indicated to him that she did not wish to engage in such form of sexual activity which he had acknowledged and undertaken not to indulge in thereafter. This discussion occurred approximately mid-August of 2007 and her position in that regard to which he had agreed, had not changed as of December 25th, 2007. D.J.D. took no steps to ascertain if her position had changed nor was there any evidence of any words, actions or

conduct on her part during that period from mid-August through to December 25th that could lend an air of reality to the issue of mistake with respect to consent. He proceeded with the act in reckless disregard of her previously stated position and his prior agreement in that regard.

[3] On the day in question the complainant, the accused, their two children, as well as a friend of the accused's were all at their residence celebrating Christmas Day. The complainant prepared Christmas dinner and while doing so had some champagne and orange juice. The accused and his friend consumed alcohol most of the day and the adults participated in the smoking of marihuana, although there is no evidence as to precisely how many joints were partaken of. The complainant described D.J.D., over the course of the day, as becoming more rude and obnoxious towards her and that at 11:00 p.m. she decided to go down to bed. She stated that she was sleeping in the nude which is the normal course of events for her in bed as her husband has demanded it during the course of the marriage. Sometime after she retired to her bed he came downstairs and engaged in anal intercourse. What was said between the two at that time is unknown as I concluded that the complainant's testimony with respect to any discussion between the parties at this time was not credible. It is clear that if there was any discussions, they did not include D.J.D. getting her consent to undertake this form of sexual contact. The accused when he had completed the act, got dressed and went back upstairs with his friend who was still in the residence. She stated at trial that her husband had his arm around her neck while the intercourse occurred and that this act scared her, given his size and strength and previous instances of physical actions on his part against her, however, her evidence in that regard I found as well to be unreliable given that in two previous statements, one of which was a recorded, sworn statement given in January of 2009, she did not mention anything about his arm being around her neck.

[4] The complainant and D.J.D. continued to co-habitat as husband and wife after this event and no evidence was presented as to when they actually separated, nor the reason for that separation. No complaint with respect to this matter was made until the Fall of 2008.

[5] The parties were married in 1988 after having a prior relationship of approximately four years. They have two children, a son and daughter, respectively born in 1987 and 1993. The complainant did not file a Victim Impact Statement and there is no evidence before the Court that the complainant has suffered any ongoing psychological or emotional trauma as a consequence of this assault. The accused has previously been convicted of three acts of assault against his wife; assault with a weapon (s.267(1)(a)) and uttering threats (s.264.1(1)(a)), which convictions were entered in March of 1996 and for which he received an eighteen month suspended sentence and probation, and a further count of assault in October of 1998, for which he received a suspended sentence and probation for three years.

[6] During the course of the trial there was some evidence describing his demeaning and rude treatment of her and she attested to some instances of past physical violence which are confirmed by the convictions referred to aforesaid. Other than this issue of unwanted anal intercourse culminating in this particular charge, the sexual life of the parties was extremely active, by her

indication as many as three times per day on a regular basis and in July of 2007, she had described their sex life as "fantastic".

Crown Submission

[7] The Crown submits that the accused should receive a sentence of four years incarceration, noting that this was an act perpetrated upon this offender's spouse and therefore an abuse of spousal trust, which is an aggravating factor. The Crown also points out that the offender knew that the complainant did not wish to participate in such form of sexual activity and proceeded in any event of that knowledge without regard for her person or her wishes. The Crown asserts that she suffered physical injury as a result of the sexual assault, such injury having to do with control of her bowel muscles. The Crown also asserts that the Court must consider his previous physical assaults of his wife and that denunciation and deterrence are the primary sentencing factors for consideration in this case. In effect, the Crown is asserting that given these factors, a sentence one year greater than the three year starting point sentence in *R. v. Sandercock* 1985, 22 C.C.C. (3d) 79, (Alta. C.A.) is appropriate and that in any event of the applicability of *Sandercock* the "principled rationale" approach as discussed in *R. v. Law* 2007 ABCA 2003 at para.61-62 would also dictate such a sentence of four years.

Defence Position

[8] Defence counsel asserts that a suitable range of one year to eighteen months is appropriate for this individual in this set of circumstances. He points out that there is no evidence of emotional or psychological trauma or impact and that there is no evidence of any medical issue that can be said to have occurred as a result of this single act of sexual assault. In this circumstance he submits a sentence in that range more than adequately addresses denunciation and deterrence, both general and specific.

Analysis

Sentencing Objectives and Purposes

[9] The fundamental purpose of sentencing and the relevant sentencing objectives are set out in s.718 of the *Criminal Code*:

> The fundamental purpose of sentencing is to contribute...to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> a. To denounce unlawful conduct;
> b. To deter the offender and other persons from committing crimes;
> c. To separate offenders from society, where necessary;
> d. To assist in rehabilitating offenders;
> e. To provide reparation for harm done to victims or to the community; and

f. To promote a sense of responsibility to offenders, and acknowledgement of harm done to the victims and to the community.

[10] The fundamental principle of sentencing, indeed one that has been given constitutional status, is set out in s.718(1) of the *Criminal Code*:

> A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[11] In *Re: s.94(2), of the Motor Vehicle Act* (1985), 23 C.C.C. (3d), 289 (S.C.C.) at 325, Mr. Justice Lamer (as he then was), discussed the principle of proportionality and stated as follows:

> It is basic to any theory of punishment that the sentence imposed bear some relationship to the offence; it must be a "fit" sentence, proportionate to the seriousness of the offence. Only if this is so can the public be satisfied that the offender "deserved" the punishment he received and feel a confidence in the fairness and rationality of the system. This is not to say that there is an inherently appropriate relationship between a particular offence and its punishment, but rather that there is a scale of offences and punishments into which the particular offence and punishment must fit. Obviously, this cannot be done with mathematical precision and many different factors will go into the assessment of the seriousness of a particular offence for purposes of determining the appropriate punishment, but it does provide a workable convenient framework for sentencing. Indeed, judges in exercising their discretion have been employing such a scale for over 100 years.

[12] In *R. v. M.(C.A.)* (1996), 105 C.C.C. (3d) 327, Lamer C.J.C. stated:

> It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime... . Sentencing is inherently an individualized process, and the search for a single appropriate sentence of a similar offender and a similar crime will frequently be a fruitless exercise of academic extraction.

[13] In *R. v. Proulx* (2000), 140 C.C.C. (3d) 449 at paragraph 82 Lamer C.J.C. stated:

> this court has held on a number of occasions that sentencing is an individualized process in which the trial judge has considerable discretion in fashioning a fit sentence. The rational behind this approach stems from the principle of proportionality, the fundamental principle of sentencing, which provides that a sentence must be proportional to the gravity of the offence and the gravity of the responsibility of the offender. Proportionality requires examination of the specific circumstances of both the offender and the offence so that the "punishment fits the crime". As a by-product of such an individualized approach, there will inevitably be a variation in sentences imposed for particular crimes.

[14] The *Criminal Code* also provides that a sentence imposed should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. It is to be noted that proportionality is the only mandatory principle of sentencing. The other sentencing principles, of which similar sentences for similar crimes is one, are factors to be taken into consideration but are not mandatory and have no specific weight in the sentencing process. (See *R. v. Brady* (1998), 121 C.C.C. (3d), 504 at p.517).

[15] In *R. v. T.L.B.,* 2007 ABCA 61, Fraser, C.J.A., in paragraph 17, describes the process as follows:

> ...What is appropriate or reasonable in the circumstances must of course be considered in the context of all relevant considerations. That will include not only the personal circumstances of the offender and the degree of responsibility of the offender for the offence, but also the gravity of the offence itself, and in that context the circumstance of the community in which the offence occurs.

[16] Each sentencing is an individual process whereby the Court seeks to impose a sentence that addresses the two elements of proportionality, that is the circumstances of the offence and the circumstances of the offender and thereby reach a sentence that fits not only the offence but also the offender. The sentencing judge must fashion a disposition from among the limited options available which take both sides of the proportionality inquiry into account (See: *R. v. Hamilton*, [2004] O.J. No. 3252 at para. 93). This proportionality is achieved by a "complex calculus" that is informed by the normative principles set out in the *Criminal Code* in s.718 and s.718.2 (See *R. v. L.M.*, [2008] S.C.J. No. 31 at paras. 17, 21, 22).

[17] In *R. v. L.M.*, the majority of the Supreme Court of Canada, at paragraph 22, adopted the following commentary on the sentencing process:

> [TRANSLATION] [The] objectives of denunciation, deterrence, separation from society, rehabilitation, reparations and retribution are all quite general, and there is no precise standard that can be applied to rank them. At first, this is desirable, since the sentencing process is fundamentally an individualized one in that sentences will necessarily vary from one offender to another in light of the particular emphasis that will be placed on one or the other of the objectives in order to arrive at the appropriate sentence, having regard to all the circumstances, in each case. [Dadour at p.17]

[18] In *Hamilton*, at paragraph 85, the Ontario Court of Appeal described the sentencing process as being a, "delicate case - specific exercise, where there is "seldom only one fit sentence" and that "fitness usually describes a range of appropriate sentencing responses". The Court later stated that there are a "myriad of factors to be balanced" and that "the fixing of a fit sentence is the product of the combined effects of the circumstances of this specific offence with unique attributes of the specific offender".

[19] In *Hamilton* the Court emphasized at paragraph 93 that:

> The sentencing judge must fashion a disposition from among the limited options available which take both sides of the proportionality inquiry into account.

[20] The purpose of sentencing as set out in the Criminal Code is to impose "just sanctions". A "just sanction" is one that is deserved. A fit sentence in that context is one that is commensurate with the gravity of the offence and the moral blameworthiness of the offender. (*R.v.M(CA)* (1996), 1 S.C.R. 500) In *R.v.Proulx* 2001 S.C.R. 61, Chief Justice Lamer repeated that principle stating:

> Proportionality requires an examination of the specific circumstances of both the offender and the offence so that the punishment fits the crime. Disparity in sentencing for similar offences is a natural consequence of the fact the sentence must fit not only the offence but also the offender.

Proportionality insures that an individual is not sacrificed "for sake of the common good". (*R.v.Priest* (1996) 110 C.C.C. (3d) 289 at 298 (Ont.C.A.))

[21] In this case, the Crown seeks a sentence of imprisonment of four years. When asked if this reflected a sentence within a range of somewhere from three to five years, the Crown, as I understand her, did not necessarily approach it in that fashion, but rather while mindful of *R.v.Sandercock (supra)*, asserts, that given the nature of the charge, the fact that the parties were husband and wife at the time, the alleged emotional and psychological impact on the victim, as well as the alleged physical impact upon the victim, and also considering the fact that he has a past record of violence against his then spouse going back some ten years or more and that denunciation and deterrence are the primary factors in sentencing in this case, a sentence of four years is appropriate. In fact this submission seems to use the *Sandercock* starting point and add on for the aforementioned factors, thus arriving at a sentence of four years.

[22] A fit sentence is one that falls within the appropriate range. Fixing the range requires the consideration of the principles of sentencing. A range is not that which is represented by the minimum and maximum possibilities for any particular offence, but is that fixed by the context of the offence, the manner in which it was committed and the circumstances of the offender. Bateman, J.A. discusses the issue of fixation of a range of sentence in *R.v.Cromwell* (2002) C.C.C. (3d) 310 N.S.C.A., at paras.22-27, culminating in the following statement:

> ...The actual punishment may vary on a continuum taking into account aggravating and mitigating factors, the remedial focus required for the particular offender and the need to protect the public. This variation creates the range.

[23] In Alberta and some other provincial jurisdictions the fixation of a range may require consideration of a guideline or even starting point sentence. In Alberta, a starting point sentence of three years was fixed by the Court of Appeal in *Sandercock*, for what is categorized as a major

sexual assault premised upon an individual with previous good character and no criminal record. It is, I believe, accepted in Alberta at this point in time that such a starting point is only a guide for consideration in the context of the Court deciding what is a fit and fair sentence for the individual offender before the Court having regard to the individual nature of the offence before the Court. (See: *R.v.Law*, 2007 ABCA 203 para.61 and *R.v.Skwarchuk*, 2007 ABCA 195 at para.10) More recently decisions of the Court of Appeal in *R.v.Jefferson*, 2008 ABCA 365 and *R.v.White*, 2008 ABCA 328 have to some extent questioned the guidelines/starting point sentences as applied to some offences by raising concerns about the overall principle and the potential undermining of judicial discretion thereby as well as the issue of how such guideline ranges are fixed and the delineation of what factors are considered in reaching the guideline. I am given to understand by the Crown that these issues are now up for re-consideration in the case *R.v.Arcand* which is scheduled to be heard on October 14th, 2009.

[24] In any event of the applicability or non-applicability of starting point and/or guideline sentences, the fundamental principle is one recognizing proportionality and imposing a sentence that fits the offence, its circumstances and the circumstances of the offender.

[25] The Supreme Court of Canada has defined sentencing as “profoundly contextual” in nature *(R. v. L.M.*, supra, para.15). Each sentencing requires an individual case by case assessment of the offender and the circumstances of the offence, having regard to the context in which the offence occurred and the context in which the offender acted. Just as it would be wrong to not impose a maximum sentence for a heinous crime on the sole basis that there could be a worse offender who has committed a worse offence *(R. v. L.M.)* so to would it be an error to ignore the individual nature and circumstances of a particular offence and offender, just to apply a guideline or to achieve some sort of parity based upon a guideline. Sexual offences are serious but they too have a context and that cannot be ignored in fixing an appropriate sentence.

[26] In my view for the reasons expressed hereinafter the range suggested by defence counsel of one year to eighteen months is an appropriate range in this case. The Quebec Court of Appeal in *R. v. L.(J.J.)* (1998) 126 C.C.C. (3d) 325 and the British Columbia Supreme Court in *R. v. D.S.B.* [2008] B.C.J. No. 2227, similarly set out a number of factors that are appropriate considerations for the Court in sentencing in sexual assault cases. Without listing all of the factors articulated in both those judgments, some of those factors are a useful vehicle for discussion of this particular issue.

The Nature and Gravity of the Offence

[27] In this case as I have found previously, the offender completed an act of anal intercourse upon his wife in circumstances when he had previous knowledge that she did not consent to such a sexual act. His culpability was found by this Court on the basis of his wife’s previous indication to him some months before, that she did not wish to endure anal intercourse and his acceptance and acknowledgment of her wishes. This case involves only one act of sexual assault as I have described aforesaid. The parties were cohabiting as husband and wife at the time and continued thereafter to do so for a further period. They are now divorced, however, the Court

was provided with no evidence as to what led to their separation and ultimate divorce, or when the separation in fact occurred.

Other Circumstances Surrounding the Commission of the Offence

[28] Other than the inherent violence that is associated with the undertaking of an non-consensual sexual act, the evidence does not disclose and I cannot infer that any other form of violence was associated with the act under consideration. There was as I concluded, no reliable evidence as to what if anything was said at the time of the act by either of the parties. There is no reliable evidence of threats, violence, psychological threats or manipulation before this Court.

[29] The offender came to their bedroom under the influence of alcohol and undertook the act. His culpability was founded upon his doing of the sexual act knowing that she did not consent, based upon previous discussion and agreement, his culpability was not determined on the basis that he undertook this act in midst of her objection on that particular day.

[30] There is no evidence that he used physical power to force her to allow the act or restrain her from trying to prevent it. The Crown asserts that she was afraid because he had his arm around her neck while he completed the act. I concluded for the reasons expressed in my judgment that her testimony was not reliable in this regard and I did not accept that his arm was around her neck. This was an uninvited, non-consensual act of anal intercourse which she endured without resistence and without violence on his part insofar as the evidences discloses. That is not a mitigating factor however it does give context to the nature of this offence.

Impact of Offence on Offender - Physically and Psychologically

[31] The Crown asserts that the complainant has been impacted psychologically and physically by this offence. With regard to the issue of psychological and emotional injury, the Court has no evidence before it of any ongoing or lasting emotional or psychological injury. No victim impact statement was filed nor was any medical evidence presented in that regard. I accept that she would have been initially impacted at the time given the previous discussion between the parties and the offender's agreement not to pursue such sexual activity. Certainly it would have been hurtful to her emotionally for this to have happened in that circumstance and the Court may take note of the fact that such a circumstance could indeed lead to some real despair on her part as to her future. I can however go no further than that; I cannot presume psychological harm *(R. v. McDonnell* (1997) 1 S.C.R. 948 at p.977, S.C.C.).

[32] With respect to physical impact, the complainant referred briefly in her testimony to be suffering some physical consequence in the nature of injury to her bowel muscles as a result of anal intercourse. No medical evidence was presented with respect to this alleged impact as to whether this could occur as a consequence of one sexual act. Defence counsel argues that if the problem exists, emphasizing "if", that it cannot be said that it was caused by the one act for which the accused has been convicted. Although the complainant's narrative speaks of other

anal intercourse at other times including the two instances in June of 2007, which formed the basis of the charges before this Court but which charges were dismissed, I cannot conclude that other instances of anal intercourse, if and when they occurred, were culpable and therefore the physical problem asserted, if it existed, is an aggravating factor. To do so would be to consider past sexual conduct which is not before the Court and which has not been proven to be non-consensual.

[33] I cannot on the evidence before me, conclude that there is any ongoing psychological or emotional impact as a consequence of this offence, nor any physical consequence as a result of this offence.

Breach of Trust

[34] This was a spousal relationship and the accused by undertaking this act without the complainant's consent, breached that trust that domestic partners are entitled to expect from each other. In this case not only did he breach the expected trust that is intended to acknowledge her personal dignity and the dignity of their relationship but, he breached the trust after having agreed he would not undertake such a sexual act again.

Previous Convictions and Discredible Conduct

[35] The accused has three prior convictions against his former wife, all occurring during the course of their marriage. Two convictions for assault, one with a weapon, I believe from her testimony that the weapon was a belt, and one conviction for assault along with a conviction for threatening her. These offences go back to 1996 and 1998; some ten or more years ago. The accused has no previous record for sexual assault with respect to his former wife or upon anyone else. Although not specifically the same offence, certainly whether it be sexual or not, sexual assault like physical assault involving a spouse is a matter of domestic violence and therefore is an appropriate matter for consideration on this sentencing.

[36] The Crown also asserts that other discredible conduct on his part over the course of the marriage including the day in question including verbal abuse and other demeaning conduct, are aggravating factors as well.

[37] It seems to me that both these factors go to what a fit sentence is not in a sense of being aggravating factors, but in the sense of the assessment of his character and whether his character is such as to mitigate in any fashion the offence before the Court. If his character is not such as to offer mitigation, it does not mean he gets a greater sentence than the offence demands, he just does not get the benefit of any measure of leniency as a result of good character. To employ a past record or discredible conduct otherwise is to sentence him again for past offences or sentence him for conduct which is not legally culpable, nor which has been proven beyond a reasonable doubt. Fixing a sentence may require the Court to consider a past record in the sense that an appropriate sentence may include an aspect of specific deterrence that an offender with no

previous record may not be subject to. That however is not sentencing again for the past offence, but rather determining a fit sentence for this particular offence and this particular offender.

[38] In this case it cannot be said that the accused's character as demonstrated by his past record, although ten to twelve years old and other discredible conduct in the nature of verbal abuse and demeaning conduct, offers much for him in the nature of mitigation. He can expect to receive that which is fit for the offence with little or no benefit of leniency based upon good character (*R. v. Hastings* 36 Alta.L.R. (2d) 193). He is not however subject to a greater sentence simply because he has been a bad husband.

[39] Again, in the matter of context, one may note that his past acts and discredible conduct towards her in their relationship did not include a sexual context. According to her they were very active and energetic when it came to sex and there is no suggestion that sex was ever used to hurt or demean the complainant. That is not a mitigating factor but it does inform the context of this offence having regard to the parties involved.

[40] In summary this case involves an unwanted sexual act which demonstrates an interference with the complainant's physical integrity. It also demonstrates the imposition by the offender of his will upon the victim and his betrayal and disregard of her trust in him as her marital partner and also his disregard of his undertaking not to engage in such acts with her. It was an act unaccompanied by actual violence or threat of violence. It was the nature of the act that is not wanted by the victim, not the sexual relationship.

[41] It is of course impossible to find cases that exhibit exactly the same circumstances with respect to either of the offence or the offender. However, case law may assist to some extent in defining a range. In *R. v. M.I.P.* [1998] N.B.J. No. 424 the accused was convicted of sexually assaulting his wife. He used force to achieve that end in circumstances when the parties were not getting along and their marriage was in trouble. He had no prior record however it appears he had been abusive in the past, although without conviction. No weapon was used and no injury or physical harm was caused to the complainant. This was the accused's first offence. The Court imposed a conditional sentence of two years less a day with stringent conditions.

[42] In *R. v. R.H.* [1994] A.J. No. 124, the Alberta Court of Appeal increased a sentence from six months to fifteen months. The accused sexually assaulted his common-law spouse by forced sexual intercourse. He did not injure her but had a history of abuse in the relationship so his past character did not assist his cause. The Court felt that eighteen months was the appropriate sentence but imposed fifteen months, recognizing an expectation given the six months original sentence.

[43] In *R. v. Louis* [1993] B.C.T. No. 2812, the British Columbia Court of Appeal increased a domestic sexual assault sentence from one day plus probation for eighteen months to two years less a day recognizing seven months in custody. The accused had previously assaulted the complainant on two occasions and their history was a stormy one. The parties had separated and the complainant had obtained a restraining order from the Court and on the day in question the

offender entered the matrimonial home at a time when the wife and the three children were still in the home, an argument ensued and there was pushing and shoving. The offender forced his wife into the bedroom and at one point in time locked the door and thereafter manipulated her into submitting to sexual intercourse, despite her using a number of tactics and ploys including the children, to try and get rid of him. The Court concluded that the accused forced himself upon her in order to regain his standing with her. The Court also noted the necessity of protecting women who are in the course of disengaging themselves from a violent spouse. The Court was also concerned about other women and the accused in the future. It was concluded to be a cruel assertion of dominance over a victim and two years was imposed, recognizing seven months previous custody.

[44] In *R. v. O.F.B.,* 2006 ABCA 207, the Alberta Court of Appeal increased a sentence from two years to five years for three counts of domestic sexual assault, two of which occurred in January of 2003 and the last of which occurred in March of 2003.

[45] The Court found that the accused had manipulated his way into close quarters with the complainant using the need for financial and emotional support as well as their child as a means of doing so. He forced the complainant to have sexual intercourse on two occasions and to submit to sexual activity on the third occasion. The aggravating fact of their domestic partnership was present and also the fact that she had an ongoing dependency upon him. The accused also had a prior conviction for domestic sexual assault. The Court imposed a global sentence of five years less one year credit for time in custody.

[46] These cases are all different, but nonetheless gives some context against which to consider an appropriate range of sentencing in this particular case.

[47] In *MPI*, In the case involving the conditional sentence order, which of course is not available now, there was evidence of some actual force being used. In *R.H.* there was force used over and above the act itself. That resulted in fifteen months. In *T.V.G.* it was forced intercourse in the classic “rape” context. He got 32 months. In *O.F.B.* three acts of sexual assault, two forced and one by submission with previous record for domestic sexual assault and ongoing dependency, resulted in a five year global sentence. All of these cases involve offences which have some form of force being applied over and above the act itself. There is some distinction to be made between an unwanted sexual act without accompanied violence or threat and one accompanied by violence or threat, all other things being equal, the former is somewhat less serious than the latter.

[48] Given all of the facts I have noted and the context of the offence as I have discussed it and having regard to the cases that I have referred to, while recognizing the need for denunciation and deterrence both specific and general and the aggravating aspect of this case in the sense of it being a sexual assault in a domestic circumstance, I am satisfied that for this offence and this offender that a sentence of fifteen (15) months followed by probation for a period of one (1) year is a fit and just sentence.

[49] I invite comments from the Crown as to probationary conditions.

Heard on the 10th day of July, 2009.

Dated at the City of Lethbridge, Alberta this 16th day of July, 2009.

J.N. LeGrandeur
A Judge of the Provincial Court of Alberta

Appearances:

Erin Olsen
For the Crown

David Cavilla
For the Accused