

## WARNING

The President of the panel hearing this appeal directs that the following should be attached to the file:

An order restricting publication in this proceeding under ss. 486.4(1), (2), (2.1), (2.2), (3) or (4) or 486.6(1) or (2) of the *Criminal Code* shall continue. These sections of *the Criminal Code* provide:

486.4(1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences;

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read at any time before the day on which this subparagraph comes into force, if the conduct alleged involves a violation of the complainant's sexual integrity and that conduct would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(iii) REPEALED: S.C. 2014, c. 25, s. 22(2), effective December 6, 2014 (Act, s. 49).

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

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

(b) on application of the victim or the prosecutor, make the order.

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community. 2005, c. 32, s. 15; 2005, c. 43, s. 8(3)(b); 2010, c. 3, s. 5; 2012, c. 1, s. 29; 2014, c. 25, ss. 22,48; 2015, c. 13, s. 18..

486.6(1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

(2) For greater certainty, an order referred to in subsection (1) applies to prohibit, in relation to proceedings taken against any person who fails to comply with the order, the publication in any document or the broadcasting or transmission in any way of information that could identify a victim, witness or justice system participant whose identity is protected by the order. 2005, c. 32, s. 15.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. M.R., 2017 ONCA 985

DATE: 20171215

DOCKET: C62619

Simmons, Lauwers and Pardu JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

M. R.

Appellant

Mark Halfyard, for the appellant

Andrew Hotke, for the respondent

Heard: December 12, 2017

On appeal from the judgment of Justice Brian P. O'Marra of the Superior Court of Justice, dated June 29, 2016, dismissing the appeal from sentence entered on December 4, 2014, by Justice Marvin Zuker of the Ontario Court of Justice.

APPEAL BOOK ENDORSEMENT

[1] In our view, leave to appeal should be granted and the appeal allowed. Like *R. v. McDonald*, [2013] O.J. No. 6336 (C.A.), this was not a case where the summary conviction appeal court judge should have approached the sentence appeal based on deference. The conviction appeal was allowed in relation to two charges of assault against the appellant's child, which were the sole focus of the sentencing submissions and the sentencing judge's reasons in the trial court. The

sentencing judge gave no reasons in relation to the assault police charge for the purpose of resisting arrest. He simply imposed the same global concurrent sentence he had imposed in relation to the other two offences. Deference was not owed in these circumstances. The summary conviction appeal court judge erred in principle in approaching sentencing on the basis that it was.

[2] We accept the appellant's submission that a conditional discharge is not contrary to the public interest and is in the appellant's interest. The circumstances of the appellant's arrest were humiliating and the appellant suffered some injuries and served a couple of days in custody. She has now served her entire probationary period without incident. The police officers suffered no injuries and filed no victim impact statement. We are satisfied that a conditional discharge with a three year probationary period had a sufficient denunciatory and deterrent effect in the circumstances.

[3] As for the appellant's<sup>1</sup> interest, the appellant is a 40 plus year old first offender. Her employment goals are such that a conditional discharge is in her interest.

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<sup>1</sup> Amendment made December 14, 2017.

[4] The appeal is allowed. The suspended sentence is set aside, a conditional discharge substituted on the same terms as the suspended sentence, the probationary period<sup>2</sup> of which, as we have said, has now been served in full.

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<sup>2</sup> Amendment made December 14, 2017.