

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2005 SKQB 461**

Date: **20051028**
Docket: Q.B.C. No. 30/2004
Judicial Centre: Regina

2005 SKQB 461 (CanLII)

BETWEEN:

HER MAJESTY THE QUEEN

- and -

PEDRO SURTIDA ALDEA

Counsel:

William (Bill) T. Jennings
John M. Williams and E. Scott Hopley

for the Crown
for the Pedro Surtida Aldea

ORAL SENTENCING
October 28, 2005

ZARZECZNY J.

THE CHARGES

[1] The accused Pedro Surtida Aldea pled guilty to the following charges contained in an Indictment filed by the Crown dated October 28, 2004:

1. **THAT HE**, the said **Pedro Surtida Aldea** between the 1st day of December, A.D. 2003 and the 30th day of April, A.D. 2004 at or near Regina in the Province of Saskatchewan did on several occasions obtain for consideration the sexual services of ["M.Y."], a person under the age of eighteen years, contrary to Section 212(4) of the *Criminal Code*.

2. **THAT HE**, the said **Pedro Surtida Aldea** between the 1st day of January, A.D. 2004 and the 30th day of April, A.D. 2004 at or near Regina in the Province of Saskatchewan did on several occasions obtain for consideration the sexual services of ["A.C."], a person under the age of eighteen years, contrary to Section 212(4) of the *Criminal Code*.

SENTENCING PURPOSES AND PRINCIPLES

[2] The *Criminal Code of Canada*, and in particular s. 718 of the *Code*, sets out the fundamental purposes of sentencing. These include maintaining respect for the law and a just, peaceful and safe society. The objectives of sentencing are also set out in this section of the *Code* and they include denunciation of unlawful conduct, deterrence of an offender or other persons from committing offences, separation of offenders from society when necessary, assisting in the rehabilitation of offenders and finally the promotion of a sense of responsibility in offenders and an acknowledgment of the harm done to victims and to the community.

[3] A fundamental principle of sentencing is set out by 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.

[4] Section 718.2 of the *Criminal Code* mandates that a sentencing court must take into consideration relevant aggravating or mitigating circumstances relating to the offence or the offender in considering whether or not a sentence should be increased or reduced. This section advances the parity principle that similar sentences should be imposed on similar offenders for similar offences committed in similar circumstances. An offender should not be deprived of liberty

if less restrictive sanctions are appropriate in the circumstances. All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders.

[5] Finally, s. 742.1 of the *Criminal Code* provides that where a court imposes a sentence of imprisonment of less than two years and it is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purposes and principles of sentencing previously referred to, the court may order that the offender serve the sentence in the community subject to conditions that the court imposes.

[6] In the case of Mr. Aldea, both the Crown and the defence accept that the circumstances of this offence together with those of this offender warrant a sentence of less than two years and that this is an appropriate case for the sentence to be served conditionally in the community. To this extent, the Crown and the defence have made a joint submission with respect to this Court's sentencing of Mr. Aldea. This Court accepts this joint submission.

[7] The Crown and defence differ only with respect to the length of the sentence and less adamantly, the conditions to be imposed. These matters are left for the Court's determination.

CIRCUMSTANCES OF THE OFFENCES

[8] The agreed upon facts are that both the victims M.Y. and A.C. were underage sex-trade workers on the streets of the City of Regina. At the time of these charged occurrences M.Y. was 17 and A.C. 16 years of age. Pedro Aldea picked up each of these young women from the streets they were working to engage their services as prostitutes in exchange for the payment of money. In the case of M.Y., there were four separate occasions when he paid for oral sex and intercourse with her. In the case of A.C. the same sexual services were purchased and performed on only one occasion.

[9] At the time of the commission of these offences Pedro Aldea was 67 years of age and a Roman Catholic priest serving in the City of Regina diocese at the Sacred Heart Parish. The church is located in the vicinity of that area of Regina where prostitutes are known to work. Mr. Aldea was resident in the Sacred Heart Rectory.

[10] After picking up M.Y. and A.C. Mr. Aldea took them to the rectory of the church where he lived and had a bedroom. On one occasion with each of M.Y. and A.C., in addition to oral sex and sexual intercourse, Mr. Aldea took pornographic photographs of these two individuals. The Crown accepts these were for his own personal use.

[11] Mr. Aldea took the films containing the photographs to a local retailer for development. The store employee who developed the films immediately reported the matter to the police and Mr. Aldea was arrested when he returned to pick up the photographs from this location.

[12] Although one of the victims, at the preliminary inquiry, testified that her age, being 17, came up in conversation between she and Mr. Aldea, nevertheless defence counsel advises the Court, and Crown counsel accepts, that this is a case where Mr. Aldea did not ask nor did he ensure that these two individuals were over the age of 18 as the law now clearly requires. Therefore the accused is guilty as charged in law and in fact whether or not such a discussion ever took place.

[13] The kinds of sexual activity, including the photos taken of the victims, that took place, the frequency of these occurrences, the deliberate nature of Mr. Aldea's actions and the fact that they took place over a period of time with more than one victim, are aggravating circumstances that the Court has taken into account in this sentencing.

[14] Counsel for the Crown fairly pointed out additional important facts with respect to the circumstances of these offences for the Court to consider. At no time did Mr. Aldea use or take advantage of the fact that he was a Roman Catholic priest to influence, intimidate or otherwise persuade these underage individuals to engage in the sexual activity which they did for money. Both of these victims acknowledge that they did not even know, nor were they aware of the fact, that he was a priest. This case did not involve use of threats or intimidation. The sexual activities did not involve the use of force, cruelty or a breach of a trust relationship that had previously been established. Mr. Aldea and these individuals, except for the sexual activities charged, were strangers to one another and remain so after these events occurred. The absence of these

aggravating factors is significant to the sentence determined appropriate to the particular circumstances of these offences.

CIRCUMSTANCES OF THE OFFENDER

[15] Pedro Aldea is presently 68 years of age and was 67 when he committed the offences to which he has pled guilty. For 40 years, firstly in the Philippines and subsequently in Canada, Pedro Aldea was a Roman Catholic priest, a vocation from which he may now be retired. His ministry in the Philippines included work with young people, charities and the poor. He served as a parish priest in small and large parishes. Because he had relatives in Canada, he became interested in locating here which he did, with the consent and approval of his Philippine bishop and the church authorities in Canada. He located in Saskatchewan and served as a parish priest in the communities of Mankota, Val Marie, Ponteix, Shaunavon, Climax, Admiral, and Eastend to name a few. After serving in these and other rural communities in Saskatchewan, he was moved to the Archdiocese of Regina and assigned pastoral work at Sacred Heart Parish.

[16] In the course of his work as a priest in Saskatchewan, Mr. Aldea has made many friends and supporters. At the sentencing hearing, some 25 letters were filed with the Court from various individuals in various walks of life who have come to know and now support Mr. Aldea. Each of these letters and testimonials demonstrate the kind of individual that Mr. Aldea was when serving his community. Each provide valuable insights into the character and qualities he possesses.

[17] Professor Koh of the University of Regina writes:

I have known Fr. Pedro Aldea for over a dozen years and I have nothing but admiration and respect for him. He has been an excellent priest, generous to the poor, compassionate to the underprivileged, kind and friendly especially to fellow Filipinos, and true to the teachings and liturgy of the Church....”

He goes on to write, “[w]hat he has done recently is an aberration, a misstep in judgment, an incongruous act due to human weakness....”

[18] Daniel Ruest of Admiral, Saskatchewan, writes, “... Father Pedro was a model priest, and he was loved and respected by everyone in our parish....”

[19] Therese McDougall of Eastend, Saskatchewan, writes that in the four years she came to know Mr. Aldea, “... I have found him to be a very compassionate, understanding and caring person.”

[20] Joseph and Claire Zerr write that while he was the parish priest in Assiniboia, “... [h]e always represented himself as a very dedicated Priest for the people in the community.”

[21] Reverend Ken Koep, a Roman Catholic priest colleague of Mr. Aldea writes:

... I can attest to the enviable reputation he has enjoyed in the various parishes he has served up to this time. He has been generous and self-giving in his pastoral role. His fellow priests from the Philippines looked up to him as their mentor.

[22] Noel Delaquis, Bishop of Gravelbourg and Mr. Aldea's first supervising bishop had this to say about him:

... [D]uring all the years I have known him he exercised a remarkable ministry in different rural parishes of the southern part of Saskatchewan. He was well received by the people.... [H]e took on in a very positive and marvellous way the challenge of living and working in a different culture.... The people were very pleased with and appreciative of his ministry.

[23] These are only some of the many testimonials that were filed from laypersons and ministerial colleagues all to similar effect.

[24] Both the Pre-Sentence Report prepared for and filed with the Court together with a separate psychological assessment and report filed by the defence prepared by Dr. Arnold, a clinical psychologist, report that Mr. Aldea found assignment to a larger city parish like Sacred Heart in Regina, at his age, to present difficult challenges. Mr. Aldea found himself lonely and missing the close-knit nature of community which he had experienced for many years in the parishes to which he had been assigned in rural Saskatchewan. His feelings of isolation led to depression and these in turn led him to the offending behaviour which now finds him in Court having pled guilty to these charges.

[25] As a result he finds himself suspended from his priestly duties and his counsel advises the Court that it is most unlikely, if not certain, that he will ever be assigned to public priestly duties again. He has some small hope that he may be assigned to perform pastoral duties in a facility like a seniors' care home or other care facility. The Court was advised that he considers that he has disgraced

himself, broken his priestly vows and will have suffered personal consequences far worse than any sentence that could be imposed upon him by this Court.

[26] Mr. Aldea has no previous criminal record. His service to communities in both the Philippines and in Saskatchewan is exemplary. The Court accepts the circumstances of this accused as mitigating factors impacting upon the length of sentence to be imposed.

SENTENCING JUDGMENT

[27] Having reviewed the circumstances of the offences and those of Mr. Aldea and the aggravating and mitigating impact they have upon the sentence of the Court, I turn now to this Court's sentencing judgment.

[28] Society, through its government's enactment of s. 212(4) of the *Criminal Code* has sought to protect young persons, primarily women, from the predatory behaviours of persons seeking to have them prostitute themselves for money. It is illegal for anyone to procure the sexual services of a young person under 18 years of age for money. As many in society, including the courts, are aware many of these young people find themselves in desperate circumstances without family or financial support. Their desperation often leads them to the streets where they sell their bodies to survive. They are often physically and emotionally abused. This street life leads, in many cases, to drug and alcohol dependency and great risk of physical or permanent psychological harm. Often these young street people possess only the clothes on their back and, before they begin working the streets, their dignity and self-respect. Persons who buy

their sexual services for money rob these poor young people of even these last precious possessions. As defence counsel so aptly put it, these predators add more misery to the already miserable lives of these young people.

[29] If this case, and the publicity it has received, has any positive benefit at all, it is to stand as a warning to those who might take advantage of these young persons that this law was passed to protect. Society and the Courts will show “0” tolerance for those convicted of such offences. If convicted you will receive a criminal record and a sentence, whether served in prison or the community, that denounces such behaviour and deters others from committing such offences.

[30] Both Crown and defence counsel, in their review of the sentencing cases reported with respect to s. 212(4) have recognized that they emphasize the sentencing principles of general and specific deterrence, denunciation and the protection of the public. This Court adopts the application of these sentencing principles to the facts and circumstances of this case and this offender.

[31] In this connection the court was referred to and considered the cases of *R. v. Slater* 2004 SKQB 301; (2004), 252 Sask. R. 81 (Sask. Q.B.); *R. v. Goohsen* 2000 SKCA 37; [2000] S.J. No. 156 QL (Sask. C.A.); and *R. v. Johnston* (2000), 136 O.A.C. 190 (Ont. C.A.). In the *Slater* case a 50 year old male teacher with 19 previous criminal convictions was convicted of six counts of procuring sexual services of a person under the age of 18 for money. These instances took place over a four year period and involved victims from 14 to 17 years of age. The accused was sentenced to 18 months imprisonment because

of the nature, severity and frequency of the offences together with the ages of the individuals involved and the lengthy serious criminal record of the accused. Justice Laing of this Court in *Slater* reviewed a large number of sentencing decisions respecting s. 212(4) charges. These were also reviewed by this Court in the course of preparing this judgment.

[32] In the *Goohsen* case the accused, a public figure with no prior criminal convictions charged with one incident of committing an offence pursuant to s. 212(4) of the *Criminal Code* was sentenced to a conditional term of imprisonment of four months. An appeal against sentence was withdrawn. In the *Johnston* case the Court of Appeal for Ontario found a sentence totalling five months imprisonment for two charges against a lawyer convicted of obtaining and attempting to obtain the sexual services of a person under the age of 18 for money was not unfit and the accused's appeal was dismissed. The court in the *Slater* case reviewed many of the sentencing cases dealing with a charge of this nature. It is clear that there is a considerable range of sentences that have been imposed for such offences and that the nature of the sentence imposed depended upon the personal circumstances of the accused and the nature, severity and frequency of the offending behaviour.

[33] The Pre-Sentence Report prepared for the Court and the psychological assessment prepared by Dr. Arnold concluded that Mr. Aldea is at a low to moderate low risk to re-offend. Indeed, it is Dr. Arnold's opinion that no risk to re-offend exists for Mr. Aldea.

[34] Regrettably, but perhaps understandably, the Court does not have the benefit of victim impact statements from either M.Y. or A.C. even though both were asked if they wished to provide one. According to their evidence given at the Preliminary Hearing both sadly continue to live their street life.

[35] The Court has concluded that no benefit would be served, whether in the interests of protection of society or deterrence of Mr. Aldea or other members of the public from offending these provisions of the *Criminal Code*, by requiring Mr. Aldea to serve his sentence in prison. This Court is satisfied that he is at a very low risk to re-offend and therefore to put other young persons at risk. Conditions of a community based sentence can just as effectively achieve these objectives.

[36] Mr. Aldea has a stable living circumstance. As the testimonials filed with the Court demonstrate, he continues to have the friendship and support of many people who he has served in his vocation as a priest.

[37] The Crown argues that a sentence of one to two years less a day would be the appropriate length of sentence in this case and that it be served in the community, subject to strict conditions. The defence urges that a sentence of six months on each charge concurrent serves the general purposes and principles of sentencing I have previously reviewed and those of them emphasized in previous sentencing judgments of the courts in similar cases. A number of the conditions which were recommended in the Pre-Sentence Report and dealt with implicitly and in some cases explicitly in the report of Dr. Arnold, were also discussed by counsel during their sentencing submissions.

[38] As the Court has already expressed, these charges are serious. The social issues that prompted the Parliament of Canada to enact protections for young persons on the street are serious issues and they need to be taken seriously. The Court has taken into account the circumstances of this case and of Mr. Aldea. The Court has done so, at some length, in this sentencing judgment.

[39] In the whole of these circumstances, this Court has concluded that an appropriate sentence for each of the two offences charged to which the accused has pled guilty is a sentence of 12 months upon each charge, to be served concurrently. The sentence of the Court is to be served in the community, subject to the following conditions:

- (1) Mr. Aldea shall report immediately, in person, to the conditional sentence supervisor or his designate, at Regina Probation Services, 1942 Hamilton Street, 2nd Floor, Regina, Saskatchewan and once per week thereafter at times specified by the conditional sentence supervisor and/or his/her designate;
- (2) Mr. Aldea shall abide by the lawful instructions of the conditional sentence supervisor or his/her designate;
- (3) Mr. Aldea is ordered to participate in the Electronic Monitoring Program ("EMP") for a period of six months from the commencement of this conditional sentence and will abide by the rules and regulations of that program;

- (4) For the first three months of his conditional sentence Mr. Aldea is ordered confined to his residence Monday to Friday from 6:00 p.m. until 6:00 a.m. on each day unless he receives written permission from the conditional sentence supervisor or his/her designate to be absent from his residence during any of this time or these hours. This restriction shall be subject to the exception that Mr. Aldea may be absent from his residence during these hours for the purpose of saying or attending mass and if so may be absent for one hour before and one hour after such mass attendance;
- (5) Mr. Aldea is ordered to participate in the sex offender education program commonly known as "John School" within three months of this sentencing or such other time as approved by the conditional sentence supervisor;
- (6) Mr. Aldea shall not contact or communicate directly or indirectly with ("M.Y.") and ("A.C.");
- (7) During the entire term of this conditional sentence Mr. Aldea shall not frequent or attend in that area of the City of Regina bounded on the east by Albert Street, on the west by Elphinstone Street, on the north by Dewdney Avenue and on the south by McKinley Avenue at any time but subject to any exceptions as may be agreed to by the conditional sentence supervisor or his/her designate;

- (8) Mr. Aldea is ordered to continue his residence at 1855 - 2nd Avenue North, Regina, Saskatchewan, unless and until he has written permission from the conditional sentence supervisor or his/her designate to live elsewhere;
- (9) Mr. Aldea is ordered to personally present himself to any conditional sentence supervisor or peace officer monitoring the provisions of this order;
- (10) Pursuant to s. 487.051 of the *Criminal Code* Mr. Aldea is ordered to provide one or more samples of bodily substances as directed for the purpose of obtaining a forensic DNA analysis sample.

[40] The conditions imposed in respect of this conditional sentence order do not include participation by Mr. Aldea in a sexual offender treatment program other than the "John School". It does not require or direct the registration of his name upon the Sexual Offender Registry provided for by the *Sex Offender Information Registration Act*, S.S. 2004, c. 10 as provided for by s. 490.012 of the *Criminal Code*. In respect of the former, I accept the submissions of the defence, predicated upon the report of Dr. Arnold, that Mr. Aldea has sought and is receiving treatment with respect to the medical conditions of depression and anxiety which, in Dr. Arnold's opinion, contributed significantly to his lack of judgment and offending behaviours. With respect to the s. 490.012 order requested by the Crown, I am satisfied that the exception provided for by subsection 490.012(4) applies to Mr. Aldea having regard to the nature of his vocation, his current living circumstances and the assessment made in this case

and reported in the Pre-Sentence Report and that of Dr. Arnold with respect to his risk to re-offend.

J.
T. C. Zarzeczny