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. 539(1), (2), (3) or (4) of the *Criminal Code* shall continue. These sections of the *Criminal Code* provide:

> 539(1) Prior to the commencement of the taking of evidence at a preliminary inquiry, the justice holding the inquiry
>
> (a) may, if application therefor is made by the prosecutor, and
>
> (b) shall, if application therefor is made by any of the accused,
>
> make an order directing that the evidence taken at the inquiry shall not be published in any document or broadcast or transmitted in any way before such time as, in respect of each of the accused,
>
> (c) he or she is discharged; or
>
> (d) if he or she is ordered to stand trial, the trial is ended.
>
> (2) Where an accused is not represented by counsel at a preliminary inquiry, the justice holding the inquiry shall, prior to the commencement of the taking of evidence at the inquiry, inform the accused of his right to make application under subsection (1).
>
> (3) Everyone who fails to comply with an order made pursuant to subsection (1) is guilty of an offence punishable on summary conviction
>
> (4) [Repealed, 2005, c. 32, s. 18(2).]
>
> R.S., 1985, c. C-46, s. 539; R.S., 1985, c. 27 (1st Supp.), s.97; 2005, c. 32, s. 18.

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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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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.

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(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.

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COURT OF APPEAL FOR ONTARIO

CITATION: R. v. R.V., 2022 ONCA 830
DATE: 20221128
DOCKET: C61866

Pardu, Miller and Trotter JJ.A.

BETWEEN

His Majesty the King

Respondent

and

R.V.

Appellant

James Lockyer and Jeffrey Couse, for the appellant

Christopher Webb, for the respondent

Heard: in writing

On appeal from the sentence imposed on January 29, 2016 by Justice Mary E. Vallee of the Superior Court of Justice.

REASONS FOR DECISION

[1] The appellant was convicted of sexual interference and invitation to sexual touching of his step-daughter, T.S. He was sentenced to two years less a day imprisonment, followed by 24 months of probation, a 20-year SOIRA order, a 10-year weapons prohibition order, a DNA order, a s. 161 order, and a s. 743.21 order.

[2] He appealed his convictions and sentence. This court allowed his conviction appeal and directed verdicts of acquittal: *R. v. R.V.*, 2019 ONCA 664, 147 O.R. (3d) 657. The Crown's appeal to the Supreme Court of Canada was allowed. The

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Court restored the convictions and remitted the case back to this court to consider the appeal against sentence: *R. v. R.V.*, 2021 SCC 10, 402 C.C.C. (3d) 295.

[3] With the consent of the Crown, the appellant has filed fresh evidence that indicates that he has been diagnosed with terminal cancer. The most up-to-date medical information reveals a very grave situation. The appellant is in a great deal of pain. His prognosis is very bleak. He is cared for at home by his wife. In these circumstances, the Crown fairly concedes that the appeal should be allowed by substituting a conditional sentence order for the term of imprisonment imposed by the trial judge.

[4] When the sentence was imposed, it was entirely fit. However, in the exceptional circumstances portrayed by the medical evidence presented to this court, we set aside the term of imprisonment and the probation order. We impose a conditional sentence order of 18 months. The appellant will be bound by the mandatory conditions in s. 742.3(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, and he is ordered to abstain from communicating directly or indirectly with T.S.: s. 742.3(2)(a.3). All other orders made by the trial judge remain in force.

[5] Accordingly, leave to appeal sentence is granted and the appeal is allowed.

"G. Pardu J.A."
"B.W. Miller J.A."
"G.T. Trotter J.A."

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