

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Chief Justice Richard J. Chartier  
Mr. Justice William J. Burnett  
Madam Justice Jennifer A. Pfuetzner

***BETWEEN:***

<b><i>HER MAJESTY THE QUEEN</i></b>	)	<b><i>G. R. Champagne</i></b>
	)	<i>for the Appellant</i>
	)	
<i>Respondent</i>	)	<b><i>R. N. Malaviya</i></b>
	)	<i>for the Respondent</i>
- and -	)	
	)	<i>Joint written submissions filed:</i>
<b><i>GARLIN VOYANT CANDY</i></b>	)	<b><i>October 22, 2018</i></b>
	)	
<i>(Accused) Appellant</i>	)	<i>Judgment delivered:</i>
	)	<b><i>October 29, 2018</i></b>

**CHARTIER CJM** (for the Court):

[1] This is a sentence appeal.

[2] The accused received a six-month custodial sentence followed by two years of probation after pleading guilty to assault with a weapon and knowingly offering sexual services for consideration. The accused had spent five days in pre-sentence custody prior to being granted judicial interim release. Regrettably, no submissions were made to the sentencing judge regarding how to deal with those five days. As a result, he did not consider whether the accused should be given credit for those days of pre-sentence custody.

[3] On appeal, the accused seeks to correct this oversight. He argues that, had the sentencing judge been made aware of the pre-sentence custody issue, the

sentencing judge would have given credit to the accused for his time in custody. The Crown agrees. Both parties submit that the accused should be credited with time in custody of five days, calculated at a rate of 1.5:1, for a total credit of eight days and that those eight days should be deducted from the accused's custodial sentence (see section 719(3.1) of the *Criminal Code*).

[4] The parties have filed a joint factum and consent to conducting this appeal in writing, without an oral hearing.

[5] We are all of the view that the accused should be given credit for the five days he spent in pre-sentence custody. Accordingly, leave to appeal sentence is granted and the appeal is allowed only to the extent that the sentence is varied to reflect a pre-sentence custody credit of eight days. This credit will be applied to his existing custodial sentence. All other aspects of the sentence remain the same.

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Chartier CJM

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Burnett JA

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Pfuetzner JA