

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Madam Justice Diana M. Cameron  
Madam Justice Janice L. leMaistre  
Mr. Justice David J. Kroft

***BETWEEN:***

<b><i>HIS MAJESTY THE KING</i></b>	)	<b><i>M. R. Merriott</i></b>
	)	<b><i>for the Appellant</i></b>
<i>Respondent</i>	)	
	)	<b><i>D. Sahulka</i></b>
<i>- and -</i>	)	<b><i>for the Respondent</i></b>
	)	
<b><i>SHELDON DAVID CONTOIS</i></b>	)	<b><i>Appeal heard and</i></b>
	)	<b><i>Decision pronounced:</i></b>
<b><i>(Accused) Appellant</i></b>	)	<b><i>February 5, 2024</i></b>

**LEMAISTRE JA** (for the Court):

[1] The accused seeks leave to appeal his sentence and, if granted, appeals his sentence.

[2] After a trial in the Provincial Court, the accused was convicted of unauthorized possession of a firearm (*Criminal Code*, s 92 [the *Code*]), carrying a concealed weapon (the *Code*, s 90(1)) and two charges of possessing a firearm while prohibited (the *Code*, s 117.01(1)). The judge imposed a sentence of five years for unauthorized possession of a firearm, one year concurrent for carrying a concealed weapon, and one year for each of the two charges of possessing a firearm while prohibited, consecutive to each

other and consecutive to the sentence for unauthorized possession of a firearm. This made for a combined sentence of seven years' incarceration.

[3] For the accused to be granted leave to appeal his sentence, he must demonstrate an arguable case; this means his grounds of appeal must have some merit when considered in light of the standard of review (see *R v Gill*, 2010 MBCA 92 at para 2). The judge's sentencing decision is highly discretionary. This Court may only interfere if the judge made an error in principle that materially impacted the sentence or if the sentence is demonstrably unfit (see *R v Friesen*, 2020 SCC 9 at para 26). The judge's decision to impose consecutive sentences is also entitled to deference (see *R v Wozny*, 2010 MBCA 115 at para 10).

[4] The accused argues that his sentence is demonstrably unfit. He argues that the judge erred by classifying the firearm as "a crime gun" and by comparing it to a prohibited weapon. He also says that the judge erred by relying on the characteristics of the firearm (that it was loaded and its serial number was obliterated) when assessing his moral culpability. At the appeal hearing, he withdrew the ground of appeal that the judge erred by imposing consecutive sentences for the two charges of possessing a firearm while prohibited.

[5] We have not been persuaded that it is arguable that the judge erred by assessing the accused's moral culpability as "very high." The judge's finding that the firearm was "a crime gun" was unassailable on the record. There was nothing in the evidence to indicate that the accused had any lawful purpose for possessing the firearm or that his conduct fell more towards the

regulatory offence end of the range established in *R v Nur*, 2015 SCC 15 at para 82, aff'g 2013 ONCA 677 at paras 51-52.

[6] The accused was prohibited from possessing firearms, he had just been in a violent altercation during which a member of his group was shot, the firearm was loaded, its serial number was obliterated, it was folded and, therefore, easier to conceal and transport, and he took it out in public in broad daylight when there were people nearby. We agree with the judge that the accused's possession of the firearm created "a real and immediate danger to the public." We are not convinced the judge erred as to how the seriousness of the offence, including the characteristics of the firearm, impacted the accused's moral culpability.

[7] Finally, it is our view that there is no merit to the accused's assertion that the individual sentences and the total combined sentence are demonstrably unfit.

[8] The application for leave to appeal sentence is denied.

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leMaistre JA

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Cameron JA

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Kroft JA