IN THE COURT OF APPEAL OF MANITOBA

B E T W E E N :

HER MAJESTY THE QUEEN	)	***Z. M. Jones***
	)	*for the Applicant*
	)	
Respondent	)	***J. A. Hyman***
	)	*for the Respondent*
- and -	)	
	)	*Chambers motion heard:*
SANDRA MARGARET DIGNARD	)	***August 16, 2018***
	)	
	)	*Decision pronounced:*
(Accused) Applicant	)	***January 29, 2019***

BEARD JA

I. THE ISSUES

[1] The accused has applied to extend the time for filing a notice of appeal to appeal her conviction. The filing of a notice of appeal, a notice of application for leave to appeal and a notice of application for an extension of time to commence an appeal are governed by sections 678(1)-(2) of the *Criminal Code* and rr 5(1), 12 and 43 of the *Manitoba Criminal Appeal Rules*, SI/92-106 (see attached appendix). The proposed ground of appeal is that of ineffective assistance of counsel.

II. THE FACTS

[2] The underlying facts were set out in an earlier chambers decision related to a motion by the accused for leave to appeal her sentence and for

judicial interim release (see 2017 MBCA 123), being as follows (at paras 3-5):

> The accused was convicted, after a trial, of possession of morphine for the purpose of trafficking contrary to section 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c 19. The circumstances of the offence are that the accused and her minor children were to have a multi-day family visit at a federal penitentiary with H.A., the father of her children. She took with her, hidden inside her body, 100 pills of morphine, each 100 mg strength with a total value of $10,000, to give to H.A. The security officers were tipped off and seized the drugs, leading to her arrest.
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> At trial, the accused raised the defence of duress, which was rejected by the trial judge. She acknowledged that that was not the first time that she had taken drugs to the penitentiary. The accused, who was approximately 32 years old at the time, had no criminal record. The trial judge sentenced her to the minimum mandatory sentence of two years' incarceration (see section 5(3)(ii)(B) of the *Controlled Drugs and Substances Act*).
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> The accused's trial lawyer, who was not her lawyer on appeal, had apparently advised the accused that, if she was convicted, he would bring a motion under section 12 of the *Charter* to challenge the constitutional validity of the mandatory minimum sentence. By the time that the accused was being sentenced, the trial lawyer had been charged with drug possession and impaired driving. The motion was never made and the accused received the mandatory minimum sentence.

[3] That motion was dismissed and the accused is now applying for leave to extend the time to appeal her conviction.

[4] This matter has been before the courts for a lengthy period of time. The accused was charged with this offence on December 21, 2012. She was committed for trial following a preliminary inquiry on January 3, 2014, and the trial was set to begin on March 9, 2015. In her affidavit, the accused said that, at first, she thought that her lawyer was doing a good job, but "[she]

started to get scared" as the trial approached. On the recommendation of H. A., she changed lawyers, hiring new trial counsel. This change, on the first day of her trial, resulted in the trial being adjourned to March 2016.

[5] The trial did not proceed until October 11, 2016, and the trial judge gave his reasons for conviction on November 2, 2016. The accused was sentenced to the mandatory minimum sentence of two years' incarceration on July 26, 2017. She retained another lawyer (appeal counsel) who filed an appeal of the sentence only on August 18, 2017. Appeal counsel determined that there should have been a conviction appeal as well, so, on October 31, 2017, she filed a motion to amend the notice of appeal to include a conviction appeal. Appeal counsel then determined that, in fact, she should have filed an application to extend the time to appeal the conviction, rather than applying to amend the notice of appeal to add a conviction appeal, so, on November 9, 2017, the motion to amend was adjourned *sine die*.

[6] On November 30, 2017, the accused applied for judicial interim release pending her sentence appeal, which was the only outstanding appeal at that time. As leave to appeal the sentence was required before the motion for judicial interim release could be determined, the leave application was heard on December 7, 2017, and dismissed on December 8, 2017, as was the motion for judicial interim release. There were no other steps taken until August 3, 2018, when the accused filed this application for leave to extend the time to appeal her conviction.

[7] The accused was released on parole on March 21, 2018, and was living in a residence in Winnipeg at the time of the appeal hearing. She expected to be able to return home on September 27, 2018.

[8] Sentencing submissions took place in May 2017 and the matter was set over to July 26, 2017, for sentence. On June 22, 2017, trial counsel was arrested and charged with impaired driving and possession of a controlled substance. On December 6, 2017, he pled guilty to the impaired driving charge and the Crown stayed the possession charge. By the date of the accused's sentencing, trial counsel had taken a leave of absence from his practice, and an associate represented the accused at the sentence hearing.

[9] According to the accused, trial counsel had assured her that, if she were convicted, he would bring a constitutional challenge to the mandatory minimum sentence that she would be facing; however, no such application was made. A lawyer from the Public Interest Law Centre of Legal Aid Manitoba had contacted trial counsel prior to the sentence hearing to offer assistance with the constitutional challenge, but trial counsel did not act on that offer and he did not advise the accused of the offer.

III. THE TEST FOR AN EXTENSION OF TIME TO APPEAL

[10] The parties are in agreement, as am I, that the test for an extension of time to appeal a conviction is well known, the criteria that are normally considered being as follows:

(i) that there was a continuous intention to appeal from a time within the period when the appeal should have been commenced;

(ii) that there was a reasonable explanation for the delay; and

(iii) that there are arguable grounds of appeal.

(See *R v Giesbrecht (EH)*, 2007 MBCA 112 at para 11; *R v Fraser*, 2016 MBCA 9 at para 10; and *R v Burnett (CD)*, 2017 MBCA 16 at para 15.)

[11] As was stated in *R v DBR*, 2005 MBCA 21 at para 6, and adopted in *Giesbrecht* at para 11, "[a]n order to extend time is a discretionary order, with the overriding objective that justice be done in the circumstances."

[12] In *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53, Rothstein J, for the Court, explained the test for determining whether there is an arguable case (at paras 72, 74):

> At the leave stage, it is not appropriate to consider the full merits of a case and make a final determination regarding whether an error of law was made. However, some preliminary consideration of the [grounds of appeal] is necessary to determine whether the appeal has the potential to succeed and thus to change the result in the case.
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> In my opinion, the appropriate threshold for assessing the legal question at issue under s. 31(2) is whether it has arguable merit. The arguable merit standard is often used to assess, on a preliminary basis, the merits of an appeal at the leave stage (see for example *Quick Auto Lease Inc. v. Nordin*, 2014 MBCA 32, . . . at para. 5; and *R. v. Fedossenko*, 2013 ABCA 164 (CanLII), at para. 7). "Arguable merit" is a well-known phrase whose meaning has been expressed in a variety of ways: "a reasonable prospect of success" (*Quick Auto Lease*, at para. 5; and *Enns v. Hansey*, 2013 MBCA 23 (CanLII), at para. 2); "some hope of success" and "sufficient merit" (*R. v. Hubley*, 2009 PECA 21, . . . at para. 11); and "credible argument" (*R. v. Will*, 2013 SKCA 4, . . . at para. 8). In my view, the common thread among the various expressions used to describe arguable merit is that the issue raised by the applicant cannot be dismissed through a preliminary examination of the [ground of appeal]. In order to decide whether the award should be set aside, a more thorough examination is necessary and that examination is appropriately conducted by the court hearing the appeal once leave is granted.

[13] He also stated that, while the leave inquiry will ordinarily consider the standard of review and whether there is any arguable merit to the grounds of appeal, "the decision-maker is not required to refer to all the arguments, provisions or jurisprudence or to make specific findings on each constituent element" of each ground of appeal (at para 75). (See *Boryskiewich v Stuart*, 2014 MBCA 77 at para 9.) While these comments were made in civil, rather than criminal, appeals, they are based on decisions in both areas of the law and apply to both.

IV. THE PARTIES' POSITIONS

The Accused's Position

[14] The accused takes the position that she had a continuous intention to appeal and has provided a reasonable explanation for the delay.

[15] On the merits of the appeal, the sole ground is that the accused received ineffective legal assistance from her trial counsel, which she alleges was deficient in three respects:

(i) her trial counsel was in a position of a conflict of interest, given that he was representing H. A. in criminal proceedings at the same time that he called H. A. as a witness in her trial;

(ii) her trial counsel was using illegal drugs at the time of her sentencing; and

(iii) her trial counsel made a unilateral decision not to pursue a constitutional challenge to the mandatory minimum sentence

> contrary to her instructions to him and without first discussing this with her.

[16] The accused summarised her position regarding the remedy she was seeking in her brief as follows:

> The [accused] is not asking this honourable Court, either now or at a conviction appeal should the extension of time be granted, to make a determination as to the constitutionality of the mandatory minimum sentence for trafficking drugs in a prison. That decision requires a full hearing, likely multiple days, with the qualification, examination and cross-examination of witnesses for both sides, testimony from the [accused], and the submission of case law and briefs.
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> The [accused] was not given a full opportunity to have such a hearing, despite having the offer of assistance to do so from the Public Interest Law Centre, because of the ineffective assistance of her lawyer. The sentencing process is part of the trial process and so ineffective assistance of counsel on sentencing hearings, and the strategy to prepare a path for them during trial, is ineffective assistance of counsel at trial. The [accused] is asking to be given an opportunity to file an appeal and request a new trial where these decisions can be made in her interests and pursuant to her instructions.
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> Additionally, the lawyer was in a conflict of interest [a]nd also was under the influence of illicit drugs.
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> Given that the proposed amended grounds of appeal have merit and speak to the fairness of the [accused's] trial, it is just to allow an extension of time for the filing of a notice of appeal. . . .

The Crown's Position

[17] The Crown argues that the accused has failed to meet any of the criteria set out in paras 10 and 11 herein.

[18] It argues that, while the accused always intended to appeal her sentence, she has not provided any evidence that she intended to appeal her conviction. Further, it argues that there has been no satisfactory explanation for the eight-month delay between the dismissal of the motion for leave to appeal the sentence and the filing of the motion to extend the time to appeal the conviction. It rejects the accused's explanation that the delay was due to the time required to obtain transcripts and client instructions, given that the transcripts were available in December 2017 and the documents that were filed in August 2018 were, essentially, the same as those filed for the motion in December 2017.

[19] Its most substantial argument, however, is that the proposed ground of appeal has no merit. As regards the allegations of a conflict of interest and use of illegal drugs, the Crown argues that, even if the accused can obtain admissible evidence to support her allegations, none of them relate to a miscarriage of justice in relation to her conviction, which would have to show a reasonable possibility that the verdict could have been different.

[20] It states that, while H. A. may have had a relationship with trial counsel, H. A. was called to testify in support of the accused's defence of duress and his testimony was, in fact, supportive. It points out that the accused filed an agreed statement of facts admitting to having smuggled the drugs into the prison. While both she and H. A. testified that he had threatened her to get her to do so, the trial judge rejected that evidence and none of those findings are under appeal. Thus, it argues, there was no conflict of interest that affected the verdict or caused an unfair trial.

[21] It argues that, likewise, the allegation related to trial counsel's drug use does not relate to the trial and conviction but, rather, to the sentence hearing and the decision not to proceed with the constitutional challenge to the mandatory minimum sentence for the offence. Again, it argues that this does not affect the verdict and, therefore, does not raise an arguable ground of appeal for a conviction appeal.

[22] Its position is that, although the accused is arguing a miscarriage of justice, that miscarriage relates to the sentencing procedure and not to her conviction. It states that, to raise an arguable ground of appeal against conviction, it must be alleged that the direct result of counsel's representation was a miscarriage of justice that raises either a reasonable possibility that the verdict could have been different or that the process was unfair, but it must relate to the verdict. It argues that, if an appeal against conviction were successful, this Court could direct a verdict of acquittal or order a new trial, but what the accused wants is a new sentence hearing. That is an outcome that is not available.

[23] In response to the accused's position that the sentencing procedure is part of the trial, the Crown states that, while that is true in some circumstances, it does not assist her in this case. It argues that, to overturn a conviction, the accused must show that "the results of [this] trial might have been different", which must relate to the verdict. As the accused is not challenging her conviction or the verdict, it states that this motion must fail because the accused has not raised any issue with respect to her conviction, much less an arguable issue.

V. ANALYSIS

(i) Conflict of Interest

[24] In my view, there is no arguable merit to the allegation that there was a miscarriage of justice as a result of a conflict of interest arising out of the relationship between trial counsel and H. A. H. A. was not a co-accused or a witness for the Crown. He was called by the defence to testify for the accused and all of the facts before me, including the trial judge's review of H. A.'s evidence, indicate that his testimony was supportive of the accused's duress defence. The trial judge's rejection of that evidence, and the accused's evidence of duress, was due, in part, to the fact that the accused admitted to having voluntarily smuggled drugs into the prison for H. A. on a number of earlier occasions. The accused has not suggested that H. A.'s testimony had anything to do with the sentencing procedure that she now challenges.

(ii) Defence Counsel's Drug Use

[25] As regards the allegation that trial counsel was using illegal drugs, the accused, in her affidavit, referred to having "suspicions" that he was using drugs when he represented her. She stated that, on one occasion before her trial, trial counsel and H. A. "disappeared together for about 5-10 minutes" and she believed that H. A. had consumed drugs, but she said that "I have no proof of that and [trial counsel] did not appear to be under the influence of drugs. [H. A.] told me on another occasion that [trial counsel] was using opiates."

[26] It was approximately eight months after the trial that trial counsel was arrested for impaired driving. While he pled guilty, the submissions at

his sentence hearing did not indicate that he had a serious or long-term drug problem. His counsel said that there were substantial challenges available to reply to the charges, but trial counsel had chosen not to pursue them. His counsel spoke of a recent bereavement that had had a serious effect on trial counsel, that he "acknowledge[d] his own personal foibles and difficulties with . . . various issues", and that he was getting treatment for a series of "other elements that he's dealing with."

[27] The evidence of the extent of his drug use, if any, at the time of the trial was non-existent. In my view, there is nothing to support the argument that trial counsel's use of drugs led to an unfair trial procedure or a miscarriage of justice.

(iii) Failure to Challenge the Mandatory Minimum Sentence

[28] The final allegation of ineffective assistance of counsel relates to the conduct of the sentence hearing and, in particular, trial counsel's failure to follow through with the promised application to challenge the mandatory minimum sentence for the drug trafficking offence. This basis for alleging ineffective assistance of counsel at the sentencing phase of the trial raises the question of whether an accused can appeal a conviction on the basis of an unfair trial where the unfairness relates to the sentencing proceedings and not to the verdict or the conviction.

[29] The Supreme Court of Canada has explained the basis of appellate jurisdiction to review trial decisions on many occasions. In *R v W (G)*, [1999] 3 SCR 597, the Court was dealing with a factual scenario much like the present case, where the appeal was from conviction only. The Court of Appeal dismissed the conviction appeal but expressed its unease with the

sentence. After finding that it had inherent jurisdiction to consider the sentence on its own motion, it ordered counsel to appear at a later date to present arguments on sentence. The Crown appealed, and the Supreme Court of Canada was required to address the question of whether the appellate court had inherent jurisdiction to review a sentence on an appeal from conviction only.

[30] Lamer CJC, for the Court on this issue, stated as follows (at paras 7-8, 14):

> At first blush this appeal could be disposed of quickly by dealing with the central issue of whether there is any inherent appellate power to deal with sentencing matters in the absence of an appeal against sentence. The answer is clearly "no". No such power exists in a court that is governed solely by a statutory framework. . . .
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> It is clear that there is no inherent appellate court jurisdiction. This statement has been explicitly made in numerous cases and should be well understood. Most recently in *R. v. Thomas*, [1998] 3 S.C.R. 535, I reiterated the established principle that courts of appeal are purely statutory bodies. La Forest J. earlier emphasized this concept in *Kourtessis v. M.N.R.*, [1993] 2 S.C.R. 53, at pp. 69-70:
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> > Appeals are solely creatures of statute; see *R. v. Meltzer*, [1989] 1 S.C.R. 1764, at p. 1773. There is no inherent jurisdiction in any appeal court. Nowadays, however, this basic proposition tends at times to be forgotten. Appeals to appellate courts and to the Supreme Court of Canada have become so established and routine that there is a widespread expectation that there must be some way to appeal the decision of a court of first instance. But it remains true that there is no right of appeal on any matter unless provided for by the relevant legislature.

> The jurisprudence of this Court has definitively established therefore, that appellate courts cannot claim any inherent jurisdiction.
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> . . . An accused therefore needs leave of the court to appeal his or her sentence. It would not be proper for an appellate court to consider a notice of appeal from conviction as incorporating a notice of appeal from sentence. That point was made in *R. v. Ferencsik,* [1970] 4 C.C.C. 166 (Ont. C.A.), wherein Aylesworth J.A. specifically held that the unequivocal wording of the appeal sections of the *Criminal Code*, "indicates the separateness of and the distinction between appeals as against conviction or dismissal of a charge on the one hand, and as against sentence on the other" (p. 167).

[31] Thus, the first place to start when considering appellate jurisdiction to hear an appeal is with the legislation, in this case, the *Criminal Code*. The right to appeal from a conviction for an indictable offence is found in section 675(1)(a) of the *Criminal Code*, while the right to appeal from a sentence is found in section 675(1)(b). Those provisions state as follows:

> **Right of appeal of a person convicted**
> **675(1)** A person who is convicted by a trial court in proceedings by indictment may appeal to the court of appeal
>
> **(a)** against his conviction
>
> **(i)** on any ground of appeal that involves a question of law alone,
>
> **(ii)** on any ground of appeal that involves a question of fact or a question of mixed law and fact, with leave of the court of appeal or a judge thereof or on the certificate of the trial judge that the case is a proper case for appeal, or
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> **(iii)** on any ground of appeal not mentioned in subparagraph (i) or (ii) that appears to the court of appeal to be a sufficient ground of appeal, with leave of the court of appeal, or

> **(b)** against the sentence passed by the trial court, with leave of the court of appeal or a judge thereof unless that sentence is one fixed by law.

[32] The powers of an appellate court on a conviction appeal are set out in section 686(2) of the *Criminal Code*:

> **Order to be made**
> **686(2)** Where a court of appeal allows an appeal under paragraph (1)(a), it shall quash the conviction and
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> > **(a)** direct a judgment or verdict of acquittal to be entered; or
> >
> > **(b)** order a new trial.

[33] The powers of an appellate court on a sentence appeal are set out in section 687(1) of the *Criminal Code*:

> **Powers of court on appeal against sentence**
> **687(1)** Where an appeal is taken against sentence, the court of appeal shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may on such evidence, if any, as it thinks fit to require or to receive,
>
> > **(a)** vary the sentence within the limits prescribed by law for the offence of which the accused was convicted; or
> >
> > **(b)** dismiss the appeal.

[34] As is clear from the legislation and the jurisprudence, there are separate statutory procedures for conviction and sentence appeals, and the remedies available to an appellate court are different, depending on whether the appeal is from conviction or sentence.

[35] As noted earlier, the accused argues that the incompetence of her trial counsel in relation to her sentencing caused a miscarriage of justice, as no challenge under the *Canadian Charter of Rights and Freedoms* was made to the mandatory minimum sentence that was imposed on her. She argues further that, as the imposition of sentence is part of the trial of an accused, the miscarriage of justice caused by the incompetence of her trial counsel regarding her sentencing can properly be dealt with as part of the conviction appeal.

[36] In this regard, defence counsel cited *R v Barrow*, [1987] 2 SCR 694. However, in *Barrow*, the issue was whether the jury selection process was part of the accused's trial for the purpose of section 577(1) of the *Criminal Code* (now section 650(1)), which indicated that an accused shall be present throughout his or her trial. The Court ultimately determined that the jury selection was part of the accused's trial, but it did not address the issue in the present case related to the sentence. In my view, *Barrow* is of no assistance.

[37] There are two decisions that address the question of whether errors affecting the fairness of a sentencing hearing can be dealt with as part of a conviction appeal, and both conclude that the answer is no.

[38] In *Regina v Petrovic* (1984), 13 CCC (3d) 416 (Ont CA), there were problems with the translation of the sentencing portion of the trial. Lacourciere JA, for the Court, set out the defence position on appeal as follows (at pp 423-24):

> This ground of appeal must therefore be approached on the basis that the appellant was inadvertently denied the assistance of an interpreter on the sentencing *voir dire*. Mr. Ruby has argued that this denial violated the accused's constitutionally protected

> right to an interpreter during a vital part of his trial and, in effect, constituted a denial of the accused's right to be present in a meaningful way during the whole of his trial, contrary to the provisions of s. 577 [now section 650] of the *Criminal Code* as interpreted by this Court in *R. v. Reale*, [1973] 3 O.R. 905, 13 C.C.C. (2d) 345; affirmed [1975] 2 S.C.R. 624 *sub nom. A.-G. Ont. v. Reale*, 22 C.C.C. (2d) 571, 58 D.L.R. (3d) 560. . . .

[39] In responding to this ground of appeal, Lacourciere JA stated (at p 426):

> . . . [I]t is clear that an accused has the right to be meaningfully present during the whole of his trial, including the sentence proceedings. I am not persuaded, however, that an accidental contravention of this right during the sentence proceedings vitiates the conviction itself following a trial otherwise untainted by jurisdictional error. The Privy Council left this question open in *Lawrence*. While sentencing is part of the decision-making process in criminal law, as stated by the Supreme Court of Canada in *R. v. Gardiner*, [1982] 2 S.C.R. 368, 68 C.C.C (2d) 477, 140 D.L.R. (3d) 612, I am not satisfied that a jurisdictional error in that part of the trial must vitiate the conviction as well as the sentence.

[40] The Ontario Court of Appeal thus concluded that it should not interfere with the conviction and instead determined that it should review the sentence as part of the sentence appeal. The Supreme Court of Canada refused leave to appeal this decision.

[41] In *R v Gates*, 2002 BCCA 128, the accused had appealed both his conviction and sentence, one of the reasons being that the video equipment that was connecting the accused, who was in one community, with the Court, which was in another community, was not functioning properly. The accused argued that the conviction should be set aside because he was not present for the entirety of his trial, as is required by section 650 of the *Criminal Code*. Ryan JA, for the Court, stated (at para 14):

> [Defence counsel] submitted that all of the proceedings, from delivery of judgment to submissions on sentence and the sentencing itself could be examined in determining whether a new trial should be ordered. I am not persuaded that the court should depart from the clear mandate of the ***Code***. The proper place to address errors committed during the culpability stage of the trial is on the conviction appeal. The proper place to address errors at sentencing is on a sentence appeal.

[42] The Court then addressed the appeal relating to the accused's culpability separately from the alleged errors that occurred during the sentencing proceedings. Leave to appeal this decision to the Supreme Court of Canada was denied.

[43] The *Petrovic* and *Gates* decisions are in accord with the general tenor of the Supreme Court of Canada's decision in *W (G)*, being that appellate courts have no inherent or statutory jurisdiction to consider the sentence imposed upon an accused after conviction in the absence of an appeal against sentence (see para 1). These decisions are all in accord with the overall statutory scheme of the appeal provisions of the *Criminal Code*, which clearly treat conviction appeals and sentencing appeals as two separate procedures with distinct remedies. Therefore, in my view, it would be contrary to the intention of Parliament to allow an accused to rely upon sentencing errors or unfairness in the sentencing process to quash a conviction and obtain a new trial. Further, to allow an accused to bring a conviction appeal for issues relating only to the sentencing process would allow an accused to avoid the requirement to obtain leave to appeal.

[44] It is of note that, even on a sentence appeal under the *Criminal Code*, the Supreme Court of Canada has stated that the remedy of a new sentencing

hearing in the trial court is not available. In *R v Sipos*, 2014 SCC 47, Cromwell J, for the Court, stated (at para 27):

> Unlike dangerous offender appeals, there is no curative power on "regular" sentence appeals and the predominant view is that there is no authority in the court of appeal to remit the matter to the trial judge for a new sentencing hearing. On a regular sentence appeal, the appellate court's role is to determine the legality and fitness of the sentence imposed at trial. If the court of appeal finds that there are grounds requiring its intervention, it imposes a fit sentence in what amounts to a new sentencing hearing: *Criminal Code*, s. 687.

[45] In conclusion, this Court is without jurisdiction to review the procedure at the sentencing portion of the trial in the context of an appeal from conviction only. Where an accused is alleging ineffectiveness of counsel during the sentencing stage of the proceedings, that would be a matter for a sentence appeal, not for a conviction appeal. Given that this Court is without jurisdiction to deal with an appeal related to the sentencing procedure as part of an appeal against conviction only, there is no discretion to make the order requested on the basis of an overriding injustice (see para 11 herein).

VI. DECISION

[46] For these reasons, I have concluded that the accused has not established that there are any arguable grounds of appeal and, as a result, has not met the test for an extension of time to file an appeal from conviction. I am, therefore, dismissing her motion for an extension of time to file an appeal from conviction.

Beard JA

APPENDIX

Criminal Code (at section 678(1)):

> **Notice of appeal**
> **678 (1)** An appellant who proposes to appeal to the court of appeal or to obtain the leave of that court to appeal shall give notice of appeal or notice of his application for leave to appeal in such manner and within such period as may be directed by rules of court.

Manitoba Criminal Appeal Rules (at rr 5(1), 12, 43):

> **Filing of Initiating Document by Crown**
> **5(1)** Where an accused is the appellant or intended appellant, the initiating document shall be sent in quadruplicate by regular lettermail to the registrar, or filed in quadruplicate in the office of the registrar, no later than 30 days after the date of sentence.
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> **Notice of Application to Extend Time**
> **12** A notice of application to extend the time for appealing or for applying for leave to appeal under section 678 of the **Criminal Code** (Canada) shall contain the same information as required under subrule 3(1), and shall be given, dealt with by the registrar and proceeded with in the same manner as a notice of application for leave to appeal.
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> **Extension of Time Limits**
> **43** The time limits set by statute or by these rules may, subject to the statute, be extended by the court or a judge of the court either before or after the expiry of the time limits.