

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Madam Justice Diana M. Cameron
Madam Justice Janice L. leMaistre

BETWEEN:

<i>HER MAJESTY THE QUEEN</i>)	<i>M. S. Bhangu</i>
)	<i>for the Appellant</i>
)	
<i>Respondent</i>)	<i>J. S. Kliewer</i>
)	<i>for the Respondent</i>
- and -)	
)	<i>Joint written submissions filed:</i>
<i>AYANSA SAFAYE</i>)	<i>November 8, 2018</i>
)	
<i>(Accused) Appellant</i>)	<i>Judgment delivered:</i>
)	<i>November 14, 2018</i>

On appeal from 2017 MBQB 217

CHARTIER CJM (for the Court):

[1] The sole issue on this appeal is whether the sentencing judge failed to apply enhanced credit for all of the time the accused spent in pre-sentence custody. This Court in *R v Kovich (GW); R v Bittern (CN)*, 2016 MBCA 19, held that the exemptions to enhanced credit for pre-sentence custody in section 719(3.1) of the *Criminal Code* were unconstitutional.

[2] As a result of *Kovich; Bittern*, the accused applies for leave to appeal and, if leave is granted, appeals his sentence and seeks enhanced credit for pre-sentence custody at the rate of 1.5:1 as opposed to the rate of 1:1 he received for part of the time he spent in pre-sentence custody. Had the sentencing judge given him enhanced credit at the rate of 1.5:1 for all of the 484 days he spent in custody

awaiting sentence, he would have received a credit of 726 days as opposed to the 593 days given. That would have left him with a go-forward sentence of approximately two years.

[3] The accused and the Crown have filed a joint factum. The Crown consents to the appeal and both parties consent to conducting this appeal in writing, without an oral hearing.

[4] We are all of the view that the accused should be given enhanced credit for all of the 484 days he spent in pre-sentence custody at the rate of 1.5:1, for a total credit of 726 days. Accordingly, leave to appeal sentence is granted and the appeal is allowed only to the extent that the sentence is varied to reflect pre-sentence custody credit of 726 days. All other aspects of the sentence remain the same.

Chartier CJM

Cameron JA

leMaistre JA