

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Madam Justice Jennifer A. Pfuetzner
Mr. Justice David J. Kroft

BETWEEN:

	)	<i>G. B. Hawrysh</i>
	)	<i>for the Appellant</i>
<i>HIS MAJESTY THE KING</i>)	
	)	<i>M. Moorthy</i>
	)	<i>for the Respondent</i>
<i>Respondent</i>)	
	)	<i>Appeal under r 45 of the</i>
	)	<i>Manitoba Criminal Appeal</i>
<i>- and -</i>	)	<i>Rules and rr 37.3, 38 of the</i>
	)	<i>MB, Court of Appeal Rules</i>
	)	<i>(Civil)</i>
<i>ANNE-DORE MARIA SCHEPPNER</i>)	
	)	<i>Joint written submissions filed:</i>
	)	<i>January 26, 2024</i>
<i>(Accused) Appellant</i>)	
	)	<i>Judgment delivered:</i>
	)	<i>February 5, 2024</i>

RIVOALEN CJM (for the Court):

[1] The accused seeks leave to appeal and, if granted, appeals her sentence, a weapons prohibition order.

[2] Pursuant to r 37.3 of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R [the *Rules*], this appeal proceeded in writing, without an oral hearing and with the consent of the parties.

[3] On October 16, 2023, the accused was found not criminally responsible (NCR) of the charge of second degree murder because she suffered from a mental disorder. In addition to the NCR finding, the sentencing judge imposed an order prohibiting the accused from possessing weapons for a period of 10 years pursuant to s 109 of the *Criminal Code* (the weapons prohibition order).

[4] This appeal relates only to the weapons prohibition order.

[5] The accused and the respondent jointly submit that the sentencing judge erred in issuing the weapons prohibition order. They state that the sentencing judge did not have the jurisdiction to issue such an order because the accused was not convicted or discharged under s 730 of the *Criminal Code*; she was found NCR. A finding of NCR is neither a conviction nor a discharge.

[6] The accused and the respondent jointly seek the reversal of the weapons prohibition order. They request that we allow the appeal in accordance with r 38 of the *Rules*.

[7] We have read the notice of application for leave to appeal, the joint factum of the accused and the respondent, the Crown materials filed on October 16, 2023, the transcript of the proceedings held on October 16, 2023, and the reasons for judgment. We note that at the sentencing hearing, both Crown counsel and defence counsel (not counsel on this appeal) were of the view that it was a mandatory order.

[8] Accordingly, leave to appeal the sentence is granted and the appeal is allowed. The weapons prohibition order should be vacated. All other terms of the judgment remain unchanged.

Rivoalen CJM

Pfuetzner JA

Kroft JA
