Citation: R v ALB-C, 2025 MBCA 19
Date: 20250303
Docket: AR23-30-09978

# IN THE COURT OF APPEAL OF MANITOBA

*Coram:* Madam Justice Jennifer A. Pfuetzner
Mr. Justice James G. Edmond
Mr. Justice David J. Kroft

***B E T W E E N:***

| | | |
|---|---|---|
| | ) | ***S. Brand*** |
| ***HIS MAJESTY THE KING*** | ) | *for the Appellant* |
| | ) | |
| *Respondent* | ) | ***D. N. Queau-Guzzi*** |
| | ) | *for the Respondent* |
| *- and -* | ) | |
| | ) | *Appeal heard and* |
| ***A. L. B.-C.*** | ) | *Decision pronounced:* |
| | ) | ***February 19, 2025*** |
| *(Accused) Appellant* | ) | |
| | ) | *Written reasons:* |
| | ) | ***March 3, 2025*** |

**NOTICE OF RESTRICTION ON PUBLICATION: No one may publish, broadcast or transmit any information that could disclose the identity of the victim or a witness (see *Criminal Code*, RSC 1985, c C-46, s 486.4).**

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

[1] The accused sought leave to appeal and, if granted, appealed his global sentence of fifteen years' imprisonment for various sexual offences under the *Criminal Code*, RSC 1985, c C-46 [the *Code*]. The accused advanced two grounds of appeal. First, that the judge erred in principle by relying on two factors that he found to be aggravating and, second, that the judge erred in applying the principles of parity and totality such that the resultant fifteen-year sentence was demonstrably unfit.

[2] At the hearing, we granted leave to appeal sentence but dismissed the appeal with brief reasons to follow. These are those reasons.

[3] The accused pleaded guilty to one count each of possession of child pornography, distribution of child pornography, making child pornography (written), making child pornography (images and videos), luring children under the age of sixteen, and voyeurism. Each offence involved multiple victims, both known and unknown. The Crown stayed multiple other charges. While the *Code* provisions in effect at the time of the offences refer to child pornography, we will use the term child sexual abuse material (CSAM).

[4] In 2020, Kik and Instagram reported to the National Center for Missing and Exploited Children (NCMEC) that the accused's accounts had downloaded CSAM. The IP addresses for the accounts were eventually linked to his home. Upon arrest, the accused was found to be in possession of eight iPhones and had two pairs of damp little girls' underwear in his pocket.

[5] The accused's collection of CSAM, amassed over five years, consisted of 5,515 images and 2,427 videos—primarily involving the sexual abuse by adults of very young female children (between one and five years old). Police identified an additional 13,401 images and 2,384 videos of "investigative interest", most of which were not strictly categorized as CSAM.

[6] Around the time the reports were made to NCMEC, the accused's original Kik account was deactivated, and its content was lost. However, the accused created a new account with a different username. As a result, the police were only able to recover chat messages for a one-month period dating from December 2020. Despite the limited time frame, the extracted communications were voluminous and contained explicit and highly graphic

CSAM. He discussed, shared and traded CSAM online with others, describing his preference for girls around six years of age and counselled others to commit sexual offences against children.

[7] The accused engaged in sexualized conversations with numerous children on various social media platforms or applications. During the one-month period, he remotely counselled six female children to create CSAM, which he recorded and saved.

[8] The accused surreptitiously filmed and photographed hundreds of unknown children in public places in Winnipeg and in other locations in Manitoba, as well as his neighbour's daughters, his sister and his niece. In some of the videos he is shown masturbating while filming or following children.

[9] At the sentencing hearing, a pre-sentence report (PSR) was filed, as were victim impact statements from the accused's neighbour (whose children were victims of the accused's voyeurism) and from the Canadian Centre for Child Protection (C3P) on behalf of several identified victims in the accused's CSAM collection. C3P also filed a Community Impact Statement on behalf of victims of voyeuristic imagery.

[10] At the time of sentencing, the accused was twenty-eight years old and had no criminal record. At the time of his arrest, he lived with his parents and younger adult sister. Although he had graduated high school, he had limited employment history and struggled socially. He disclosed sexual abuse by adult females that occurred when he was an adolescent. The writer of the PSR assessed the accused as a low risk to reoffend generally, but an above-average risk for sexual recidivism.

[11] At the sentencing hearing, the Crown sought a global sentence of thirty years, reduced to eighteen for totality. The accused sought a sentence of fifteen years, reduced to eight for totality. The judge imposed a total sentence of twenty-five years, reduced to fifteen after totality. The sentences imposed for the individual offences were as follows:

| Count | Offence | Sentence (years) | Sentence After Totality (years) |
|---|---|---|---|
| 1 | Possession of CSAM | 4 | 3 |
| 3 | Distribution of CSAM | 4 | 3 |
| 5 | Making CSAM (written) | 3 | 3 (concurrent to count 3) |
| 17 | Making CSAM (images and videos) | 4 | 3 |
| 20 | Luring | 7 | 4 |
| 23 | Voyeurism | 3 | 2 |
| | | | |
| | | **Total: 25** | **Total: 15** |

[12] The accused concedes that the standard of review to be applied by this Court to the judge's sentencing decision is "highly deferential". We can only intervene to vary the sentence if it is demonstrably unfit or if the judge made an error in principle that had an impact on the sentence (see *R v Friesen*, 2020 SCC 9 at para 26).

[13] On appeal, the accused argues that the judge erred in principle by treating his finding that "it is unclear how much insight [the accused] has into his behaviour" as an aggravating factor. The Crown concedes that uncertainty regarding the accused's insight into his offending behaviour is not an aggravating factor but is the lack of a mitigating factor. However, the Crown asserts that the accused's level of insight is relevant to his risk to reoffend.

[14] We agree that it was an error in principle to treat a lack of proven insight by the accused as an aggravating factor. However, in our view, the judge's error was not material, as it had no impact on the sentence. The lack of insight on the part of the accused was listed as but one of several serious aggravating factors. Moreover, we agree with the submission that it is relevant to the accused's risk to reoffend, which is a proper consideration in the determination of sentence.

[15] Next, the accused submits that the judge erred in stating that he was "satisfied, based upon the length of time of his involvement in viewing [CSAM] and the extent of that involvement as demonstrated in the material that was seized, that there is *a high risk to reoffend*" (emphasis added). The accused asserts that the evidence did not support a finding, beyond a reasonable doubt, that he is a high risk to reoffend. He points out that the actuarial tools used by the writer of the PSR assessed him as only a low risk to reoffend generally and an above-average risk to reoffend sexually.

[16] We are not persuaded that the judge erred in his assessment of risk. The results of the actuarial tools are useful but are not the only evidence that a sentencing judge is entitled to consider in determining an offender's risk to reoffend. The entire context of the accused's offending over five years against countless children, together with the comments of the writer of the PSR that the accused's risk assessment "will rise" upon his family becoming aware of the actual extent of his offending, supported the judge's finding that he was a high risk to reoffend.

[17] In support of his second ground of appeal, the accused submits that the judge erred in applying the principles of parity and totality and that the resultant sentence is demonstrably unfit.

[18] As for parity, he asserts that the maximum range of sentence for luring in circumstances such as the present is five years and cites this Court's decision in *R v Sinclair*, 2022 MBCA 65 [*Sinclair*] in support. He also argues that the high end of the range of sentence for voyeurism is one year.

[19] We are not convinced by this submission. While there may be some similarities with *Sinclair*, the judge was entitled to find that the offending here was "much more egregious". Turning to the voyeurism sentence, we have no hesitation in rejecting the accused's argument. The sheer number of victims and the nature of the voyeuristic recordings warranted the sentence imposed by the judge.

[20] Finally, the accused argues that the judge failed to make a sufficient reduction for totality considering that he is a youthful offender with no prior criminal record and he has shown remorse and a desire to change. He seeks a global sentence of ten years' imprisonment.

[21] In our view, the judge made no error in his approach to totality. He followed the proper analytical process required when sentencing for multiple offences and his "last look" for totality resulted in the total sentence being reduced by ten years. This was a meaningful reduction and resulted in a total sentence that does not exceed the overall culpability of the accused and is not unduly long or harsh.

[22] In the absence of an error in principle, and in light of the deferential standard of review, we were not persuaded that there was any basis to interfere with the sentence. While the sentence is high, it is not demonstrably unfit. The moral blameworthiness of the accused was exceedingly high and the sentence reflects that. He possessed, shared, traded and produced what

amounts to “crime scene images” (*R v Pike*, 2024 ONCA 608 at para 147). He abused children by luring them online and he criminally invaded the privacy of numerous others.

[23] For these reasons, we granted leave to appeal sentence but dismissed the appeal.

Pfuetzner JA

Edmond JA

Kroft JA