

**IN THE COURT OF APPEAL OF MANITOBA**

***BETWEEN:***

	)	<b><i>W. W. J. Becks</i></b>
	)	<b><i>on their own behalf</i></b>
	)	
<b><i>HIS MAJESTY THE KING</i></b>	)	<b><i>K. Hart</i></b>
	)	<b><i>for the Respondent</i></b>
<b><i>Respondent</i></b>	)	
	)	<b><i>Chambers motion heard:</i></b>
<b><i>- and -</i></b>	)	<b><i>July 17, 2025</i></b>
	)	
<b><i>WAYNE WILLIAM JOSEPH BECKS</i></b>	)	<b><i>Decision pronounced:</i></b>
	)	<b><i>July 18, 2025</i></b>
<b><i>(Accused) Appellant</i></b>	)	
	)	<b><i>Written reasons:</i></b>
	)	<b><i>July 25, 2025</i></b>

**NOTICE OF RESTRICTION ON PUBLICATION:** An order has been made in accordance with section 486.5(1) of the *Criminal Code*, RSC 1985, c C-46, directing that any information that could identify a victim or witness in this proceeding shall not be published, broadcast or transmitted in any way.

**TURNER JA**

**Introduction**

[1] The appellant (Becks) sought an order under section 684(1) of the *Criminal Code*, RSC 1985, c C-46 [the *Code*], appointing counsel to act on his behalf for the appeal of his convictions and sentence. Becks pleaded guilty to assault causing bodily harm and assault in Provincial Court and was sentenced to a total of forty-four and a half months' imprisonment to be followed by two years of probation.

[2] He also sought an order pursuant to section 684(2) of the *Code* that his mother be reimbursed for the cost of transcripts that were ordered in preparation for the hearing of this motion and the appeal.

[3] At the hearing, I granted Becks' motion in part, with reasons to follow. These are those reasons.

### Background

[4] On November 22, 2022, Becks was charged with aggravated assault, assault with a weapon and uttering threats against his former partner (the partner). He was also charged with assault with a weapon and assault by choking against the partner's fourteen-year-old daughter (the daughter).

[5] The matter was set for trial in Provincial Court; however, on the first day of the trial, prior to any evidence being called, Becks pleaded guilty to assault causing bodily harm against the partner and assault against the daughter. Becks was represented by counsel at the time (the first lawyer). A pre-sentence report with *Gladue* components (see *R v Gladue*, 1999 CanLII 679 (SCC)) was ordered (the PSR) and a stay of proceedings was entered on the remaining charges.

[6] A plea inquiry was conducted when the guilty pleas were entered. During the plea inquiry, Becks confirmed that he was entering his guilty pleas voluntarily, that he was waiving his right to a trial, that a PSR was being ordered and that the sentencing judge would have the final say as to the appropriate sentence. The facts on which the Crown would rely at the sentencing were not put on the record and, from the transcript of proceedings, it does not appear that an agreed statement of facts had yet been prepared.

[7] The first lawyer subsequently withdrew as counsel and a second lawyer (the second lawyer) went on the record to represent Becks. The second lawyer indicated that Becks intended to apply to withdraw his guilty pleas and a hearing date was set for that application. On September 26, 2024, the second lawyer appeared and indicated that the application to withdraw the guilty pleas was being abandoned. The matter was put over for sentencing.

[8] On October 29, 2024, the parties appeared for the sentencing. An agreed statement of facts was attached to the PSR, which was filed as an exhibit. I note that the agreed statement of facts was not signed by Becks or his counsel. It is not clear on the record before me when or how the agreed statement of facts was prepared.

#### *The Agreed Statement of Facts*

[9] A summary of the relevant portions of the agreed statement of facts is helpful.

[10] Members of the RCMP received multiple calls regarding an assault. When they arrived, they observed that the partner had various injuries, including a cut above her left eye and a cut on the back of her head. The daughter was also injured while trying to intervene during the assault. Both the partner and the daughter were transported to the hospital by ambulance, where they were admitted.

[11] The partner stated to police that during an argument, Becks grabbed two knives (a pocket knife and a twelve-inch machete). He pressed the tip of a knife against the partner's stomach and struck the bedroom door with the knife with enough force to embed the knife in the door. Becks continued to

kick and punch the partner, striking her with a television and a heavy shelf. The partner managed to get the machete away from Becks and she threw it under the bed.

[12] The daughter heard the altercation and her mother's cries for help. She grabbed a knife from the kitchen and approached Becks, telling him to stop. Becks then attacked the daughter, holding her down while holding a knife and choking her. He threatened to kill the partner while the daughter watched and then kill the daughter.

### *The Sentencing Hearing*

[13] Other than referring the sentencing judge to the agreed statement of facts attached to the PSR, the Crown did not detail the facts of the offences at the hearing. Crown counsel only stated that "this was a violent, horrific, domestic assault that involved weapons and violence towards children."

[14] At the conclusion of counsel's submissions, Becks was asked if he had anything to say. When he addressed the Court, Becks denied that he used any weapons during the offences and denied ever having a machete. He also denied uttering threats to anyone. He stated that he did not attack the daughter; rather, it was the daughter who stabbed him. He took the knife away from her and let her go.

[15] The sentencing judge asked counsel if they had any comments regarding Becks' statements. She noted that he was represented by counsel and had not pursued an application to withdraw his guilty pleas. She stated, "So I've got an agreed statement of fact[s]. It was attached and provided to the Court. So I'm inclined to take what I've just heard as minimizations and

denials, but I have no application to withdraw the guilty plea.” Neither the Crown nor defence counsel raised any issues or concerns. The sentencing judge then stated, “I’m inclined to go forward and sentence Mr. Becks today, and I’m not hearing any opposition to that in the circumstances.”

[16] In her reasons for sentence, the sentencing judge relied on the facts that Becks grabbed a pocket knife and a machete during the assault on the partner, that he attacked the daughter with a knife and that he threatened to kill the partner and the daughter. While outlining the aggravating factors of the offences, the sentencing judge repeated that weapons were used and that there were threats to kill the partner and the daughter.

[17] For the charge of assault causing bodily harm against the partner, the sentencing judge imposed a sentence of 971 days in custody (minus credit for pre-sentence custody of 607 days). For the charge of assault against the daughter, the sentencing judge imposed a sentence of 365 days in custody to be served consecutively, followed by two years of probation. The total period of custody was equivalent to forty-four and a half months.

### *The Notice of Appeal*

[18] Becks remains in custody and is self-represented. He filed his own handwritten notice of appeal and notice of application for leave to appeal his convictions and his sentence on November 6, 2024.

[19] Although the grounds of appeal are somewhat difficult to understand, I would summarize the grounds of the conviction appeal as follows:

- a) The Crown withheld evidence.
- b) Becks' rights under the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [the *Charter*] and the *Canadian Bill of Rights*, SC 1960, c 44 [the *Bill of Rights*] were violated.
- c) The verdict was unreasonable and not supported by the evidence.
- d) There was a miscarriage of justice because the decision was based on "a wrong decision on a question of law".

[20] On April 2, 2025, Becks filed a second notice of appeal and notice of application for leave to appeal, which seems to add the following grounds related to his sentence appeal:

- a) Ineffective assistance of counsel.
- b) A reasonable apprehension of bias.
- c) An error in the assessment of the evidence.
- d) That he did not know the nature and consequences of entering a guilty plea.

[21] At the hearing of the motion before me, the Crown did not take issue with the two separate documents.

## The Application to Assign Counsel

[22] Section 684(1) of the *Code* provides:

**Legal assistance for appellant**

**684 (1)** A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the court or judge, it appears desirable in the interests of justice that the accused should have legal assistance and where it appears that the accused has not sufficient means to obtain that assistance.

**Assistance d'un avocat**

**684 (1)** Une cour d'appel, ou l'un de ses juges, peut à tout moment désigner un avocat pour agir au nom d'un accusé qui est partie à un appel ou à des procédures préliminaires ou accessoires à un appel, lorsque, à son avis, il paraît désirable dans l'intérêt de la justice que l'accusé soit pourvu d'un avocat et lorsqu'il appert que l'accusé n'a pas les moyens requis pour obtenir l'assistance d'un avocat.

[23] In order for a court to assign counsel, the applicant must demonstrate that (i) it appears desirable in the interests of justice that they should have legal assistance, and (ii) it appears that the applicant does not have sufficient means to obtain that assistance (see *R v Bernardo*, 1997 CanLII 2240 at paras 11, 14 (ONCA) [*Bernardo*]; applied in *R v JJB*, 2016 MBCA 4 at paras 26-27).

### *Sufficient Means*

[24] A representative from Legal Aid Manitoba attended the hearing of this motion and confirmed that Becks has been denied legal aid assistance for his appeal. Becks has also exhausted all his appeals through the legal aid system.

[25] Becks presented limited evidence regarding his financial circumstances. He did not provide an affidavit outlining his own financial situation, whether he could obtain funds from his family or whether loans are available to him. However, I am prepared to accept most of Becks' assertions during his submissions at the hearing before me because, in several ways, they are corroborated by the PSR and other documentation.

[26] Becks has been in custody since September 27, 2023. The first lawyer and the second lawyer were appointed to him through legal aid, which demonstrates that he qualified financially at the time of the Provincial Court proceedings. Prior to his incarceration, Becks was unemployed and he was last employed in 2017. It was Becks' mother who paid nearly \$800 for transcripts of the relevant Provincial Court proceedings.

[27] While this limited amount of information regarding Becks' financial situation is not ideal and would not be sufficient in every case, I am prepared to conclude that he does not have the financial means to privately retain a lawyer to assist him with his appeal.

*The Interests of Justice*

[28] Becks bears the onus of demonstrating that there are arguable grounds to appeal his conviction and seek leave to appeal his sentence. This is a low threshold. In *Bernardo* at para 22, Doherty JA stated:

In deciding whether counsel should be appointed, it is appropriate to begin with an inquiry into the merits of the appeal. Appeals which are void of merit will not be helped by the appointment of counsel. The merits inquiry should not, however, go any further than a determination of whether the appeal is an arguable one. I would so limit the merits inquiry for two reasons. First, the



assessment is often made on less than the entire record. Second, any assessment beyond the arguable case standard would be unfair to the appellant. An appellant who has only an arguable case is presumably more in need of counsel than an appellant who has a clearly strong appeal.

### The Conviction Appeal

[29] The grounds for Becks' conviction appeal do not have merit. The conviction appeal must be considered in the context of the fact that he entered the guilty pleas voluntarily to the lesser included offences of those with which he had initially been charged.

[30] As to the allegation that the Crown withheld evidence, Becks asserts that he sent a letter to the Crown outlining his version of events surrounding the offences. This is not evidence, nor was it information the Crown was required to relay to the Court. Becks had counsel at the time to present his position and arguments to the Court.

[31] In his notice of appeal, Becks makes several allegations that his *Charter* rights were violated. When I asked him to detail those allegations at the hearing before me, he provided an example that his right to counsel under section 10(b) of the *Charter* was denied. He stated that while he was in custody, he often called the first lawyer and would not receive a call back. His mother and son also tried to reach the first lawyer without success. While I understand Becks' frustration in reaching the first lawyer, especially while he was in custody, this is not a denial of right to counsel under the *Charter*.

[32] In his written materials, Becks also alleges breaches of sections 7, 9, 11 and 12 of the *Charter*, as well as section 2 of the *Bill of Rights*. He has

not provided any foundation for the allegations that these rights have been violated and I cannot find anything in the record before me to support such a claim.

[33] As such, the grounds of appeal based on the *Charter* and the *Bill of Rights* do not have any merit.

[34] Becks claims that the verdict was unreasonable, not supported by the evidence and was a miscarriage of justice. Again, he does not provide a factual foundation to support his claims. Given that Becks voluntarily pleaded guilty, these grounds of appeal do not have merit.

[35] I think it is important to add that, in my view, and on the information before me, Becks would not have been able to meet the onus that would have been upon him to withdraw his guilty pleas. Guilty pleas entered in open court are presumed to be valid, especially when an accused is represented by counsel (see *R v Robinson*, 2020 MBCA 12). A full plea inquiry was conducted, during which Becks confirmed that he was pleading guilty voluntarily and understood the consequences of his pleas (i.e. there would not be a trial). There was no equivocation when Becks entered his guilty pleas or any indication that he did not understand the allegations against him.

[36] When I assess the merits of the grounds of the conviction appeal, I find that they do not have merit; therefore, I am denying his motion to have counsel assigned to assist with his conviction appeal.

### The Sentence Appeal

[37] In my view, Becks' grounds that there was a reasonable apprehension of bias on the part of the sentencing judge and that he did not know the nature and consequences of entering the guilty pleas do not have merit.

[38] At the hearing before me, Becks asserted that the judge was biased against him because he had appeared before her previously.

[39] There is a strong presumption of judicial impartiality that is not easily displaced. The mere fact that a judge has heard previous matters involving the same person does not displace that presumption (see *Pereira v Dexterra Group Inc*, 2023 BCCA 201); therefore, this ground of appeal does not have merit.

[40] The assertion that he did not know the nature and consequences of entering a guilty plea similarly does not have arguable merit. Becks has a lengthy criminal record, so he is familiar with the criminal justice system. As noted above, when he entered his guilty pleas, he clearly stated that he was entering the guilty pleas voluntarily, understood there would not be a trial and understood that the final decision on the sentence would be determined by the sentencing judge. There is nothing on the record before me that shows Becks expressed any uncertainty regarding the guilty pleas he was entering.

[41] On the other hand, the grounds of appeal alleging an error in the assessment of the evidence and ineffective assistance of counsel do meet the threshold of arguable merit.

[42] When Becks was asked to speak at the sentencing, he took issue with aspects of the agreed statement of facts: the use of weapons, the utterance of threats and the details of the attack on the daughter. The sentencing judge rightly described the statements as “minimizations and *denials*” [emphasis added].

[43] Neither defence counsel nor the Crown expressed any comment or concern about the fact that Becks was denying some of the details on which the Crown was relying. The sentencing judge proceeded with her reasons for sentence without a pause to clarify whether Becks was resiling from the agreed statement of facts. There was no discussion of whether the Crown would be put to the proof of aggravating facts pursuant to section 724(3)(e) of the *Code*, which requires the Crown to prove any aggravating facts beyond a reasonable doubt. The sentencing judge relied upon the use of weapons and uttering threats as aggravating factors in determining the appropriate sentence.

[44] My comments regarding these two grounds of appeal should not be taken as a decision that they will win the day. Whether an error occurred and whether an unfit sentence was imposed is a decision that will have to be made by a full panel of this Court. On the motion before me, I am mindful of the comments in *Bernardo* that an appellant who has an arguable case may be more in need of counsel than an appellant who clearly has a strong case. In my opinion, Becks needs the assistance of counsel to properly pursue these grounds of appeal.

#### Reimbursement for the Cost of Transcripts

[45] Section 684(2) of the *Code* states:

<b>Counsel fees and disbursements</b>	<b>Honoraires et dépenses</b>
<b>(2)</b> Where counsel is assigned pursuant to subsection (1) and legal aid is not granted to the accused pursuant to a provincial legal aid program, the fees and disbursements of counsel shall be paid by the Attorney General who is the appellant or respondent, as the case may be, in the appeal.	<b>(2)</b> Dans le cas où l'accusé ne bénéficie pas de l'aide juridique prévue par un régime provincial, le procureur général en cause paie les honoraires et les dépenses de l'avocat désigné au titre du paragraphe (1).

[46] Given that I have ordered for counsel to be assigned, albeit on a more limited basis than Becks requested, I think it is fair that there be reimbursement for the cost of transcripts that have been produced to date. Had counsel been assigned prior to the transcripts being ordered, even if it was for the limited purpose of advancing Becks' motion under section 684(1) of the *Code*, I have no doubt that counsel would have requested transcripts and they would have been paid for by the Attorney General pursuant to section 684(2) of the *Code*.

### Conclusion

[47] For the foregoing reasons, I granted Becks' motion, in part. Counsel is to be assigned to assist him on two grounds of his sentence appeal: (i) an error in the assessment of the evidence, and (ii) ineffective assistance of

counsel. Further, I order that the Attorney General reimburse Becks' mother for the cost of transcripts ordered on this matter to date<sup>1</sup>.

Turner JA

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<sup>1</sup> For the sake of clarity, those are the transcripts of proceedings of October 20, 2023, September 26, 2024, and October 29, 2024, and the reasons for sentence of October 29, 2024.