Citation: R v Becks, 2026 MBCA 13
Date: 20260209

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Madam Justice Jennifer A. Pfuetzner
Madam Justice Lori T. Spivak

B E T W E E N:

	)	***A. R. Hodge***
	)	*for the Appellant*
HIS MAJESTY THE KING	)	
	)	***C. R. Savage*** *and*
Respondent	)	***K. D. Basarab***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
WAYNE WILLIAM JOSEPH BECKS	)	*Decision pronounced:*
	)	***January 20, 2026***
(Accused) Appellant	)	
	)	*Written reasons:*
	)	***February 9, 2026***

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RSC 1985, c C-46, directing that any information that could identify a victim or witness in this proceeding shall not be published, broadcast or transmitted in any way.

SPIVAK JA (for the Court):

[1] The accused sought leave to appeal and, if granted, appealed his sentence following his guilty pleas to assault causing bodily harm and assault (the offences). The victims were his former domestic partner (the mother) and her fourteen-year-old daughter (the daughter). The accused received a total sentence of 1,336 days' (approximately forty-four months') custody.

More particularly, in relation to the assault causing bodily harm on the mother, the accused was sentenced to 971 days' custody, less credit for pre-sentence custody of 607 days. For the assault on the daughter, the sentencing judge imposed a sentence of 365 days' custody to be served consecutively, followed by two years' supervised probation.

[2] The accused appealed his sentence on the basis that the sentencing judge erred by relying on aggravating facts that were disputed and not proven by the Crown beyond a reasonable doubt. At the hearing of the appeal, the Crown conceded that the sentencing judge erred in this way and the parties submitted a joint recommendation that each sentence be reduced by 120 days of custody. After hearing the appeal, we granted leave to appeal the sentence, allowed the appeal, accepted the joint recommendation and varied the sentence accordingly. We indicated that brief written reasons would follow. These are those reasons.

[3] On November 22, 2022, the accused violently assaulted the victims in their home. At the time of entering guilty pleas to the offences on October 20, 2023, no facts were put on the record. The sentencing hearing proceeded on October 29, 2024, during which a pre-sentence report (PSR) was filed with an attached document outlining the "facts" of the offences (the document). The document appears to be a police synopsis and primarily contained what was relayed to the police by both of the victims regarding the circumstances of the offences. In summary, the accused was described as repeatedly punching and kicking the mother and striking her with a television, a shelf, and knives that he grabbed. When the daughter tried to assist the mother, the accused held her down, choked her and slammed her head into a shelf. The mother barricaded herself in her bedroom and was further assaulted

by the accused. The document indicates that, during the course of the assaults, the accused uttered threats, which included threats to kill both of the victims.

[4] The mother suffered extensive bruising, cuts to her body, defensive wounds, chipped teeth, a concussion and required approximately ten sutures to her forehead. Victim impact statements filed by the victims described ongoing physical, psychological, emotional and financial suffering because of the offences.

[5] During submissions at the sentencing hearing, neither the Crown nor the accused's counsel (not the same counsel on this appeal) detailed the facts of the offences. Rather, the Crown merely filed the PSR with the document attached and described the offences in general terms as "a violent, horrific, domestic assault that involved weapons and violence towards children."

[6] When the accused was asked by the sentencing judge whether he wished to address the Court, he expressed that he had "arguments" with "the facts". He told the Court that he did not use weapons, did not threaten and provided a brief summary of what had occurred, which was partially inconsistent with the facts in the document. Following the accused's statements, the sentencing judge, after noting that the accused had not pursued an application to withdraw the guilty pleas and that she had "an agreed statement of fact[s]", indicated her inclination to consider the accused's statements as "minimizations and denials".

[7] In sentencing the accused to a total custodial sentence of 1,336 days, the sentencing judge recited, in her reasons for sentence, the circumstances of the offences as outlined in the document, including that weapons were used and threats were made. She listed numerous aggravating factors, including

that weapons were used and further mentioned the threat to the daughter as an example of the gratuitous nature of the violence. After reviewing the accused's personal circumstances, including his *Gladue* factors (see *R v Gladue*, 1999 CanLII 679 (SCC) [*Gladue*]), the sentencing judge considered the accused's moral culpability to be substantial and stated that denunciation and deterrence were the paramount sentencing considerations in cases of serious intimate partner family violence.

[8] Appellate intervention is only justified where the sentencing judge has committed a material "error in principle that impacted the sentence or where the sentence is demonstrably unfit . . .. Errors in principle include an error of law, a failure to consider a relevant factor, or an erroneous consideration of an aggravating or mitigating factor" (*R v Sheppard*, 2025 SCC 29 at para 39 [*Sheppard*], citing with approval *R v Friesen*, 2020 SCC 9 at para 26 [*Friesen*]; see *R v Arac*, 2025 MBCA 54 at para 6; *R v Lacasse*, 2015 SCC 64 at paras 41-44).

[9] At the appeal hearing, the Crown properly conceded that the sentencing judge erred by relying on aggravating factors that were not proven beyond a reasonable doubt and that this error in principle materially impacted the sentence. To be sure, section 724(3) of the *Criminal Code*, RSC 1985, c C-46 [the *Code*] sets out the procedure to be followed when a factual dispute arises during sentencing submissions. When the disputed fact constitutes an aggravating factor, the Crown is required to establish it beyond a reasonable doubt (see *ibid*, s 724(3)(e)). As explained by the Supreme Court of Canada in *R v Gardiner*, 1982 CanLII 30 (SCC) [*Gardiner*], "a plea of guilty, in itself, carries with it an admission of the essential legal ingredients of the offence admitted by the plea, and no more. Beyond that any facts relied upon by the

Crown in aggravation must be established by the Crown" (at 414). Unfortunately, here, there was no acknowledgement of the facts of the offences on the record, nor was there an agreed statement of facts signed on behalf of the accused. To the contrary, the accused took issue with the facts and his version of events differed from the document relied upon by the Crown.

[10] If an error in principle has occurred that had a material impact on the sentence, an appellate court must perform its own sentencing analysis "without deference to the original sentence, while still adhering to the sentencing judge's untainted findings of fact" (*Sheppard* at para 41; see *Friesen* at paras 27-28). An "appellate court may, upon its own independent review, arrive at the same sentence as the one originally imposed" (*Sheppard* at para 42; see *Friesen* at para 29).

[11] Initially, at the appeal hearing, the Crown submitted that, even considering the matter afresh and disregarding the disputed aggravating facts, given the gravity of the offences, the sentence imposed by the sentencing judge does not warrant a reduction and should be affirmed despite the error. On the other hand, the accused asserted that, re-sentencing the accused with the removal of the aggravating facts of weapons and threats should result in a reduced sentence of twelve months' custody on the assault causing bodily harm and six months consecutive on the assault, plus supervised probation.

[12] Upon questioning by this Court regarding the positions noted above, it became apparent that we were not being asked to re-sentence the accused on a factual foundation agreed to by the parties. For example, the Crown was asking that we interpret the accused's denial of weapons at the sentencing

hearing as only referring to knives, which was not agreed to by counsel for the accused, who acknowledged that this Court was left with a factual vacuum and disagreement concerning aspects of the offences.

[13] An appellate court does not have jurisdiction under the *Code* to remit the matter back to the trial court for re-sentencing (see s 687(1); *R v OCFG (No 1)*, 2025 MBCA 27 at para 194; *R v Abdelrazzaq*, 2023 ONCA 231 at para 5; *R v Sipos*, 2014 SCC 47 at para 27). It can appoint a Provincial Court judge to conduct an evidentiary hearing or a "*Gardiner* hearing" to resolve the disputed facts and report back to this Court (see the *Code*, s 683(1)e; *R v Buyck*, 2017 YKCA 8 at paras 43-46; *R v Pahl*, 2016 BCCA 234 at paras 87-88). If this matter were sent to a Provincial Court judge for a *Gardiner* hearing, this would necessarily entail delay and the likelihood that the victims would be required to testify. It was in this context that we suggested that counsel explore the possibility of providing an agreed statement of facts to this Court for the purposes of re-sentencing the accused (see the *Code*, s 687(1)).

[14] Following a discussion amongst counsel, an agreed statement of facts and a joint recommendation for sentence were put forward for our consideration.

[15] The agreed facts are that, on November 22, 2022, the accused, while intoxicated, assaulted both the mother and then the daughter when she came to the mother's aid. The assault was violent and protracted, and took place within the victims' home. During the assault of the mother, which was primarily with the accused's hands and fists, the mother was shoved into a television and a shelf. When the daughter, armed with a knife, tried to assist

the mother, she was assaulted by the accused and choked. At one point, the mother barricaded herself in her bedroom and the accused broke down the door, and the assault on her continued. The victims ran from the home barefoot to seek aid. The injuries as detailed above are not disputed.

[16] The parties jointly recommended that the accused's custodial sentence for the offences should each be reduced by 120 days and the probation order imposed remaining as is.

[17] As noted in *R v Buboire*, 2024 MBCA 7, domestic violence is a common problem in our society that poses a corrosive threat to social order (see para 35). No doubt, as recognized by the sentencing judge, this was a serious case of domestic violence that was prolonged. It is statutorily aggravating that the accused assaulted an intimate partner and a child, which included choking. The assaults took place in the victims' home, caused injuries and had a lasting impact on the victims. Although there are *Gladue* factors present and the accused ultimately pled guilty, he does have a criminal record that includes some violence, driving offences and property offences. His moral culpability is high and the sentencing principles of denunciation and deterrence are paramount.

[18] That said, we are satisfied that in these circumstances, the proposed disposition as agreed to by the parties is appropriate. It is a small reduction to the sentence satisfactory to both parties and avoids having to refer the matter back to the Provincial Court for a *Gardiner* hearing. It provides finality to both of the victims and the accused.

[19] A final comment. An accused who pleads guilty is not obliged to admit all of the facts that the Crown seeks to have admitted in support of a

guilty plea. However, this case highlights the importance of counsel sorting out the details of the facts to be admitted before a plea is entered and placing those facts before the court. As aptly noted in *R v Sithravel*, 2023 ONCA 748: "Lack of clarity as to what facts are admitted in support of a guilty plea can, as in this case, generate errors in relation to factors relied on as aggravating or mitigating and create difficulties in ascertaining the factual record for appellate review" (at para 27).

[20] For the foregoing reasons, taking into account the parties' submissions and consent, we granted leave to appeal the sentence, allowed the appeal and, as jointly recommended, varied the sentence to 851 days' custody on the assault causing bodily harm and to 245 days' custody consecutive on the assault, for a total sentence of 1,096 days, less credit for pre-sentence custody of 607 days. The two-year supervised probation order, as well as the other ancillary orders imposed by the sentencing judge, remain.

Spivak JA

Rivoalen CJM

Pfuetzner JA