Citation: R v Gingras, 2025 MBCA 28
Date: 20250407
Docket: AR24-30-10108

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Lori T. Spivak
Mr. Justice David J. Kroft
Madam Justice Anne M. E. Turner

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

	)	***S. Koulack***
	)	*for the Appellant*
HIS MAJESTY THE KING	)	
	)	***R. N. Malaviya, K.C.***
Respondent	)	*for the Respondent*
	)	
- and -	)	*Appeal heard and*
	)	*Decision pronounced:*
JEREMY OMER GINGRAS	)	***March 28, 2025***
	)	
(Accused) Appellant	)	*Written reasons:*
	)	***April 7, 2025***

On appeal from *R v Gingras*, 2024 MBPC 59 [*sentencing decision*]

SPIVAK JA (for the Court):

[1] The accused pleaded guilty to two counts of breaking and entering a dwelling-house with intent and one count of mischief over $5,000. He was sentenced to five years in prison, less credit for time in pre-sentence custody. The accused seeks leave to appeal and, if granted, appeals his sentence, arguing that the sentencing judge erred in his findings of fact and in his weighing of the sentencing principles, which resulted in a harsh and excessive sentence.

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

[3] Over the course of two days, the accused twice broke into the home of the victim, who was an acquaintance and former co-worker at a local A&W restaurant (the restaurant). The victim has an intellectual disability. The first time he broke into the victim's home, the accused assaulted the victim by pushing him to the ground and choking him. He also took the victim's cellphone and bicycle. The following day, he broke into the victim's home again and, using a hammer he found in the house, destroyed some of the victim's property. As for the mischief offence, the accused then went to the restaurant, where he had previously worked, and used a hammer to smash the restaurant windows and damage cars in the parking lot. Although the restaurant was not open, the owner and her eight-year-old daughter were present. The owner was injured while shielding her daughter.

[4] The accused has a history of mental illness and two psychiatric reports that were prepared earlier in the proceedings were provided to the sentencing judge. The accused had previously been diagnosed with bipolar disorder and cluster B personality disorder. He reported abusing several substances and being intoxicated at the time of the offences. He was found fit to stand trial and the forensic psychiatrist concluded that there was no evidence of a major disorder that would have caused him to be unable to appreciate his actions or know about their wrongfulness.

[5] The accused has a significant criminal record, which included a previous assault of the victim. The pre-sentence report indicated that he was assessed as a high risk to reoffend.

[6] At the initial sentencing hearing, the Crown (not counsel on this appeal) sought a two-year prison sentence, acknowledging that this was a very generous sentencing recommendation, but that it was being made in light of his serious mental health issues. The accused sought a sentence of two years less a day to be served as a conditional sentence order. The sentencing judge expressed concern that the recommended sentences were too low and asked for further information, including "home invasion type" precedents. This was provided at a continuation date.

[7] In imposing the sentence, the sentencing judge agreed with the Crown that given the close temporal connection, the offences warranted concurrent sentences but noted that there should be no "free ride" (*sentencing decision* at paras 44-45). In his view, a two-year sentence for the break and enter offences would only be appropriate if there was one such offence involving no violence or the use of a weapon and the accused had no prior record. Instead, he observed that there were two break and enters that met the threshold to be considered home invasions under section 348.1 of the *Criminal Code*, RSC 1985, c C-46 [the *Code*], which were statutorily aggravating as well as a serious mischief offence.

[8] The sentencing judge found that six-year concurrent sentences on the break and enter offences with a one-year concurrent sentence for the mischief offence would be appropriate before consideration of the effect of the accused's mental illness. He then reduced the six-year sentences to five years because of the role that the accused's mental illness played in the commission of the offences, which he found reduced his moral blameworthiness.

[9] The standard of review for sentence appeals is well-known. Deference is owed to the sentencing judge's exercise of discretion absent an error in principle or a material misapprehension of evidence that had an impact on a sentence or the imposition of a sentence that is demonstrably unfit (see *R v Sinclair*, 2022 MBCA 65 at para 18; *R v Friesen*, 2020 SCC 9 at paras 26-27 [*Friesen*]; *R v Lacasse*, 2015 SCC 64 at para 42 [*Lacasse*]). The standard of review relating to factual errors and drawing inferences is one of palpable and overriding error (see *R v PES*, 2018 MBCA 124 at para 15).

[10] We are not persuaded that there is any basis to warrant appellate intervention.

[11] To begin with, the parties agree that this was not a joint recommendation and the sentencing judge gave notice that he was considering a harsher sentence than what the Crown proposed and provided an opportunity for further submissions in accordance with *R v Nahanee*, 2022 SCC 37 at para 43.

[12] The accused submits that the sentencing judge mistook the order in which the offences occurred and erred in attributing a motive to the accused, which led him to characterize the offences as more serious than they were. He also contends that the sentencing judge overemphasized denunciation and deterrence, which resulted in the imposition of a harsh and excessive sentence.

[13] As for the assertion of errors in the sentencing judge's findings of fact, the parties acknowledge that he erroneously assumed that the accused had attended the restaurant in between the two break and enter offences. However, we agree with the Crown that this was a minor error, which had no impact on the sentence. While the accused argues that this caused the

sentencing judge to mistakenly assume that the accused returned to the residence a second time armed with a hammer, the sentencing judge made no such finding. In his *sentencing decision*, the sentencing judge noted that the victim reported, in relation to the second break and enter offence, that the accused entered his residence uninvited and *grabbed* a hammer and smashed his belongings. The victim indicated that he left his home in fear of getting hurt.

[14] Furthermore, the record supports the sentencing judge's conclusions regarding the accused's motive for the offences. The accused expressed that he felt disrespected by the victim and decided to enter his home the first time to harass and confront him, and returned the second time to obtain an A&W mascot doll. He also indicated that he attended the restaurant and caused extensive damage as he was angry that he had been fired from his job. It was open to the sentencing judge to conclude that the offences were planned and premeditated.

[15] We also are not convinced that the sentencing judge erred in giving inadequate weight to the accused's rehabilitation, which resulted in a harsh and excessive sentence. A sentencing judge's decision to weigh relevant factors in a particular manner does not in itself permit appellate intervention unless the weighing is unreasonable (see *Lacasse* at para 42; *Friesen* at para 104).

[16] After consideration of the psychiatric reports and the proper application of *R v Okemow*, 2017 MBCA 59, the sentencing judge found that the accused's moral blameworthiness was attenuated by his mental illness and recognized that he had improved with treatment. Consequently, he reduced

the ultimate sentence as he saw fit (i.e., by one year) and made no reviewable error in doing so. At the same time, as was his right, he viewed the offences as profoundly serious with many aggravating factors. These included twice violating the sanctity of the vulnerable victim's home with violence and theft, which had a significant impact upon him; the accused's substantial and related record; the assessment that he was a high risk to reoffend; and the accused's limited insight regarding his crimes.

[17] In the end, the sentencing judge followed the proper process and comprehensively explained his reasons for imposing a sentence higher than that recommended by the Crown. He was entitled to conclude that the recommended sentences were quite low for these three distinct violent offences. He was appropriately mindful that, despite his acceptance that the sentences be concurrent, the accused should not be given a free ride on the remaining offences. It was reasonable for him to consider the break and enter offences as having the statutorily aggravating factor pursuant to section 348.1 of the *Code*, as they involved a dwelling-house that was occupied and included violence to a person or property. The sentencing judge appropriately found that the sentencing range of seven to ten years for a serious home invasion robbery to the degree described in the case law was not applicable in the circumstances of these offences (see *R v DMS*, 2024 MBCA 74 at para 10; *R v Pakoo*, 2004 MBCA 157 at para 37).

[18] Additionally, as the Crown argued on this appeal and as noted by the sentencing judge, this case is distinguishable from *R v Blacksmith*, 2018 MBCA 81 at para 20 [*Blacksmith*], where this Court pointed out that the two-year starting point for a single incident of breaking and entering into a dwelling-house assumes a mature accused with no criminal record. In

Blacksmith, the homeowner was not present in the home at the time of the offence. The sentence imposed in the present case was consistent with the four-year sentence imposed in *R v Keating*, 2022 MBCA 32, for one offence of break and enter and commit assault.

[19] In the result, leave to appeal sentence was granted but the appeal was dismissed.

Spivak JA

Kroft JA

Turner JA