

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Madam Justice Janice L. leMaistre
Madam Justice Karen I. Simonsen

BETWEEN:

<i>HIS MAJESTY THE KING</i>)	<i>A. E. Dawson</i>
)	<i>for the Appellant</i>
)	
<i>Respondent</i>)	<i>A. C. Smith</i>
)	<i>for the Respondent</i>
- and -)	
)	<i>Appeal heard and</i>
<i>G. J. B.</i>)	<i>Decision pronounced:</i>
)	<i>June 10, 2026</i>
<i>(Accused) Appellant</i>)	
)	<i>Written reasons:</i>
)	<i>June 22, 2026</i>

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).

PER CURIAM

[1] The accused sought leave to appeal and, if granted, appealed his total sentence of eleven years' incarceration for two counts of sexual interference against two young girls in relation to whom he was a de facto grandfather. The trial judge imposed consecutive sentences of five-and-one-half years for each offence and declined to reduce the combined sentence on account of the principle of totality.

[2] The accused asserted that the trial judge erred in principle by (1) failing to give effect to the mitigating factors of his relatively advanced age and ailing health; and (2) failing to correctly apply the principle of totality by not taking into account relevant factors, in particular, the accused's age and health status.

[3] At the appeal hearing, we granted leave to appeal the sentence but dismissed the appeal with reasons to follow. These are those reasons. As we will explain, we dismissed the appeal despite having a number of concerns about the trial judge's reasons for decision.

[4] In terms of the factual background, the accused had known the victims' family for many years and was close with all members of the family, including the victims' mother. The accused acted as a grandfather to the victims since their birth and was their sole caregiver when they frequently had sleepovers at his home.

[5] The trial judge found that, when the older victim was nine years old, the accused licked her vagina and that, when the younger victim was five years old, the accused pulled down his pants and asked her to play with his penis, put his penis in her mouth and also put his penis near or touching her vagina. The victims' mother described the resulting harm to the victims and their family as "devastating".

[6] At the time of sentencing, the accused was seventy years of age. He had twice been diagnosed with cancer but was in remission. He had arthritis and was seeing a chiropractor once a month for neck and back issues. The accused was also taking blood thinners and cholesterol medication. Nonetheless, he was able to care for his house and yard on his own. The

accused has a dated, unrelated criminal record. He was assessed as a below-average risk to reoffend sexually and a low risk to reoffend generally.

[7] Before the trial judge, the Crown sought consecutive sentences of six years, with no reduction for totality, resulting in a combined sentence of twelve years. Counsel for the accused agreed that consecutive sentences were necessary but recommended lower sentences—three to four years in respect of the younger victim, and three-and-one-half to four-and-one-half years for the older victim. He did not provide a specific sentence recommendation post-totality except to say that, if the combined sentence came to eight years, it should be reduced to six-and-one-half years. (On appeal, counsel for the accused suggests a sentence of three to four-and-one-half years for each offence after totality).

[8] In imposing two five-and-one-half-year sentences, the trial judge stated that one of the reasons he chose a sentence less than that recommended by the Crown was the accused's low risk to reoffend.

[9] As for totality, the trial judge stated that totality was “perhaps less of an imperative” where sexual offences against children are involved, as compared to “property offences or multiple property offences” (which, in our view, was a very imprecise way of him attempting to emphasize the seriousness of the offences before him). Ultimately, the trial judge concluded: “So I’m choosing not to -- to use a totality reduction, under the circumstances of this case, the two very young victims and the many aggravating factors.”

[10] The standard of review on a sentence appeal is highly deferential. Absent an error in principle that had an impact on the sentence, or a sentence that is demonstrably unfit, an appellate court is not to intervene (see

R v Friesen, 2020 SCC 9 at para 26). A sentencing judge's exercise of discretion in weighing or balancing sentencing factors will be an error in principle only if it is exercised unreasonably. As a result, an appellate court cannot disturb a sentence simply because it would have weighed the relevant factors differently (see *R v Harrison*, 2025 MBCA 35 at para 19; *R v Lacasse*, 2015 SCC 64 at para 49 [*Lacasse*]; *R v Proulx*, 2000 SCC 5 at para 125).

[11] As for review of a sentencing judge's determination regarding totality, "totality considerations are a delicate matter of judgment entitled to considerable deference" (*R v Logan*, 2022 MBCA 97 at para 12 [*Logan*], citing *R v Rose*, 2019 MBCA 40).

[12] On the first ground of appeal, the accused contends that the trial judge erred by failing to consider his relatively advanced age and ailing health as mitigating factors when setting the sentences. However, at the appeal hearing, counsel for the accused indicated that he would not focus on the accused's health because of what he acknowledged were limitations in the medical evidence.

[13] In his reasons, the trial judge stated:

The age and medical history of the accused, though not exactly a mitigating factor, are a somewhat sympathetic factor. The reality is that his -- his health -- he's had two bouts of cancer, and though he's in remission of course, that he is perhaps slightly more sympathetic in -- in that regard than a middle-aged person in perfect health. So again, I put a small amount of weight on that factor as well.

[14] The trial judge also stated that the accused was “certainly not a youthful offender” and contrasted his age with that of “an 18- or 19-year-old offender,” whom he suggested would be entitled to greater sympathy.

[15] Serious illness can be “treated as a mitigating factor on the basis that it will cause additional hardship for an offender during incarceration” (*R v Silaphet*, 2024 MBCA 58 at para 84).

[16] Similarly, advanced age of an accused is usually a mitigating factor because “[t]he older a person is the harder it is to serve a prison term and the less is that person’s life expectancy after prison” (*R v Fones (D)*, 2012 MBCA 110 at para 72, quoting *R v R (A)* (1994), 88 CCC (3d) 184 at 191, 1994 CanLII 4524 (MBCA)). A judge should generally refrain from imposing a sentence that so greatly exceeds an offender’s expected remaining life span that the traditional sentencing goals, even denunciation and deterrence, have all but depleted their functional value.

[17] In our view, despite some lack of clarity in the trial judge’s language and a questionable comparison to a youthful offender, he considered and was entitled to give the weight that he did to both the accused’s relatively advanced age and his health status, when setting the five-and-one-half-year sentences. Although the trial judge said that both age and medical history were “not exactly a mitigating factor,” we are satisfied that, reading this comment in context, what he intended to convey was that he did not give these factors significant weight. We see no basis to interfere with him doing so.

[18] As for the mitigating effect of ill health in particular, an evidentiary foundation is required. In this case, there was no evidence that the accused was suffering from serious illness or reduced life expectancy. Given the record

before the trial judge and the minimal information about limiting medical conditions suffered by the accused, the trial judge reasonably gave this factor “a small amount of weight”.

[19] Therefore, we dismiss the first ground of appeal. The accused is simply asking us to re-weigh sentencing factors and come to a different conclusion.

[20] Regarding the second ground of appeal, the accused argues that, when addressing totality, the trial judge again erred by failing to consider his health status and relatively advanced age—and their potential impact on his experience in jail, as well as the fact that, with an eleven-year sentence, he will likely spend much of his remaining lifespan in custody.

[21] A reduction of sentence on account of the principle of totality is not automatic and the higher the degree of moral culpability of the offender, the less likely the sentence will be reduced (see *Logan* at para 12).

[22] There are several factors that are to be considered and balanced when applying the principle of totality (see *R v SADF*, 2021 MBCA 22 at para 41, quoting *R v GJM*, 2015 MBCA 103 at para 10). Briefly, these factors are (1) the length of the combined sentence in relation to the normal level of sentence for the most serious of the individual offences involved; (2) the number and gravity of the offences; (3) the offender’s criminal record; (4) the impact of the combined sentence on the offender’s prospects for rehabilitation, in the sense that it may be harsh or crushing; and (5) other factors as may be appropriate to consider to ensure that the combined sentence is proportionate to the gravity of the offences and the offender’s degree of responsibility. Failure to consider a relevant factor is an error in principle.

This includes failing to account for factors that will make jail more difficult for an offender (see *R v Schofield*, 2025 MBCA 43 at paras 67-68).

[23] As for the accused's health status, we fail to see how the trial judge made a material error in principle in this regard, given the limitations in the medical evidence that we outlined earlier.

[24] As for the accused's age, in our view, it is unclear whether the trial judge took that into account when considering totality. In his conclusion on totality, he did not specifically mention the accused's personal circumstances or age, although he did refer more generally to "the circumstances of this case".

[25] Regardless, even if the trial judge erred in principle in failing to consider the accused's age when addressing totality, we are not persuaded that such an error had a material impact on the total sentence imposed (see *Lacasse* at paras 44, 83). It is apparent that, throughout the trial judge's reasons, he gave the accused's personal circumstances limited, if any, weight when balanced against other relevant factors. He gave minimal weight to the issues of age and health when setting the five-and-one-half-year sentences. In specifically dealing with totality, he was, as we have said, clearly focussed on the seriousness of the crimes and the harm to the victims. In addition, at the conclusion of his reasons immediately following his discussion of totality, the trial judge offered further comments, stating that "[d]enunciation and deterrence [were] paramount" and that rehabilitation, while not irrelevant, "was a small factor in [his] decision."

[26] As noted, a sentencing judge's decision on totality is owed significant deference on appeal. In light of the applicable standard of review,

we are not persuaded that there is a basis for appellate intervention with respect to the trial judge's exercise of his discretion in this case.

[27] In the result, we granted leave to appeal the sentence but dismissed the appeal.

Rivoalen CJM

leMaistre JA

Simonsen JA