

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Marc M. Monnin
Madam Justice Diana M. Cameron
Mr. Justice Christopher J. Mainella

BETWEEN:

<i>HIS MAJESTY THE KING</i>)	<i>S. B. Simmonds, K.C.</i>
)	<i>for the Appellant</i>
)	
<i>Respondent</i>)	<i>R. Lagimodière</i>
)	<i>for the Respondent</i>
<i>- and -</i>)	
)	<i>Appeal heard and</i>
<i>BRENNAN MICHAEL HARRISON</i>)	<i>Decision pronounced:</i>
)	<i>April 8, 2025</i>
<i>(Accused) Appellant</i>)	
)	<i>Written reasons:</i>
)	<i>April 23, 2025</i>

MAINELLA JA (for the Court):

[1] At the end of the accused's sentence appeal, we announced that it was dismissed with reasons to follow, which now do.

[2] By way of background, the accused pleaded guilty to possession of a prohibited or restricted firearm with ammunition (see *Criminal Code*, RSC 1985, c C-46, s 95(1) [the *Code*]). The sentencing judge rejected the request for a conditional sentence order and imposed a sentence of thirty months' imprisonment. A judge of this Court granted the accused leave to appeal his sentence and released him from custody pending determination of the appeal.

[3] The circumstances of the offence can be stated in brief.

[4] The accused was a lawful gun owner who had the requisite licencing under the *Firearms Act*, SC 1995, c 39 to acquire and possess restricted firearms, such as handguns. On the evening of February 23, 2022, via social media, the accused observed Danielle Desjardins (Desjardins), in whom he had a romantic interest, “almost kissing” Collin Fox (Fox), whom the accused disliked. The accused called Desjardins and demanded to speak to Fox and Desjardins placed her phone on speaker. The accused told Fox “that he was going to shoot him with a Glock.” He said he would “come to [Fox’s] house and beat the fuck out of [him]” and, if he had to, he would “pull [his] gun out and shoot [Fox].” Fox replied by telling the accused to say that “to [his] face” and provided the accused with his address in rural Manitoba.

[5] The accused got into his vehicle and drove to Fox’s address. He brought with him his loaded semi-automatic 9-mm Glock handgun (the handgun), together with two additional magazines of ammunition. The handgun was legally purchased and properly registered. It took the accused about fifty minutes to travel to Fox’s address from his residence in Winnipeg. When Desjardins and Fox learned that the accused was driving to them through checking the geolocation of the accused’s mobile phone, they called 911.

[6] When the accused arrived at Fox’s residence, he parked in the driveway and began a text message conversation with Dylan Daymond (Daymond). Daymond attempted to de-escalate the situation by telling the accused to stay away from his friends. The accused suggested he would give Daymond the “glock” and he could “shoot [the accused] in the head if you

guys wanna fight”. Daymond said: “nah just stay off my buddies property thansk. Don’t need to talk tonight”. The accused replied: “I’ll be on the road dw”.

[7] Instead of leaving, the accused sat in his vehicle for a further twenty minutes until the police arrived and arrested him. The accused cooperated and advised that the handgun and ammunition were in the back seat. Police found the items on the driver’s side back seat underneath a jacket. The accused told police he had been “lured” there.

[8] The accused was twenty-four years old at the time of the offence. He had no prior criminal record. The accused grew up in a stable and supportive family environment with both of his parents. He is well educated, is gainfully employed in the telecommunications industry, is in a committed relationship, and has an extensive support network of friends and family. He has attention-deficit/hyperactivity disorder (ADHD). In the two-and-one-half years between the offence and the sentencing, the accused undertook significant psychotherapy and measures to manage his ADHD, including medication. He was assessed as a low risk to reoffend by a forensic psychologist.

[9] The first issue is the sentencing judge’s analysis of *R v Nur*, 2015 SCC 15 [*Nur*]. He stated:

The primary objectives of sentencing for Section 95(1) offences are denunciation and deterrence. The Court in *Nur* prescribed a range of three years for offences with true crime guns committed by those individuals in other criminal acts at the top of that range.

I find that [the accused] was intent on bringing the handgun with him for a criminal purpose, and that was to carry out his threat or

to use it for intimidation or protection. Regardless [of] the intent, it was for a criminal purpose. He was not very different than Mr. Nur, albeit [the accused] was older and experienced a stable upbringing. Mr. Nur was involved with some other individuals, and perhaps the situation involved gang activity.

[10] The accused argues that, in assessing the accused's moral culpability, the sentencing judge failed to recognize that the handgun was not a "crime gun" because the accused had the lawful right to possess the handgun and ammunition but unlawfully transported it on the day in question. He says that the sentencing judge further erred by viewing *Nur* as establishing a three-year starting point for sentencing an offender under section 95(2) of the *Code*.

[11] As was explained in *R v Kennedy*, 2016 MBCA 5 at paras 52-59 [*Kennedy*], the discussion in *Nur* highlighted that there is a very wide "spectrum" (*ibid* at para 82) of potential conduct that section 95(1) captures. The proportionality analysis required by section 718.1 of the *Code* therefore mandates that the sentencing judge assess where on this spectrum an offender's conduct lies between: on one end, the outlaw who possesses a firearm in a public place for a criminal purpose and who, thus, has high moral blameworthiness; and, at the other end, the licensed and normally responsible gun owner who has made a mistake and, thus, has low moral blameworthiness.

[12] In our view, the sentencing judge applied the spectrum analysis in *Nur* that he was required to do in assessing the accused's moral blameworthiness. His conclusion that the accused's conduct fell towards the "higher-end" of the *Nur* range was reasonably open to him on the record, mindful of the accused's intentional risk-taking, the consequential harm he caused and the normative character of his conduct (see *R v M (CA)*, 1996 CanLII 230 at para 80 (SCC)).

[13] While the accused is not an offender entrenched in a criminal lifestyle and the handgun was lawfully purchased and registered, the accused's conduct with the handgun was a serious risk to public safety and is far removed from a regulatory indiscretion by a normally responsible gun owner. The combination of the accused threatening to use lethal force with a gun during a jealous rage and then travelling to confront Desjardins and Fox while armed with the handgun is highly morally blameworthy. As the sentencing judge noted, the accused had many opportunities to de-escalate, and was encouraged to do so by Daymond, but the accused did not abandon his dangerous activity until the police intervened.

[14] In terms of the accused's other submission about *Nur* as a sentencing precedent, while it is accurate to say that *Nur* is a case about the constitutionality of a mandatory minimum sentence as opposed to being "quantitative tools" for sentencing (*R v Parranto*, 2021 SCC 46 at para 15), this Court and other appellate courts have used the discussion in *Nur* for sentencing guidance. In *R v Parker*, 2023 MBCA 51 [*Parker*], Steel JA stated that for a section 95(1) offence, "denunciation and deterrence are the primary sentencing objectives, and that three years' incarceration is the starting point" (at para 18, see also *R v Saeed*, 2024 ABCA 373 at para 21; *R v Morris*, 2021 ONCA 680 at para 71; *R v McDonald*, 2017 BCCA 271 at para 33; *Kennedy* at paras 52-60).

[15] In our view, the sentencing judge did not err by using the discussion in *Nur* to assist in crafting the length of the accused's sentence.

[16] The other grounds raised by the accused turn on how the sentencing judge weighed the sentencing objectives and principles in sections 718 to 718.2 of the *Code* in light of the circumstances of the offence and the accused.

[17] The accused submits that the sentencing judge should have given more weight to his demonstrated rehabilitation, the impact that his untreated ADHD had on his criminal behaviour, and the fact that he was enticed and manipulated by Desjardins and Fox. The accused also argues that the sentencing judge overemphasized the objective of general deterrence.

[18] In furtherance of his position that his sentence was unduly harsh, the accused relies on various authorities where offenders, many of whom had prior criminal records, received conditional sentence orders for firearms offences (see *R v Okbe* (2 April 2024), Winnipeg 013-58551 (MBPC); *R v Bitternose*, 2023 BCPC 6; *Parker*; *R v Krywonizka*, 2022 MBCA 85; *R v Carter*, 2021 ONCJ 561; *R v Vaillant*, 2020 BCSC 1137; *R v Ulmer*, 2020 ABQB 393; *R v Buffalo*, 2020 ABQB 41; *R v Abma*, 2019 BCPC 268).

[19] We have considered the authorities raised by the accused; however, sentencing is an individualized process. An appellate court “must generally defer to sentencing judges’ decisions” (*R v Friesen*, 2020 SCC 9 at para 25 [*Friesen*]). In our system of justice, the sentencing judge has the discretion to weigh relevant sentencing objectives and principles in light of the established facts. This discretion is not untrammelled as it must be exercised in a principled way and within the controlling legal and factual parameters. As a result, an appellate court cannot disturb a sentence simply because it would have weighed the relevant factors differently in the circumstances (see *R v Proulx*, 2000 SCC 5 at para 125; *R v Lacasse*, 2015 SCC 64 at para 49).

[20] The sentencing judge correctly prioritized the sentencing objectives of denunciation and deterrence as this was a serious firearms offence (see *R v Chief*, 2024 MBCA 67 at para 51; *Parker* at para 16). Appropriately, the sentencing judge also considered other relevant sentencing factors, including the accused's positive personal circumstances, as well as his ADHD condition and the role it played in the offence. Consistent with the deferential standard of review, the weight to be given to the aggravating and mitigating factors was within the sentencing judge's discretion. We are not persuaded that he weighed those factors unreasonably (see *Friesen* at para 26).

[21] In the result, the appeal was dismissed.

Mainella JA

Monnin JA

Cameron JA