

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Madam Justice Holly C. Beard  
Madam Justice Janice L. leMaistre  
Madam Justice Lori T. Spivak

***BETWEEN:***

<b><i>HER MAJESTY THE QUEEN</i></b>	)	<b><i>D. C. Sahulka</i></b>
	)	<b><i>for the Crown</i></b>
<i>Appellant/Respondent</i>	)	
- and -	)	<b><i>M. D. Glazer</i></b>
	)	<b><i>for the Accused</i></b>
	)	
<b><i>BRYCE ALEXANDER KEATING</i></b>	)	<b><i>Appeal heard and</i></b>
	)	<b><i>Decision pronounced:</i></b>
<i>(Accused) Respondent/Appellant</i>	)	<b><i>April 4, 2022</i></b>

On appeal from 2021 MBPC 18

**BEARD JA** (for the Court):

[1] After a trial in the Provincial Court, the accused was convicted under the *Criminal Code* of break and enter and commit assault under section 348(1)(b), uttering a threat to burn down the complainant's house under section 264.1(1)(b) and assault under section 265(1)(c). There was a conditional judicial stay of proceedings of the assault conviction pursuant to *Kienapple v The Queen*, [1975] 1 SCR 729.

[2] The trial judge sentenced the accused to 18 months' incarceration on the break and enter and commit assault conviction and six months'

incarceration, concurrent to the first sentence, on the utter threats conviction, followed by three years' probation with conditions.

[3] The Crown appealed the sentence as being unfit, while the accused appealed both the conviction and the sentence. At the commencement of the appeal hearing, the accused stated that he was withdrawing both of his appeals and that he wished to consent to the Crown's sentence appeal. We accept the accused's withdrawal of his appeals, and will address the Crown's sentence appeal.

[4] The accused was involved in a relationship with the complainant's adult daughter, R.M.; however, they did not live together. The accused lived with his mother, while R.M. sometimes lived with her mother. The complainant agreed that R.M. had addiction issues related to drug use and, while R.M. sometimes slept at the complainant's residence, she often did not.

[5] On some occasions, R.M. slept over at the accused's residence. On one such occasion, the accused awoke to find that R.M. had left while he was asleep, and he was missing some property, including money and a gold chain. He was angry and determined to get his property back. Believing that R.M. was at the complainant's residence, he went over there with the intention of getting his property back.

[6] The trial judge found that the accused had entered the complainant's residence without permission, having been told on an earlier occasion that he was not welcome there. The complainant and a young child were laying on a bed in the living room. The accused began shouting at the complainant regarding R.M.'s whereabouts, to which the complainant replied that R.M. was not there. The accused jumped up on the bed and, at one point, was

holding a knife, although he did not brandish, point or otherwise use it. The complainant again denied that R.M. was there and, once she saw the knife, she shouted for her teenaged children to bring a phone and call the police. The accused then left the residence, but, as he was leaving, he shouted that he would burn her house down.

[7] The Crown alleges that the trial judge erred by underestimating the gravity of the offences and the accused's moral culpability, that she underemphasized the aggravating factors and overestimated the mitigating factors, and that the sentence was unfit.

[8] Taking into account the parties' written submissions, brief oral submissions and the accused's consent, we grant leave to the Crown to appeal the sentence in this matter and find that the sentence imposed by the trial judge was an unfit sentence. As a result, we are granting the Crown's sentence appeal.

[9] Further, as is jointly recommended by the parties, we impose a sentence of four years' incarceration on the conviction for break and enter and commit assault and six months' incarceration, to be served concurrently, on the utter threats conviction. On the conviction for assault, we direct that the conditional judicial stay of proceedings that was entered by the trial judge will become permanent on the expiration of the appeal period from this appeal, unless an appeal has been filed within that period or any extension thereof, or once any further appeal from conviction has been dismissed. (See *R v Provo*, [1989] 2 SCR 3 at 17; and *R v Nuttall*, 2018 BCCA 479 at para 495.)

[10] The accused will have credit for time served.

Beard JA

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leMaistre JA

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Spivak JA

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