Citation: R v Logan, 2022 MBCA 97
Date: 20221208
Docket: AR22-30-09732

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Mr. Justice Christopher J. Mainella
Madam Justice Lori T. Spivak

B E T W E E N:

	)	***B. S. Newman*** *and*
	)	***G. S. Kahlon***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***M. S. Bright***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
ROBIN ALAN LOGAN	)	*Decision pronounced:*
	)	***November 30, 2022***
(Accused) Appellant	)	
	)	*Written reasons:*
	)	***December 8, 2022***

NOTICE OF RESTRICTION ON PUBLICATION: No one may publish, broadcast or transmit any information that could disclose the identity of the victim(s) or witness(es) (see section 486.4 of the *Criminal Code*).

SPIVAK JA (for the Court):

[1] The accused seeks leave to appeal and, if granted, appeals his global sentence of 10 years' imprisonment arising from his convictions for three counts of sexual assault and three counts of sexual interference, involving six children between the ages of 14 and 16. He argues that the trial judge erred with respect to her totality analysis, which resulted in a demonstrably unfit

sentence. After hearing the appeal, we granted leave to appeal the sentence, but dismissed the appeal with reasons to follow. These are those reasons.

[2] The circumstances of the offences are that the accused, who was age 25 and 26 at the time, opened his house as a "party house" where vulnerable teenagers could drink, get high and stay for varying periods of time (the house). With respect to victims E.M./J., A.K., N.P., T.L.G. and A.C., the accused gave them drugs and/or alcohol and sexually assaulted them while at the house. A 6th victim, C.J., never went to the house, but was sexually assaulted by the accused while in the community. With respect to all of the victims, the accused engaged in repeated incidents of unwanted sexual touching. Additionally, in regard to victim T.L.G., the accused punched her vaginal area, tried to take off her clothes and, on one occasion, attempted sexual intercourse which she physically repelled. As for victim A.C., the accused also forced her to have sexual intercourse with him between five and 10 times. The accused was described by the trial judge as "[persisting] in his interference with [the victims'] physical integrity whenever, wherever and to the extent he wished."

[3] The accused's only prior criminal conviction was a fine for breach of a protection order. The accused has cognitive and mental health challenges, which, according to the assessment by Forensic Psychological Services, supported the diagnosis of Attention Deficit Hyperactivity Disorder, Alcohol-Related Neurodevelopmental Disorder, intellectual disability and Substance Use Disorder. A pre-sentence report (PSR) outlined the accused's significant *Gladue* factors (see *R v Gladue*, [1999] 1 SCR 688), which included familial substance abuse, violence and a Child and Family Services placement. The PSR assessed him as a high risk to re-offend, generally.

[4] At the sentencing hearing, the Crown sought a total sentence of 19 years' incarceration, which it recommended be reduced to 13 years for totality. The accused submitted that a fit sentence would be seven years, reduced for totality to six years. In a lengthy decision, the trial judge reviewed the circumstances of the offences and the accused in careful detail. Following her comprehensive review of all of the relevant factors and sentencing principles, the trial judge imposed a cumulative sentence of 10 years, allocated as follows:

- Sexual assault on C.J.: six months' custody
- Sexual assault on E.M./J: six months consecutive
- Sexual interference on A.K.: 12 months consecutive
- Sexual interference on N.P.: 12 months consecutive
- Sexual interference on T.L.G.: two years consecutive
- Sexual assault on A.C.: five years consecutive
- Total sentence: 10 years

[5] After doing so, the trial judge considered totality and concluded that no reduction was required. She stated:

> . . .
> Taking a "last look" at the sentence in totality, I conclude that considering all of the circumstances, this sentence is not excessive for this offender as an individual. I acknowledge that this sentence is long. However, considering all of the circumstances I have described, in my view no reduction is required.
> . . .

[6] The trial judge credited the accused with 64 months for pre-sentence custody, leaving a go-forward sentence of 56 months.

[7] Importantly, the accused concedes that the individual sentences imposed were appropriate, but submits that the trial judge's decision not to reduce the global sentence for totality failed to take into account his rehabilitative prospects.

[8] We see no grounds for appellate intervention.

[9] The standard of review on sentence appeals is highly deferential. Absent an error in principle that had an impact on the sentence, or a sentence that is demonstrably unfit, this Court will not intervene (see *R v Friesen*, 2020 SCC 9 at para 26).

[10] The trial judge followed the proper approach to sentencing for multiple offences and imposed acceptable sentences for each offence, balancing the aggravating and mitigating factors, including the accused's mental disabilities. She understood that, in the case of consecutive sentences, the principle of totality should be considered but, in taking the "last look", determined that no sentence reduction was warranted (see *R v RJ*, 2017 MBCA 13 at para 13). In deciding that the cumulative sentence was not excessive, the trial judge properly considered all of the circumstances, including the seriousness of these offences, which targeted vulnerable victims with significant impact, and the Supreme Court of Canada's direction in *Friesen* that sentences for sexual offences against children must increase. In our view, there is no basis to disturb the trial judge's assessment of the accused's overall moral culpability.

[11] Furthermore, we are not persuaded that the trial judge erred in failing to impose a sentence that allowed for a period of probation, which the accused argues, negatively affected his rehabilitation. Deference is owed to the trial judge's weighing and balancing of relevant factors, which was not unreasonable (see *R v Lacasse*, 2015 SCC 64 at para 49). She was not obligated to ensure that the sentence contained a probation order and understandably considered that the PSR did not recommend the accused as a suitable candidate for community supervision.

[12] A reduction for totality is not automatic. Rather, it is a "last look" to ensure that the cumulative sentence does not exceed the accused's overall culpability. The higher the degree of moral culpability, the less likely the sentence will be reduced (see *R v Sinclair*, 2022 MBCA 65 at para 74). As this Court noted in *R v Rose*, 2019 MBCA 40, totality considerations are a delicate matter of judgment entitled to considerable deference.

[13] For these reasons, we granted leave to appeal the sentence, but dismissed the sentence appeal.

Spivak JA

Cameron JA

Mainella JA