Citation: R v LSC, 2026 MBCA 9
Date: 20260129

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Jennifer A. Pfuetzner
Madam Justice Janice L. leMaistre
Madam Justice Karen I. Simonsen

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

	)	***M. S. Bhangu** and*
	)	***J. Clermont***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***R. N. Malaviya, K.C.***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard:*
L. S. C.	)	***October 8, 2025***
	)	
(Accused) Appellant	)	*Judgment delivered:*
	)	***January 29, 2026***

NOTICE OF RESTRICTION ON PUBLICATION: An order has been made in accordance with section 486.5(1) of the *Criminal Code*, RSC 1985, c C-46, directing that any information that could identify a victim or witness in this proceeding shall not be published, broadcast or transmitted in any way.

SIMONSEN JA

[1] The accused seeks leave to appeal and, if granted, appeals his sentence of eight years' incarceration (with a credit of 558 days for pre-sentence custody) for aggravated assault on his then pregnant intimate partner (the victim).

[2] The accused appeals on the basis that the sentencing judge erred by failing to notify counsel that he was contemplating a sentence exceeding that proposed by the Crown. The accused argues that this error should lead to

appellate intervention because it had an impact on the sentence. More particularly, he contends that the failure to provide notice and an opportunity to make further submissions justifies appellate intervention because: if given the opportunity, he would have addressed two authorities relied upon by the sentencing judge that had not been tendered by counsel; the sentencing judge failed to provide adequate reasons for imposing the harsher sentence; the sentencing judge provided erroneous or flawed reasons for imposing the harsher sentence; and the sentence is demonstrably unfit (see *R v Nahanee*, 2022 SCC 37 [*Nahanee*]).

[3] The Crown acknowledges that the sentencing judge erred in failing to notify counsel but maintains that there is no basis for appellate intervention.

[4] For the reasons that follow, I would grant leave to appeal and dismiss the appeal.

Circumstances of the Offence

[5] At the time of the offence, the accused and the victim had been in a relationship for approximately five years and they shared a six-month-old daughter (the baby). The victim was four months pregnant.

[6] There is no dispute about the circumstances of the offence. The accused lost his temper, smashed the victim's cellphone and hit her in the head a number of times at their residence (the suite). He repeatedly punched her, including in the mouth. She ran to the bathroom and locked the door, and remained there for about one hour, with the accused demanding that she come out. She initially refused, but she then heard the baby crying. Concerned, the victim went to the bedroom and picked up the baby, but the accused demanded

that she put the baby down. The victim did so, but the accused then began wrapping her head and neck with tape; he covered her eyes with it. He pushed her to the bed and kneed her until she became unconscious, all in front of the baby.

[7] When the victim regained consciousness, she was able to escape but had to leave the baby behind. She managed to remove the tape that was all over her body and ran out the front door of the suite. Police officers happened to be on the street. They observed her distress and the tape still on her head. Her body was bloodied. She was extremely concerned about the baby, so officers went into the suite. They found the baby abandoned and unharmed. The accused had fled.

[8] The victim was hospitalized as a result of the assault, having sustained significant injuries, including extensive bruising and swelling, a laceration to her lip requiring seven sutures, a fractured wrist, concussion and broken teeth. She would require an oromaxillofacial surgery specialist to fix the damage to her teeth. No harm was sustained to the unborn child.

[9] The victim declined to prepare a victim impact statement. However, at the sentencing hearing, the Crown shared insights with respect to her experience:

> [H]er biggest concern overall . . . is the safety and wellbeing for her children and creating a safe environment [for] them. And by coming to court [to testify at trial] she wanted to demonstrate right from wrong for her children, while at the same time wanting them to still have a father in their life.

Circumstances of the Accused

[10] The accused is Indigenous. He grew up primarily with his grandmother. He witnessed his mother being abused by several partners. His grandmother had been forced to attend residential school where she was subjected to sexual abuse, and he attended day school where he was physically abused by the nuns who ran the school. In addition, the accused has a history of experiencing racism, making him embarrassed by his Indigeneity.

[11] The accused quit school at age thirteen and had the first of his five children at age fifteen. Until this incident, he had been a positive influence in their lives and he was regularly employed.

[12] The accused has a long history of alcohol and substance abuse. He first became involved in criminal offending in his youth, and he now has an extensive record that includes a jail term for two prior assaults and a penitentiary sentence for sexual interference. At the time of the aggravated assault, the accused was serving an intermittent sentence for driving while prohibited, and he was then unlawfully at large on that sentence for one month.

[13] Although the accused has participated in programs while in custody, he has also committed numerous institutional infractions. He has previously demonstrated poor compliance with community supervision. The pre-sentence/*Gladue* report (see *R v Gladue*, 1999 CanLII 679 (SCC) [*Gladue*]) (the pre-sentence report) that was prepared to assist the sentencing judge indicates that the accused was assessed as a high risk to reoffend.

Sentencing Hearing

[14] At the sentencing hearing that followed the accused's guilty plea, the Crown sought a sentence of six years, whereas the accused requested a sentence of three years followed by supervised probation. (On appeal, the accused suggests a sentence of five years.) The positions of both parties recognized that the proposed sentence was to be reduced by a credit for pre-sentence custody.

[15] Counsel presented to the sentencing judge a total of four authorities involving sentencing for aggravated assault to assist in his determination of a fit sentence. The Crown tendered *R v Kravchenko*, 2020 MBCA 30 [*Kravchenko*] (eight years) and *R v LJJD*, 2024 MBCA 54 [*LJJD*] (ten years). The accused referred to *R v Rabbit*, 2023 ABCA 170 [*Rabbit*] (four years) and *R v KSS*, 2022 MBPC 22 [*KSS*] (three years). Only *LJJD* and *KSS* are intimate partner abuse cases.

[16] In *Kravchenko*, this Court provided general guidance regarding the "considerations a sentencing judge must keep in mind, in each case of aggravated assault, when weighing the circumstances of the case in light of the sentencing principles and objectives set out in sections 718-718.2 of the *Code*" (at para 52). In *Kravchenko*, this Court also established a sentencing range of four to eight years for "an unprovoked random attack on a stranger with a weapon and significant resulting consequences" (at para 63).

[17] At the sentencing hearing, defence counsel recognized that *Rabbit* was "not on point in terms of facts". It was tendered primarily for its comments about the approach to be taken in sentencing Indigenous offenders.

[18] During submissions, the sentencing judge mentioned that he had reviewed over ninety-six cases that were "similar cases in terms of charge" and that "it's spread all over."

[19] At the conclusion of the hearing, the accused addressed the Court, accepting responsibility for his actions and expressing remorse. He indicated that he had been sober while in custody and looked forward to continuing his rehabilitation efforts.

Sentencing Reasons

[20] Without notifying counsel that he was considering a sentence exceeding that sought by the Crown, the sentencing judge delivered his oral reasons for decision thirteen days after the sentencing hearing, imposing the sentence of eight years (less a credit for pre-sentence custody).

[21] The sentencing judge found the accused to have a high level of moral culpability, as his actions "appear[ed] to result from a jealous reaction to texts received or sent." The sentencing judge also noted that "the strangling of the victim went to the extreme, such that she lost consciousness, which did not stop the accused from continuing the attack."

[22] The sentencing judge identified the accused's lengthy criminal record and that he was serving an intermittent sentence at the time of the offence. The sentencing judge also appreciated that the victim, being female and Indigenous, was a vulnerable person. He referenced section 718.04 of the *Criminal Code*, RSC 1985, c C-46 [the *Code*], which provides that a sentence must give primary consideration to the principles of denunciation and deterrence where the offence involves abuse of a person who is "vulnerable

because of personal circumstances—including because the person is Aboriginal and female".

[23] In mitigation, the sentencing judge recognized the accused's guilty plea. He also noted that the accused had held steady employment and that the pre-sentence report "for the most part [was] positive". He canvassed the accused's *Gladue* factors.

[24] Having conducted this review, the sentencing judge concluded that the sentence must reflect the principles of denunciation and deterrence. He stated that this Court has indicated that aggravated assaults against an intimate partner are to be sentenced more harshly than other assaults.

[25] The sentencing judge relied on two authorities not submitted or mentioned by counsel, namely *R v Wishlow*, 2013 MBCA 34 [*Wishlow*] and *R v Chase*, 2023 MBPC 68 [*Chase*], both cases of aggravated assault on an intimate partner. He stated: "*Kravchenko* [which had been canvassed extensively during oral submissions] sets a range of four to eight years from [*sic*] an unprovoked stranger attack. Other cases which are similar include *R. v. Wishlow* and *R. v. Chase*."

[26] With respect to the case before him, the sentencing judge indicated that "it should be considered more seriously" as it involved a victim who was the intimate partner of the accused, them sharing two children (including him being a step-parent to the oldest of the children) and her being pregnant. He then stated: "The range of the term should at least be that of the upper range of *Kravchenko* and more; a proper sentence, in my opinion, should be ten years or more." He concluded that a fit sentence would be ten years, which he reduced to eight on account of the accused's *Gladue* factors.

Standard of Review

[27] The standard of review on a sentence appeal is deferential. An appellate court can only interfere with a sentence that is demonstrably unfit or where there is an error in principle that had an impact on the sentence (see *Nahanee* at para 52; *R v Friesen*, 2020 SCC 9 at paras 25-29; *R v Lacasse*, 2015 SCC 64 [*Lacasse*]).

Discussion and Decision

[28] The parties agree, as do I, that the sentencing judge erred by failing to notify counsel that he was contemplating a sentence higher than that proposed by the Crown and not allowing counsel the opportunity to respond to those concerns (see *Nahanee* at paras 43-50).

[29] The accused notes that the sentencing took place after a plea bargain, in which he agreed to plead guilty to aggravated assault and the Crown agreed to stay other charges arising from the same incident, specifically, choking to overcome resistance, forcible confinement, mischief and abandoning a child. The accused says that, because he gave up a trial in this process, fairness particularly required that he be given notice of the sentencing judge's intention to possibly impose a sentence higher than that suggested by the Crown.

[30] However, a judge's error in failing to notify counsel will only lead to appellate intervention if it had an impact on the sentence and/or the resulting sentence was demonstrably unfit (see *Nahanee* at para 52; *Lacasse* at para 44). In *Nahanee*, Moldaver J, writing for the majority, held that, where a judge is considering a sentence harsher than the Crown has proposed and

fails to give notice and an opportunity for further submissions, there are three potential errors in principle that would justify appellate intervention: (i) the appellant establishes that there was information they or the Crown could have provided to the sentencing judge that would have impacted the sentence (first *Nahanee* error); (ii) the sentencing judge failed to provide adequate reasons for imposing the harsher sentence, thereby foreclosing meaningful appellate review (second *Nahanee* error); or (iii) the sentencing judge provided erroneous or flawed reasons for imposing the harsher sentence (third *Nahanee* error) (see *Nahanee* at paras 4, 59, 62; see also *R v Klyne*, 2024 MBCA 90 at para 10 [*Klyne*]).

[31] The accused asserts that, as a consequence of the approach taken by the sentencing judge, all three errors in principle identified in *Nahanee* have been established. The Crown disagrees.

First Nahanee Error

[32] The accused takes the position that, had he been given notice that the sentencing judge thought the Crown's recommendation was too low, he would have made submissions to distinguish *Wishlow* and *Chase*, which had not been tendered, or referred to, by the parties but upon which the sentencing judge relied heavily. In those cases, sentences of eight and four years respectively were imposed for aggravated assault on an intimate partner.

[33] More specifically, the accused contends that, had he been given the opportunity, he would have explained to the sentencing judge that *Wishlow* is distinguishable because it involved an offender who had a prior record for violence against the victim and was on protective conditions in relation to her at the time of the offence, was not Indigenous, used a weapon, engaged in

serious aggravating post-offence conduct and did not plead guilty. As well, in *Wishlow*, the offence itself included degrading acts. The accused also says that, had notice been given, he would have made submissions making clear that *Chase* ran counter to any notion of imposing a sentence above that sought by the Crown because it involved a sentence of four years for a serious aggravated assault on an intimate partner. The accused argues that submissions in these areas would have affected the sentence imposed.

[34] In *Nahanee* at para 48, Moldaver J provided the following guidance on the kind of further submissions counsel can make should a sentencing judge give notice that they are contemplating imposing a higher sentence than that sought by the Crown:

> It is critical that both the Crown and the accused initially provide as much relevant information as possible at the contested sentencing hearing in support of their respective positions. *The opportunity for further submissions should not be relied on as a chance to pull a rabbit out of the hat. Additional submissions should respond to the concerns raised, including matters that the parties considered irrelevant or simply overlooked in their initial submissions*.
>
> [emphasis added]

[35] Justice Moldaver went on to address the errors in principle that would need to be demonstrated to warrant appellate intervention. Regarding the first *Nahanee* error, he explained (*ibid* at para 59(i)):

> *If the failure to provide notice and/or further submissions impacts the sentence*. The appellant must demonstrate that there was information that they could have provided, if given the opportunity to do so, and it appears to the appellate court that this information would have impacted the sentence. If the appellate court is of the view that there is missing information that would realistically have

> impacted the sentence, the court can consider the sentence afresh. In assessing impact, the focus should be on whether the missing information is material to the sentence at issue.
>
> [emphasis in original; underlining added]

[36] He also indicated what is required of an appellant who seeks to argue that the first *Nahanee* error has been committed (*ibid* at para 58):

> The parties are best placed to inform the appellate court of the information they would have provided, had they been given the opportunity to do so. *It is not unduly burdensome to require the appellant* — with the aid of the Crown where it has relevant information to share as to why its proposed sentence was appropriate — *to provide the appellate court with the information the sentencing judge did not have due to their failure to provide notice. If there is no additional information that the accused would have provided, then the lack of opportunity to provide this information will have had no impact on the sentence.* This is simply not a situation where the error's impact on sentence is unknowable, such that impact must be assumed in all cases.
>
> [emphasis added]

[37] Ultimately, in *Nahanee*, the majority concluded that "[t]he sentencing judge was well aware of the information [the offender] now says he would have provided had the judge given him notice. Hence, he has not demonstrated any impact on his sentence warranting intervention" (at para 65; see also *Klyne* at paras 9-10).

[38] Thus, in order to establish the first *Nahanee* error, an appellant must show that the information relied upon would have had a material impact on the sentence imposed. Where a court finds that the information relied upon is not "missing information" (*Nahanee* at para 59(i)), this will result in the

judge's error not having an impact on the sentence and the appellant will have failed to demonstrate the first *Nahanee* error.

[39] In the present case, I am not convinced that submissions on *Wishlow* and *Chase*, which were not made before the sentencing judge, would have affected the sentence imposed. The sentencing judge is presumed to know the law, and I assume that he read and considered the facts of those cases.

[40] *Wishlow* involved a serious aggravated assault, which, as I have indicated, resulted in an eight-year sentence. While the offender in that case was not Indigenous, the victim, too, was not Indigenous. The offender in *Wishlow* had only a limited criminal record and the victim was not pregnant.

[41] As for *Chase*, the offender had only one entry on his criminal record, for impaired driving eleven years earlier. As well, the four-year sentence imposed for a serious aggravated assault on an intimate partner was part of a global sentence of eight and one-half years that included sentences for break and enter and kidnapping, and there may have been some accommodation on the sentence for aggravated assault as a result. And, as argued by the Crown, applying the principle of parity is not as simple as taking two cases and comparing them. Furthermore, irrespective of the quantum of the sentence in *Chase*, it was relevant to the sentencing judge's task in that it applied, in a case of intimate partner violence, the general guidance for sentencing for aggravated assault provided in *Kravchenko*—while concluding that the sentencing range prescribed by *Kravchenko* did not apply in that context. (The same approach was taken in *KSS*.)

[42] As a secondary argument regarding the first *Nahanee* error, the accused asserts that, had he been given notice of the sentencing judge's

concerns about the Crown's recommendation for sentence, he would have addressed the sentencing judge's finding that the pre-sentence report stated that the accused tended "to blame the attack upon the victim and the alcohol he had consumed." In particular, the accused would have challenged the finding regarding victim-blaming and he says that he could have done this by seeking the notes of the probation officer who prepared the pre-sentence report or by cross-examining the probation officer—and he also could have pointed out his own comments made at the conclusion of the sentencing hearing in which he showed remorse and dispelled any notion of him blaming the victim.

[43] What may have come from the notes or cross-examination of the probation officer is unknown. However, what is known, and of which the sentencing judge was well aware, were the accused's comments at the sentencing. In his reasons, the sentencing judge stated that, in court, the accused denied telling the probation officer that he blamed the victim.

[44] In any event, given the sentencing judge's weighing of all of the relevant factors, in particular, his focus on denunciation and deterrence and aggravating factors, as well as his review of ninety-six cases, I am not persuaded that further submissions by defence counsel in any of the areas identified would have had an impact on the sentence.

Second and Third Nahanee Errors

[45] The accused raises four arguments in this area, which are addressed below. For the reasons outlined, I am of the view that, although the sentencing judge's reasons could have been more comprehensive, the second and third *Nahanee* errors have not been established. That is, the sentencing judge did

not provide unclear or insufficient reasons explaining the imposition of the harsher sentence than what was sought by the Crown, nor did he provide erroneous reasons for imposing the sentence he did.

[46] First, the accused contends that the sentencing judge's reasons were unclear and insufficient because they do not explain how intoxication factored into the commission of the offence. Alcohol consumption was mentioned in both the pre-sentence report and submissions. The sentencing judge understood this when, in his reasons, he stated that the accused had "indicated he was drinking alcohol, which raised his anger." As well, in his analysis of the accused's *Gladue* factors, the sentencing judge stated that "alcohol has played a factor in [the accused's] life since [attending alcohol treatment in 2016] and in this assault." Because there was no clarity as to exactly what role intoxication played in the offence, it is understandable that the sentencing judge could not say much more about it than this.

[47] Second, the accused argues that the sentencing judge provided insufficient and erroneous reasons regarding *Gladue* factors and their impact on his moral culpability. According to the accused, the sentencing judge failed to adopt the approach set out by the Alberta Court of Appeal in *Rabbit* at para 47:

> To apply s 718.2(e), sentencing judges must try to understand what influenced an Indigenous offender to act in the way he did. It also includes assessing whether one's instinctive reaction to that conduct would be the same, given the circumstances, if the offender were of a different race, culture, or background. This analysis involves empathy, imagination, and introspection, among other things. It imposes on the sentencing judge the difficult task of imagining a different life, and honestly asking how a person - not the world's strongest or most resilient person - might be affected by such an experience.

See also *R v Cope*, 2024 NSCA 59 at para 120.

[48] The sentencing judge appreciated the accused's *Gladue* factors. He noted that the accused had grown up without the influence of his parents (having spent most of his childhood with his grandmother), that the accused attributed some of his difficulties to his attendance at day school for a number of years, and, as noted above, that alcohol had played a role in his life and this offence. The sentencing judge reduced the sentence he considered appropriate by two years to reflect the reduced moral culpability stemming from *Gladue* factors. Although it would have been preferable for the sentencing judge to have said more, I am not persuaded that his reasons are inadequate, that he took an improper approach or that he unreasonably weighed the accused's *Gladue* factors.

[49] Third, the accused contends that the sentencing judge gave both insufficient and erroneous reasons by not mentioning remorse or rehabilitation on the part of the accused. While it is true that these factors were not specifically mentioned, the sentencing judge did refer to the accused's guilty plea. (The Crown notes that the plea was entered on the trial date and says that the Crown's case was strong.) In addition, the sentencing judge's reasons must be read in the context of the record. Counsel addressed rehabilitation at the sentencing hearing, with defence counsel arguing in some detail about what the accused had done while in custody awaiting trial and the accused himself indicating that he was now sober and expressing insight into the difficult road ahead to maintain his sobriety.

[50] Fourth, the accused alleges that the sentencing judge gave erroneous reasons by determining that a case of aggravated assault of an intimate partner

necessarily involves a sentence at the high end of the four-to-eight-year range for aggravated assault set out in *Kravchenko*, or higher—rather than considering all of the circumstances to arrive at a proportionate sentence. According to the accused, the sentencing judge should have adopted the approach taken in *KSS* and *Chase*, where the courts declined to apply the fact-specific range set out in *Kravchenko* on the basis that cases of intimate partner violence do not align with the category of cases contemplated by *Kravchenko* (see *Chase* at para 74; *KSS* at paras 21-22).

[51] I do not accept that the sentencing judge erred by using the *Kravchenko* range as the accused alleges. The sentencing judge appreciated the factual differences between that case and the one before him. And, again assuming, as I must, that the sentencing judge knew and applied the correct law, I am of the view that he did not conclude that every case of aggravated assault on an intimate partner would require a sentence at the high end (or higher) of the *Kravchenko* range but, rather, that this particular case did. It was not unreasonable for him to have considered *Kravchenko*, despite the differences, given that there is no established range of sentence for aggravated assault on an intimate partner.

[52] Moreover, even if the sentencing judge did choose an inappropriate sentencing range, that, in itself, is not a reviewable error (see *R v Bordian*, 2023 MBCA 26 at para 9).

Demonstrably Unfit Sentence

[53] Finally, I must consider whether the sentence is demonstrably unfit.

[54] Violence against intimate partners is a serious issue in our communities. As stated by this Court in *R v Buboire*, 2024 MBCA 7 at para 35:

> Unfortunately, domestic violence is an all-too-common problem in our society. Such crimes are disproportionally gendered offences that have long-lasting negative individual and systemic consequences. Courts have few tools to address this corrosive threat to social order; however, in clear and egregious cases such as this one, the message to offenders, victims and the public generally must be that such conduct will not be tolerated and the consequences for those who abuse their intimate partners will be significant (see *R v GGS*, 2016 MBCA 109 at paras 41-42 [*GGS*]).

[55] This was a very serious crime involving a prolonged assault. The accused's moral culpability was high. He beat the victim to unconsciousness. The assault took place in the presence of the baby until the victim was forced to escape, leaving the baby behind. The sentence had to reflect the statutorily aggravating factor that the victim was the accused's intimate partner (see the *Code*, s 718.2(a)(ii)). The sentencing principles of denunciation and deterrence were primary because the victim was female and Indigenous (see the *Code*, s 718.04; *R v Bunn*, 2022 MBCA 34). Furthermore, as the sentencing judge recognized, the accused's *Gladue* factors had to be accounted for, and it is mitigating that he pled guilty. However, he has a significant criminal record.

[56] On appeal, the accused submitted a number of authorities where lower sentences were imposed for an aggravated assault on an intimate partner. These cases demonstrate, as the sentencing judge commented on, that the range of sentences is vast.

[57] In my view, considering all of the circumstances, the sentence, while high, is not demonstrably unfit.

[58] For the above reasons, I would grant leave to appeal and dismiss the appeal.

Simonsen JA

I agree: Pfuetzner JA

I agree: leMaistre JA