Citation: R v Merasty, 2026 MBCA 39
Date: 20260427

IN THE COURT OF APPEAL OF MANITOBA

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

B E T W E E N:

	)	***R. Sitarik***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***R. N. Malaviya, K.C.***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
VIRGIL ZACHRAY MERASTY	)	*Decision pronounced:*
	)	***April 17, 2026***
(Accused) Appellant	)	
	)	*Written reasons:*
	)	***April 27, 2026***

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LEMAISTRE JA (for the Court):

[1] The accused sought leave to appeal and, if granted, appealed his sentence of 730 days' incarceration for sexual assault (see *Criminal Code*, RSC 1985, c C-46, s 271 [the *Code*]), on the grounds that the judge's weighing of the relevant factors was unreasonable and that the sentence was demonstrably unfit.

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

[3] The accused pleaded guilty to one count of indecent act and one count of indecent exposure (see the *Code*, ss 173(1), 173(2)) for exposing his erect penis to a group of teenaged girls (the indecent act) and one count of sexual assault for brushing his penis against the girls' twenty-three-year-old church group leader.

[4] For the sexual assault offence, the judge imposed a sentence of 730 days' incarceration, less credit for twenty-one days of pre-sentence custody, resulting in a go-forward sentence of 709 days. For the indecent act, the judge imposed sentences of one day of incarceration on each count to be served concurrently with each other but consecutively to the sentence for sexual assault, after giving credit for 180 days of pre-sentence custody. The accused is not appealing the sentences imposed for the indecent act. The judge also imposed a two-year period of probation and made ancillary orders that are not at issue on the appeal.

[5] On appeal, the accused argues that the judge failed to give sufficient weight to his cognitive limitations, mental health issues, *Gladue* factors (see *R v Gladue*, 1999 CanLII 679 (SCC) [*Gladue*]), and addiction issues, as well as his mental state at the time of the offences. He also argues that the sentence is demonstrably unfit.

Discussion

[6] The standard of review on a sentence appeal is highly deferential (see *R v Friesen*, 2020 SCC 9 at para 26 [*Friesen*]). Absent a material error in principle, an appellate court may intervene only where the sentence is demonstrably unfit. As explained in *Friesen*, "[e]rrors in principle include an error of law, a failure to consider a relevant factor, or erroneous consideration

of an aggravating or mitigating factor" (*ibid*). The weighing of relevant factors does not constitute an error in principle unless the judge's exercise of discretion is unreasonable.

[7] We are not persuaded that the judge committed any error in principle. In our view, she correctly applied the law and her weighing of the relevant factors was reasonable.

[8] We do not accept the accused's submission that the judge unreasonably weighed the impact of his cognitive limitations, mental health issues or addiction issues on his moral culpability, or the extent to which his *Gladue* factors contributed to his criminal conduct. The judge delivered her reasons immediately following comprehensive submissions from both counsel. Those submissions addressed the applicable legal framework for assessing whether the accused's mental illness or cognitive limitations diminished his degree of responsibility (see *R v Okemow*, 2017 MBCA 59 at para 73), as well as the effect of the accused's *Gladue* factors and other considerations relevant to the determination of a fit sentence.

[9] Moreover, the judge is presumed to know the law and to have applied it correctly (see *R v GF*, 2021 SCC 20 at para 79). Importantly, in this case, when delivering her oral reasons, the judge took care to address the accused directly so that he understood her reasons and the sentence imposed.

[10] The judge was keenly aware of the accused's "very special personal issues", including his "trouble with thinking and learning, . . . and drugs", and his *Gladue* factors. She also understood the need to take those factors into account and consider "the whole context" when balancing the accused's circumstances with the seriousness of the offences.

[11] The judge accepted that the accused was not "in [his] right mind" at the time of the offences but she also found that he "certainly had the ability to make some choices there that [he] could have made differently".

[12] We are also not persuaded that the sentence is demonstrably unfit.

[13] The judge accepted that the accused's moral culpability was reduced but appropriately concluded that deterrence and denunciation were the primary sentencing principles. Therefore, the accused's personal circumstances, while relevant, necessarily took on a reduced role (see *R v KNDW*, 2020 MBCA 52 at para 21).

[14] Although the accused's moral culpability was reduced, the offences were nevertheless serious, involving the sexual objectification of one young adult and eight teenagers. The impact on the sexual assault victim was significant.

[15] As set out in the *Gladue* pre-sentence report, the accused's risk to reoffend generally was very high and his risk to reoffend sexually was well above average. His major risk factors included substance use, companions and pro-criminal orientation. The accused had a lengthy criminal record, including prior convictions for violence and breaching court orders. His prospects for rehabilitation were low; he has failed to engage with community resources in the past and stated that he had no intention of changing his behaviour regarding substance abuse.

[16] We do not agree that the judge mischaracterized the sexual assault offence. After considering the impact of the offences on the victims, which the judge stated was traumatizing and "could affect them for the rest of their

lives", the judge found that the offences were "pretty concerning". She did not find that the sexual assault was "incredibly violent" or adopt that aspect of the Crown's submission.

[17] While the sentence imposed for the sexual assault offence is, in our view, high, it is not demonstrably unfit given the unique circumstances of this case. Those circumstances include the accused's extensive criminal history, which does not entitle him to leniency (see *R v Wright*, 2010 MBCA 80 at para 7); his persistent non-compliance with court-ordered conditions; his expressed refusal to alter his substance use; and his very high risk of reoffending. Collectively, these considerations justify a sentence focussed on public safety. The sentence imposed reflected both the significant public safety risk and the accused's poor prospects for rehabilitation.

[18] Finally, in light of the unusual nature of the offences, the circumstances of the accused and the resulting public safety concerns, the cases relied on by the accused are of limited assistance in assessing the fitness of the sentence.

Conclusion

[19] In the result, leave to appeal was granted, but the appeal was dismissed.

leMaistre JA

Beard JA

Spivak JA