Citation: R v Roussin, 2025 MBCA 103
Date: 20251125
Docket: AR25-30-10191

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Jennifer A. Pfuetzner
Madam Justice Lori T. Spivak
Mr. Justice David J. Kroft

B E T W E E N:

	)	***J. S. Brar***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***D. N. Queau-Guzzi***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
BJARNE JOSEPH LEE ROUSSIN	)	*Decision pronounced:*
	)	***November 18, 2025***
(Accused) Appellant	)	
	)	*Written reasons:*
	)	***November 25, 2025***

SPIVAK JA (for the Court):

[1] The accused sought leave to appeal and, if successful, appealed his global sentence of three years' imprisonment imposed following his guilty pleas to three counts of break and enter to commit theft at commercial businesses. The accused argued that the sentencing judge erred by considering expert evidence about his rehabilitative prospects that was not properly before her, and treating it as an aggravating factor.

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

[3] Over a period of several weeks, the accused committed three separate break and enters at commercial businesses, stealing thousands of dollars in merchandise. He used tools to facilitate entry and disguised his identity.

[4] At the time of sentencing, the accused was forty-six years old. He is of Métis descent. While no pre-sentence report was prepared and a *Gladue* report was waived (see *R v Gladue*, 1999 CanLII 679 (SCC) [*Gladue*]), the accused's counsel at the time reviewed the accused's significant *Gladue* factors and difficult background that was marked by abuse and Child and Family Services involvement. The accused has a lengthy and related criminal record. He suffers from drug addiction and mental health challenges.

[5] While there was no joint recommendation on the sentence to be imposed, the Crown had agreed that, in exchange for the accused's guilty pleas, it would ask for a sentence of one year in custody on each count to be served consecutively. The accused sought a sentence of six months' custody on each count to be served concurrently. At the sentencing hearing, the Crown referred the sentencing judge to a chambers decision of this Court in 2011 that dealt with the accused's application for judicial interim release pending appeal (see *R v Roussin (B)*, 2011 MBCA 103 [the *2011 decision*]). The *2011 decision* referred to a 2010 psychological/psychiatric report regarding the accused (the report) that was described as "decidedly negative about the [accused's] prospects for rehabilitation" (at para 16).

[6] In imposing a global sentence of three years, the sentencing judge viewed the offences as very serious, sophisticated and planned. She reviewed all of the accused's personal circumstances, but determined that his moral

culpability was nonetheless high. She took into account the accused's "non-stop criminal history" and risk to public safety, and considered his rehabilitative prospects to be wanting, stating that, while rehabilitation was "not completely off the table", it was to "take a backseat" to deterrence and denunciation. In her reasons, she referred to the *2011 decision* and the report, and suggested that the accused had not "done much since that point."

[7] It is trite law that an appellate court can only intervene to vary a sentence if the sentence is demonstrably unfit, or the sentencing judge made an error in principle that had an impact on the sentence. An error in principle includes an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor (see *R v Friesen*, 2020 SCC 9 at para 26, citing *R v Lacasse*, 2015 SCC 64).

[8] The accused argues that the sentencing judge erred in law by giving weight to, and treating as an aggravating factor, an expert opinion about the accused's rehabilitation prospects from the report that was not properly before the Court.

[9] We are not persuaded that the sentencing judge so erred.

[10] In our view, the sentencing judge did not improperly rely on an expert opinion from the *2011 decision* as an aggravating factor in concluding that the accused had poor rehabilitative prospects. The sentencing judge's references to the *2011 decision* and the report regarding the accused's rehabilitative potential were made only in passing, and after a detailed and extensive review of the accused's continuous criminal behaviour from 1996 until the date of sentencing. The accused's criminal record, highlighted by the sentencing judge, included forty-nine criminal convictions, twenty-five of

which were property related. Several of the offences involved a firearm and the imposition of long penitentiary sentences.

[11] The sentencing judge also noted that the accused was aware that he had "issues", but had chosen not to do enough about them. This led the sentencing judge, based on her own assessment, to conclude that the accused posed a safety risk, had dim rehabilitative prospects, and required a sentence that emphasized denunciation and deterrence. Before noting the *2011 decision* and the report, and after recounting the accused's concerning criminal history, the sentencing judge determined that not only did his criminal history disentitle the accused "to leniency, but it [told her of] the need for him to be deterred from being reinvolved in criminal conduct, [and] the fact that he [didn't] have the best prospects for rehabilitation." The sentencing judge was entitled to reach this conclusion on the record and did so without material error.

[12] Further, the *2011 decision* and the report were not provided to the sentencing judge as expert evidence and they were not treated by her as such. At the sentencing hearing, the Crown pointed out that the report suggested that the accused was unlikely to change his behaviour and argued that this earlier assessment was borne out given the accused's criminal activity in the decade that followed the *2011 decision* and the offences that brought him before the Court. The sentencing judge did not rely on the *2011 decision* or the report as evidence of an aggravating factor. Her brief references to the *2011 decision* and the report were part of her comprehensive review of the accused's criminal record and the lack of rehabilitative steps taken by him since that time.

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

Spivak JA

Pfuetzner JA

Kroft JA