Citation: R v SNL, 2025 MBCA 65
Date: 20250707
Docket: AR24-30-10083

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Karen I. Simonsen
Mr. Justice David J. Kroft
Madam Justice Anne M. E. Turner

B E T W E E N:

	)	***W. G. Marks***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***R. Lagimodière***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard:*
S. N. L.	)	***January 7, 2025***
	)	
(Accused) Appellant	)	*Judgment delivered:*
	)	***July 7, 2025***

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KROFT JA

Introduction

[1] The twenty-seven-year-old accused pleaded guilty to sexual interference against a seven-year-old girl (the victim). He also pleaded guilty to failing to appear on the initial sentencing date and breaching a condition of a release order. The sentencing judge imposed a ten-year sentence for the

sexual interference and two, three-month consecutive sentences for the other offences.

[2] The accused seeks leave to appeal his ten-year sentence for sexual interference and, if granted, that a sentence in the five-year range be substituted therefor. The accused is not appealing the other sentences.

[3] At the sentencing hearing, the Crown sought a sentence of twelve years for sexual interference. On appeal, the Crown acknowledged the sentence imposed for that offence is at the higher end but says it is not unfit and there is no basis for appellate intervention.

[4] For the following reasons, I would grant leave to appeal, allow the appeal and substitute a sentence of eight years for the sexual interference conviction.

Facts

[5] The victim, who is Indigenous, lived with her mother and siblings. Her home was within walking distance from the accused's house. Early one morning, the victim answered a knock at her front door. At the time, the victim was alone watching television as her mother and siblings were still asleep. The person at the door was the accused—someone the victim knew well and trusted because of his long-time relationship with the victim's older cousin. Upon opening the door, the accused offered the victim Dorito chips, walked her to his house and assaulted her by engaging in sexual intercourse causing significant injury to her genital area. The victim was left to walk home unattended where she was met by her mother who, by that time, was panicked about the whereabouts of her young child. At the sentencing

hearing, it was clear the victim also sustained significant psychological trauma evidenced, in part, by an inability to progress with therapy or return to school for a period of nearly four years after the offence.

[6] The accused has no memory of the assault due to being intoxicated to the point of experiencing blackouts. As for his personal circumstances, it is common ground he is also Indigenous, has been a victim of sexual abuse, had a mother with addiction issues who died young, had an absentee father, and was raised by grandparents who, at the time, abused alcohol. On formal testing, his overall cognitive functioning, adaptive reasoning and IQ fell in the extremely low range. The accused has no criminal record.

Grounds of Appeal

[7] In his factum, the accused articulates his grounds for appeal as follows:

> i) The sentencing judge imposed a harsh and unfit sentence.
>
> ii) The sentencing judge failed to properly consider the impact of the [accused's] intoxication when committing the offence.
>
> iii) The sentencing judge failed to properly consider and apply the [accused's] *Gladue* [*R v Gladue*, 1999 CanLII 679 (SCC)] factors and resulting addiction issues to the sentencing process.

[8] On more than one occasion in the factum, and again when the appeal was argued, the accused articulated grounds two and three somewhat differently. He stated the sentencing judge erred by failing to properly consider *Gladue* factors, cognitive impairment and intoxication before concluding the accused was highly morally blameworthy. He goes further by

submitting "[a]n Indigenous person with intellectual challenges and a troubled background who commits an offence while grossly intoxicated because of these two factors cannot be found highly morally culpable for their offending."

Standard of Review

[9] The starting point on a sentence appeal is for an appellate court to show a high degree of deference to the sentencing judge's decision. Before interfering, the accused must establish the sentence is demonstrably unfit or that the sentencing judge made an error in principle that materially impacted the sentence (see *R v Friesen*, 2020 SCC 9 at paras 25-26 [*Friesen*]).

Analysis

Grounds Two and Three: Failure to Incorporate Gladue, Cognitive Impairment and Intoxication

[10] The sentencing judge's decision was delivered orally. After reviewing the facts, the positions of the parties and the sentencing principles articulated in section 718 of the *Criminal Code*, RSC 1985, c C-46 [the *Code*], the sentencing judge stated, among other things, "there [was] no question this [was] a highly moral[ly] blameworthy set of circumstances". The accused argues this reference to high moral culpability so early in the decision is evidence the sentencing judge came to that conclusion without properly considering the accused's *Gladue* factors, cognitive impairment and intoxication. In other words, he jumped the proverbial gun and thereby erred in principle.

[11] The Crown submits there was no error in principle and, at its core, this aspect of the appeal turns on deference. It says the sentencing judge considered and reasonably weighed the evidence as it pertained to the accused's *Gladue* factors, cognitive impairment and intoxication, and came to a decision respecting the degree to which those particular background factors impacted the accused's moral culpability. The Crown states the accused has not established any error in principle and, absent reversible error, it is not the role of this Court to interfere even if it would have arrived at a different conclusion.

[12] In respect of grounds two and three, I agree with the Crown. The accused's position is not borne out when the sentencing judge's reasons are read as a whole and in the context of the record, which included a forensic psychological assessment and a pre-sentence report. Despite the sentencing judge's reference to high moral blameworthiness early in his reasons, he goes on to explain in some detail how he considered and balanced the three factors at issue on these grounds of appeal to arrive at his decision.

Gladue Factors

[13] The sentencing judge specifically addressed *Gladue* factors, correctly stating they are the overall lens through which sentencing of the accused should be examined. He then addressed the *Gladue* factors at play in this case, including intergenerational trauma. Specific mention was made to section 718.2(e) of the *Code* mandating the Court to consider sanctions, other than imprisonment, that are reasonable in the circumstances, with particular attention to the circumstances of Indigenous offenders.

Cognitive Impairment

[14] The accused's cognitive impairment was first referenced by the sentencing judge when summarizing the parties' positions and then specifically considered later in his reasons, following discussion of *Gladue* factors.

Intoxication

[15] Intoxication was considered by the sentencing judge as evidenced, in part, by his statement that "this [was] a highly [morally] blameworthy set of circumstances *despite* the fact that [he had] accepted that this [was] an individual who was blackout drunk or extremely intoxicated at the time" [emphasis added]. He clearly was alive to the accused's arguments about the impact of intoxication on moral culpability.

[16] When the reasons are read as a whole, in the context of counsel's submissions and the evidentiary record, the foundation for the sentencing judge's assessment of moral culpability is reasonably discernable (see *R v REM*, 2008 SCC 51 at paras 15-17). I do not endorse, as a correct statement of the law, the accused's submission that an Indigenous person with intellectual challenges and a troubled background who commits an offence while grossly intoxicated cannot be found highly morally culpable for their offending. I would dismiss grounds two and three of the accused's appeal. He has not established the sentencing judge failed to reasonably consider *Gladue* factors, cognitive impairment and intoxication when assessing his moral blameworthiness. There was no error in principle that materially impacted the sentence.

Ground 1: Sentence is Demonstrably Unfit

[17] A "demonstrably unfit" sentence has alternatively been described by the Supreme Court of Canada as one that is "clearly unreasonable", "clearly or manifestly excessive", "clearly excessive or inadequate" or representing a "substantial and marked departure" (*R v Lacasse*, 2015 SCC 64 at para 52 [*Lacasse*]). Similarly, this Court has defined demonstrably unfit as "unreasonably depart[ing] from the principle of proportionality taking into account the individual circumstances of the offence and the offender and the acceptable range of sentence for similar offences committed in similar circumstances" (*R v McLean*, 2022 MBCA 60 at para 82 [*McLean*], citing with approval *R v Houle*, 2016 MBCA 121 at para 11 [*Houle*]).

[18] A sentence may be demonstrably unfit even if a judge made no error in principle by imposing it (see *Lacasse* at para 52).

[19] An inquiry into the fitness of a sentence must be focused on the principle that sentences must be "proportionate to the gravity of the offence and the degree of responsibility of the offender" (*Friesen* at para 30; *Lacasse* at para 53). This principle is codified in section 718.1 of the *Code*.

[20] Proportionality is determined both on an individualized basis and by comparison with sentences imposed in other cases for similar offences committed in similar circumstances (see *Lacasse* at para 53). The latter comparison is known as parity. Parity is codified in section 718.2(b) of the *Code*.

[21] In *Friesen*, the Supreme Court describes parity as an expression of proportionality and observes that a consistent application of proportionality

will lead to parity. On the other hand, assigning the same sentence to unlike cases will achieve neither parity nor proportionality. In practice, parity gives meaning to proportionality. Judges calibrate the demands of proportionality by reference to the sentences imposed in other cases. Precedents embody the collective experience and wisdom of the judiciary. They are the practical expression of parity and proportionality (see *Friesen* at paras 32-33).

[22] Still in the context of parity, *Friesen* cautions to not assign a hierarchy to or place a focus on specific types of physical acts committed against children so as not to risk underemphasizing the emotional and psychological harm to the victim that all forms of sexual violence cause. That said, judges can legitimately account for the greater risk of harm posed by certain physical acts and consider those acts aggravating factors (see *R v Silaphet*, 2024 MBCA 58 at paras 59-60 [*Silaphet*]; *Friesen* at paras 142, 146).

[23] Prior to the decision in *Friesen*, which changed the landscape for sentencing sexual offences against children, this Court, in *R v Sidwell (KA)*, 2015 MBCA 56 [*Sidwell*], held that a four- to five-year starting point is appropriate for a "major sexual assault of a child when in a position of trust, assuming that the accused is a mature person with no criminal record and prior good character" (at para 49).

[24] This Court has recognized that, in *Friesen,* the Supreme Court called for higher sentences for sexual abuse of children (see *R v Sinclair*, 2022 MBCA 65 at paras 60-61; *R v KNDW*, 2020 MBCA 52 at para 2). Indeed, in *Friesen*, the Supreme Court stated, "[w]hen a body of precedent no longer responds to society's current understanding and awareness of the gravity of a

particular offence and blameworthiness of particular offenders or to the legislative initiatives of Parliament, sentencing judges may deviate from sentences imposed in the past to impose a fit sentence" (at para 35; see also para 110). Having said that, the Supreme Court did note the sentencing judge appropriately applied the guidance provided in *Sidwell* (see *Friesen* at para 162). Subsequently, this Court has continued to refer to *Sidwell* in sentencing appeals (see e.g. *Silaphet* at para 66).

[25] Bearing the foregoing in mind, the following appellate decisions are of assistance in determining whether the ten-year sentence in this case is demonstrably unfit.

[26] In *R v JM*, 2022 MBCA 25 [*JM*], this Court upheld the accused's five-year sentence for sexual assault against his eleven-year-old great-niece. The abuse occurred in one evening with the accused sexually touching the victim and then taking her to her bedroom where he engaged in sexual intercourse. Shortly after the offence, the victim began abusing substances. *Gladue* factors were present and considered by the sentencing judge. This Court held that the sentence was consistent with the guidance in *Friesen* (*JM* at para 51).

[27] In *R v Logan*, 2022 MBCA 97, the accused was sentenced to ten years for three counts of sexual interference and three counts of sexual assault against six children, aged fourteen to sixteen. The accused was in his mid-twenties. The abuse of one of the victims included five to ten instances of sexual intercourse. Within the ten-year sentence, the accused received five years for those penetrative sexual assaults. This Court upheld the sentence, finding that the trial judge did not err in not making a reduction for totality

and appropriately weighed and balanced the aggravating and mitigating factors for each offence, which included the accused's mental disabilities.

[28] In *R v SADF*, 2021 MBCA 22, the thirty-two-year-old accused's global sentence was increased from four years and six months' incarceration to six years for two counts of sexual interference against his six-year-old daughter and eight-year-old stepdaughter. The abuse included repeated sexual touching and vaginal penetration. This Court held the trial judge erred by failing to appreciate the gravity of the offences and the accused's moral culpability. *Gladue* factors were not present. This Court also agreed with the Crown and imposed a sentence of four years for each offence, reduced by two years for totality.

[29] In *R v JDW*, 2021 MBCA 49, this Court upheld an eight-year sentence for incest. The accused sought out his seven-year-old daughter in her bedroom and penetrated her anus. The victim was found by her mother, crying in the corner of the room as her father sat naked on the bed. The accused was highly intoxicated. The accused had a history of violence against women, including the victim. There were *Gladue* factors. Cognitive impairment was not a factor.

[30] In *R v RW*, 2021 MBCA 71 [*RW*], this Court upheld the accused's nine-year sentence for sexual interference arising from three events of sexual intercourse with the thirteen-year-old sister of his then common-law wife. On one occasion, no condom was used and, on another, the victim was intoxicated. This Court found that the trial judge erred in her totality assessment but held that the error was not material and did not result in an unfit sentence. *Gladue* factors were present but there were no mitigating

factors. Numerous aggravating factors were identified by the trial judge, including the position of trust, the victim's young age, her age relative to that of the accused, the victim's increased vulnerability from her intoxication, the significant impact of the offence on the victim, the serious and repetitive nature of the sexual abuse, the accused's failure to use a condom during at least one of the sexual acts, and the fact that the offending occurred shortly after the accused was released on bail.

[31] In *R v S (D)*, 2022 MBCA 94 [*S (D)*], this Court upheld the accused's nine-year sentence for sexual interference against his fourteen-year-old stepdaughter. The sexual abuse occurred during one event that included forced vaginal, anal, oral and digital penetration for two to three hours. The accused threatened to kill the victim's family if she disclosed what happened. The trial judge considered and gave weight to the accused's *Gladue* factors and the fact that he had family support. However, numerous aggravating factors were present: significant physical and emotional harm to the victim, the accused's position of trust, the inherent wrongfulness of his conduct and a prior criminal record for violent offences.

[32] This Court also noted in *S (D)* that, because the victim is Indigenous, denunciation and deterrence must be primary considerations as per section 718.04 of the *Code*. Describing the sentence as high, this Court nonetheless upheld it based on the applicable standard of review and deference owed to the sentencing judge.

[33] In *R v AAJT*, 2022 MBCA 47 [*AAJT*], this Court upheld a global sentence of twenty-two years' incarceration, reduced from thirty and one-half years for totality, for offences that included sexual interference; making,

distributing and possessing child pornography; and failing to comply with an undertaking. Contained within the total sentence (before totality), the trial judge imposed a sentence of fourteen years for sexual interference (the maximum sentence for this offence under section 151(a) of the *Code*). He then reduced the global sentence for totality without allocating a reduction to specific offences. On appeal, this Court determined the sentence for sexual interference, after totality, should be twelve years.

[34] In *AAJT*, the victim was the four-year-old daughter of the accused's then-girlfriend. The abuse occurred over the course of one year and included cunnilingus and digital and penile penetration. The trial judge held the offending conduct was at the extreme end of the scale of moral blameworthiness and severity. Numerous aggravating factors were present, including a position of trust; the victim's young age; the duration and frequency of abuse; the interference was unprotected and in the presence and with the participation of the victim's mother; a very significant impact on the victim and her family relationships; and the nature and size of the accused's child pornography collection that included images of the victim. No *Gladue* factors were present. This Court described the total sentence of twenty-two years as very high, although not unfit given the "uniquely disturbing circumstances" (at para 23).

[35] I conclude my review by observing that, in all but one of the decisions just cited, the sentences were lower than the ten years imposed against the accused in the present case. Many of those cases involved more serious offending and the absence of mitigating factors.

[36] In *AAJT*, where the sentence was twelve years after totality, the circumstances were clearly much more severe than in the present appeal. The victim, the four-year-old daughter of the accused's partner, was sexually abused over the course of one year involving acts of cunnilingus and digital and penile penetration. As well, the accused was convicted of numerous other sexual offences, including making, possessing and distributing child pornography that was created from the victim's sexual abuse. No *Gladue* factors were present in that case. The abuse in *AAJT* was particularly devastating. As I have already noted, this Court found the circumstances of that case to be "uniquely disturbing".

[37] In *RW*, where a nine-year sentence was upheld, there were three events of intercourse, there were no mitigating factors and the offending occurred shortly after the accused was released on bail.

[38] In *S (D)*, a nine-year sentence was also upheld where, in a high position of trust (stepfather), the Indigenous accused engaged in forced vaginal, anal, oral and digital penetration over several hours and threatened to kill the Indigenous victim's family if she disclosed what had occurred. He had a criminal record. This Court described the nine-year sentence as high.

[39] After considering the jurisprudence from this Court, I conclude a ten-year sentence for the accused in the facts of the present appeal is demonstrably unfit. It unreasonably departs from the principle of proportionality when all of the individual circumstances of the offence and the accused and the parity principle are taken into account. To repeat, it is parity that gives meaning to proportionality. I am ever mindful of the aforementioned highly deferential standard of review, the individualized

nature of sentencing and judicial cautions against permitting sentencing ranges to overtake the principle of proportionality (see paras 17-22 herein; *McLean* at para 81; *Lacasse* at paras 11, 51-55).

[40] My conclusion is supported by an extensive review of post-*Friesen* decisions from other jurisdictions across Canada for penetrative sexual offences against a child, including cases involving frequent and prolonged sexual abuse against one or multiple children.[1] It is also consistent with other post-*Friesen* decisions of this Court where the assault involved victims older than the victim in this case (see e.g. *R v Abassi*, 2020 MBCA 119) or where the assault against the child was non-penetrative in nature (see e.g. *Silaphet*).

[41] There can be no doubt the accused's conduct in the present case was reprehensible and had and will continue to have a devastating impact on the physical and psychological well-being of the victim. However, when the circumstances of this case are considered as a *whole* and in the context of the post-*Friesen* jurisprudence, I find they are distinguishable from the circumstances in those cases where the *highest* sentences were upheld despite sharing several aggravating factors. These distinguishing circumstances include:

i) the degree and frequency of the sexual interference committed by the accused;

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[1]See e.g. *AZ v R*, 2024 NBCA 140; *R v GB*, 2024 ONCA 757; *R v AS*, 2024 SKCA 63; *R v GJM*, 2024 BCCA 82; *R v WBG*, 2024 NSCA 24; *R v AMD*, 2024 PECA 6; *R v Elson*, 2024 NLCA 6; *R v CK*, 2023 BCCA 468; *R v Harry*, 2023 BCCA 448; *R v Williams*, 2023 ONCA 719; *R v GS*, 2023 ONCA 712; *R v RK*, 2023 ONCA 653; *R v TKN*, 2023 ONCA 488; *R v BM*, 2023 ONCA 224; *R v GH*, 2023 ONCA 89; *R v MacKay*, 2022 BCCA 374; *R v Dichrow*, 2022 ABCA 282; *R v Bains*, 2022 ABCA 227; *R v NBM*, 2021 ABCA 248; *R v MacLean*, 2021 NLCA 24; *R v RH*, 2021 ONCA 236; *R v Okemaysim*, 2021 SKCA 33; *R v Nahanee*, 2021 BCCA 13, aff'd 2022 SCC 37; *R v HCTT*, 2020 BCCA 366; *R v Lemay*, 2020 ABCA 365; *R v Boucher*, 2020 ABCA 208.

ii) *Gladue* considerations; and

iii) mitigating factors, including a guilty plea, the absence of prior misconduct, an expression of remorse, significant cognitive impairment and the disproportionately harmful impact of incarceration on people with significant cognitive impairment (see *R v Bertrand Marchand*, 2023 SCC 26 at paras 147, 150), as well as the accused having taken programming while in custody.

[42] I pause to acknowledge that, prior to sentencing, the sentencing judge was not presented with, and therefore did not consider, many of the cases referred to in this decision.

[43] In all of the circumstances, I would set aside the accused's ten-year sentence and replace it with an eight-year sentence.

[44] In my view, eight years properly reflects the sentencing judge's finding of high moral culpability, the statutorily prescribed paramountcy of denunciation and deterrence in cases such as this, the victim's own Indigeneity, and aggravating factors such as the victim's young age, her trusting relationship with the accused, the accused's abuse of that relationship, a degree of planning on the part of the accused, and the significant physical and psychological harm caused to the victim. Eight years also takes into account the *Gladue* factors, as well as the mitigating factors summarized in paragraph 41 hereof. A five-year sentence as suggested by the accused is too low in the circumstances. I am satisfied an eight-year sentence for the accused remains true to the directions articulated by the Supreme Court in *Friesen*, including:

i) Sentences must accurately reflect the wrongfulness of sexual violence against children and the far-reaching and ongoing harm it causes to children, families and society at large (see para 5).

ii) Courts are to focus their attention on emotional and psychological harm, not simply physical harm (see para 56).

iii) The wrongfulness and harmfulness of sexual violence impact the gravity of the offence and the degree of responsibility of the offender. "[C]ourts need to take into account the wrongfulness and harmfulness of sexual offences against children when applying the proportionality principle" (at para 75).

iv) By increasing maximum sentences for sexual offences against children, Parliament has expressed its intention that such offences be punished more harshly and that primary consideration be given to the objectives of denunciation and deterrence. Courts should give effect to that intent (see paras 95-105).

v) Mid-single-digit custodial sentences for sexual offences against children are normal and upper-single-digit and double-digit custodial sentences should be neither unusual nor reserved for exceptional cases (see para 114).

vi) When arriving at a fit sentence for sexual offences against children, courts must consider, among other things, the

> likelihood of the perpetrator to reoffend; the presence and abuse of a trust relationship; the duration and frequency of the sexual violence; the age of the victim; and the degree of physical interference, mindful to not attribute intrinsic significance to the occurrence or non-occurrence of certain sexual acts based on traditional notions of sexual propriety, or assume there is any clear correlation between the type of physical act and the harm to the victim (see paras 121-142).

Conclusion

[45] For the foregoing reasons, I would grant leave to appeal, allow the appeal and substitute a sentence of eight years in place of the ten years imposed by the sentencing judge for the offence of sexual interference. The ancillary orders made by the sentencing judge remain.

Kroft JA

I agree: Simonsen JA

TURNER JA (dissenting):

[46] I have had the benefit of reading the reasons for judgment of my colleague.

[47] I agree that the sentencing judge did not make any reversible errors, for the same reasons as set out by my colleague. I also agree generally with my colleague's explanation of the facts and the law; however, I respectfully disagree that the sentence imposed was demonstrably unfit. When the aggravating factors, including the significant harm to the victim, are considered together with the highly deferential standard of review, the ten-year sentence is not "clearly or manifestly excessive" (*Lacasse* at para 52).

[48] The Supreme Court, in *Friesen*, instructs that focus must be placed on the harm to the victim in cases of sexual violence against children. The decision emphasizes the harm that sexual violence causes to children and the profound wrongfulness of such acts, causing harm not only to the victim, but also to families and society at large (see *ibid* at para 5).

[49] The opening paragraph of *Friesen* frames the overall meaning of the Supreme Court's decision:

> Children are the future of our country and our communities. They are also some of the most vulnerable members of our society. They deserve to enjoy a childhood free of sexual violence. Offenders who commit sexual violence against children deny thousands of Canadian children such a childhood every year. This case is about how to impose sentences that fully reflect and give effect to the profound wrongfulness and harmfulness of sexual offences against children.

Facts

[50] In addition to the facts set out in my colleague's reasons, the following facts, which were not disputed by the accused, are also important in determining whether the sentence imposed was demonstrably unfit.

[51] First, the injuries to the victim's genital area included a tear to her inner labia and a vertical tear to her hymen. After the sexual assault, the accused left the victim to walk home alone and bleeding from her vagina. The victim's mother, the police and the forensic examiner noted blood on her underwear. The emergency room nurse also noted blood on her shorts.

[52] The medical reports indicated that the victim was shaky and tearful during the physical exam. The physical and psychological trauma of the assault resulted in the victim refusing any physical examination after the initial exam at the Children's Hospital.

[53] Second, other than the initial disclosure of the offence to her mother, the victim was so traumatized that she could not speak about the incident again, other than perhaps making some progress in therapy shortly before the sentencing (over three and a half years after the offence).

[54] Third, the victim was unable to return to school for nearly four years. In the few months leading up to the sentencing, the victim had just started going to school for one hour a day. Therefore, the offence not only had physical and psychological impacts, but it also had a profound effect on the victim's education and development during a formative time in her life.

[55] I highlight these additional facts because of the Supreme Court's instruction in *Friesen* at para 56 that:

> [The] emphasis on personal autonomy, bodily integrity, sexual integrity, dignity, and equality requires courts to focus their attention on emotional and psychological harm, not simply physical harm. Sexual violence against children can cause serious emotional and psychological harm that, as this Court held in *R. v. McCraw*, [1991] 3 S.C.R. 72, "may often be more pervasive and permanent in its effect than any physical harm" (p. 81).

Analysis

[56] Sentencing is "one of the most delicate stages of the criminal justice process in Canada" that requires the sentencing judge to exercise a broad discretion "in balancing all the relevant factors in order to meet the objectives being pursued in sentencing" (*Lacasse* at para 1).

[57] As noted by my colleague at paragraph 9 herein, the standard of review on a sentence appeal is highly deferential. I would add that this Court noted in *Houle* at para 11:

> The law affords a sentencing judge great latitude in tailoring a sentence to the offence and the offender (*R v Ipeelee*, 2012 SCC 13 at para 38, [2012] 1 SCR 433; and *R v Nasogaluak*, 2010 SCC 6 at paras 43-46, [2010] 1 SCR 206). Accordingly, the threshold for appellate intervention with a sentence is "very high" and limited only to situations of material error or where the sentence is demonstrably unfit (section 687(1) of the *Code* and *R v Lacasse*, 2015 SCC 64 at para 52, [2015] 3 SCR 1089). . . . A sentence will be demonstrably unfit where it unreasonably departs from the principle of proportionality taking into account the individual circumstances of the offence and the offender and the acceptable range of sentence for similar offences committed in similar circumstances (see *Lacasse* at paras 52–55; and *R v Ruizfuentes* (*HS*), 2010 MBCA 90 at para 7, 258 ManR (2d) 220).

[58] While I acknowledge that the ten-year sentence imposed in this case is somewhat longer than the sentences imposed in some of the cases my colleague outlined, I do not think that renders this sentence demonstrably unfit. As this Court recently noted in *R v Alcera*, 2024 MBCA 32 at para 44:

> However, perfect parity in sentencing is neither attainable nor desirable; sentencing is an individualized process (see *R v M (CA)*, 1996 CanLII 230 (SCC) at para 92). Seldom are two offenders so alike that a "sentence in one can be taken 'off the peg' for use in the other" (*R v FCG*, 1997 CanLII 23073 (MBCA) at para 9; see also *R v Reader (M)*, 2008 MBCA 42 at para 13 [*Reader*]). Some disparity in sentences for similar offenders committing similar crimes is to be expected (see *R v Cook (N)*, 2014 MBCA 29 at para 83).

[59] In the current case, the sentencing judge recognized the seriousness of the offence and the attention that had to be paid to the harms done to the victim and her family. He considered the victim's young age, her significant physical injuries, and the fact that the victim had just recently been able to return to school for short periods of time and had just started speaking about the assault to a therapist. He also considered that the accused was in a position of trust to the victim, in that she had known him all her life, often referred to him as her uncle and trusted him enough to go with him when he arrived at her door the morning of the offence while the rest of her family was still asleep.

[60] The sentencing judge properly approached the sentencing through the lens of the several *Gladue* factors in the accused's life. He also considered that the accused was grossly intoxicated at the time of the offence and had intellectual limitations.

[61] In my view, the sentencing judge properly weighed all of the circumstances of the offender and the offence in coming to a sentence of ten years. The sentence also properly gave effect to the statutorily aggravating factor that the victim was a young, Indigenous girl (see the *Code*, s 718.04).

[62] In *Friesen*, the Supreme Court was very clear that mid-single-digit sentences for sexual offences against children should be normal and that upper-single-digit and double-digit sentences should not be unusual, nor should they only be imposed in rare or exceptional circumstances. In addition, substantial sentences can be imposed where there is only a single act of sexual violence and/or a single victim (see para 114).

Conclusion

[63] When the highly deferential standard of review is applied and all of the relevant factors are considered, the ten-year sentence imposed was not demonstrably unfit. Therefore, I would grant leave to appeal but dismiss the accused's sentence appeal.

Turner JA