On appeal from a summary conviction sentence of the Manitoba Provincial Court, Winnipeg Centre, dated January 16, 2024.

Date: 20241126
Docket: CR 24-01-39947
(Winnipeg Centre)
Indexed as: R. v. Dobbin
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,	)	ARIAN POUSHANGI
	)	LEIGH-ANNE MERCIER
appellant,	)	for the Crown
	)	
- and -	)	
	)	
BRET ALLAN DOBBIN,	)	MATTHEW T. GOULD
	)	CALEIGH M.A. GLAWSON
(accused) respondent.	)	for the respondent
	)	
	)	
	)	Judgment delivered:
	)	November 26, 2024

PERLMUTTER A.C.J.

INTRODUCTION

[1] This case highlights the special need to protect older and vulnerable people from financial exploitation by those who abuse a position of trust. In this sense, it is also the court's opportunity, through the imposition of a fit and proper sentence, both to express society's denunciation of financial exploitation of vulnerable people of advanced age by someone who abuses a position of trust and to deter those in the community who might be tempted to engage in such conduct.

[2] The Crown appeals a summary conviction sentence imposed upon the accused following his guilty plea to 50 offences under ***The Mortgage Brokers Act***, C.C.S.M. c. M210 and ***The Securities Act***, C.C.S.M. c. S50. The sentencing judge imposed a 15-month conditional sentence, one condition of which allows the accused to assist the victim of these offences with household tasks and errands.

[3] The Crown contends that the sentencing judge committed five errors in principle, which had a material impact on the sentence. Therefore, it is the Crown's position that the conditional sentence order should be replaced with a carceral sentence in the range of two to three years. The defence maintains that there were no such errors in principle and that deference is to be shown to the sentence imposed by the sentencing judge.

FACTUAL BACKGROUND

[4] In early 2000, the complainant, her husband, the accused, the accused's wife, and the accused's mother (whom the complainant knew from years before) had dinner together. The accused asked the complainant's husband if he could manage his money, and he declined the offer. The complainant's husband passed away in 2015, at which time the complainant was 80 years old. Later that year, the complainant looked up the accused and he invited the complainant to his house for dinner. In early 2016, the accused asked if the complainant needed a mortgage. She did not. Instead, she told him that she owned her house and had money.

[5] Starting in 2016, the accused told the complainant to give him her money instead of giving it to a bank. The accused told the complainant that he would get her much higher interest; that he was going to use her money to finance mortgages for people who

would otherwise be losing their homes; that in two years she would have her principal back; and that every month she would receive a cheque for interest.

[6] From April 2016 to December 2017, 17 transactions were initiated by the accused for which he prepared all documents. The complainant signed documents presented to her by the accused, which she did not understand. Several of these transactions had documentation, including references to loan commitment, mortgage commitment, client authorization, and loan commitment notification. For these transactions, the accused obtained the money from the complainant. All cheques signed by the complainant were to payees and in amounts as instructed by the accused.

[7] During this time frame, the accused, in total, took $503,237.61 from the complainant. Portions of the monies were used to fund mortgages while portions were used by the accused and his associate to fund personal expenses. In a number of transactions that purportedly involved other payees, the accused or his associate received a significant portion of the funds or, in one case, all of the funds. From May 2016 to November 2021, the complainant received approximately $82,694 in interest, bonuses or fee payments on her total funds invested of $503,237.61. Monthly interest payments were not made consistently resulting in periods of time where no payments were made. The full amount of the principal, which was due years ago, has never been repaid.

[8] During the time the offences were committed, the accused took the complainant to church, drove her to appointments, and took her on errands such as getting glasses and medication and to financial institutions to do her banking where he would instruct her to write cheques, including to himself. The complainant complied. She says she

trusted him in part because he belonged to the same church. The complainant says the accused told her that he would take care of her until she dies. She [symbolically] made the accused her "son", and he began to call her "mom".

[9] By the end of September 2016, the accused had been given power of attorney and his associate was named as alternate. The accused was also named in the complainant's will as executor and beneficiary. Both the power of attorney and the inclusion in the complainant's will were revoked in about September 2017.

[10] The accused continued to ask for money from the complainant. In May 2018, the accused approached the complainant for money to be loaned immediately. She refused telling him that he had basically depleted her in 2016 and 2017. In January 2019, the accused came to the complainant's house and wanted $45,000. She refused as the money he had previously obtained from her had not been paid back.

[11] After the beginning of the investigation by the Manitoba Securities Commission, which led to the charges underlying the offences in this case, the accused told the complainant to hang up if the investigator called; that she had the power to stop the investigation; that he loved his "mom"; and that he promised he would work until his dying day to pay her back and might have to sell his house and move to another province. The complainant further said that the accused told her that if she did not write a letter forgiving him, he was going to go to jail and would not be able to work and pay her back. The complainant said she felt pressured by the accused to write a letter forgiving him.

[12] The accused pleaded guilty to 33 offences under ***The Mortgage Brokers Act*** and 17 offences under ***The Securities Act***, which included several counts of trading in

a security without being duly registered, acting as a mortgage broker on his own behalf, acting as a mortgage salesperson on his own behalf, and failing to pay over to the registered mortgage broker, with whom he was registered, monies received.

SENTENCING DECISION

[13] The above facts were set out in an agreed statement of facts that was filed at the sentencing hearing, along with additional sentencing materials, including several favourable reference letters from family members, friends, and business associates. No victim impact statement was filed. However, the complainant attended the sentencing hearing. While the Crown sought a sentence of two to three years' incarceration, the accused sought a one-year sentence to be served by way of conditional sentence order. The sentencing judge imposed a 15-month conditional sentence order on each count to be served concurrently.

[14] In the reasons for sentence, the judge outlined the complainant's background, the relationship between the accused and the complainant, the circumstances leading to the complainant paying money to the accused, the trust the complainant placed in the accused, the transactions and the accused's conduct that grounded the offences, and the principles of sentencing. The sentencing judge specifically noted that given the nature of the offences, "a repeated ongoing abuse of trust", he agreed with the Crown that denunciation and deterrence are primary considerations. The sentencing judge considered the aggravating and mitigating circumstances. Based on the case law, he concluded that a period of incarceration between six months and one year would fit the fact scenario in this case. Importantly, the sentencing judge also discussed the

framework and requirements pertaining to the imposition of a conditional sentence order under s. 742.1 of the ***Criminal Code***. Ultimately, in imposing a conditional sentence, the sentencing judge explained that, considering he was imposing a conditional sentence order, the amount of time that the accused would have been sentenced to jail (of six months to a year) would be increased to 15 months. As well, the sentencing judge stated:

> There are no allegations that the behaviour that led to these breaches of the *Acts* continues, and I can only surmise that [the accused] provides a needed benefit to her and is not continuing to try to take advantage of this arrangement.
>
> While this is not a mitigating factor, it does provide comfort to me that [the accused] does not continue to be a danger to her or the community in his actions shown since these offences occurred. Therefore, I am sentencing [the accused] to a jail time that will be served in the community.
>
> [Reasons for Sentence, January 16, 2024, p. T6, ll. 6-14 ["Reasons for Sentence"]

[15] As of the date of the sentencing, the complainant had paid back some money to the complainant, although the Crown and defence disagree about the amount. This amount was left to be determined by the sentencing judge in considering a stand-alone restitution order. At the hearing of this appeal, counsel agreed that the amount of the restitution order should be determined by the sentencing judge.

STANDARD OF REVIEW

[16] The Crown appeals the sentence pursuant to ***The Provincial Offences Act***, C.C.S.M. c. P160, which provides in s. 79(2), as follows:

> 79(2) The Attorney General or a prosecutor may appeal the following to the Court of King's Bench:
>
> (a) a dismissal of a charge against a defendant;
>
> (b) a penalty imposed on a defendant, but only if the proceeding was commenced by an information;

> (c) subject to subsection (5), any other order made by a justice in a hearing or other proceeding under this Act.

[17] There is no dispute about the standard of review for a sentence appeal, which is provided in ***R. v. Daniels***, 2023 MBCA 86 as follows (para. 10):

> **An appellate court must show great deference to a sentencing judge's exercise of discretion and only intervene if the sentence is demonstrably unfit or if there has been an error in principle which had a material impact on the sentence. "Demonstrably unfit" in the sentencing context refers to a sentence falling outside the acceptable range of sentences under similar circumstances**…. **An error in principle includes** failing to consider a relevant factor, considering an irrelevant factor, **failing to give sufficient weight to a relevant factor** or overemphasizing an appropriate factor…. [Citations omitted] [Emphasis added]
>
> See also, ***R. v. Chief***, 2024 MBCA 67, para. 12

[18] In ***R. v. Proulx***, 2000 SCC 5 (paras. 123-26), the Supreme Court of Canada emphasized the considerable deference to be shown from appellate courts to conditional sentences ordered by a trial court in light of the wide discretion conferred upon the sentencing judge.

PARTIES' POSITIONS

[19] It is the Crown's position that the sentencing judge committed the following five errors in principle that had a material impact on the sentence and thus justify appellate intervention:

1. The condition that allows the accused to assist the complainant with household tasks and errands reflects that the sentencing judge used the fact that the accused continued to assist the complainant as a mitigating factor, which enables further exploitation by the accused of the complainant

and fails to address the sentencing principles of denunciation and deterrence.

2. Past enforcement by the Securities Commission of similar conduct by the accused was not assessed as an aggravating factor, thereby also failing to address deterrence.

3. The complainant's elderly age and vulnerability were not given sufficient weight as an aggravating factor and the sentence does not reflect changes to securities regulation specifically focussed on protecting elderly and vulnerable people from financial exploitation.

4. The sentencing judge did not assess that restitution is unlikely given the amount that has been repaid by the accused and the complainant's age of 88 years.

5. The sentence does not reflect that the penalty for this kind of offence is moving upward as reflected by amendments to ***The Securities Act***, which increases the maximum penalty for these offences from a term of imprisonment of two years to five years less a day.

[20] It is the accused's position that by seeking a sentence of two to three years, the Crown is inappropriately looking to replace the entire sentencing regime governing these offences. It is the accused's position that if any increase in the sentence range is appropriate, it should be incremental. Moreover, it is the accused's position that the imposition of a conditional sentence order was appropriate, deference is owed to the

sentencing judge's decision, and the errors in principle suggested by the Crown are all ill-founded.

[21] The accused's counsel points out that in both submissions before the sentencing judge and this court, the Crown did not ask for a no-contact order such that the Crown's position that the condition allowing the accused to assist the complainant with household tasks and errands contradicts the Crown's position that this is an error in principle. The accused submits that it was appropriate for the sentencing judge to acknowledge, through the condition permitting ongoing contact with the complainant, the various ways the accused still provides support to the complainant.

[22] With respect to the other alleged errors in principle, it is the accused's position that there is no basis to submit that restitution is unlikely and the that the sentencing judge's reasons are to be read in light of the record, which make clear that the sentencing judge was alert to the age and vulnerability of the complainant as well as the prior sanctioning of the accused by the Securities Commission.

ANALYSIS

a) Did the sentencing judge make an error in principle?

[23] A conditional sentence may be as onerous as, or perhaps even more onerous than, a jail term (***Proulx***, para. 41). To be effective, usually a conditional sentence must be punitive and what ordinarily makes a conditional sentence punitive is house arrest or a stringent curfew (***R. v. Bogart*** (2002), 61 O.R. (3d) 75 (C.A.), para. 40; ***Proulx***, paras. 36, 103, 107). While the conditional sentence order imposed by the sentencing

judge here provides for an absolute curfew, the exemptions allowed effectively mean his curfew imposes minimal restrictions on his liberty.

[24] The terms of the conditional sentence order imposed by the sentencing judge allow the accused to leave home to work or take an educational program, attend church on Saturdays, attend to personal business for four hours each week, and importantly unlimited time to assist the complainant. In other words, the conditional sentence order allows the accused to spend much, if not most, of everyday out in the community with minimal impact on his liberty. While the sentencing judge acknowledged that denunciation and deterrence are primary sentencing principles in this kind of case, a conditional sentence order, especially with the conditions imposed in this case, cannot affect those principles.

[25] I agree with the Crown's submission that the conditional sentence order enables further exploitation and places the complainant at continued risk by allowing the accused to be with the complainant to assist with household tasks and errands. In effect, this condition results in a similar environment in which the accused committed the offences at hand, and thus risks fostering repetition of the offences.

[26] It is also difficult to understand how the sentencing judge concluded that the accused was not a danger to the complainant or the community because there was no evidence that he continued to try to take advantage of the complainant since these offences occurred (see Reasons for Sentence, p. T6, ll. 6-13). In fact, the evidence is that he was pressuring the complainant not to cooperate with the investigation by the Securities Commission.

[27] The accused was sanctioned for somewhat similar conduct in 2006. In that case, while registered as a salesperson under ***The Securities Act***, the accused took $62,100 from a different 78-year-old woman living on her own. Instead of investing the money as he was supposed to do, the accused gave the money to his wife, and he and his wife, like in the offences at hand, used some of the money to make loans to other people and some of the money was spent by the accused on his own expenses. The Securities Commission issued an order against the accused, approving a settlement agreement and ordering a seven-year denial of exemptions, administrative penalty, and costs. The fact that the accused repeated this kind of conduct with the complainant in the case at bar, which involves more money over a longer period, underscores the need for specific deterrence. Again, I fail to see how a conditional sentence order reconciles with this need.

[28] Here, the accused was in a position of trust, this was not a crime of impulse, and it was carried out over an extended period by a person who was knowledgeable. While the accused has positive letters of reference from family members describing his church and community involvement, it appears it was these very kinds of attributes that allowed him to gain the complainant's trust (he attended church with the complainant). For those who commit this kind of crime, they should be aware of the consequences based on sentences given to others. In this sense, general deterrence and denunciation are important objectives.

[29] I adopt the following quotation from ***R. v. Edgar***, 2000 BCPC 215, 2000 CarswellBC 2503, paras. 8-9 (cited to CarswellBC 2503):

> It is critical to keep in mind in considering this matter that the *Securities Act* is regulatory legislation aimed at protecting the average member of the public from investing in an irresponsible fashion...
>
> … As was said by Judge Babe of the Ontario Provincial Court of Justice in 1994 in *R. v. Sisto Finance N.V.*:
>
> > **I think there is a need to show people who want to go to the public for money without complying with the *Securities Act*** that the penalties may be much more severe than that, that they may not be able to simply pay fines and get out of it in that manner, and **that there is a very real danger if a deliberate evasion of the *Act* has been found that they will go to jail**.
> >
> > [Citations omitted] [Emphasis added]

[30] The principle of deterrence was also previously highlighted in Manitoba in ***R. v. Zitzerman***, (unreported decision of Aquila P.C.J., Manitoba Provincial Court, dated March 29, 1996) where the court noted that the "purpose of the **[*Securities*] Act** is to protect the public from unscrupulous dealers" and wrote (pages 2-3):

> The principle that stands out amongst all others is the principle of general deterrence. It is this Court's opinion that the sentence imposed should discourage the accused from committing this type of conduct in the future, and also to deter others in the community who might be of like mind and might be tempted to act in a similar manner, engaging in a scheme of their own.

See also, ***R. v. Lewandosky***, [1997] M.J. No. 471 (Prov. Ct.), para. 19

[31] In ***R. v. Eckert***, 2006 MBCA 6, Steel J.A. discussed the sentencing principle of denunciation and its relationship to moral blameworthiness, as follows (para. 16):

> In passing sentence, the judge must assess the moral blameworthiness involved in each case. It is not sufficient to look only at the tragic consequences when determining the seriousness of a crime. The function of a court is not to exact revenge, but, in this case, a sentence should express society's denunciation of the conduct involved. Therefore, the nature of the blameworthy conduct that led to the consequences must be considered.

[32] The circumstances surrounding the commission of the present offences speak to their seriousness. The complainant is elderly and had very little experience with investing money. The conduct extended over a period of 20 months and entailed several transactions taking over $500,000 from a vulnerable complainant in a situation of trust. The accused's moral blameworthiness is at the higher end given that he repeatedly took advantage of the complainant over an extended period with consequential harm to her. In addition, the accused tried to convince the complainant not to cooperate with the investigation.

[33] As referenced by Crown counsel, there are growing efforts by securities regulators and the securities industry to protect elderly and vulnerable victims from financial exploitation (Canadian Securities Administrators Notice of Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to Enhance Protection of Older and Vulnerable Clients, 2021 July). I would strongly emphasize that there is a special need to protect vulnerable people of advanced age from financial exploitation by those who abuse a position of trust.

[34] This special need is also reflected in the following provisions of the ***Criminal Code***:

> 718.04 When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances — including because the person is Aboriginal and female — the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.
>
> …

> 718.2 A court that imposes a sentence shall also take into consideration the following principles:
>
> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
>
> …
>
> (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
>
> (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
>
> …
>
> shall be deemed to be aggravating circumstances.

[35] While the sentencing judge referred to the pertinent sentencing principles, the sentence under appeal suggests that the sentencing judge did not fully appreciate and thus failed to give sufficient weight to the gravity of the offences, the extent of the accused's moral blameworthiness, and the sentencing principles of deterrence and denunciation. In my view, this constitutes an error in principle. I am also of the view that this led the sentencing judge to impose a demonstrably unfit sentence. As such, I am setting the conditional sentence order aside and I must impose another sentence in its place.

b) What sentence is fit and proper?

[36] When appellate courts intervene and vary a sentence, it does not mean that they start their analysis without any consideration for those findings or conclusions of the sentencing judge that are untainted by error (***R. v. Johnson***, 2020 MBCA 10, para. 11). Deference is owed to those of the sentencing judge's findings regarding both the circumstances of the accused and of the offence that can reasonably be supported by the record (***Chief***, para. 52). In addition, this court was informed that the accused has

complied with the terms of the conditional sentence order, is employed, and since the imposition of the order, has paid some limited additional amount to the complainant.

[37] Above I have largely discussed the circumstances of the offence, the sentencing principles, the moral blameworthiness of the accused, and the aggravating and mitigating factors. In addition, I recognize the need to impose a sentence that gives the opportunity to the accused to rehabilitate him or herself so that they benefit and, in turn, society as a whole benefits. As mitigating factors, I also note the accused's guilty plea and statement to the sentencing judge that reflects remorse, as well as his positive letters of support.

[38] I have considered the case law that was filed regarding the sentence range. The lengthiest custodial sentence imposed is 12 months. However, with one exception, these cases dealt with offences committed prior to amendments to ***The Securities Act*** to increase the maximum sentence that may be imposed from one or two years (depending on the date of the offence) to five years less a day (s. 136(1) of ***The Securities Act***). This increase in the maximum term of imprisonment was commented upon by the court in ***R. v. Conrad***, (unreported decision of Collerman P.C.J., Manitoba Provincial Court, dated April 4, 2007) as follows (page 3):

> It has been brought to the court's attention that the section has been amended in part upwards [increasing the maximum term of imprisonment from two years to five years less a day], which is a reflection of the ongoing and increasing concern that the law-makers have with respect to ensuring that the requirements of this legislation are complied with by those who involve themselves in this type of endeavour and for very good reason.

[39] In ***Lewandosky***, the accused pleaded guilty to nine counts of trading a security without being registered pursuant to ***The Securities Act*** and nine counts of trading a

security without a prospectus. The loss was about $900,000, shared by nine different complainants, with little if any experience buying and selling securities, and all were known to the accused. The accused was found to have taken advantage of their trust to continue her scheme, although she was found not to be a sophisticated person in terms of her knowledge of ***The Securities Act***. The offences predated the increase in the maximum sentence to five years less a day. In imposing a sentence of six months incarceration, the court noted that it would not have considered a conditional sentence order as the principles of deterrence and protection of the public called for a period of incarceration (para. 27).

[40] In the case at hand (as compared to ***Lewandosky***), the maximum available term of imprisonment is five years less a day, there are more offences, the accused was knowledgeable having been previously registered as a salesperson under ***The Securities Act*** and registered as a salesperson under ***The Mortgage Brokers Act***, and the accused was previously sanctioned for similar conduct.

[41] In ***R. v. Yaworski***, 2015 MBPC 68, the accused had traded in shares of a company to 10 investors and pleaded guilty to 12 counts of trading in a security without registration contrary to ***The Securities Act***. The amount that the accused received was about $545,000. The aggravating factors included that the accused's actions were not merely careless, the accused had been registered to trade for about eight years and had a history of infractions with Securities Commissions. The accused also had a record of conviction in the Manitoba Provincial Court where he was convicted of six counts under ***The Securities Act*** and received a fine. The sentencing judge referred to the lack of

experience or blind reliance on the accused by some investors as well as how the accused's actions had a significant impact on some who dealt with him with the losses being substantial. The sentencing judge noted that the most disturbing part was that the accused had been through this before and the penalties imposed on him did not deter him. Some of the counts were covered by the amended legislation that provides for a five-year maximum term of incarceration and other counts were covered by the two-year maximum. The court sentenced the accused to one year incarceration followed by two years of probation.

[42] In the case at hand, nearly the same amount of money was taken. However, the loss was to only one complainant, which necessarily means it was more than the loss to any individual of the 10 investors in ***Yaworski***. Like in ***Yaworski***, here, the accused was subject to previous enforcement action by the Securities Commission, albeit on fewer occasions. Again, unlike in ***Yaworski***, where only some of the offences were subject to a maximum available sentence of five years less a day, here all of the 17 offences under ***The Securities Act*** are subject to this higher maximum sentence.

[43] In ***R. v. Friesen***, 2020 SCC 9, the Supreme Court of Canada explained the meaning and consequence of a legislated increase to the maximum sentence for a particular offence or type of offence, as follows (paras. 97, 100):

> …a decision by Parliament to increase maximum sentences for certain offences shows that Parliament "wanted such offences to be punished more harshly" (*Lacasse*, at para. 7). An increase in the maximum sentence should thus be understood as shifting the distribution of proportionate sentences for an offence.
>
> …
>
> To respect Parliament's decision to increase maximum sentences, courts should generally impose higher sentences than the sentences imposed in cases that preceded the increases in maximum sentences.

[44] Accordingly, in considering the length of sentence, I agree with Crown counsel that it is to reflect the increased maximum term of imprisonment now available under ***The Securities Act*** that was not available with respect to all the offences at issue in the comparable case law.

[45] This increase in maximum sentence applicable to all of the offences at hand, the more recent acknowledgement of the importance of enhancing protection of older and vulnerable people from financial exploitation (as discussed above), and the circumstances as a whole, in my view, mandate a sentence that is longer in duration than those imposed in the precedent case law.

[46] Taking all of the foregoing into account, it is my view that a fit and proper sentence is 18 months in jail. No issue was raised regarding the sentencing judge's determination that the sentences for these offences are to be served concurrently, and, in the circumstances, I agree.

c) Credit for time served of conditional sentence order

[47] The Crown did not move to suspend operation of the conditional sentence order under s. 683(5)(f) of the ***Criminal Code*** pending the outcome of the appeal (***Chief***, para. 53). In all cases in which a conditional sentence order has been set aside and a custodial sentence has been substituted, some credit or discount is to be incorporated in the custodial sentence based on the length of the conditional sentence served at the time of the appeal. Although, generally, the credit is expressed as a 1:1 ratio, there is no precise formula. In the end, fairness should govern in crafting the appropriate sentence

when a custodial sentence is substituted for a conditional sentence. (***R. v. MacDonald***, 2009 MBCA 36, para. 30)

[48] While the conditional sentence order imposed by the sentencing judge here provides for an absolute curfew, the exemptions allowed effectively mean his curfew imposes minimal restrictions on his liberty.

[49] In these circumstances, I find that it is fair that the accused be credited with about half of the time he has served of the conditional sentence so as to leave a remaining jail sentence of 12 months.

d) Stay of jail sentence?

[50] Last, I have considered whether a stay of the jail sentence is to be imposed. In ***Daniels***, the Manitoba Court of Appeal addressed the applicable test when considering a stay of sentence. The Court noted that the "paramount consideration in a stay of a sentence is whether reincarceration would create an injustice" (para. 20). Steel J.A. (para. 21) set out the following non-exhaustive factors "to be used to assist the court in balancing the applicable purposes, objectives, and principles of sentencing so as to end up with a disposition that is compatible with the overall purpose of contributing to respect for the law and the maintenance of a just and safe society" (paras. 21-22):

> (a) the elapsed time since the offender was released from custody and the date when the appellate court hears and decides the appeal;
>
> (b) the potential for injustice if the new sentence is served;
>
> (c) the length of time since the offence occurred or the original sentence was imposed…;
>
> (d) rehabilitation issues, including the impact of reincarceration on the rehabilitation of the offender; whether there has been evidence of progress in rehabilitation or evidence of rehabilitative efforts since the original

> sentencing; and the behaviour and conduct of the offender in the ensuing period since sentencing…;
>
> (e) the reasons for any delay between the date of arrest and the date the appeal sentence was imposed…;
>
> (f) the gravity of the offence…; and
>
> (g) the length of sentence remaining to be served (i.e., the difference between the new sentence and the original sentence)…. [Citations omitted]

[51] Steel J.A. noted that "[w]hat is being considered is whether, given the degree of rehabilitation achieved, reincarceration will disrupt that rehabilitation and, therefore, be detrimental to the ends of justice and serve no genuine societal interest" (para. 30).

[52] Here, the offences committed were serious. The accused is not an immature first-time offender at the time of the offences. While the accused has complied with the terms of the conditional sentence, nothing compelling has been presented in terms of rehabilitation or the impact of reincarceration on the accused's rehabilitation. In terms of the other factors identified, as the accused continues to serve his sentence, there is no issue of the time from custody and the date of the hearing and decision on appeal. Significant time remains to be served on the sentence. Finally, there is no suggestion of potential for injustice if the new sentence is served, particularly given that the accused is being provided with credit for half the time he has served. In these circumstances, I am of the view that this is not an appropriate case to stay the execution of the sentence.

CONCLUSION

[53] In conclusion, I am allowing the Crown's appeal against sentence and am imposing a jail sentence of 18 months concurrent for each offence. The accused is to be credited with about half of the time he has served of his conditional sentence. This leaves a

remaining jail sentence of 12 months. For the above reasons, I would not stay the sentence.

_____ A.C.J.