

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Chief Justice Richard J. Chartier  
Madam Justice Diana M. Cameron  
Mr. Justice Christopher J. Mainella

***BETWEEN:***

<b><i>HER MAJESTY THE QUEEN</i></b>	)	<b><i>J. G. Neufeld</i></b>
	)	<b><i>for the Appellant</i></b>
	)	<b><i>Respondent</i></b>
- and -	)	<b><i>R. N. Malaviya</i></b>
	)	<b><i>for the Respondent</i></b>
	)	
<b><i>JUSTIN ADELARD CATCHEWAY</i></b>	)	<b><i>Appeal heard and</i></b>
	)	<b><i>Decision pronounced:</i></b>
<b><i>(Accused) Appellant</i></b>	)	<b><i>September 8, 2017</i></b>

**CHARTIER CJM** (for the Court):

[1] The accused appeals against his eight-year sentence for manslaughter. There is no right to appeal against sentence only. Leave to appeal must first be obtained (see section 675(1)(b) of the *Criminal Code*).

[2] The appropriate threshold for assessing the leave question is whether the ground of appeal has arguable merit. This assessment must be done in light of the applicable standard of review (see *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 75). The standard of review on the judge’s determination of the appropriate sentence is highly deferential—appellate courts should not intervene unless it is demonstrated that the judge made a material legal error or imposed a sentence that is demonstrably unfit (see *R v Lacasse*, 2015 SCC 64 at para 11).

[3] Based on the foregoing, the test for leave to appeal against sentence only can be stated as follows: for leave to be granted, the accused must demonstrate that the grounds of appeal present an arguable case that the sentence was arrived through material legal error or was demonstrably unfit. Arguable case means a case with some merit; some realistic chance of success (see *Sattva* at para 74; and *R v Amin*, 2010 MBCA 15 at para 9). A material legal error means that it must have affected the sentence in more than just an incidental way. Legal error includes an error in law, a failure to consider or give sufficient weight to a relevant factor, consideration of an irrelevant factor, or an overemphasis of an appropriate factor (see *Lacasse* at para 44). A sentence is 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 Houle*, 2016 MBCA 121 at para 11).

[4] We are all of the view that the threshold for granting leave has not been met in this case.

[5] Therefore, leave to appeal sentence is denied.

Chartier CJM

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Cameron JA

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Mainella JA

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