

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner

BETWEEN:

<i>HER MAJESTY THE QUEEN</i>)	<i>B. Taylor</i>
)	<i>for the Appellant</i>
)	
)	<i>B. M. Passler</i>
<i>- and -</i>)	<i>for the Respondent</i>
)	
<i>CASEY CLINTON JOSEPH DUMAS</i>)	<i>Appeal heard and</i>
)	<i>Decision pronounced:</i>
<i>(Accused) Appellant</i>)	<i>February 26, 2020</i>

NOTICE OF RESTRICTION ON PUBLICATION: No one may publish, broadcast or transmit any information that could disclose the identity of the complainant(s) or witness(es) (see section 486.4 of the *Criminal Code*).

On appeal from 2018 MBQB 49

CHARTIER CJM (for the Court):

[1] The 48-year-old accused appeals concurrent indeterminate sentences imposed on him for two offences: a sexual assault on a 30-year-old man after an unwanted advance; and a sexual assault with a weapon on a 15-year-old girl while she was sleeping. The accused did not contest that he met the dangerous offender criteria under section 753(1)(b) of the *Criminal Code* (the *Code*). He argues that the sentencing judge should have ordered a 20-year determinate sentence followed by a 10-year long-term supervision order instead of the indeterminate sentences.

[2] The accused submits that the sentencing judge failed to properly apply the relevant *Gladue* factors (see *R v Gladue*, [1999] 1 SCR 688) and that the sentence was unreasonable given that the evidence established that a measure less than an indeterminate sentence would adequately protect the public.

[3] We disagree. We are satisfied that the sentence imposed is proportionate mindful of how the accused's traumatic background reduced his moral blameworthiness.

[4] The sentencing judge gave comprehensive reasons. Near the beginning of her decision, she noted the "particular relevance here" of the *Gladue* factors (at para 7). In her analysis, she took into account the accused's unique life circumstances that played a part in bringing him before the courts. She stated (at para 53):

[The accused's] background is horrific, marked by deprivation and abuse. I am mindful of his personal circumstances and that the impact of colonialism and systemic features beyond his control wreaked havoc and chaos upon him. As a result of this victimization, he has experienced loss of culture, family displacement and abandonment. Both Dr. Klassen and Dr. Nicholaichuk commented on how his traumatic childhood significantly impacted his offending behaviour. Both diagnosed him with a substance abuse problem, antisocial personality disorder and PTSD, which are trauma-informed. . . .

[5] The sentencing judge was also mindful that, when imposing the appropriate penalty under section 753(4.1) of the *Code*, the *Gladue* factors are to be considered in the context that the protection of the public is the paramount consideration (see *R v Osborne (CG)*, 2014 MBCA 73 at para 97). She correctly described the accused's criminal record as "long and concerning", having amassed approximately 75 prior convictions (at para 14). The concerning and

most troubling element of his record, in light of the two sexual assault offences for which he was sentenced, is that it includes nine prior sexual offences. With these two predicate offences, he now has 11 sexual offence convictions.

[6] The sentencing judge then reviewed the evidence of the two expert witnesses, Dr. Klassen, who was the court-ordered expert, and Dr. Nicholaichuk, who testified for the defence. Dr. Klassen opined that the accused suffers from pedohebephilia, a preference for prepubescent or pubescent children and falls within the category of “persisters” (at para 57) who continue to sexually offend at a significant rate beyond age 60. Of particular importance to any reduced moral blameworthiness based on the *Gladue* factors is Dr. Klassen’s opinion that pedohebephilia is not trauma-related and is a congenital condition. He concluded that the accused poses a very high risk for sexual recidivism.

[7] In the end, the sentencing judge accepted Dr. Klassen’s evidence on, and diagnosis of, pedohebephilia; that he is a persister and that he poses a very high risk to the public to reoffend. She noted that the defence expert, Dr. Nicholaichuk, agreed that the odds of the accused being successfully managed in the community were not good, even offering that perhaps the best place from the accused’s perspective and that of public safety was a long-term minimum security institution. Finally, she was not satisfied that there was a reasonable expectation that imposing a lengthy determinate sentence would adequately protect against the commission of a serious personal injury offence given the accused’s history of offending and propensity, poor compliance in the community and his diagnosis. In our view, these are reasonable findings and conclusions in the circumstances and are owed deference.

[8] While we grant leave to appeal, the appeal from sentence is dismissed.

Chartier CJM

Mainella JA

Pfuetzner JA