Citation: R v Galatas, 2020 MBCA 108 Date: 20201102
Docket: AR19-30-09277

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice William J. Burnett
Madam Justice Jennifer A. Pfuetzner
Madam Justice Lori T. Spivak

B E T W E E N:

	)	***M. T. Gould** and*
HER MAJESTY THE QUEEN	)	***C. L. Mahoney***
	)	*for the Appellant*
Respondent	)	
	)	***J. M. Mann** and*
- and -	)	***M. S. Bright***
	)	*for the Respondent*
GEORGE GALATAS	)	
	)	*Appeal heard and*
(Accused) Appellant	)	*Decision pronounced:*
	)	***November 2, 2020***

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*).

PFUETZNER JA (for the Court):

[1] The accused appeals his conviction for multiple sexual offences against two vulnerable children who were 13 and 14 years of age. The 62-year-old accused paid the victims to have sex with him in his home and to fellate him in his vehicle. He also directed them to have sex with another man in his home. He filmed and took photographs of his sexual offences.

[2] The accused was convicted of 19 charges (four of which were stayed pursuant to the principle in *Kienapple v The Queen*, [1975] 1 SCR 729), including sexual interference, invitation to sexual touching, obtaining sexual

services for consideration from a person under 18 years of age, forcible confinement, internet luring, making child pornography and possession of child pornography.

[3] If the conviction appeal is dismissed, the accused seeks leave to appeal and appeals his sentence of 16.5 years' custody.

[4] At trial, the accused testified that he believed that the victims were 18 years old. The trial judge did not believe the accused and found that his evidence did not raise a reasonable doubt. In convicting the accused, the trial judge made the following key factual finding: "I am satisfied beyond a reasonable doubt that the accused knew these girls were under 16 years of age." He made this finding based on "all of the evidence", including the appearance and demeanour of the victims in the videos and photographs taken by the accused.

[5] The accused argues that the trial judge did not properly consider his mistaken-belief-in-age defence. He points out that the evidentiary basis of the defence was confirmed by the victims whose testimony the trial judge accepted. Their evidence was that they told the accused they were 18 but had either lost or left their identification at home.

[6] While the trial judge considered, and rejected, the accused's argument that he took reasonable steps to ascertain the victims' ages, this was not the basis for the conviction.

[7] We are not persuaded that the trial judge misapprehended the evidence or made any palpable and overriding error in his findings of fact or

factual inferences, including his finding that the accused knew that the victims were under the age of 16 years.

[8] With respect to the sentence appeal, the accused says that the sentence imposed is demonstrably unfit. He argues that the trial judge did not properly consider his bail terms, remorse, supports in the community, low risk to reoffend, prospects for rehabilitation and the totality principle. In our view, the trial judge made no reversible error in weighing the mitigating factors.

[9] The accused takes no issue with the length of the sentence imposed for each of the offences or the decision to order them consecutively. Rather, the accused maintains that the trial judge erred in the "ultimate application" of the totality principle. He says that the sentence, once reduced, is so long that it is "harsh and crushing." He is proposing an 11-year sentence.

[10] The trial judge considered the accused's moral culpability to be "extremely high." The accused lured two young girls and exploited their vulnerabilities by paying them for sex. He sexually assaulted them many times in degrading ways and kept recordings of those acts. He arranged for them to have sexual intercourse with another person for money.

[11] Bearing in mind the highly deferential standard of review applicable on sentence appeals, we are not persuaded that the sentence imposed by the trial judge, in the circumstances of this case, is demonstrably unfit. Indeed, as recently noted by the Supreme Court of Canada in *R v Friesen*, 2020 SCC 9 (at para 114): "mid-single digit penitentiary terms for sexual offences against children are normal and . . . upper-single digit and double-digit penitentiary

terms should be neither unusual nor reserved for rare or exceptional circumstances."

[12] In the result, the conviction appeal is dismissed. Leave to appeal sentence is granted and the sentence appeal is dismissed.

"Pfuetzner JA"

"Burnett JA"

"Spivak JA"