

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Madam Justice Barbara M. Hamilton
Mr. Justice Alan D. MacInnes

BETWEEN:

<i>HER MAJESTY THE QUEEN</i>)	<i>S. E. Pinx, Q.C.</i>
)	<i>for the Appellant</i>
)	
)	<i>Respondent</i>
)	
<i>- and -</i>)	<i>R. N. Malaviya</i>
)	<i>for the Respondent</i>
)	
<i>MARC THERENCE VINCENT</i>)	<i>Written joint submission filed:</i>
)	<i>July 12, 2017</i>
)	
<i>(Accused) Appellant</i>)	<i>Judgment delivered:</i>
)	<i>August 3, 2017</i>

PER CURIAM

[1] The parties requested this appeal proceed in writing without oral submissions. These reasons address the new written joint submission on the accused's sentence appeal for assault, following the adjournment, in 2012, of the sentence appeal. See *R v Vincent*, 2012 MBCA 89 (the 2012 decision).

Background

[2] Following a trial in 2011, the accused was convicted of dangerous driving causing bodily harm and assault. The trial judge sentenced him to 90 days' incarceration, to be served intermittently, for the dangerous driving.

For the assault, he received a consecutive six-month conditional sentence, followed by one-year probation.

[3] The accused appealed his conviction for dangerous driving causing bodily harm and sought leave to appeal his sentence for assault. A judge of this Court granted him judicial interim release and suspended the conditional sentence. He had served nine days of the conditional sentence.

[4] The Crown sought leave to appeal the accused's sentence for the dangerous driving offence.

[5] In the 2012 decision, we set aside the conviction on the dangerous driving charge and ordered a new trial. The Crown conceded at that time that the trial judge misapprehended the evidence with respect to that charge. We also adjourned the accused's sentence appeal *sine die*. As we explained in the 2012 decision, given that the trial judge sentenced the accused based on the two charges arising out of one incident, "it would be inappropriate, in the circumstances, to review one of the sentences, when uncertainty remains on the other" (at para 4).

[6] In October 2014, in Provincial Court, the accused entered a guilty plea to the charge of driving carelessly under *The Highway Traffic Act*, CCSM c H60 and received a reprimand. The Crown directed a stay of proceedings on the dangerous driving charge.

[7] In May 2016, the Crown filed a formal notice of abandonment of the sentence appeal relating to the dangerous driving charge.

Written Joint Submission

[8] The accused married in 2012, has three children and has demonstrated that he is a productive member of the community.

[9] Given the change of circumstances, the passage of time and the lack of re-involvement by the accused, the parties agree that the six-month conditional sentence, followed by one year of probation, is now harsh and excessive and that the interests of justice would be served by resolving the accused's sentence appeal by setting aside the six-month conditional sentence and one-year probation order and replacing that sentence with the nine days served under the conditional sentence order before it was suspended.

Decision

[10] We accept the written joint submission contained in the factum without oral argument. Accordingly, leave to appeal is granted to the accused and his appeal of sentence with respect to the assault is allowed. The accused's conditional sentence order and probation order is set aside and replaced with a sentence of nine days that he served under the conditional sentence order.

Chartier CJM

Hamilton JA

MacInnes JA