

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Freda M. Steel
Mr. Justice William J. Burnett
Madam Justice Janice L. leMaistre

BETWEEN:

<i>HER MAJESTY THE QUEEN</i>)	<i>D. A. Wolson</i>
)	<i>for the Appellant</i>
)	<i>Respondent</i>
- and -)	<i>R. N. Malaviya</i>
)	<i>for the Respondent</i>
)	
<i>NEIL ANDREW HOWARD WADDELL</i>)	<i>Appeal heard and</i>
)	<i>Decision pronounced:</i>
<i>(Accused) Appellant</i>)	<i>September 13, 2017</i>

STEEL JA (for the Court):

[1] This is an appeal of the termination of a conditional sentence. Leave to appeal was given in chambers upon the granting of judicial interim release.

[2] As a result of a joint recommendation, the accused was sentenced to two years less one day to be served conditionally and a driving prohibition of three years, on two counts of dangerous driving.

[3] As part of the conditions imposed, the accused was to observe an absolute curfew (with many exceptions that would allow him to work and pursue an education). He was also ordered not to attend at any licensed establishment primarily engaged in the sale of alcohol.

[4] Just over one month after being sentenced, in breach of that prohibition and his curfew, the accused was observed, on two occasions, at

the McPhillips Station Casino (the casino). He acknowledged the breaches and was sentenced to serve the remaining portion of his sentence in custody.

[5] The accused appeals on the grounds that the termination of the conditional sentence was harsh and excessive, that it was contrary to the recommendation of the conditional sentence supervisor and that the sentencing judge did not consider all other options before terminating the conditional sentence.

[6] The standard of review with respect to the termination of a conditional sentence is the same as that of any other sentence appeal; substantial deference is owed to the sentencing judge. See *R v Beaulieu*, 2015 MBCA 90 at para 12; and *R v Carpentier*, 2005 MBCA 134 at para 36.

[7] In this case, the sentencing judge found that the actions of the accused showed his continuing lack of maturity and his failure to understand the seriousness of his actions.

[8] The underlying facts related to the initial charges were quite serious. In January 2015 the accused, driving at speeds up to 226 kilometers per hour, while talking on his phone, lost control on black ice and flipped into a ditch, injuring his two passengers. On a second occasion, while on charge for that offence and with warrants outstanding for his arrest, the accused fled police, at speeds of up to 160 kilometers per hour. The police aborted their pursuit due to concerns for public safety, including the potential for children to be in the area. While the accused had no prior criminal record, he had been convicted numerous times in the past of speeding at extreme rates under *The Highway Traffic Act*, CCSM c H60.

[9] In accepting the joint recommendation of a conditional sentence, the sentencing judge made clear to the accused that this was a jail sentence and that if any of the conditions were breached, it might very well result in the termination of the conditional sentence.

[10] The sentencing judge rejected the explanation of the accused that he was just getting some food at the casino. He was clearly seen sitting at the black-jack table after curfew. The sentencing judge concluded that it would be contrary to the public interest to allow the accused back into the community. The accused's actions indicated that he had not matured or learned his lesson, as argued at the original sentencing hearing and that in fact:

You have demonstrated a disregard and a lack of maturity in how you've handled yourself. That same lack of maturity motivated your actions in the previous set of offences. . . . Your actions, by blatantly going to [the casino] and gambling, regardless of the reason why you were there, whether you were there for a meal or not, demonstrates a lack of trustworthiness.

[11] It is correct that his supervisor supported the accused returning to the community. While the recommendation of a conditional sentence supervisor should be considered, it is not determinative. I agree with Crown counsel that the supervisor who made this recommendation had very limited insight into the situation since the supervisor had only met with the accused once. As well, the sentencing judge needed to consider a variety of objectives besides the rehabilitation of the accused, such as deterrence and denunciation.

[12] While the evidence with respect to the difficulties that the accused has encountered while being incarcerated is very unfortunate, it does not mean

that the sentencing judge erred in his disposition. I would expect the correctional authorities to address the situation and take appropriate action.

[13] The appeal is dismissed.

Steel JA

Burnett JA

leMaistre JA