

In the Court of Appeal of Alberta

Citation: R v IA, 2026 ABCA 298

Date: 20260916
Docket: 2501-0315A
Registry: Calgary

Between:

His Majesty the King

Respondent

- and -

I.A.

Appellant

Restriction on Publication

Identification Ban – See the *Criminal Code*, section 486.4.

By Court Order, information that could identify the victim or the witness must not be published, broadcast, or transmitted in any way.

NOTE: Identifying information has been removed from this judgment to comply with the ban so that it may be published.

Identification Ban – See the *Youth Criminal Justice Act*, section 110(1).

No person shall publish the name of a young person or any other information that may identify a young person as having been dealt with under the *Youth Criminal Justice Act*.

NOTE: Identifying information has been removed from this judgment to comply with the ban so that it may be published.

Identification Ban – See the *Youth Criminal Justice Act*, section 111(1).

No person shall publish the name of or any other information that may identify a child or young person as having been a victim of or appeared as a witness in connection with an offence committed or alleged to have been committed by a young person.

NOTE: Identifying information has been removed from this judgment to comply with the ban so that it may be published.

The Court:

The Honourable Justice Jolaine Antonio
The Honourable Justice April Grosse
The Honourable Justice Alice Woolley

Memorandum of Judgment

Appeal from the Sentence by
The Honourable Justice E. J. Funk
Sentenced on the 7th day of October, 2025
(Docket: 230850034Q1)

Memorandum of Judgment

The Court:

I. OVERVIEW

[1] The appellant was convicted of manslaughter after he and his brother attacked a young man on a basketball court with bear spray and a knife, resulting in the young man's death. The appellant was 16 years old at the time of the offence and was tried pursuant to the *Youth Criminal Justice Act*, SC 2002, c 1 [YCJA]. After giving the appellant credit for 18 of the 25 months he was in custody prior to sentencing, the sentencing judge imposed a custody and supervision order of 18 months, with the first 12 months to be served in custody and the final six months under conditional supervision in the community.

[2] The appellant appeals his sentence. He argues the sentencing judge erred by not granting him credit for all 25 months he spent in custody prior to sentencing on a 1:1 basis. The appellant's position in respect of this ground of appeal evolved over the course of the appeal from one focused on the sufficiency of reasons to an argument that the sentencing judge erred in law by imposing a sentence in excess of the three-year maximum youth sentence for manslaughter established by section 42(2)(o) of the YCJA when time in pre-sentence custody and sentenced custody and supervision is combined. The appellant also argues the sentencing judge misapprehended the evidence relating to the programming in which the appellant was engaged while in pre-sentence custody, contributing to an erroneous finding that the appellant had not taken responsibility for his offence. Finally, the appellant argues the sentence was demonstrably unfit.

[3] For the reasons set out below, the appeal is dismissed.

II. SENTENCING DECISION

[4] The offence occurred on September 5, 2023. The appellant was arrested on September 9, 2023 and remained in custody until October 7, 2025, when he was sentenced. At the sentencing hearing, the Crown argued for the maximum custodial sentence permitted under the YCJA for manslaughter – three years custody and supervision – with no credit for pre-sentence custody. The appellant proposed a sentence of 11 or 12 months of conditional supervision based on two potential approaches: 1) a 36-month custody and supervision order, with 1:1 credit against the custodial portion for 25 months of pre-sentence custody, resulting in an imposed sentence of 11 months of supervision; or 2) a 26-month custody and supervision order (14 months in custody and 12 months of supervision), with credit for 14 months of the 25 months of pre-sentence custody, resulting in an imposed sentence of 12 months of supervision.

[5] In oral reasons, the sentencing judge rejected both the Crown and defence positions. She held that the sentence sought by the Crown effectively amounted to a custodial sentence of five

years, given the 25 months the appellant had already spent in pre-sentence custody. She found this to be disproportionate in view of the three-year maximum sentence set out in the *YCJA* for manslaughter. The sentencing judge noted the *YCJA* required her to take into account the appellant's pre-sentence custody in determining a fit and proper sentence (*YCJA*, s 38(3)(d)) but found she had discretion as to whether to grant any credit for such detention and if so, how much. The sentencing judge concluded that some credit was appropriate considering the strides the appellant had made during his time in custody. However, in light of the "road ahead and the steps required for rehabilitation and achieving a level of accountability", the appellant should not receive credit for the entire 25 months of pre-sentence custody. Rather, the sentencing judge granted credit for 18 months of pre-sentence custody. After accounting for that credit, the sentencing judge ordered an 18-month custody and supervision order, with the first 12 months in custody and the remaining six months under conditional supervision.

III. GROUNDS OF APPEAL

[6] Based on his factum and oral argument, the appellant raises the following grounds of appeal:

- (a) The sentencing judge materially erred in law by failing to credit seven months of the appellant's time in custody, thereby effectively imposing a sentence that exceeds the statutory maximum sentence for manslaughter;
- (b) The sentencing judge materially erred in mixed fact and law, or misapprehended the evidence, by finding certain exhibits provided no evidence that the appellant accepted accountability for the offence; and
- (c) The sentencing judge materially erred by imposing the statutory maximum sentence for manslaughter contrary to the sentencing principles of parity and proportionality and the sentence was demonstrably unfit.

IV. STANDARD OF REVIEW

[7] Like adult sentences, youth sentences are reviewed on a deferential standard: *R v IM*, 2025 SCC 23 at para 55. This Court will not intervene unless the sentencing judge made a material error in principle or the sentence was demonstrably unfit: *R v Friesen*, 2020 SCC 9 at para 26.

V. ANALYSIS

A. First ground of appeal: Credit for pre-sentence custody

Preliminary issue – new issue on appeal and new arguments at the oral hearing

[8] The first ground of appeal raises a preliminary issue as to the scope of argument that should be considered by this Court. At the sentencing hearing, the appellant proposed two paths to an order for 11 or 12 months of conditional supervision – one that gave him credit for 25 months of

pre-sentence custody on a 1:1 basis, and one that gave him credit on a ratio of less than 1:1. Trial counsel noted the sentence sought by the Crown, a 36-month custody and supervision order with no credit for pre-sentence custody, would “be equivalent to him spending more time in custody than the *YCJA* contemplates in terms of the maximum sentence”. However, trial counsel for the appellant did not argue that granting 1:1 credit was required by law or that failing to grant 1:1 credit would result in an illegal sentence because it would exceed the statutory maximum sentence for manslaughter set out in section 42(2)(o) of the *YCJA*. The appellant provided the sentencing judge with *R v SK*, in which the court found it had discretion in accounting for pre-sentence custody: *R v SK*, 2025 ABKB 494 at paras 51-55. The court in *R v SK* did not have to address whether failing to grant credit for pre-sentence custody would exceed the maximum applicable sentence but gave some reasons why it may not do so: *R v SK* at paras 61-65. The appellant now argues the sentencing judge was required by law to grant sufficient credit for his pre-sentence custody to ensure the total of pre-sentence custody and sentenced custody and supervision did not exceed three years. In other words, the appellant wants to raise a new issue on appeal.

[9] Appellate courts have a discretion to consider issues raised for the first time on appeal, but they should do so sparingly: *R v Al Askari*, 2021 ABCA 204 at paras 78-79; *Guindon v Canada*, 2015 SCC 41 at para 22. Of concern in this case is that the arguments relating to the new issue were largely presented for the first time during the oral appeal hearing.

[10] The appellant’s factum noted the appellant’s combined pre-sentence custody and the imposed custody and supervision order exceeded the three-year maximum sentence for manslaughter and that the sentencing judge did not expressly consider whether this was legally permissible. The factum also asserted there was no binding authority to support the legality of such a sentence. However, the factum did not claim the sentence imposed was legally impermissible. Rather, the factum alleged that the sentencing judge gave inadequate reasons for denying credit for the entire period of pre-sentence custody and that she simply determined a further period of custody was required to promote accountability. The factum then, in effect, re-argued the case for granting 25 months of credit.

[11] In response, the respondent relied on cases such as *R v DB*, 2008 SCC 25; *R v DMT*, 2012 ABCA 142; *R v DDT*, 2010 ABCA 365; *R v CHC*, 2009 ABQB 125; and *R v DM*, 2026 ABCA 115 to emphasize that section 38(3)(d) of the *YCJA* requires a sentencing judge to take pre-sentence custody into account but does not require that pre-sentence custody be credited on a 1:1 basis, or that the total combined period of pre-sentence custody and sentenced custody and supervision be less than the maximum custody and supervision order permitted by the *YCJA*. The respondent’s factum argued that the sentencing judge correctly recognized her discretion to grant credit for all, none or some of the appellant’s period of pre-sentence custody. The factum cited *R v Mathieu*, 2008 SCC 21 for the proposition that a sentence only begins when imposed; in other words, pre-sentence custody is not part of a sentence.

[12] At the oral appeal hearing, the appellant expanded his argument to claim that his sentence was illegal because it exceeded the mandatory maximum, and this became his primary argument. The appellant acknowledged that section 38(3)(d) of the *YCJA* requires pre-sentence custody to be

taken into account but does not dictate any particular methodology for that accounting. He also acknowledged the authorities cited by the respondent confirming the discretion of a sentencing judge to give credit for all, some or none of a young person's time in pre-sentence custody as well as the authorities in which pre-sentence custody was found not to be part of a sentence. However, the appellant argued such authorities do not govern his case for one or more of the following reasons: 1) All or most of the authorities cited by the respondent were decided in the context of the Crown seeking an adult sentence and defence requesting that pre-sentence custody not be credited so as to avoid the need for an adult sentence to hold the young person accountable pursuant to section 72(1) of the *YCJA*; 2) *R v IM*, 2025 SCC 23 has changed the law in this area and precludes courts from relying on the need for accountability as a basis to deny credit for pre-sentence custody if the Crown has not met the threshold for application of section 72(1) of the *YCJA*; and 3) While there are authorities to the effect that pre-sentence custody is not considered part of a sentence, and that may be the general rule, the circumstances at bar should be treated as an exception by application of the reasoning in *R v Fice*, 2005 SCC 32, and *R v Wust*, 2000 SCC 18.

[13] We decline to address the appellant's newly identified issue. The arguments advanced at the oral hearing were not straightforward. For example, they would create a regime where credit for pre-sentence custody at a 1:1 ratio is mandatory in at least some circumstances, even though there is no such express language in the *YCJA*. They ask the Court to narrow the scope of application for previous decisions and to transpose points made in the context of adult pre-sentence custody to the youth context. They do not include a thorough statutory interpretation analysis of the relevant provisions of the *YCJA*, including section 42(2)(o) (the provision that imposes the maximum sentence for manslaughter), which states that the youth sentencing court may make "a custody and supervision order in respect of the young person for a specified period not exceeding three years from the date of committal..." [emphasis added]. Because the appellant advanced his claim that the sentence was unlawful for the first time at the oral hearing, the panel did not have the benefit of considered submissions from the respondent, nor were we prepared to fully test the appellant's claim. In the circumstances, the Court's ability to properly address the new issue raised by the appellant on appeal is materially impacted by the way in which the issue arose. We are satisfied there is no risk of injustice to the appellant in not considering the new issue.

The reasons of the sentencing judge

[14] The remaining argument under the first ground of appeal is that the sentencing judge failed to provide reasons for not giving the appellant credit for the full 25 months he spent in pre-sentence custody. The appellant argues reasons were particularly important, given that the total pre-sentence custody and sentenced custody and supervision exceeded three years. At the outset, we note the sentencing judge expressly considered the relationship between the sentence she was imposing and the statutory maximum. She found that the three-year custody and supervision order proposed by the Crown, with no credit for pre-sentence custody, resulting in five years of total custody, would be disproportionate in light of the statutory maximum. When considering the reasons of the sentencing judge, it is also fair to recall that one of the sentencing options presented by the

appellant involved less than 1:1 credit for his pre-sentence custody. The reasons must be considered in context.

[15] We disagree that the sentencing judge failed to give reasons explaining her decision to grant credit for 18 months of pre-sentence custody. The sentencing judge thoroughly reviewed the circumstances of both the offence and of the appellant. She considered the appellant's criminal record, the *Psychological and Risk Report* prepared pursuant to section 34 of the *YCJA* and the other exhibits. The sentencing judge took note of the appellant's expression of remorse in court, which she found to be sincere. She also considered comparator cases, including *R v PD*, 2025 ABKB 320, relied upon by the appellant.

[16] In the context of the defence position that, in effect, the only sentence the appellant should serve going forward was a period of conditional supervision with his parents as supervisors, and the Crown position that the appellant should be subject to the maximum custody and supervision order of three years with no credit for pre-sentence custody, the sentencing judge discussed the options of a "non-custodial" sentence and "continued custody". The sentencing judge recognized she must impose the least restrictive sentence that could achieve the relevant purposes of sentencing. She concluded that, in the circumstances, a "non-custodial sentence" was inadequate to achieve the purposes and principles set out in the *YCJA* and a continued period of custody was required. The sentencing judge had little confidence the appellant would comply with a non-custodial sentence supervised by his parents, given his demonstrated pattern of defying authority at school and at home, including skillfully circumventing his parents' rules and hiding his rule-breaking conduct from them. The defence also suggested the appellant could be supervised by an aunt and uncle, but no information was provided to the sentencing judge about them.

[17] The sentencing judge noted that manslaughter is a serious offence. The attack that killed the victim in this case was random and the victim was defenceless. The offence occurred in broad daylight at a busy community centre with young children nearby. The appellant was ready and willing to immediately engage in violence when questioned about why he was at the community centre. The appellant was bound by a weapons prohibition at the time of the offence. While the strides made by the appellant at the time of sentencing boded well for the appellant's ultimate reintegration into society, he would benefit from treatment and counselling in the structured environment of custody. There was more work to do. Considering the road ahead and the steps required for rehabilitation and achieving a level of accountability, the sentencing judge granted the appellant credit for 18 months of his time in pre-sentence custody.

[18] Read as a whole and in context, the reasons of the sentencing judge do not reflect any error in principle. They explain to the appellant and this Court why she imposed the sentence she did, including the amount of credit given for pre-sentence custody. In effect, the appellant's argument on this ground asks us to reweigh the evidence, grant more credit for pre-sentence custody and impose a different sentence. That is not our role. We decline to intervene and the first ground of appeal is dismissed.

B. Second ground of appeal: evidence of remorse and taking accountability

[19] The appellant argues the sentencing judge misapprehended the evidence relating to the programming in which the appellant was engaged while in custody, contributing to an erroneous finding that the appellant had not taken responsibility for his conduct. The appellant then argues that this erroneous finding played a material role in the decision of the sentencing judge to impose an unduly long custodial sentence, including by refusing to grant 1:1 credit for all of the appellant's time spent in pre-sentence custody.

[20] The appellant's argument fails in three respects. First, the sentencing judge did not misapprehend the evidence. Second, the argument places undue importance on one passage of the sentencing decision. Third, the appellant essentially asks this Court to re-weigh the evidence and come to a different factual conclusion about the extent to which the appellant had taken responsibility for his offending behaviour.

[21] The appellant relies heavily on the following passage in the sentencing decision:

I've considered as well the materials provided to me by the defence. These include letters of support and certificates of achievement that [IA] has achieved during his time at CYOC [Calgary Young Offender Centre]. From those documents, it is clear that [IA] is capable of participating in and excelling at prosocial activities. Notably absent from these documents from CYOC is any indication that [IA] has participated in any type of programming aimed at promoting a sense [sic] of responsibility for his offending behaviour or acknowledging the harm that his actions have done to the victim and to the community. That is, while the programming and courses that he has participated in at CYA—CYOC may speak to his prospects of reintegration, they do not speak to any measure of accepting accountability.

[22] The appellant argues that in finding that the CYOC documents did not include any indication the appellant had participated in programming aimed at promoting a sense of responsibility or acknowledging the harm he had caused, the sentencing judge ignored parts of the CYOC documents or otherwise misapprehended them. The appellant points in particular to one letter from a recovery program, which letter referenced the appellant's "tremendous personal growth" and his willingness to "acknowledge his past". The letter also stated that the appellant "has taken ownership of his actions while also allowing himself the space to understand the 'why' behind them."

[23] The statements of the trial judge are not inconsistent with the CYOC documents, including the letter from the recovery program, nor do they reflect a misapprehension of the evidence. Notably, the letter on which the appellant relies described the recovery program as a program "focused on trauma-informed healing, mental health, and creating sustainable pathways to long-term recovery through a foundation of spirituality, fitness, nutrition, and emotional wellness." The writer indicated that their one-on-one sessions with the appellant were "focused on helping him

process and release past trauma, develop tools to manage anger and regulate emotions, and begin practicing forgiveness – for both others and himself.” A significant part of the work involved preparing the appellant for life after release. Nothing in the letter, or any of the other CYOC documents, suggested that the appellant was involved in programming “aimed at” promoting a sense of responsibility or acknowledging the harm that his actions caused. Further, nothing in the letter indicated that the reference to the appellant taking ownership of his actions related specifically to the offence, as opposed to the appellant’s conduct in the CYOC or more generally.

[24] There is no reason to believe the sentencing judge was not aware of the letter from the recovery program or did not consider it. Both counsel referenced the letter in their sentencing submissions.

[25] In considering the degree to which the appellant had taken responsibility, the sentencing judge also had the benefit of a comprehensive *Psychological and Risk Report* prepared pursuant to section 34 of the *YCJA* and of testimony from the clinical and forensic psychologist who conducted the assessment. As noted by the sentencing judge, the *Report* says that in the evaluation process, the appellant expressed no remorse or accountability for the death he had caused. He did not appear to have any insight into his offending conduct, nor how it might impact others. There was no indication the appellant possessed any victim empathy. The appellant also downplayed the circumstances of a previous offence.

[26] The appellant notes that the psychologist who prepared the assessment was not privy to information about the CYOC programming in which the appellant was engaged and acknowledged in cross-examination that such information could change his assessment. However, it is important to note that sentencing took place in October 2025. The letter from the recovery program relied on by the appellant was issued March 28, 2025 and the *Psychological and Risk Report* was issued April 11, 2025. This is not a case where the programming happened after the risk assessment. Presumably, whatever progress the appellant made through the programming on which he relies ought to have been reflected in his interactions with the psychologist, even if the details of the programming were not available to the psychology team.

[27] The sentencing judge noted that the appellant had made progress while in the CYOC and she accepted his apology to the victim’s family in court as sincere. She was hopeful the latter was “a step towards the sense of accountability that is necessary to ensure [the appellant] never again resorts to violent offending.” It nonetheless remained open to the sentencing judge to consider the lack of remorse and responsibility demonstrated in the context of the psychological assessment and to find that further work was required in that area. Moreover, it remained open to the sentencing judge to account for all the relevant factors, including the nature and circumstances of the offence, the appellant’s moral culpability, the risk assessment profile and other noted factors when crafting a proportionate sentence.

[28] The appellant has not demonstrated a reversible error in the way the sentencing judge handled the sentencing evidence or otherwise in her findings with respect to the appellant taking responsibility or accountability. It is not our role to re-weigh the evidence. The second ground of appeal is dismissed.

C. Third ground of appeal: The sentence was not demonstrably unfit

[29] With respect to the third ground of appeal, the appellant's argument is essentially that the sentence was demonstrably unfit because it exceeded the sentences imposed in *R v PD*. The appellant contends the sentencing judge failed to explain why, having found *R v PD* to be the closest comparator, she nonetheless departed from *R v PD* and the cases cited therein.

[30] In imposing a youth sentence, the court must consider "sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances": *YCJA*, s 38(2)(b). The sentencing judge expressly noted this requirement. However, youth sentences must also be tailored to the particular circumstances of the young person before the court in the context of the offence they are being sentenced for. Parity does not overcome the need for a fit and proportionate sentence in the circumstances of the offence and the offender: *R v Ellahib*, 2008 ABCA 281 at para 10. Further, a sentence is not demonstrably unfit simply because it is not the same as the sentence imposed in even a similar case: *R v LM*, 2008 SCC 31 at para 36.

[31] Factors present in the appellant's case that underscore the fitness of his sentence include, among others: the appellant participated in an unprovoked violent attack; the attack occurred at a park with young children present; the appellant possessed the weapon deployed in the attack; the appellant was in breach of conditions imposed in his sentence for a previous offence; the psychological evidence described the appellant as demonstrating little to no remorse or responsibility for the offence, notwithstanding his time in pre-sentence custody; the appellant was assessed as a moderate risk to re-offend; the appellant had a demonstrated pattern of defying authority; the sentencing judge had little confidence the appellant would comply with supervision by his parents; and, while the appellant sincerely apologized to the victim's family at sentencing, the sentencing judge found he had work to do with respect to taking responsibility and that work was best done in the structured environment of custody. While neither the sentencing judge nor this Court is required to justify the sentence by specific reference to *R v PD*, we note that even though the cases have similarities, in *R v PD*, neither offender was under conditions at the time of the offence and, in fact, neither had any criminal history; there was no stated concern about the offenders complying with the terms of supervision in the community by family; and, while the custody and supervision orders imposed in *R v PD* were of shorter duration than the one imposed on the appellant, probation orders were also imposed as part of the sentence for both offenders.

[32] The sentence imposed on the appellant was not demonstrably unfit in the circumstances and the third ground of appeal is dismissed.

VI. DISPOSITION

[33] The appeal is dismissed.

Appeal heard on June 23, 2026

Memorandum filed at Calgary, Alberta
this 16th day of September, 2026

Authorized to sign for: Antonio J.A.

Grosse J.A.

Woolley J.A.

Appearances:

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