

In the Court of Appeal of Alberta

Citation: R v DB, 2026 ABCA 323

Date: 20261014
Docket: 2501-0005A
Registry: Calgary

Between:

His Majesty the King

Respondent

- and -

D.B.

Appellant

Restriction on Publication

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

By Court Order, information that could identify the victim or witnesses must not be published, broadcast, or transmitted in any way.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 Kevin Feehan
The Honourable Justice Anne Kirker
The Honourable Justice Joshua B. Hawkes

Memorandum of Judgment

Appeal from the Sentence by
The Honourable Justice G.L.M. Bennis
Sentenced the 9th day of December, 2024
(Docket: 220572267Y1)

Memorandum of Judgment

The Court:

Introduction

[1] Following a judge-alone trial, the appellant was convicted of one count of sexual assault and one count of assault against his then girlfriend who was 14 to 16 years old. The appellant was 14 to 15 years old at the time of the offences. He was sentenced under the *Youth Criminal Justice Act*, SC 2002, c 1 (*YCJA*) to 9 months custody (6 months closed custody and 3 months community supervision), followed by 15 months probation. In oral reasons delivered in February 2026, this Court dismissed the appellant's conviction appeal. He now appeals his sentence and asks us to substitute a sentence of 18 months probation or, alternatively, 6 months custody and supervision followed by 15 months probation.

Background

[2] Three separate incidents formed the basis of the appellant's conviction for one count of sexual assault. In brief, between approximately March and October 2020, the appellant forced the complainant to have vaginal and anal intercourse without her consent. The complainant suffered vaginal bleeding after the first incident and bruising after the second incident. During the third incident, the appellant threatened to commit suicide if the complainant did not have sex with him. He cut his wrists in front of her. The complainant eventually submitted to sexual contact, but any purported consent was coerced through the appellant's threat of self-harm.

[3] The appellant's assault of the complainant took place in a separate incident in the spring of 2021 when he had joined her on a family vacation. The appellant restrained the complainant, hit her abdomen, and pressed her against furniture. She had significant bruising and sought medical attention due to the pain she suffered.

[4] Following the appellant's trial, an assessment under section 34 of the *YCJA* was conducted. There were delays in the report's completion due to the appellant's failure to make himself available.

[5] The section 34 report noted the appellant understood the illegal nature of the acts for which he had been convicted but did not accept responsibility. He declined to provide details of the offences because it would be a "different variation" from court documents and he was appealing the trial judge's decision. He did not express remorse or show empathy towards the complainant. The appellant's primary diagnoses were mild intellectual disability, attention deficient hyperactivity disorder (combined), historical diagnosis of generalized anxiety disorder,

intermittent explosive disorder and cannabis misuse disorder. Secondary diagnoses included a learning disability and congenital birth defects.

[6] It was also noted that historically the appellant had presented with psychotic-like symptoms, but they no longer appeared as part of his clinical presentation. There was no data to suggest the appellant was impaired by “any acute pathological mood disturbance, psychotic thought process or alcohol/drug misuse disorder” at the time of the offences. The appellant was deemed to be a moderate risk for both general and violent recidivism. The section 34 report concluded that due to the appellant’s lack of social and life skills, impulsiveness, inattention and distractibility, he would “require considerable long-term support and supervision to ensure compliance with Court Orders”. The report further suggested that it would be “counterproductive” to place the appellant in custody because it could victimize him and escalate his anger, aggression, and low self-esteem.

[7] An Indigenous background report was also prepared before sentencing. It noted that the appellant’s maternal relatives had attended residential or day schools. The appellant reported that he had a difficult childhood, which included parental absence, physical abuse, and exposure to domestic violence and substance abuse. The appellant also shared that he had been bullied because of his physical abnormalities and he had academic challenges in school. He did not finish high school due to family pressures. The appellant disclosed that at the time of the report he was experiencing anxiety, social isolation, and poverty. He expressed a desire to pursue counselling and reconnect with his Cree culture.

[8] The complainant and her mother provided victim impact statements at the sentencing hearing. The complainant explained the profound and lasting impact the appellant’s actions have had on her, both physically and emotionally. Her mother described the “pure torture” of what the appellant put her family through. She felt the appellant had taken the complainant’s innocence, family and friends, self-worth, confidence, and chance at a future.

Sentencing Decision

[9] Crown counsel sought a sentence of one year combined custody and supervision followed by probation. Defence counsel argued that two years probation would be a fit sentence.

[10] The sentencing judge began by recognizing that the complainant had suffered serious bodily harm, both physical and psychological. Because of this finding, she agreed with Crown and defence counsel that a deferred custody and supervision order was not available: *YCJA*, s 42(5). The sentencing judge then considered whether probation was nevertheless an available sentence.

She took note of *R v IG*, 2024 ABCA 264, where this Court provided guidance on sentencing a young person who has caused or attempted to cause serious bodily harm.

[11] Among other things, the Court in *IG* held that: sentencing under the *YCJA* is an individualized and contextualized process; a “singular focus” on whether “exceptional circumstances” exist to justify a non-custodial sentence distracts from that core task; and that, Parliament has not foreclosed the availability of probation when a young person causes or attempts to cause serious bodily harm: *IG* at paras 26-28. Custody, however, is generally required “to achieve a proportional, meaningful consequence” due to the inherent gravity of an offence involving serious bodily harm, the unavailability of a deferred custody and supervision order under section 42(5)(a) of the *YCJA*, Parliament’s intention as reflected in section 42(5)(a) and sentencing guidance from appellate courts: *IG* at para 28.

[12] The Court in *IG* went on to say at paragraph 30, which the sentencing judge expressly referenced:

...in cases involving serious bodily harm, when determining whether a non-custodial sentence would accord with the purpose and principles of section 38, a youth sentencing judge must meaningfully grapple with the serious bodily harm, the effect and intent of section 42(5)(a) as interpreted by the jurisprudence, and whether a non-custodial sentence is consistent with the purpose and principles of section 38, including serving as a meaningful consequence, in all the circumstances.

[13] Ultimately, the sentencing judge was not satisfied probation would be an appropriate sentence for the appellant. He was sentenced to 9 months custody (6 months closed custody and 3 months community supervision), followed by 15 months probation. In coming to this result, the sentencing judge considered the principles and purpose of sentencing under the *YCJA*, the gravity of the offences, and the appellant’s unique circumstances and background factors as detailed in the pre-sentence reports. She was of the view that the sentence imposed would provide the appellant with “the best opportunity to rehabilitate and reintegrate into society, while recognizing the seriousness of the offences he has been found guilty of.”

Discussion

[14] The appellant argues the sentencing judge erroneously found there must be “exceptional circumstances” for a court to impose a probationary sentence on a young person who commits an offence that causes serious bodily harm. He also contends that the sentencing judge misapprehended, and did not sufficiently weigh, the relevant mitigating factors. He further submits

that the sentencing judge improperly relied upon the lack of structure in his life and need for mental health measures to justify a custodial sentence.

[15] We are not persuaded any of the alleged errors warrant this Court's intervention.

[16] It is important to recall the well-established deferential standard of review applicable to sentencing decisions. An appellate court can only intervene to vary a sentence if the sentence is demonstrably unfit or the sentencing judge made an error in principle that impacted the sentence: *R v Friesen*, 2020 SCC 9 at para 26, citing *R v Lacasse*, 2015 SCC 64 at paras 41 and 44; *IG* at para 19.

[17] In support of his position that the sentencing judge treated "exceptional circumstances" as a prerequisite for imposing a probationary sentence when a young person has caused serious bodily harm, the appellant points to two excerpts of the sentencing reasons. First, the sentencing judge queried if the appellant's circumstances "rise to the level of exceptional circumstances that could leave probation as a possible sentence, despite [s]ection 42(5)?" Second, she later concluded "there are no exceptional circumstances such that the Court should consider a non-custodial sentence." Taken in isolation, these statements are not helpful. However, a functional and contextual reading of the reasons, in their entirety and with reference to the record and counsel's submissions, makes clear that the sentencing judge understood the role of "exceptional circumstances" in sentencing the appellant. She referred to the recent guidance in *IG* and followed it. Contrary to the appellant's contention, the sentencing judge did not have a "singular focus" on "exceptional circumstances" in considering whether probation would be appropriate, nor did she treat "exceptional circumstances" as a threshold prerequisite to imposing a non-custodial sentence. Accepting the appellant's characterization of the sentencing decision results in a parsing of the reasons in search for error, which the Supreme Court has warned against: *R v GF*, 2021 SCC 20 at para 69.

[18] In the alternative, the appellant argues that his circumstances are exceptional and the sentencing judge erred in finding otherwise. We cannot accept this submission. The sentencing judge's conclusion that there were no exceptional circumstances as described in *IG* is amply supported by the record and discloses no reviewable error.

[19] Somewhat related to his assertion regarding exceptional circumstances, the appellant's second ground of appeal is that the sentencing judge erred in her treatment of his Indigenous background factors and disabilities. This argument amounts to an invitation for this Court to reweigh the relevant mitigating factors. "The decision to weigh such factors in a given way is not in itself an error that opens the door to appellate intervention unless the weighing is unreasonable": *Lacasse* at para 78.

[20] In this case, the sentencing judge considered the appellant's unique circumstances. She referred to his challenging childhood which included domestic violence, parental substance abuse and neglect, and bullying. She recognized the appellant's cognitive challenges and mental health issues. Upon review of the reasons and the evidence, the suggestion that the sentencing judge misapprehended the mitigating factors is unfounded. The sentencing judge's weighing of the appellant's Indigenous background factors and disabilities with the other relevant sentencing principles, including the seriousness of repeated acts of sexual violence against an intimate partner, was reasonable.

[21] The appellant also takes issue with the sentencing judge's failure to follow the section 34 report writer's suggestion that it would be "counterproductive" to place the appellant in custody. The sentencing judge expressly acknowledged this recommendation and grappled with its usefulness. However, she found it to be of little assistance in the circumstances and explained why that was so. We see no principled basis to interfere with her conclusion.

[22] Finally, the appellant submits that by imposing a custodial sentence instead of a probationary sentence, the sentencing judge violated section 39(5) of the *YCJA*, which states: "A youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures." The appellant says the sentencing judge erroneously relied on his unstable life circumstances and need for mental health measures to justify a custodial sentence. There is no merit to this argument.

[23] Based on the evidence before her, the sentencing judge rightfully had concerns with the appellant's rehabilitation and reintegration to date. In particular, the appellant lacked remorse and empathy towards the complainant and did not take responsibility for his actions. He lacked engagement with the pre-sentence assessment process and did not follow the recommended treatments or supports. He was living with his father who was described as violent and struggling with substance abuse. The appellant was not attending school or working regularly and had not attended counselling. These concerns, in addition to the gravity of the offences, the appellant's other unique circumstances, and the purpose and principles of sentencing under the *YCJA*, informed the sentencing judge's analysis of whether probation would achieve accountability, meaningful consequences, rehabilitation, reintegration and protection of the public. The sentencing judge did not allow the impact of a non-custodial sentence on the appellant's mental health overtake her reasoning. The imposition of a custodial sentence is not the product of reviewable error.

Conclusion

[24] The appeal is dismissed.

[25] The appellant must surrender himself into custody at the Calgary Young Offender Centre no later than noon on Thursday, October 15, 2026. Because the appellant is now 20 years of age and pursuant to section 93(1) of the *YCJA*, he will thereafter be transferred to a provincial correctional facility for adults to serve the remainder of his youth sentence, unless the provincial director orders that he continue to serve his youth sentence in a youth custody facility.

Appeal heard on September 22, 2026

Memorandum filed at Calgary, Alberta
this 14th day of October, 2026

Feehan J.A.

Kirker J.A.

Hawkes J.A.

Appearances:

A. Beland
for the Respondent

D. Ngyuen
C. Sprague
for the Appellant