Citation: R v Sandhu, 2026 MBCA 55
Date: 20260612
Docket: AR26-30-10352

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Madam Justice Janice L. leMaistre
Mr. Justice David J. Kroft

***B E T W E E N**:*

	)	***K. L. Jones***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***J. A. Hyman***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
HARPREET SINGH SANDHU	)	*Decision pronounced:*
	)	***June 3, 2026***
(Accused) Appellant	)	
	)	*Written reasons:*
	)	***June 12, 2026***

LEMAISTRE JA (for the Court):

[1] The accused sought leave to appeal and, if granted, appealed his sentence of thirty months' imprisonment imposed following his guilty plea to possession of opium and heroin for the purpose of trafficking. He also brought a motion for the admission of fresh evidence.

[2] After hearing the appeal, we denied the motion for fresh evidence and granted leave to appeal, but dismissed the appeal with reasons to follow. These are those reasons.

[3] The accused was arrested after police officers observed him engage in at least eight interactions over a two-day period that were consistent with drug trafficking.

[4] During a search of his vehicle, police officers found significant quantities of opium and heroin, including 176.94 grams of opium in the trunk, along with smaller packaged amounts on his person and in the vehicle. Police also seized a scale, packaging materials and a score sheet, indicating trafficking activity. Text messages confirmed active sales of opium in significant quantities (up to 80-90 grams for $2,300). The total value of the drugs exceeded $10,000, demonstrating a commercial trafficking operation.

[5] At the sentencing hearing, the Crown's position was that the accused had engaged in both street-level and mid-level trafficking, justifying a sentence of three years' incarceration; a sentence that was at the upper end of the one-to-four-year range for a street-level trafficker and the lower end of the three-to-six-year range for a mid-level trafficker without decision making authority (see *R v McLean*, 2022 MBCA 60 at paras 6-7; see also *R v Alcera*, 2024 MBCA 32 at paras 19-26, 31).

[6] The accused argued that he should be sentenced as a street-level trafficker, leaving open the possibility of a conditional sentence order (CSO). He also raised immigration consequences, arguing that a CSO could assist him in avoiding removal from Canada.

[7] Although the judge was advised that the accused was a permanent resident who would be inadmissible in Canada because of the conviction (see *Immigration and Refugee Protection Act*, SC 2001, c 27, s 36(1)(a) [*IRPA*]), he was not told that a jail sentence of more than six months would remove the

accused's right to appeal on humanitarian and compassionate grounds (see *ibid*, ss 63-64, 67). Nor was it drawn to his attention that a CSO is not a term of imprisonment under section 36(1)(a) of the *IRPA* (see *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para 24).

[8] The judge found the accused's involvement in trafficking was significant, with aspects of mid-level trafficking, increasing his moral culpability. The judge recognized the mitigating factors (addiction issues, early rehabilitative steps and some positive personal circumstances). However, he determined that the appropriate sentence was between thirty and thirty-six months' imprisonment.

[9] After the judge determined that a sentence exceeding two years was appropriate, he considered whether a CSO could be imposed after accounting for the accused's pre-sentence custody of approximately five months. Both parties agree that considering a CSO in these circumstances constituted an error (see *R v Henderson*, 2026 MBCA 28 at para 8).

[10] Nevertheless, in conducting this analysis, the judge considered the immigration consequences. He stated, "I have no doubt that a [CSO] would be possibly a factor in immigration consequences rather than an actual jail sentence." However, the judge found that a CSO was not appropriate because the offence was serious and involved significant trafficking, rehabilitation was only at an early stage, and the principles of denunciation and deterrence required a term of imprisonment.

[11] The judge imposed a sentence of thirty months' imprisonment, reduced to twenty-five months after credit for pre-sentence custody.

Fresh Evidence

[12] The accused seeks to admit fresh evidence on the appeal consisting of an affidavit from his immigration counsel (the affidavit). In the affidavit, immigration counsel states that because the accused is a permanent resident and he was sentenced to more than six months' imprisonment, he will be removed from Canada without the right to appeal on humanitarian and compassionate grounds. He also states that if the judge had imposed a CSO, the accused would not have lost his right to appeal a removal order.

[13] Immigration counsel also indicates that the accused's admissibility hearing is pending and that, in his view, the accused's appeal against a removal order would have merit.

[14] While the affidavit offers a helpful overview of the law concerning the immigration consequences arising from the accused's sentence, that does not constitute fresh evidence.

[15] The information regarding the history of the accused's case before the Immigration and Refugee Board of Canada and the status of the accused's admissibility hearing is helpful and we have considered it. However, as we will explain, in our view, the fresh evidence could not reasonably be expected to have affected the result and therefore does not meet the test for admission (see *Palmer v The Queen*, 1979 CanLII 8 at 775 (SCC)).

Sentence Appeal

[16] On the sentence appeal, the accused argues that the judge imposed the sentence without understanding a critical collateral consequence and

misstated the law of conditional sentences, leading to an unfit sentence. He submits that a CSO of two years less one day would be an appropriate sentence.

[17] The standard of review on a sentence appeal is highly deferential (see *R v Friesen*, 2020 SCC 9 at para 26 [*Friesen*]). Absent a material error in principle, an appellate court may intervene only where the sentence is demonstrably unfit. As explained in *Friesen*, "[e]rrors in principle include an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor" (*ibid*).

[18] The effect of a sentence on an individual offender, including immigration consequences, are collateral consequences that may be considered as part of the offender's personal circumstances (see *R v Pham*, 2013 SCC 15 at para 11). However, inappropriate and artificial sentences should not be imposed to avoid collateral consequences flowing from legislation, including the *IRPA* (see *ibid* at para 15).

[19] We are not persuaded that the judge's failure to appreciate the full immigration consequences of a sentence of imprisonment exceeding six months was a material error in principle.

[20] It is common ground that the impact of the immigration consequences, in particular the loss of the right to appeal a removal order, was not fully explained to the judge. However, in our view, that omission does not assist the accused.

[21] First, the judge was aware, in a general way, that immigration consequences were a relevant consideration and expressly acknowledged them.

[22] Second, and more importantly, the judge's conclusion that a penitentiary sentence between thirty and thirty-six months was required was driven by the gravity of the offence and the accused's degree of responsibility. Once he had made that determination, the immigration consequences could not justify a materially lower sentence without undermining proportionality. As we have explained, collateral consequences cannot distort what would otherwise be an appropriate sentence.

[23] In our view, there is no basis to conclude that a fuller understanding of the immigration consequences would have led the judge to impose a fundamentally different sentence. Any error was therefore not material.

[24] We are also not persuaded that the judge misstated the law by suggesting that rehabilitation beyond "initial steps" was required before a CSO could be considered.

[25] When the judge's reasons are considered in context, it becomes clear that his remarks about rehabilitation explained why he was not prepared to reduce the sentence to one that would allow him to impose a CSO. He was not imposing a novel legal threshold for a CSO, but declining to depart from what he had determined was a fit sentence in the absence of compelling mitigating circumstances.

[26] While we agree that the judge did err in briefly considering whether credit for pre-sentence custody might reduce the effective sentence below two years, that error had no impact on the ultimate sentence.

[27] Overall, we see no error warranting appellate intervention arising from the judge's treatment of conditional sentences.

[28] Finally, we are of the view that the sentence imposed is not demonstrably unfit.

[29] The accused's conduct involved repeated drug transactions, possession of significant quantities of opium and heroin, and indicators of both street-level trafficking and movement of bulk quantities. The judge properly emphasized denunciation and deterrence and gave effect to the mitigating factors, including the accused's addiction and efforts at treatment, by imposing a sentence at the low end of the identified thirty-to-thirty-six-month range. The resulting sentence falls squarely within the appropriate range for street-level trafficking with elements of mid-level trafficking.

[30] Moreover, the sentence proposed by the accused (a CSO of two years less one day) would, in our view, represent a substantial departure from the appropriate range and would undermine the principle of proportionality.

Conclusion

[31] To summarize, the judge determined that the appropriate sentence was between thirty and thirty-six months. Properly understood, the immigration consequences could not have justified the reduction necessary to bring the sentence within the range for a CSO. Accordingly, the fresh evidence

could not reasonably be expected to have affected the result. The judge did not misapply the law on conditional sentences and the sentence imposed is not demonstrably unfit.

[32] In the result, the motion for fresh evidence was denied and leave to appeal was granted, but the appeal was dismissed.

leMaistre JA

Cameron JA

Kroft JA