

CANADA / JUDGMENT

R v. K.L.

2026 ONCA 300

COURT

Court of Appeal for Ontario

DECIDED

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Coroza, Steve A.; Copeland, Jill M.; Madsen, Lene

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COURT OF APPEAL FOR ONTARIO

CITATION: R v. K.L., 2026 ONCA 300[1]

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Coroza, Copeland and Madsen JJ.A.

BETWEEN

His Majesty the King

Respondent

and

K.L.

Appellant

Lisa Freeman and Adam Binhammer, for the appellant

Amy Rose, for the respondent

Heard: October 1, 2025

On appeal from the convictions entered by Justice J. Christopher Corkery of the Superior Court of Justice on January 20, 2023, and from the sentence imposed on February 7, 2024.

Coroza J.A.:

I. Overview [1] The appellant and the complainant were in a relationship from February 2019 to February 2020. At the start of their relationship, the appellant was 25 and the complainant was 17. Throughout the relationship, the appellant subjected the complainant to several acts of verbal, physical and sexual violence.

- [2] The appellant was tried before a judge sitting alone in the Superior Court of Justice on a multi-count indictment. The case turned largely on the credibility of the complainant. The complainant testified. The appellant did not.
- [3] However, the complainant's evidence was not the sole evidence at trial. The appellant's grandfather also testified. His testimony was disbelieved by the trial judge. The complainant's mother and the response personnel who attended the scene of one of the incidents also testified. Photographs of the complainant's injuries and screenshots of text messages between the appellant and complainant were also tendered as evidence.
- [4] At the end of trial, the appellant was convicted of 18 counts in relation to eight different episodes of abuse. The trial judge sentenced the appellant to a global sentence of eight years less one year of Downes credit, resulting in a net sentence of seven years.
- [5] The appellant appeals from both his convictions and sentence. On his conviction appeal, he argues that the trial judge did not provide sufficient reasons for accepting the complainant's evidence. Specifically, the appellant submits that the trial judge did not meaningfully address key inconsistencies in the complainant's evidence and did not subject her testimony to adequate scrutiny.

- [6] On his sentence appeal, the appellant submits that the trial judge committed an error in principle by failing to give appropriate weight to the Gladue factors and failing to prioritize the principle of restraint in sentencing the appellant, as an Indigenous, youthful, first-time offender.
- [7] For the reasons that follow, I would dismiss the conviction appeal. The trial judge was not required to address and resolve each inconsistency arising from the complainant's evidence. The trial judge appropriately considered the complainant's evidence as a whole and found it to be both reliable and credible. I see no basis for appellate intervention.
- [8] However, I am persuaded by the appellant's submission that the reasons for sentence disclose an error in principle. The reasons for sentence of the trial judge do not address the principle of restraint. The Crown fairly acknowledges as much. The failure to take into account this important principle for a first-time offender, even in a case of serious violence, clearly impacted the sentence. Accordingly, the sentence imposed by the trial judge is not entitled to deference and I would consider the sentence afresh. After considering the appropriate aggravating and mitigating factors, including the fresh evidence (which is admitted on consent), I would vary the seven-year sentence imposed by the trial judge to five years.

II. Facts [9] The complainant began dating the appellant in February 2019, when she had just turned 17. The appellant was 25 years old at the time.

- [10] During the relationship, the complainant lived with the appellant in his grandfather's basement in Alderville, a 40-minute drive from her home in Cobourg. The complainant relied on the appellant and his grandfather to drive her whenever she wanted to return home.
- [11] Over the course of the relationship, the appellant threatened, assaulted, unlawfully confined, and sexually assaulted the complainant. This abuse spanned a nearly year-long period, from 2019 to 2020. The eight separate incidents of abuse charged at trial and corresponding convictions are detailed below.
- i. Incident One, Count 1: Mischief [12] In March or April of 2019, during an argument, the appellant threatened to destroy the complainant's belongings. Later, the complainant received a Snapchat video of her possessions on fire in the appellant's bathtub.
- ii. Incident Two, Counts 2-4: Sexual Assault Causing Bodily Harm, Unlawful Confinement and Utter a Death Threat [13] From March 28 to March 30, 2019, the appellant took the complainant to stay at a motel. While at the motel, the appellant repeatedly sexually assaulted the complainant, causing her vaginal tears and bleeding. The complainant felt that she had no choice but to stay at the motel throughout the assaults. During this time, the appellant threatened to kill himself and kill her if she left.

iii. Incident Three, Count 5: Assault [14] The complainant was unsure of the date of this incident but believed it took place in July of 2019. The complainant was with the appellant in the basement of the appellant's grandfather's home. The complainant and the appellant got into an argument. During the argument, the appellant threw full water bottles at the complainant. The complainant also testified that the appellant dragged her by her hair, but on cross-examination stated that he dragged her by her arm.

iv. Incident Four, Counts 7-8: Assault and Utter a Death Threat [15] The complainant was unsure of the date of this incident. The trial judge found that it took place in August of 2019. While in the basement, the appellant and the complainant got into another argument. The appellant dragged the complainant by her hair up the stairs and locked her outside. The appellant's grandfather later came home and confronted the appellant. In response, the appellant smashed a lamp and threatened to kill both the complainant and his grandfather.

v. Incident Five, Counts 9-10: Mischief and Assault [16] On January 28, 2020, during another argument, the appellant threw the complainant's phone against a wall, damaging it. When the complainant went to retrieve her phone, the appellant tried to forcefully take it back. The appellant put his arm around the complainant's neck, choking her and pulling on her hair.

vi. Incident Six, Counts 13-14: Mischief and Assault Causing Bodily Harm [17] On January 29, 2020, while the appellant was searching through the complainant's phone, he became angry and smashed the phone on the ground repeatedly. He then started hitting the complainant's head against the door. He then dragged her to the living room and hit her head against the living room floor. The complainant believes she blacked out at this point. When she regained consciousness, the appellant's hands were around her neck, and she could not breathe. The appellant then dumped a water bottle and carton of iced tea on her head and struck her with an extension cord. After this incident, the complainant went back to her mother's house.

vii. Incident Seven, Counts 17-19: Assault Causing Bodily Harm, Utter a Death Threat and Dangerous Driving [18] On January 30, 2020, the appellant picked the complainant up from her mother's house. While driving, the appellant began hitting the complainant's head against the driver's side glass. The appellant crashed the car into a ditch. The police and a firetruck arrived at the scene. The appellant told the complainant he would kill her if she told anyone what happened. The complainant later attended the hospital and was treated for a concussion.

viii. Incident Eight: Counts 22-23: Unlawful Confinement and Sexual Assault [19] After the driving incident, the complainant told the appellant that she wanted to return to her mother's house. The appellant did not let her go home. Instead, he took her back to his house against her wishes. Once back, he covered the basement window with a wooden board. The complainant had no means of leaving or contacting anyone. She went to sleep that night and awoke to the appellant sexually assaulting her.

III. Conviction Appeal [20] As noted above, the overarching theme of the appellant's appeal against his convictions is that the trial judge's reasons were insufficient because he did not explain how he resolved several inconsistencies in the complainant's evidence. The appellant frames this as both an insufficiency of reasons and an uneven scrutiny argument.

- [21] Ultimately, the court is to take a functional and contextual approach in reviewing a trial judge's reasons: *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, at para. 69. The Supreme Court has instructed that appellate courts are not to "finely parse" trial decisions searching for errors; rather, "they must assess whether the reasons, read in context and as a whole, in light of the live issues at trial, explain what the trial judge decided and why they decided that way in a manner that permits effective appellate review": *G.F.*, at para. 69. Reviewing the trial judge's reasons in this light discloses no error.
- [22] The appellant advanced two principal submissions during oral argument. I will address each submission in turn.
- [23] First, the appellant asserts that there were six troubling areas of the complainant's evidence which he submits were inconsistent and implausible. The trial judge did not explain how he resolved these areas in concluding that the complainant was credible and reliable.
- [24] It is not necessary to outline each of the six areas raised by the appellant in his written and oral argument. Many of these arguments recycle the initial submissions made before the trial judge. Suffice to say many of the areas are narrow factual issues and inconsistencies that were not material to the issues at trial.
- [25] After carefully examining each of the appellant's submissions, I see no reason not to defer to the trial judge's finding on the complainant's credibility. Not only did the trial judge benefit from hearing a thorough cross-examination of the complainant, he also received comprehensive closing submissions addressing each of the six areas highlighted again on appeal.
- [26] Despite any supposed inconsistencies in the complainant's testimony, the trial judge made an appropriate credibility finding after balancing the competing considerations. At the end of the summary of the evidence, the trial judge concluded:

Turning, then, to the evidence of the complainant. I found the evidence of the complainant to be measured, articulate, ready to admit her weaknesses and inconsistencies. I found her explanations for inconsistencies to be reasonable. There was nothing in her evidence to suggest that she was deliberately in any way modifying or changing her evidence to strengthen her case. If anything, I perceived her evidence as being given reluctantly. She was speaking of experiences, traumatic experiences she had endured as a 17-year-old. She testified about abuse that not only was a breach of her trust in her relationship with [the appellant], but involved the most intimate aspects of their relationship. She testified, recalling things to the best of her ability. She did not hesitate to say when she had difficulties remembering. She did not hesitate to acknowledge when there was an inconsistency and tried to explain to the best of her ability the reason for the

inconsistency. Although not a child, I am mindful of some of the difficulties that arise when a young adult is testifying about things she experienced in her late teens. I accept the evidence of the complainant as credible and reliable. There was no exaggeration. There was no manipulation of the facts. There was no tailoring of her story to make it sound more convincing. Her disposition at trial, the pauses that I observed in her evidence, the moments when she became emotional – her vulnerability, her reluctance to testify, was clear. I suspect that there is much more to her story than what was heard in court. But she testified as to what was necessary to fulfill her duty in telling the truth, her oath to this court. [Emphasis added.]

- [27] The excerpt above provides sufficient explanation for why the trial judge found the complainant credible. Nor is it an error for the trial judge to structure his reasons in such a way, addressing the complainant's credibility and reliability in a holistic manner following a recitation of her testimony. Some judges may have crafted their reasons in a different way. However, that is not a basis for intervention by this court.
- [28] The appellant further submits that this is a case akin to *R. v. J.L.*, 2024 ONCA 36, 170 O.R. (3d) 97. I disagree.
- [29] In *J.L.*, the appellant was found guilty of serious sexual offences and uttering threats. Despite evident issues with the complainant's credibility, in his reasons the trial judge only summarized the complainant's evidence in-chief and provided a generic statement that he found her credible. The trial judge did not merely fail to resolve the inconsistencies, he failed to acknowledge that the inconsistencies existed at all, other than by broadly stating that any inconsistencies were peripheral. This was despite the fact that many of the inconsistencies could only fairly be described as material in nature.
- [30] Approaching the trial judge's analysis with deference, and after examining the evidentiary record, the submissions of counsel and the live issues at trial, this case is plainly not akin to *J.L.*
- [31] In this case, though the trial judge did not explain in depth how he resolved every single inconsistency in the complainant's evidence, the trial judge did identify the inconsistencies and explain why they did not detract from her credibility. Moreover, an examination of the entire record reveals that the trial judge was alive to these issues throughout the trial, as evidenced by his exchanges with counsel during closing submissions.
- [32] It seems to me that the appellant's painstaking parsing of each of these six areas is really a complaint about what weight should have been accorded to any given inconsistency's impact on the complainant's credibility. That type of determination, as the jurisprudence holds, is fact specific and, absent any legal error, owed deference on appeal: *R. v. Saleh*, 2022 ONCA 735, at para. 22; *R. v. Kruk*, 2024 SCC 7, 433 C.C.C. (3d) 301, at paras. 82-84. "The trial judge's determination of the significance of inconsistencies and related problems in the testimony of any witness, like any other matter going to credibility, must be given considerable deference on appeal": *R. v. Marshall*, 2013 ONCA 113, at para. 11.

- [33] Second, the appellant submits that the trial judge erred by failing to accept the Crown's concession that he only be convicted of assault simpliciter on count 14 (Incident Six, committed on January 29, 2020). The appellant submits that the trial judge appears to have forgotten this concession and conflated the complainant's evidence on count 14 with her evidence on count 17 (Incident Seven, committed on January 30, 2020).
- [34] I am not persuaded that the trial judge erred in this way. The complainant testified that she suffered a concussion, which was diagnosed on January 31, 2020. Given that the trial Crown could not attribute the symptoms of the concussion to Incident Six, the Crown invited the trial judge to find an assault simpliciter.
- [35] However, the trial judge was not bound by this concession. It is clear from the reasons that the trial judge was satisfied that the nature of the bodily harm attributed to count 14 was not restricted to a concussion. In his reasons he stated:

And to be clear, I am also satisfied that the evidence of the complainant, if accepted, that she was injured as shown in the photos by being hit or struck with an extension cord, by having her head slammed against the front door and the floor, with respect to Count 14, and having her head struck against the driver's side window ultimately leading to a diagnosis of a concussion, I am satisfied that if I accept the evidence of the complainant, that the essential element with respect to bodily harm has been met. [Emphasis added.]

- [36] The appellant acknowledges that there was evidence at trial to sustain a conviction for assault causing bodily harm on count 14. Indeed, the complainant testified that she received a large bruise on her shoulder from being struck by the extension cord. At trial, the Crown introduced photographs that she took of her shoulder and legs several days later were admitted into evidence. Regardless of whether the concussion suffered by the complainant could specifically be attributed to the incident underlying count 14, the trial judge could still rely on the photographs and this testimony about the bruising to establish the bodily harm element. The excerpt from the reasons quoted above shows that is what he did.
- [37] Given the evidence cited by the trial judge on this count, I am satisfied that there was a basis for a conviction in relation to count 14 and that the trial judge adequately explained how he reached this conviction despite the Crown's concession.
- [38] For these reasons, I would dismiss the appeal from conviction.

IV. Sentence Appeal [39] The trial judge delivered thorough reasons for sentence and imposed a sentence of eight years' imprisonment, in addition to several ancillary orders. The appellant received a one-year credit for stringent bail conditions pursuant to *R. v. Downes* (2006), 79 O.R. (3d) 321 (Ont. C.A.), reducing the global sentence imposed to seven years' imprisonment. In accordance with the Gladue report submitted by the appellant, the trial judge ordered the appellant be considered for initial placement or early transfer to Waseskun Healing Center and, if he was not eligible for initial placement, he be placed in a penitentiary with an Indigenous liaison officer and pathways program.

- [40] The trial judge considered several aggravating and mitigating factors. The trial judge noted that the mitigating factors were: (1) the appellant's lack of criminal record; (2) the appellant's youthful age of 25 years old at the time of the offences; (3) the appellant's difficult circumstances growing up, including those influenced by his Indigenous heritage; (4) the appellant's support from his grandfather; and (5) the appellant's role as a father to his a young child. The aggravating factors were: (1) the complainant's young age of 17 at the time of the offences; and (2) the fact that the incidents involved domestic violence.
- [41] As stated above, the appellant submitted a Gladue report, which contained details about the appellant's experiences of abuse and addiction, his awareness of his Indigenous identity as a child, the passing of his grandmother who was an important figure for him, his successful completion of trade school and employment, his ongoing mental health challenges, and his new relationship and young son.
- [42] The trial judge noted the following circumstances of the appellant's background:
- [The appellant] was raised by his mother until he was 12 years of age. It was a tumultuous and abusive period for [the appellant]. [The appellant] has no relationship with his father and ended up, at the age of 12, with his maternal grandmother and her husband. They provided a caring home for [the appellant]. Before moving in with his grandparents, [the appellant] describes suffering a great deal of physical abuse from his stepfather, whom he believes is now incarcerated for a double homicide. He also described having suffered a lot of abuse from his mother.
- [43] On consent, the appellant has filed fresh evidence providing an update on his conduct since being convicted. According to the appellant, he has done his best, both while in jail and while out on bail pending appeal since September of 2024, to be a present and caring father to his baby daughter, who was born in May of 2024. He has also tendered evidence from his new partner (the mother of his daughter) and his grandfather. By all accounts, the appellant is a present and supportive figure in his daughter's life and is doing his best to take on a fatherly role by contributing financially and taking care of her.
- [44] The appellant challenges his sentence on the grounds that the trial judge failed to give appropriate weight to the Gladue principles and failed to prioritize the principle of restraint in sentencing the appellant, as an Indigenous, youthful, first-time offender.
- [45] I disagree that the trial judge did not give adequate weight to the principles from Gladue. However, I am persuaded that the trial judge erred by failing to advert to the principle of restraint in sentencing the appellant. Accordingly, I would allow the appeal from sentence.
- [46] First, the appellant submits that the trial judge minimized the impact of the appellant's circumstances, shaped by his upbringing and tied to his Indigenous heritage, in determining the appropriate sentence. In arguing that the trial judge paid mere lip service to Gladue, he points to the following passage from the reasons for sentence:

The Children's Aid were involved with his family when he resided with his mother. The Gladue report writer notes the unfortunate common experience of witnessing and surviving domestic violence as a child. There is no clear link between the abuse that [the appellant] suffered and his Indigenous heritage. However, [the appellant] believes that his mother may have consumed alcohol while she was pregnant. While he has not been tested for fetal alcohol syndrome, he does not believe that he has it.

...

I consider the circumstances that he experienced growing up, which I believe are related to some degree to his Aboriginal heritage as a mitigating factor. I have considered that his moral blameworthiness to some degree has been affected by his Aboriginal heritage. [Emphasis added.]

[47] I disagree with the appellant's submission that the trial judge's treatment of the appellant's Indigenous background was insufficient. The trial judge thoroughly reviewed the principles set out in *R. v. Gladue*, [1999] 1 S.C.R. 688, and *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433. He correctly observed that, even in the most serious of cases, these principles still apply and may mitigate moral blameworthiness.

[48] After carefully reviewing the appellant's background, the trial judge stated that the appellant's Indigenous identity did have an impact on his moral culpability. The trial judge explicitly found that, out of the various considerations, he considered the appellant's Indigenous background to be the most significant mitigating factor in the case. In concluding his reasons, the trial judge stated:

In my view, the period of incarceration is appropriate, particularly taking into account the Gladue report. In my view, that is the most significant mitigating factor in this case. I am of the view that as an Aboriginal person, your childhood has affected and has mitigated your moral culpability in this case. I am also mindful of the recommendations contained in that Gladue report and I am prepared to adopt them. The recommendations contained in the Gladue report shall be provided to the place where you were incarcerated. [Emphasis added.]

[49] The trial judge's reasons make clear that he was alive to the Gladue report and the impact of the Gladue factors on the sentence. Accordingly, I reject the appellant's submission on this point.

[50] Second, the appellant submits that the trial judge ignored the principle of restraint. I would agree that the trial judge failed to advert to the principle of restraint and, in doing so, committed an error in principle requiring the appellant to be sentenced afresh.

[51] The principle of restraint serves to minimize sentences imposed on youthful, first-time offenders. The principle requires a sentencing judge to explore whether dispositions aside from incarceration are appropriate for the first-time offender. Where a custodial sentence is required, the principle requires that the sentence be as short as possible and tailored to the individual circumstances of the accused, with an eye to individual deterrence and rehabilitation over general deterrence and denunciation: *R. v. Desir*, 2021 ONCA 486, at para.

41, citing *R. v. Batisse*, 2009 ONCA 114, 93 O.R. (3d) 643, at para. 32 and *R. v. Priest* (1996), 110 C.C.C. (3d) 289 Ont. C.A., at pp. 294, 296.

- [52] This court has repeatedly held that, in sentencing youthful first-time offenders to incarceration, a sentencing judge must justify why a non-custodial or less severe option is insufficient. Where only a period of incarceration will suffice, the length of a first penitentiary sentence for a youthful offender should rarely be determined solely by the objectives of denunciation and general deterrence. Instead, the trial judge must consider the shortest possible sentence required to achieve the relevant objectives: *R. v. Al-Akhali*, 2025 ONCA 229, 447 C.C.C. (3d) 81, at para. 72, *R. v. S.K.*, 2021 ONCA 619, at para. 13, and *R. v. Borde* (2003), 63 O.R. (3d) 417 (C.A.), at para. 36.
- [53] In *R. v. Habib*, 2024 ONCA 830, 99 C.R. (7th) 110, writing for this court, Tulloch C.J.O. wrote that, even when dealing with serious offences requiring a sentence that emphasizes denunciation and deterrence, it is nevertheless an error in principle to lose sight of the principle of restraint in dealing with a youthful first-time offender: at paras. 38-39.
- [54] The principle of restraint extends to first-time offenders who committed their offences near in age to the appellant here: see *R. v. Celenk*, 2026 ONCA 60, at para. 18; *R. v. Disher*, 2020 ONCA 710, 153 O.R. (3d) 88, at para. 39.[2]
- [55] The principle of restraint is not only set out in our jurisprudence but is also reflected in ss. 718.2(d) and (e) of the Criminal Code, R.S.C. 1985, c. C-46.
- [56] The Crown fairly concedes that the reasons for sentence do not mention the principle of restraint. While the failure to mention the word restraint is not necessarily an error, in my view, a close look at the trial judge's reasons for sentence more generally reflect that he failed to apply the principle.
- [57] No doubt the gravity of these offences had to be recognized and denounced. The trial judge correctly highlighted the seriousness of the appellant's conduct and noted that a penitentiary sentence was required.
- [58] However, the trial judge also recognized that the appellant was a youthful first-time offender and had strong rehabilitation prospects. At the time of the offences, the appellant did not have a criminal record. He had never been sentenced to time in custody before, let alone in the penitentiary. Nevertheless, the trial judge imposed a sentence of eight years, less Downes credit.
- [59] Respectfully, in fixing that sentence of imprisonment, the trial judge failed to advert to the restraint principle, and instead simply adopted the Crown position. Accordingly, the trial judge committed an error in principle that had an impact on the sentence. Consequently, this court owes no deference to the trial judge's decision.

- [60] Having found an error in principle, it falls on this court to impose the appropriate sentence. Applying the principle of restraint, and taking into account both the aggravating features of these serious offences and the mitigating impact of the Gladue principles and the post-sentence conduct evidence at hand, in my view a five-year sentence is the shortest possible sentence that would achieve the purposes of deterrence, denunciation and rehabilitation. This accounts for the Downes credit already identified by the trial judge, which I see no error with.
- [61] To reach a net sentence of five years, I would vary the sentence on counts 2, 3 and 4 on the indictment from seven years to five years, concurrent. I would leave intact the trial judge's sentence on counts 13, 14, 15 and 16 of one year, concurrent with each other and consecutive to the sentence on count 2. Finally, I would subtract one year of Downes credit, leaving a net sentence of five years. The sentences on the remaining counts would remain the same.
- [62] Lastly, during oral argument, the appellant submitted that the appellant's sentence should be reduced further based on the conditions of the appellant's bail pending appeal and his conduct while on that bail. I would reject this submission. The sentence set out above fairly accounts for the principle of restraint and the seriousness of the offences and already takes into consideration the appellant's conditions and conduct while released on bail.

V. Disposition [63] I would dismiss the conviction appeal. I would grant leave to appeal sentence and allow the sentence appeal. I would reduce the net sentence of seven years imposed by the trial judge to a net sentence of five years. I would let the ancillary orders made by the trial judge stand.

Released: April 29, 2026 "S.C."

"S. Coroza J.A."

"I agree. Copeland J.A."

"I agree. L. Madsen J.A."

- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.
- [2] This court has also held that the failure to advert to the principle of restraint can still be an error even where the first-time offender is not youthful: *R. v. Hoang*, 2024 ONCA 361, 172 O.R. (3d) 97, at para. 80, leave to appeal refused, [2024] S.C.C.A. No. 221.

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