
CANADA / JUDGMENT

R. v. M.W.

2026 ONCA 301

COURT

Court of Appeal for Ontario

DECIDED

27 April 2026

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Judges

Roberts, Lois B.; Coroza, Steve A.; Osborne, Peter J.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. M.W., 2026 ONCA 301[1]

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Roberts, Coroza and Osborne JJ.A.

BETWEEN

His Majesty the King

Respondent

and

M.W.

Appellant

Paul Socka, for the appellant

Manasvin Goswami, for the respondent

Heard: April 2, 2026

On appeal from the sentence imposed by Justice Nancy M. Mossip of the Superior Court of Justice, on September 22, 2020, with reasons reported at 2020 ONSC 1481.

L.B. Roberts J.A.:

Overview

- [1] On November 13, 2019, the appellant was convicted of two counts of sexual interference, one count of invitation to sexual touching, two counts of failure to comply with probation order and two counts of sexual assault against K.L., the daughter of her[2] former romantic partner. The two sexual assault convictions were stayed in accordance with *R. v. Kienapple*, [1975] 1 S.C.R. 729.
- [2] The appellant committed the index offences against K.L. in 2007 and 2008, when K.L. was between 4 and 6 years old. The offences involved several instances of anal intercourse and forcing K.L. to masturbate and fellate the appellant, as well as eat the appellant's semen. The appellant groomed K.L. by showing her adult pornography and child sexual abuse and exploitation material, dressing her up in adult lingerie and make-up, and photographing her in sexually suggestive poses. She bought her chocolate so that K.L. would do whatever she asked. She told K.L. "sternly" not to tell anyone what she was doing to her.
- [3] The appellant received a global sentence of nine years in custody, plus ancillary orders, including lifetime prohibition orders under ss. 161(1)(a), (b) and (c), and s. 109(3) of the Criminal Code.
- [4] This is an appeal from sentence only.[3] The appellant does not challenge that the nine-year sentence is within the appropriate range, however, she submits that the sentencing judge made the following reversible errors that resulted in the inflation of her sentence and erroneous ancillary orders:
 - 1. The sentencing judge erroneously double-counted the breaches of probation orders as an aggravating factor on sentence.

2. The sentence failed to account for the unique systemic and background factors of the appellant's Indigenous identity that played a role in bringing the appellant before the court.
3. The s. 161(a) and (c) prohibition orders were erroneous.
4. The s. 109(3) prohibition order was erroneous.
- [5] The appellant also seeks leave to file fresh evidence.
- [6] The appellant submits that her sentence should be reduced to 8 years with a modified s. 161(1)(a) prohibition and a 10-year s. 109(2)(a) weapons prohibition.
- [7] Crown counsel concedes that the s. 161(1)(c) order should be set aside because it was legally unavailable at the time of the offences, but submits that the appeal should otherwise be dismissed.
- [8] At the conclusion of the appellant's submissions, the appeal was dismissed, save for the Crown's concession with respect to the s. 161(c) order, with reasons to follow. These are the promised reasons.

Fitness of the sentence

- [9] I shall consider the first two grounds together as they relate to the fitness of the global sentence imposed by the sentencing judge.
- [10] I see no double-counting error by the sentencing judge. The two probation orders that the appellant breached by committing the index offences were imposed in relation to the appellant's previous conviction in 2006 for sexually assaulting her goddaughter, M.P., in 2001, when M.P. was between seven and eight years old. The sentencing judge appropriately considered the breaches of the probation orders as an aggravating factor with respect to the global sentence that she imposed, which included a consecutive sentence for the breaches.
- [11] Having determined the appropriate global sentence for all the convictions, the sentencing judge was next required to fix the sentence in respect of each conviction: see *R. v. Khalid*, 2022 ONCA 501, at para. 32, citing *R. v. Friesen*, 2020 SCC 9, 391 C.C.C. (3d) 309, at para. 157.
- [12] As the 9-year global sentence is a fit sentence, there is no indication that the trial judge incorrectly inflated it by double-counting the aggravating factor of the breaches. The imposition of consecutive sentences within a fit global sentence did not create an error.
- [13] The appellant seeks to admit fresh evidence of her Indigenous background, consisting of her Correctional Plan through Correctional Service Canada and an Elder Review Report. The Correctional Plan and the Elder Review Report contain details of the appellant's very difficult upbringing. These details include her problematic home life and the sexual, physical and emotional abuse that the appellant suffered when she was a child and a teenager. They also report the appellant's early drug and alcohol use when she was 12 and 13.

- [14] The appellant acknowledges that no mention of her Indigenous heritage was made to the sentencing judge. While not determinative, I note that the appellant has indicated having awareness of her Indigenous heritage since 1992. Evidence related to her Indigenous heritage and any impact it may have had on her moral blameworthiness could have been submitted at sentencing.
- [15] While the sentencing judge cannot be faulted for not considering this issue, I would nevertheless admit the fresh evidence because s. 718.2(e) of the Criminal Code requires a sentencing court to take into account the unique circumstances of Indigenous offenders. However, here, the proposed fresh evidence would not have affected the appellant's sentence.
- [16] In her factum, the appellant "does not argue there were any other appropriate sentencing procedures or sanctions that were overlooked, nor that Gladue principles dictated a different prioritization of the relevant sentencing objectives." She asserts a loss of cultural identity because her family hid their Indigenous background from her until she was 17. She argues that this cultural disconnection likely influenced the risk factors related to her offences and that her Indigenous social history has contributed to her maladaptive coping strategies. This all goes to her overall moral blameworthiness for the offences, which, she argues, should have been considered on sentencing.
- [17] The appellant has not demonstrated that her past unawareness of and disconnection with her Indigenous cultural identity has any relation to her overall moral blameworthiness for the offences. Although Indigenous offenders are not required to "draw a straight line" between their Indigenous roots and the offences for which they are being sentenced, "more is required than the bare assertion of an offender's Aboriginal status": *R. v. Monckton*, 2017 ONCA 450, 349 C.C.C. (3d) 90, at para. 115.
- [18] Systematic and background factors may bear on the culpability of the offender to the extent they illuminate the offender's level of moral blameworthiness: *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, at para. 73; *R. v. Radcliffe*, 2017 ONCA 176, 347 C.C.C. (3d) 3, at para. 53. Although systemic and background factors provide the necessary context to enable a judge to determine an appropriate sentence, it is only where the unique circumstances of an offender bear on culpability or indicate which sentencing objective can and should be actualized, that they will influence the ultimate sentence: *Ipeelee*, at para. 83; *Radcliffe*, at para. 55. That is not the case here.
- [19] In any event, the mitigating impact of the appellant's very difficult upbringing and struggles with substance abuse, detailed in the fresh evidence, was already expressly applied by sentencing judge. As a result, the fresh evidence, when taken with other evidence, could not reasonably be expected to have affected the result: *R. v. Lévesque*, 2000 SCC 47, [2000] 2 S.C.R. 487, at paras. 14, 35; *R. v. LaPierre*, 2018 ONCA 801, at paras. 22, 40; *R. v. I.M.C.*, 2014 ONCA 312, 120 O.R. (3d) 1, at para. 59.

[20] The nine-year global sentence imposed by the sentencing judge was entirely fit. As this court instructed in *R. v. D. (D.)* (2002), 58 O.R. (3d) 788, upper single digit to low double digit penitentiary sentences should be the norm for serious, penetrative sexual offences against children. In *Friesen*, the Supreme Court instructed that higher sentences should be imposed to recognize society's greater awareness of the tremendous harm that these offences inflict upon children: at para. 5. These principles apply to historic sexual assaults against children: *R. v. Sheppard*, 2025 SCC 29, 451 C.C.C. (3d) 417, at paras. 67-83; *R. v. Wright*, 2024 ONCA 516, at para. 10.

[21] I would dismiss these grounds of appeal.

Section 161(1)(a) prohibition order[4]

[22] The sentencing judge imposed a lifetime prohibition order under s. 161(1)(a), which prohibits the appellant from:

attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre.

[23] The appellant submits that the s. 161(1)(a) prohibition order is overly broad and unrelated to the offences for which she was convicted. Specifically, she says that the unconditional prohibition unfairly restricts her legitimate attendance at community centres, parks, condominium pools and libraries where no children would be at risk. She submits that the order was therefore demonstrably unfit and should be modified to restrict her attendance solely to daycares, playgrounds and schools where young children are known to be present.

[24] I would not accept these submissions.

[25] Prohibition orders under s. 161(1) of the Criminal Code serve to protect children from sexual offenders. These orders are discretionary and entitled to substantial deference on appeal, absent error in principle or overriding and palpable error: *R. v. J.B.*, 2022 ONCA 214, at para. 52, citing *R. v. Durigon*, 2021 ONCA 775, at para. 5. I see no reversible error here.

[26] I would reject the appellant's argument that the s. 161(1)(a) order is overly broad. The appellant's index offences did not have to occur in the physical areas covered by the prohibition order to warrant it. As this court explained in *J.B.*, at para. 56:

Related convictions are not prerequisites to an order under s. 161(1). Nor must the offender have committed the offence in the circumstances contemplated by the order. A finding of pedophilia is not necessary either. A sentencing judge need only have an evidentiary basis upon which to conclude that the particular offender poses a serious risk to young children and be satisfied that the terms of the order are [a] reasonable attempt to minimize it[.]

[27] The sentencing judge had a solid evidentiary basis upon which to conclude that the appellant poses a serious risk to young children. The appellant's record shows her propensity to groom and sexually abuse very young children over a prolonged period. The

index offences demonstrate an alarming escalation in the appellant's sexual abuse of children. She abused a privileged position accorded by her former partner, who gave her access to and trusted her with K.L. She took steps to conceal the index offences by warning K.L. not to tell anyone about the abuse. K.L.'s victim impact statement reveals the deep and enduring trauma that she suffers as a result of the appellant's abuse. The appellant has shown no remorse and denied responsibility for her actions, which is a relevant factor indicative of future risk: J.B., at para. 57.

[28] Finally, as the Crown highlights in its factum, if, in future circumstances, the appellant's risk to children proves reasonably manageable in one or more of the locations covered by the order, the appellant can apply for a variation under s. 161(3) of the Criminal Code: R. v. McCann, 2011 ONCA 49, at para. 4.

[29] I would reject this ground of appeal.

Section 109(3) prohibition order

[30] The trial judge imposed an order under s. 109(3) of the Criminal Code prohibiting the appellant from possessing any firearm, cross-bow, restricted weapon, ammunition and explosive substance for life.

[31] This was not the appellant's first weapons prohibition order. When the appellant was convicted in 2006 of sexual assault against M.P., a s. 110 order was imposed. It is common ground that the s. 110 order was imposed in error. Because the appellant's 2006 conviction was an offence listed under s. 109(1), the appellant should have received a s. 109(2) prohibition order.

[32] Nevertheless, the appellant submits that the s. 109(3) order in this case should be set aside because it is inapplicable, as that subsection relates only to subsequent convictions for the same offence. She claims that the appropriate order would be under s. 109(2), because the convictions for sexual interference against K.L. in this case are "first convictions" for purposes of s. 109. The appellant had never before been convicted of sexual interference. And, while she was previously convicted of sexual assault against M.P. in 2006, the sexual assault convictions against K.L. in this case were stayed.

[33] I am not persuaded by the appellant's arguments.

[34] It is well established that the words of a statute are to be interpreted in accordance with their plain language in a commonsense manner that avoids an impractical meaning and maintains accordance with the intention of Parliament: Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27, at para. 21.

[35] The relevant provisions of ss. 109(1), (2) and (3) of the Criminal Code read as follows:

s. 109 (1) Where a person is convicted, or discharged under section 730, of

(a) an indictable offence in the commission of which violence against a person was used, threatened or attempted and for which the person may be sentenced to imprisonment for ten years or more,

(a.1) an indictable offence in the commission of which violence was used, threatened or attempted against

(i) the person's intimate partner,

(ii) a child or parent of the person or of anyone referred to in subparagraph (i), or

(iii) any person who resides with the person or with anyone referred to in subparagraph (i) or (ii),

...

the court that sentences the person or directs that the person be discharged, as the case may be, shall, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, firearm part, ammunition, prohibited ammunition and explosive substance during the period specified in the order as determined in accordance with subsection (2) or (3), as the case may be.

(2) An order made under subsection (1) shall, in the case of a first conviction for or discharge from the offence to which the order relates, prohibit the person from possessing

(a) any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, firearm part, ammunition and explosive substance during the period that

(i) begins on the day on which the order is made, and

(ii) ends not earlier than ten years after the person's release from imprisonment after conviction for the offence or, if the person is not then imprisoned or subject to imprisonment, after the person's conviction for or discharge from the offence; and

(b) any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

(3) An order made under subsection (1) shall, in any case other than a case described in subsection (2), prohibit the person from possessing any firearm, cross-bow, restricted weapon, firearm part, ammunition and explosive substance for life.

[36] The appellant's proposed interpretation of s. 109(1), (2) and (3) is inconsistent with the application of these interpretative principles. In particular, it would defeat the clear public safety purpose of the provisions, which is to ensure that the escalating commission of the category of offences referenced in s. 109(1) must result in a lifetime prohibition order under s. 109(3). The consistent legislative intent of Parliament behind s. 109 and its predecessor, s. 98, serves to enjoin future criminal misconduct by a certain class of offenders, namely, "those who have involved themselves in proven and serious offences which are marked by

violence or its overtones”: Regina v. Tobac (1985), 20 C.C.C. (3d) 49 (N.W.T.C.A.), cited in Bossé v. R., 2005 NBCA 72, 201 C.C.C. (3d) 77, at para. 8.

- [37] As a result, the subsequent offences referenced under s. 109(3) that trigger the lifetime ban include all offences within the classes set out under s. 109(1), and not solely the exact same offence as the first conviction: R. v. Keays (1983), 10 C.C.C. (3d) 229 (Ont. C.A.); R. v. Broome (1984), 63 C.C.C. (2d) 426 (Ont. C.A.).
- [38] There is nothing in the language employed by Parliament in s. 109(2) to explicitly restrict the application of this section to the exact same offence, as suggested by the appellant. Surely, had Parliament intended this interpretation, it would have said so. It did not do so when these provisions were enacted, nor did it do so in the series of amendments made to these provisions since their enactment.
- [39] Nor, as the appellant argues further, does s. 109(3) apply only when a previous prohibition order has been made under s. 109(1). The statute speaks in terms of prior convictions for particular classes of offences, not prior prohibition orders. Interpreting the statute to say otherwise would similarly undermine the public safety purpose of Parliament.
- [40] The appellant’s 2006 convictions engaged the provisions of s. 109(1). The appellant’s convictions for the index offences engaged these provisions again. As the convictions for the index offences are not the appellant’s first convictions for offences under s. 109(1), the order under s. 109(3) is mandatory. The language of s. 109(3) leaves no room for any discretion to order otherwise.
- [41] I would dismiss this ground of appeal.

Disposition

- [42] I would allow the appeal from sentence in part and set aside the s. 161(1)(c) prohibition order. I would admit the fresh evidence. I would otherwise dismiss the appeal.

Released: April 27, 2026 “L.B.R.”

“L.B. Roberts J.A.”

“I agree. S. Coroza J.A.”

“I agree. P.J. Osborne 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] By sentencing, the appellant was in the process of transitioning to female.
- [3] The appellant has also appealed her conviction, however the conviction and sentence appeals have been bifurcated.

- [4] As earlier noted, the Crown concedes and I agree that the s. 161(1)(c) prohibition order was not legally available and must be set aside.
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