Citation: R v Mrozik, 2026 MBCA 46
Date: 20260528

IN THE COURT OF APPEAL OF MANITOBA

2026 MBCA 46 (CanLII)

Coram: Mr. Justice Christopher J. Mainella
Madam Justice Janice L. leMaistre
Madam Justice Karen I. Simonsen

B E T W E E N :

	)	***N. P. Steen***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***D. N. Queau-Guzzi*** *and*
	)	***L. Campbell***
- and -	)	*for the Respondent*
	)	
DAX DAKOTA MROZIK	)	*Appeal heard:*
	)	***January 30, 2026***
(Accused) Appellant	)	
	)	*Judgment delivered:*
	)	***May 28, 2026***

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On appeal from *R v Mrozik*, 2025 MBPC 54 [*sentencing decision*]

LEMAISTRE and SIMONSEN JJA

Introduction

[1] Following a guilty plea, the accused was sentenced to two and one-half years' incarceration for possession of child sexual abuse and exploitation material (CSAEM). He seeks leave to appeal and, if granted, appeals the sentence.

[2] The accused was diagnosed with social anxiety disorder, major depressive disorder and mild autism spectrum disorder (level 1) (ASD) (collectively, disorders). He asserts that the sentencing judge erred in principle by (1) giving insufficient weight to his disorders, (2) overemphasizing the principles of denunciation and deterrence and underemphasizing the principle of restraint and mitigating factors, and (3) finding that a conditional sentence order (CSO) was inappropriate based solely on the nature of the offence. In essence, the accused contends that he was sentenced based on the crime alone without reasonable consideration of his personal circumstances.

[3] Although several arguments are advanced, from our perspective, the focus of this appeal is on the sentencing judge's approach to the accused's disorders, in particular, when assessing his moral culpability and the impact jail will have on him due to those disorders.

[4] While the accused seeks a reduced sentence, he more specifically takes the position that the appropriate sentence is a CSO of two years less a day, followed by three years of supervised probation.

[5] The Crown maintains that the sentencing judge made no reversible error.

[6] During oral submissions, the Crown invited this Court to set a sentencing range or starting point for the offence of possession of CSAEM (see *Quebec (Attorney General) v Senneville*, 2025 SCC 33 at paras 239-40 [*Senneville*]). The Crown recognizes that a sentencing range or starting point must provide a clear description both of the category created and the logic behind it (see *R v Friesen*, 2020 SCC 9 at para 39 [*Friesen*]). The Crown suggests that this Court adopt the approach taken by the Manitoba Provincial

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Court in *R v Hall*, 2025 MBPC 34, "that absent exceptional circumstances, a normative sentence for possessing CSA[E]M where the collection is large and contains material that includes a high degree of depravity is a penitentiary term in the three-year range for a first offender who has no record and who has entered a guilty plea" (at para 52).

[7] Given the limited case law submitted and submissions made regarding a sentencing range or starting point, we would decline to decide that issue and would leave it for another day.

[8] As for the appeal at bar, we would, for the reasons that follow, grant leave to appeal the sentence but dismiss the appeal.

Background

[9] Following a tip from an encrypted messaging and social networking application that four videos depicting CSAEM had been uploaded to the accused's account, the National Center for Missing & Exploited Children in the United States provided information to the National Child Exploitation Coordination Centre in Canada. As a result, the Winnipeg Police executed a search warrant at the accused's residence, arrested him and seized his cellphone and gaming computer.

[10] Forensic analysis of the accused's devices revealed 612 images and 51 videos of CSAEM, including 187 unique images and 25 unique videos.

[11] The CSAEM was extremely graphic and disturbing. All the videos depicted real children, some as young as one to four years old. The images also depicted real children, as well as anime and computer-generated children.

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[12] Additional images and videos found on the accused's devices depicted bondage, dominance, sadism, masochism, bestiality, "zoosadism" and "hurt core pornography".

[13] The accused's browser history revealed that he accessed the "dark web" and used an internet messaging service, Telegram, to discuss, request and share with others images of CSAEM, incest, bestiality, zoosadism and other disturbing materials.

[14] The police also recovered five CSAEM short stories that the accused had saved to his Telegram account. These stories contained extreme depictions of child sexual abuse, including descriptions of voyeurism, fellatio and sexual intercourse. Some of the stories had corresponding CSAEM images.

[15] At the sentencing hearing, counsel filed a pre-sentence report, a report from Dr. L. Ellerby (Dr. Ellerby), a registered clinical psychologist, and a report from the accused's family physician. Dr. Ellerby also testified.

[16] The pre-sentence report outlines that, at the time of his arrest, the accused was nineteen years of age and had no criminal record. He had completed high school and was enrolled in an online post-secondary computer science program.

[17] The pre-sentence report also indicates that the accused has few hobbies and limited employment prospects, he struggles with his sexuality and he has difficulty forming prosocial connections. He does, however, have a lot of family support. When asked about his offending by the probation

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officer who prepared the pre-sentence report, the accused expressed remorse for his actions. He was assessed as a low risk to reoffend generally.

[18] Dr. Ellerby's report indicates that, about one month before the CSAEM was discovered in the accused's possession, he was diagnosed with his disorders. Dr. Ellerby confirmed that his ASD is the highest functioning form of ASD, requiring the least amount of support. Dr. Ellerby explained that, since the accused's diagnosis, he had been seeing a psychiatrist and had made noteworthy gains in his treatment. Dr. Ellerby opined that incarceration would be harmful to the accused, considering his significant vulnerabilities.

[19] Dr. Ellerby described the accused as a good candidate for further treatment and programming but acknowledged that the process was challenging for the accused and that he had progressed at a slow pace. Dr. Ellerby assessed the accused as a below-average risk to reoffend respecting CSAEM-related charges and a very low risk to reoffend generally.

[20] The report from the accused's family physician indicates that the accused "has a challenging and complex mental health history with significant symptoms reported to [him] in 2017, but also some variable reactive and situational anxiety issues documented since approximately 2014." The family physician explained that the accused suffered from significant social anxiety and depressive symptomatology, and that following consultation with a psychiatrist, a short trial of medication was undertaken to address symptoms, including intrusive negative thoughts associated with depression. Eventually, the accused's diagnoses of his disorders were made in August 2022.

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[21] At the sentencing hearing, the Canadian Centre for Child Protection filed five victim impact statements from several victims, or their family members, whose identities were discovered within the accused's CSAEM collection. The statements describe the devastating and enduring harm caused by the offence, including the trauma associated with the original abuse, the ongoing distress of being identified from the CSAEM and contacted by strangers online or in person, and the profound impact of knowing that images documenting their abuse have been viewed by thousands of individuals.

[22] In submissions before the sentencing judge, the Crown took the position a fit sentence was forty-two months' imprisonment, whereas the accused sought a CSO followed by probation. The Crown indicates that its recommendation took into account the accused's personal circumstances.

[23] In a comprehensive decision, the sentencing judge determined that the accused's moral culpability was high, and that denunciation and deterrence were the primary sentencing principles. She thoroughly reviewed the accused's background, disorders and moral blameworthiness. She accepted that specific deterrence had already been accomplished through his arrest, the restrictive conditions imposed on his release and his exposure to the court process. She balanced the numerous aggravating and mitigating factors and focussed on proportionality and parity in post-*Friesen* decisions.

[24] The sentencing judge determined that a sentence of two and one-half years was called for, making a CSO unavailable. In any event, she concluded that, even if she had found that a sentence of two years less a day was appropriate, a CSO was not a proportionate sentence in the circumstances of this case.

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Standard of Review

[25] The standard of review on a sentence appeal is well known. An appellate court should not intervene in a sentence unless the judge committed a material error in principle or imposed a sentence that is demonstrably unfit (see *Friesen* at paras 26-27). In *Friesen*, the Supreme Court of Canada explained that "[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" (at para 26). The weighing of relevant factors amounts to an error in principle only where the judge's exercise of discretion is unreasonable (see *ibid*).

Analysis and Decision

1. The Accused's Disorders

Positions of the Parties

[26] The accused submits that the sentencing judge failed to reasonably take into account his disorders in two respects. First, he argues that the sentencing judge failed to give reasonable weight to his disorders when assessing his moral culpability. Second, he contends that the sentencing judge erred by failing to take into account the evidence from his family and Dr. Ellerby that incarceration would be harmful to his psychological and mental health functioning and, potentially, his safety.

[27] The Crown does not dispute that these are two possible ways in which mental illness can be mitigating but maintains that the sentencing judge

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considered both aspects in her analysis and reasonably determined the weight to be attributed to the accused's disorders.

Legal Principles

[28] The governing principles are well established. An offender's mental illness can be a mitigating factor on sentencing. As explained in Clayton C Ruby, *Sentencing*, 10th ed (Toronto: LexisNexis, 2020), sections 5.316, 5.321, 5.325, mental illness or cognitive deficits can be mitigating when there is an established link between the offender's condition and the offending conduct such that the offender's moral culpability is reduced, or where mental illness would render imprisonment more severe for the offender than for a person who does not suffer from the same condition. As stated at section 5.332:

> It is clear, that a sentence can be reduced on psychiatric grounds in two instances: (1) when the mental illness has contributed to or caused the commission of the offence; or (2) when the effect of imprisonment or other penalty would be disproportionately severe because of the offender's mental illness. In some cases, both factors are relevant.

[29] This statement has been adopted by the Supreme Court in *R v Bertrand Marchand*, 2023 SCC 26; the Court indicated that where there is a nexus between an offender's mental illness and crime, the illness "though it serves as no justification or excuse for [the offender's] behaviour, attenuates [the offender's] degree of responsibility and acts as a mitigating factor on sentencing" (at para 128). The Court went on to state (*ibid* at para 151):

> Most often, mental illness is viewed as a mitigating factor at sentencing as it may reduce an offender's moral culpability and

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> sentencing judges recognize that offenders with mental disorders are particularly affected by imprisonment (see Ruby).

[30] Again, in *R v Hills*, 2023 SCC 2 at para 135, the Supreme Court stated:

> Courts should consider the effect of a sentence on the *particular* offender. The principle of proportionality implies that where the impact of imprisonment is greater on a particular offender, a reduction in sentence may be appropriate (*Suter*, at para. 48; B. L. Berger, "Proportionality and the Experience of Punishment", in D. Cole and J. Roberts, eds., *Sentencing in Canada: Essays in Law, Policy, and Practice* (2020), 368, at p. 368). For this reason, courts have reduced sentences to reflect the comparatively harsher experience of imprisonment for certain offenders, like offenders in law enforcement, for those suffering disabilities . . ..
>
> [emphasis in original]

[31] In support of these general propositions of law in the context of a case involving possession of CSAEM, the accused relies on *R v Rytel*, 2019 ONSC 5541 [*Rytel*]. In that case, the Court explained that mental illness may justify a reduced sentence on two distinct grounds (*ibid* at para 31):

> Mental illness can lower a jail sentence on two distinct grounds: 1. Mental illness can reduce an offender's moral blameworthiness; and 2. The impact of incarceration on an individual suffering from mental illness can lead to a disproportionate effect and require a lower sentence: *R. v. Ellis*, 2013 ONCA 739, 303 C.C.C. (3d) 228 at paras. 117-122; *R. v. Batisse*, 2009 ONCA 114, 241 C.C.C. (3d) 491 at para. 38; *R. v. Fraser*, 2007 SKCA 113, [2007] 12 W.W.R. 615 at paras. 32-39.

The accused also relies on the following authorities in support of these principles: *R v Schofield*, 2025 MBCA 43 at paras 67-68; *R v Nathaniel*

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Dillon, 2025 ONSC 958 at paras 23-26; *R v Prendivoj*, 2022 ONCJ 257 at paras 40-41; *R v Jenkins*, 2021 PESC 6 at paras 60-62 [*Jenkins*]; *R v JED*, 2018 MBCA 123 at para 82 [*JED*]; *R v Adamo*, 2013 MBQB 225 at para 48; *Regina v Wallace* (1973), 11 CCC (2d) 95 at 100, 1973 CanLII 1434 (ONCA).

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Moral Culpability

[32] The accused contends that the sentencing judge unreasonably assessed the impact of his disorders on his moral culpability. He argues that the sentencing judge found that there could only be an attenuation of his moral culpability if a direct causal relationship between his disorders and his crime were found. He adds that, in this case, as in *Rytel*, it should be recognized that courts are unlikely to ever find "a straight-line cause and effect relationship" (at para 39) between mental illness and CSAEM, as compared to other crimes, given the inherent nature of the offence.

[33] As appreciated by the sentencing judge, in *R v Okemow*, 2017 MBCA 59 [*Okemow*], Mainella JA set out the approach to be used to determine if moral blameworthiness is reduced by an offender's cognitive limitation and/or mental disorder. The relevant questions are (*ibid* at para 73):

> 1. Is there cogent evidence that the offender suffers from a recognized mental illness or some other cognitive limitation?
>
> 2. Is there evidence as to the nature and severity of the offender's mental circumstances such that an informed decision can be made as to the relationship, if any, between those circumstances and the criminal conduct?
>
> 3. Assuming the record is adequate, the sentencing judge must decide the offender's degree of responsibility for the offence taking into account whether and, if so, to what degree his or her

> mental illness or cognitive limitation played a role in the criminal conduct.

[34] At the first step, the sentencing judge determined that there was cogent evidence that the accused suffers from several mental health conditions—his disorders.

[35] As for the second step, the sentencing judge found some nexus between the accused's disorders and his offending, stating (*sentencing decision* at para 96):

> I am persuaded that [the accused's] mental health challenges contributed to the circumstances that made him vulnerable to descend into the negative online activity, which included possessing CSA[E]M. These circumstances were exacerbated by the COVID-19 pandemic lockdown such that [the accused] was necessarily even more socially isolated than he usually was. Due to his anxiety and other diagnoses, he found himself not able to sustain the prosocial connections he did have online. He was alone. He was bored. He was depressed. To cope with these feelings, products of his mental health challenges, he started exploring online and found the Dark Web, which led to the offending. So, although it is not a straight line — I cannot say that the mental health challenges caused the offending — I find there is some nexus between his mental health challenges and his offending.

[36] At the third step of the *Okemow* test, that is, the degree of the accused's responsibility, the sentencing judge concluded that, despite the nexus established, she could not "find that his moral blameworthiness was significantly reduced" (*sentencing decision* at para 97). She then stated: "His mental health challenges did not cause him to actually engage in CSA[E]M offending" (*ibid* at para 98).

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[37] The accused argues that the sentencing judge erred in her analysis at this point by holding him to an impossible standard and failing to reasonably consider and weigh the evidence of his disorders. He argues that the sentencing judge determined that there should be no attenuating effect unless a direct causal link between his disorders and his offending was established.

[38] We disagree. In stating that the mental health challenges did not cause the accused to offend, the sentencing judge was simply explaining *why* his moral culpability was not significantly attenuated.

[39] This is confirmed by her conclusion in this area (*ibid* at paras 102-3):

> His mental health challenges did not prevent him from knowing what he was doing was morally wrong or illegal.
>
> Ultimately then, although I do find that [the accused's] mental health challenges contributed to the circumstances that made him vulnerable to offending, the attenuation of his moral blameworthiness is at the low end, given his intentional and ongoing decision making, knowing it was wrong.

[40] In our view, the sentencing judge reasonably considered the impact of the accused's disorders on his moral culpability, within the appropriate legal framework. She understood Dr. Ellerby's evidence and carefully considered how it factored into her moral blameworthiness assessment. She conducted "[a]n individual holistic assessment" (*JED* at para 42). While accepting that the accused suffered from disorders at the time of the offence, the sentencing judge ultimately gave this limited weight. She was entitled to do so. It is not the role of this Court to re-weigh the relevant sentencing factors

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unless the weighing is unreasonable (see *R v Lacasse*, 2015 SCC 64 at para 78).

Impact of Jail

[41] With respect to the impact of the accused's disorders as they relate to his anticipated experience in jail, the sentencing judge again understood the relevant evidence when she reviewed Dr. Ellerby's opinion (*sentencing decision* at paras 61-62):

> Dr. Ellerby, while recognizing that crafting the right sentence is the purview of the Court, did opine that [the accused's] rehabilitation needs, with his complicating mental health issues, can best be met in the community, and that incarceration would be harmful to [the accused's] mental health, given his vulnerability and fragility (emotionally, physically and psychologically).
>
> [The accused's] mother, his aunt and other collaterals, also express fear of [the accused] receiving a sentence that would have to be served in an institution, saying that his mental health would be negatively impacted.

[42] Although there was no evidence that the accused would necessarily be suicidal in jail, Dr. Ellerby offered the opinion that he is uniquely vulnerable and that incarceration would be counter-therapeutic.

[43] In terms of the impact of jail given the accused's disorders, the sentencing judge concluded (*ibid* at paras 139-40):

> I have considered the concerns that [the accused's] family members and Dr. Ellerby have expressed about the challenges that [the accused's] mental health may cause him in a custodial institution. The mental health situation of [the accused] is mitigating. But the focus of the sentence has to be on denunciation and general deterrence. The public cannot be expected to receive the same message of denunciation and general deterrence that a

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> jail sentence delivers, if jail, when it is required, is avoided by concerns as to how an offender may do in custody.
>
> Further, I have not been provided with any evidence that [the accused's] mental health challenges cannot be managed in custody.

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[44] Thus, the sentencing judge accepted that the impact of jail was a mitigating factor. However, in the end, she weighed the evidence that she had before her in relation to that consideration against the principles of denunciation and deterrence, and determined that she would give the impact of jail on the accused little, if any, weight. Again, she was entitled to do so.

[45] This is not a situation, as the accused suggests, where the sentencing judge determined that no weight could be given to the impact of jail on the accused simply because denunciation and deterrence were the primary sentencing objectives.

[46] In our view, the sentencing judge's weighing of the relevant factors was particularly justified given the seriousness of this crime and gravity of the circumstances of the CSAEM. This Court has traditionally classified the severity of CSAEM as outlined in *R v Basov*, 2015 MBCA 22 at para 5, for the purposes of section 718.1 of the *Criminal Code*, RSC 1985, c C-46 [the *Code*]:

> [O]n the basis of a classification system adopted in the United Kingdom in 2002 in the decision of *Oliver & Ors, R. v.*, [2002] EWCA Crim 2766, [2003] 2 Cr. App. R. (S) 15 (BAILII), and later adopted in this province. (See, for example, *R. v. Brooks (J.C.)*, 2010 MBPC 61, 263 Man.R. (2d) 186; and *R. v. Lague (G.J.)*, 2013 MBQB 32 at paras. 19, 32, 287 Man.R. (2d) 204.) That system classifies the content of [CSAEM] into five levels: (i) erotic posing with no sexual activity; (ii) sexual activity between children or solo masturbation by a child; (iii) non-penetrative

> sexual activity between adults and children; (iv) penetrative sexual activity between children and adults; and (v) sadism or bestiality.

[47] In the present case, the material qualifies under all five levels, including considerable material at levels (iv) and (v). The sentencing judge described the CSAEM as including material "at the high end of depravity" (*sentencing decision* at para 112). The gravity of this serious offence was significant.

[48] The Crown also submits that the sentencing judge was entitled to find that she had "not been provided with any evidence that the [accused's] mental health challenges cannot be managed in custody" and that programming could continue in custody. The accused says that this forms part of the unreasonable weighing the sentencing judge did in respect of his disorders and the impact of jail.

[49] As we have explained, Dr. Ellerby's evidence, from a treatment and risk management perspective, was that incarceration posed a risk of harm to the accused. Members of the accused's family similarly expressed concern about the potential impact of imprisonment on his mental health.

[50] However, pursuant to section 86 of the *Corrections and Conditional Release Act*, SC 1992, c 20, correctional authorities are required to provide essential health care, including psychological treatment (see also section 87). In addition, the pre-sentence report indicated that rehabilitative programming would be available to the accused while in custody.

[51] The sentencing judge was clearly aware of the accused's mental health diagnoses, Dr. Ellerby's opinion and the concerns expressed by the

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accused's family. While she could have said more about how she weighed the potential impact of incarceration, we are satisfied that she committed no reversible error.

2. Overemphasizing Denunciation and Deterrence and Underemphasizing the Accused's Vulnerabilities

[52] The accused submits the sentencing judge overemphasized the sentencing objectives of denunciation and deterrence, to the point of overlooking his vulnerabilities, and thereby erred in her overall assessment of proportionality. He argues that the sentencing judge failed to properly apply the principle of restraint in his case, given that he was a youthful, first-time offender.

[53] He further submits that it is generally accepted that the weight accorded to general deterrence is diminished where an offender suffers from mental illness, as "these types of offenders are inappropriate mediums by which to discourage others" (*R v Hilbach*, 2023 SCC 3 at para 107). He also argues that the principle of denunciation must similarly be tempered by an offender's mental illness (see *Rytel* at paras 74-75).

[54] As we noted earlier, the Crown contends that the normative range for possessing CSAEM in Manitoba is three years' incarceration where, absent exceptional circumstances, the offender has no prior criminal record, pleads guilty and has a significant collection of depraved materials. In the Crown's submission, the sentencing judge appropriately referenced this range and concluded a sentence outside the normative range was appropriate having regard to the accused's personal circumstances and the principle of restraint.

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[55] In our view, the sentencing judge did not unreasonably weigh the objectives of denunciation and deterrence against the accused's mitigating circumstances.

[56] In identifying the mitigating factors, she noted that the accused was "very youthful" (*sentencing decision* at para 111) at the time of his arrest. She also took into account his guilty plea, genuine remorse, lack of prior criminal record, family support, mental health diagnoses, low/very low risk to reoffend, insight into his offending and his compliance with treatment and progress toward rehabilitation. That said, the sentencing judge found that "[a]lthough he ha[d] been in treatment for some time, the progress [was] slow, and it [could not] be said that he has turned his life around" (*ibid* at para 134).

[57] The sentencing judge also identified several aggravating factors, including the presence of CSAEM on two devices, one of which was the accused's cellphone, the collection was extensive and involved numerous victims who suffered significant harm, some of the material was "at the high end of depravity" (*ibid* at para 112), the offending conduct persisted over time and the accused provided advice and instruction to others.

[58] We reiterate that this was an extremely serious offence, as were the circumstances of its commission given the depravity of the CSAEM. The courts have made clear that the principles outlined in *Friesen* about the seriousness of, and harm caused by, sexual offending against children apply to CSAEM offending (see *Senneville* at para 34). As stated by this Court in *R v Sinclair*, 2022 MBCA 65, "possession of [CSAEM] is itself child sexual abuse" (at para 65). See also section 718.01 of the *Code*.

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[59] Restraint and rehabilitation will always remain relevant sentencing considerations. As the accused submits, courts have recognized that the principles of denunciation and deterrence are attenuated where an offender suffers from a mental illness. However, in our view, the sentencing judge accounted for this by imposing a sentence of two and one-half years, below that sought by the Crown, which it maintained already considered the accused's vulnerabilities.

[60] As we have said, it is within the discretion of a sentencing judge to ascribe the weight to the various sentencing factors. The sentencing judge's weighing, in this case, was not unreasonable and is entitled to deference.

3. Appropriateness of the CSO

[61] Finally, the accused submits that the sentencing judge erred in determining that a CSO could never be appropriate for offences involving possession of CSAEM. The accused argues that his mental health issues justify a CSO and that the sentencing judge determined that a CSO was inappropriate based solely on the nature of the offence.

[62] He also says that the sentencing judge erred in finding that exceptional mitigating circumstances were required in order to impose a CSO. He points to the following paragraph in the sentencing judge's reasons (*sentencing decision* at para 142):

> Even if I had found [that a] sentence under two years could be a fit sentence for [the accused], I would not find exceptional circumstances nor personal circumstances so compelling as to have a CSO be a proportionate sentence and to be able to adequately address deterrence and denunciation.

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[63] The accused acknowledges that CSO's are rare for sexual offences against children, but points to post-*Friesen* cases involving such offences where courts have held that a CSO was warranted (see *R v Faroughi*, 2024 ONCA 178; *R v Snowbird* (24 February 2023), Winnipeg CR19-15-00947 (MBKB); *Jenkins*; *R v Nepon*, 2020 MBPC 48).

[64] The fact is that custodial sentences are the anticipated norm for sexual offences against children, including those involving CSAEM (see *R v Arac*, 2025 MBCA 54 at paras 8-9; *R v Dew*, 2024 MBCA 55 at para 64). The sentencing judge did not prescribe any particular legal test for a CSO that was inconsistent with section 742.1 of the *Code*. Rather, she found that, in all the circumstances of the case, including the accused's personal circumstances, a fit sentence for this offender and offence should be a penitentiary sentence and that a CSO would neither adequately address the objectives of denunciation and deterrence nor be proportionate. She was entitled to reach that conclusion; absent reversible error or a demonstrably unfit sentence, this Court must defer to the refusal to impose a CSO (see *R v Proulx*, 2000 SCC 5 at para 131).

Conclusion

[65] In our view, the sentencing judge did not err in her approach, and she did not impose a demonstrably unfit sentence.

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[66] For the foregoing reasons, we would grant leave to appeal the sentence but dismiss the appeal.

_____ JA

_____ JA

I agree: _____ JA

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