COURT OF APPEAL FOR ONTARIO

CITATION: R. v. A.J., 2026 ONCA 727[1]
DATE: 20261009
DOCKET: COA-25-CR-0604

Gillese, Coroza and Copeland JJ.A.

BETWEEN

His Majesty the King

Respondent

and

A.J.

Appellant

Jeffery Couse, for the appellant

Martin Heslop, for the respondent

Heard: September 21, 2026

On appeal from the sentence imposed by Justice James Alexander Ramsay of the Superior Court of Justice on December 3, 2024.

REASONS FOR DECISION

[1] The appellant was convicted of sexual interference, contrary to s. 151 of the *Criminal Code*, R.S.C. 1985, c. C-46. At the sentencing hearing, the appellant sought a sentence of three years' imprisonment, less 389 days of *Summers* credit

[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.

2026 ONCA 727 (CanLII)

for the length of presentence custody. The Crown submitted that the trial judge should impose a sentence of four to five years' imprisonment less *Summers* credit.

[2] In very brief reasons, the trial judge concluded that the range suggested by the parties was not appropriate and not in the public interest. The trial judge found that the appellant posed a significant danger to children based on his criminal history and his admission that while under the influence of substances, he has "heightened" sexual thoughts. The trial judge also relied on the appellant's diagnosis of pedophilia. In his view, taken together, these factors demonstrated that the appellant was unable or unwilling to control his sexual behaviour and consequently imposed a sentence of 10 years' imprisonment.[2]

[3] The appellant seeks leave to appeal his sentence and submits that the trial judge erred in principle by finding that the appellant's risk of reoffending against children was significant and by failing to take into account the jump principle considering that the longest sentence the appellant had served for a sexual offence was 164 days.

[4] The respondent submits that it was open to the trial judge to find that the appellant needed to be separated from society given his untreated sexual diagnoses. In the alternative, if this court's intervention is warranted, the

[2] The sentence was reduced by the trial judge by 15 months to account for presentence custody and other credit. It should also be noted that this was the maximum sentence for sexual interference at the time.

2026 ONCA 727 (CanLII)

respondent submits that this court should vary the sentence to five years' imprisonment less 479 days.[3]

[5] There is no dispute about the gravity of the offence. The underlying incident occurred in May of 2015 when the appellant was working for a moving company. He entered the complainant's bedroom as she was unpacking and exposed his penis to her. He then touched her vagina underneath her clothing, digitally penetrating her. He then moved her hand to touch his penis and pushed her mouth towards it. The complainant was eight years old at the time.

[6] The complainant initially only told her parents and the police about the exposure and that the appellant had touched her shoulder in passing. Consequently, the appellant was charged only with indecent exposure and sentenced to a 90-day intermittent sentence in February of 2017. Several years later, in 2021, the complainant disclosed the extent of the sexual touching to the police and the appellant was subsequently charged with sexual interference arising out of the same incident.

[3] The parties agree that the trial judge erred in calculating the appellant's *Summers* credit. The appellant was entitled to 389 days of *Summers* credit but received credit for only 365 days. Furthermore, as we will explain, the appellant was initially sentenced for indecent exposure arising out of the same incident in 2017. The parties further agree that the trial judge properly credited the appellant with an additional 90 days for time spent in custody following that initial sentencing. Accordingly, there is no dispute that the appellant is entitled to a total credit of 479 days, which must be deducted from the sentence.

2026 ONCA 727 (CanLII)

[7] The appellant has a prior criminal record. It contains several sexual offences. A brief chronology of the appellant's sexual offending is important to situate the appellant's arguments.

[8] Two months before the complainant's allegations in March of 2015, another young girl had made allegations of sexual offences in similar circumstances. Consequently, the appellant also pleaded guilty to sexual interference arising from those allegations on February 21, 2017, the same date he pleaded guilty to indecent exposure. For both offences, the appellant was sentenced to 90 days' imprisonment to be served intermittently concurrent to each other.

[9] In December of 2017, the appellant was convicted of indecent exposure, the offence of making, printing, publishing, or possessing child pornography for the purpose of publication, and failing to comply with a probation order. He received a global sentence of 99 days' imprisonment, followed by one year of probation.

[10] Following his convictions in December of 2017, there was a gap in the appellant's criminal record of approximately four years until 2021 when the appellant was convicted for property crimes and breaches of court orders. There was a further sexual offence in 2021 for an indecent act and a drug offence. However, the complainant in that case was not a child.

[11] In sum, the appellant's record for sexual offending against children was confined to a two-year time span between 2015 and 2017.

2026 ONCA 727 (CanLII)

[12] Sentencing judges are in the best position to determine a just and appropriate sentence consistent with the objectives and principles set out in the *Criminal Code*. However, if the reasons reveal that the sentence imposed was reached by an error in principle that has an impact on the sentence, or the sentence is demonstrably unfit, this court may intervene: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 11.

[13] Respectfully, the sentencing reasons reflect errors in principle. Moreover, the sentence imposed, at twice the length of the sentence proposed by the Crown, was demonstrably unfit.

[14] Turning to the appellant's first argument, the appellant submits that the trial judge erred in his treatment of the appellant's substance abuse as evidence that he was a significant risk to children:

> He has been diagnosed with paedophilia, and the [appellant] says that substance abuse contributes to his misbehaviour, and he has only recently stopped using substances. I see in all this an inability or unwillingness to control his sexual urges. I think the offender is a danger to children. To me this outweighs denunciation, rehabilitation, and restraint. [Emphasis added.]

[15] We acknowledge that an offender's increased likelihood of reoffending is an important consideration when sentencing an offender for harming children: *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, at para. 123. However, the trial judge appears to have based his finding that the appellant was a significant risk to

2026 ONCA 727 (CanLII)

children on his record and his admission to the police that when he is using illicit substances, he has heightened sexual thoughts.

[16] The appellant argues that the trial judge misapprehended the appellant's statement to the police. The appellant told the author of his pre-sentence report that he had heightened sexual thoughts when unmedicated or when using illicit substances, but not about children.

[17] We agree with the appellant that there is ambiguity in the words used by the appellant in the report, and more significantly, the trial judge's finding about the appellant's risk did not account for the fact that the conduct the appellant was being sentenced for took place in 2015. Any further record for sexual offending against children ended in 2017. This was followed by a seven-year gap in his record until another sexual offence (indecent exposure committed against an adult) occurred in 2024. There is nothing in the record that suggests that the appellant has reoffended against children since 2017. Accordingly, we agree with the submission that the trial judge's finding that the appellant was an ongoing danger to children was flawed. Clearly, this error impacted the sentence because it formed the basis for the trial judge's decision to give no weight to the principle of rehabilitation. Therefore, the trial judge's sentence should not be afforded deference.

[18] With respect to the second argument, we agree that the trial judge did not consider the jump principle when he imposed a 10 year sentence for the offence.

2026 ONCA 727 (CanLII)

The jump principle cautions a court against imposing a dramatically more severe sentence than the sentences imposed upon the offender for similar offences in the recent past: *R. v. Borde* (2003), 63 O.R. (3d) 417 (ON CA), *R. v. Parker*, 2024 ONCA 591, 173 O.R. (3d) 118. The trial judge ignored the fact that the longest sentence the appellant has served for a sexual offence was about 164 days.

[19] While the respondent correctly points out that the jump principle has little application where the severity of the offender's crimes shows a dramatic increase in violence and seriousness, as noted above, the Crown suggested a range of four to five years' imprisonment for the offence. Plainly, the Crown advocated for a significant sentence, but the trial judge did not explain the dramatic increase from the Crown's position to 10 years, or why the Crown's suggested range was not sufficient to address any public safety concerns or the severity of the crime.

[20] In sum, the reasons for sentence contained errors in principle that impacted the sentence and the sentence imposed was demonstrably unfit. This court must therefore perform its own sentencing analysis to determine a fit sentence: *Friesen*, at para. 27.

[21] The offence was serious and, like all sexual offences against children, had profound physical and psychological effects on the complainant. As such, it warrants a significant custodial sentence. Having regard to the circumstances of the offence, the Crown's position, the appellant's criminal record, and the principle

2026 ONCA 727 (CanLII)

that “courts should encourage efforts toward rehabilitation because it offers long-term protection”, a sentence of four years’ imprisonment is fit and appropriate: *Friesen*, at para. 124.

[22] Leave to appeal sentence is granted, the appeal is allowed, and the sentence is varied to four years’ imprisonment less credit for 479 days. All other aspects of the trial judge’s sentence stand.

“E.E. Gillese J.A.”
“S. Coroza J.A.”
“J. Copeland J.A.”

2026 ONCA 727 (CanLII)