

COURT OF APPEAL OF YUKON

Citation: *R. v. Amin*,
2026 YKCA 11

Date: 20260806
Docket: 23-YU910

Between:

Rex

Respondent

And

Rudra Pulastyakumar Amin

Appellant

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Before: The Honourable Justice Griffin
The Honourable Justice Manocchio
The Honourable Justice MacNaughton

On appeal from: An order of the Supreme Court of Yukon, dated
December 15, 2023 (sentence) (*R. v. Amin*, 2023 YKSC 75,
Whitehorse Docket 20-01515D).

Counsel for the Appellant: J. Budgell

Counsel for the Respondent: B. Demone

Place and Date of Hearing: Whitehorse, Yukon
June 24, 2026

Place and Date of Judgment: Whitehorse, Yukon
August 6, 2026

Written Reasons by:

The Honourable Justice Griffin

Concurred in by:

The Honourable Justice Manocchio

The Honourable Justice MacNaughton

Summary:

Mr. Amin was found guilty of four counts of sexual assault and sentenced to a global sentence of 26 months' incarceration. On appeal he seeks a conditional sentence order to avoid collateral immigration consequences. Held: Appeal dismissed. The judge did not err in sentencing on Count 2, a penetrative sexual assault, which occurred in the victim's home over her repeated protests. The judge did not err in considering the sentencing range related to sleeping or unconscious victims set out in R. v. White, 2008 YKSC 34, nor did she fail to appreciate that the victim on Count 2 in this case was awake and protesting, not asleep. The judge did not err in her consideration of Mr. Amin's support letters or the reduced stigma Mr. Amin might experience if he served a conditional sentence in a city where he was a relative newcomer. The sentencing judge did not treat as aggravating the fact Mr. Amin lacked mitigating circumstances present in some comparator cases, namely a guilty plea and insight. The sentence is not demonstrably unfit, and the fresh evidence, while relevant to collateral consequences, is not admissible because it would not have affected the result. Even if the sentence was reduced, a conditional sentence would not be fit in this case.

Reasons for Judgment of the Honourable Justice Griffin:**Overview**

[1] Mr. Amin was sentenced on December 15, 2023 ("sentencing reasons"), to a global sentence of 26 months' incarceration following his conviction on four counts of sexual assault committed against three victims. The assaults took place over a 14-month period, occurring in September and October 2017, and September and November 2018.

[2] The longest sentence was for Count 2 which occurred in September 2018. It involved Mr. Amin's non-consensual penetration of a former intimate partner's vagina with his penis, in her home and against her repeated protests. The sentence for that offence was 20 months' imprisonment.

[3] The other offences involved Mr. Amin pinning a second victim against a wall in her home, kissing her, and touching her breasts and vagina against her will. He also kissed and touched a third victim, a co-worker, in her car. On a separate occasion, after a party, Mr. Amin kissed the third victim and, despite her protests, touched her breasts and crotch area, and moved her hand to his erection. This

happened after she granted him permission to sleep in her bed, but told him not to touch her, and he agreed not to touch her. The sentencing judge considered the appropriate sentence for each of these offences to be two months; three months; and four months respectively, all consecutive sentences.

[4] While the overall sentence would have been 29 months, the sentencing judge reduced it by three months to account for the totality principle.

[5] Mr. Amin seeks leave to appeal his sentence, and for the appeal to be allowed. The focus of his appeal is on the sentence imposed for Count 2. He seeks to reduce that sentence by two months and a day, which he says would then make the global sentence for all offences just under 24 months, and make him eligible for a conditional sentence order (“CSO”), a form of sentence he submits is appropriate. I note parenthetically that Mr. Amin’s position on appeal assumes that if an appropriate sentence for Count 2 was reduced by two months and a day, it would still be appropriate to reduce the overall global sentence by three months based on the totality principle. We had no argument addressing this assumption and so I will simply say this judgment should not be taken as support for that proposition.

[6] If Mr. Amin persuades this Court that the sentencing judge made an error in principle that affected the sentence, or the sentence is demonstrably unfit, he seeks leave to introduce fresh evidence that he says is relevant to the new sentencing exercise this Court must undertake. In summary, that evidence relates to the fact that since the trial he has been leading a responsible life and he has dependents, namely his wife who moved with him to Canada in 2023 and their baby born in December 2025.

[7] For the reasons that follow, I would grant leave to bring the sentence appeal but dismiss the sentence appeal and the application to admit fresh evidence.

Alleged Errors

[8] Mr. Amin submits the sentence imposed was demonstrably unfit and the judge committed an error in principle in not imposing a conditional sentence.

Specifically, Mr. Amin submits the judge made the following errors:

- a) On Count 2, she relied on the sentencing range set out in *R. v. White*, 2008 YKSC 34, without appreciating the more aggravating circumstances in cases of sleeping or unconscious victims, as was the focus in that case;
- b) She failed to give sufficient weight to support letters and found a conditional sentence inappropriate in part because the stigma of house arrest would not be felt the same way in Mr. Amin's circumstances as, after the offences, he had moved to Calgary from Whitehorse;
- c) She found Mr. Amin's not guilty plea to be an aggravating factor and that he lacked insight into his behaviour.

The Standard of Review

[9] Given the respective roles of a sentencing judge and an appellate court, this Court will rarely grant the remedy Mr. Amin seeks—the reduction of his 20-month sentence for Count 2 by two months less a day. Unless Mr. Amin shows an error in principle affecting the sentence, this is simply tinkering and not this Court's proper role. This Court cannot lightly interfere with a sentence decision. Sentencing decisions are entitled to a high level of deference on appeal: *R. v. Parranto*, 2021 SCC 46 at para. 29.

[10] This Court will only intervene where the judge made an error in principle that had an impact on the sentence or the sentence is demonstrably unfit: *R. v. Lacasse*, 2015 SCC 64 at paras. 11, 67; *R. v. Friesen*, 2020 SCC 9 at para. 26; *Parranto* at para. 30. A sentence is demonstrably unfit when it unreasonably departs from the principle of proportionality: *Lacasse* at para. 53.

[11] If a sentence is demonstrably unfit or there is an error in principle that had an impact on the sentence, this Court performs its own sentencing analysis to determine a fit sentence: *Lacasse* at para. 43; *Friesen* at para. 27. However, this Court owes deference to the sentencing judge's findings of fact and consideration of aggravating and mitigating factors, unless those findings are affected by an error in principle: *Friesen* at para. 28; *R. v. Maslehati*, 2024 BCCA 207 at para. 47, leave to appeal to SCC ref'd, 41413 (19 December 2024); *R. v. Nystrom*, 2023 BCCA 232 at para. 16.

[12] Further, a sentencing judge has discretion to choose a sentencing range or a category within a range. This exercise of discretion "cannot in itself constitute a reviewable error" and it is an error of law for an appellate court to intervene simply because it would have put the offence in another range or category: *Lacasse* at para. 51; *Parranto* at para. 30.

[13] Mr. Amin's counsel recognizes the applicable standard of review but advances the position that a sentence reduction is justified based on the alleged errors in the judge's approach. Mr. Amin emphasizes that two months is not a minor change to his sentence and it would have a significant impact on him if the sentence was served as a conditional sentence order.

Yukon Sentencing Ranges for Sexual Assault

[14] I turn now to Mr. Amin's first ground of appeal. He alleges the judge erred in applying the *White* sentencing range of 12 to 30 months which is based on cases of sexual assaults on sleeping or unconscious victims. Mr. Amin argues the judge erred in considering cases with sleeping or unconscious victims, as those cases are inherently more aggravating.

[15] In my view, the sentencing judge did not err in applying the range from *White*. Nor did she lose sight of the fact that Mr. Amin's case differed from the facts of *White* and the other cases she considered where the victims were asleep or unconscious.

[16] Mr. Amin accepts that the sentencing judge properly summarized the legal principles applicable to considering sentencing ranges (sentencing reasons at paras. 55–62) and no issue is taken with the judge’s recitation of other sentencing principles. What Mr. Amin takes issue with is the sentencing judge’s application of these principles.

[17] In the sentencing reasons, the judge considered the relevant principles, including the following:

- a) Sentences should be individualized to account for the circumstances of the offender and the offence: at para. 55.
- b) The primary sentencing objectives in sexual assault cases are denunciation and deterrence: at para. 56.
- c) Rehabilitation is a relevant sentencing objective in sexual assault cases: at para. 57.
- d) The principle of restraint must be considered, especially since Mr. Amin was a first-time offender: at para. 58.
- e) The principle of parity must be applied, which means similar offenders who commit similar offences should receive similar sentences. While sentencing ranges are not straightjackets and judges may depart from them, ranges may be used to achieve rationality, fairness, and consistency in sentencing, which advances the parity principle. Parity, however, is secondary to proportionality: at para. 59.
- f) The principles applicable to sentencing ranges are set out in *Parranto*, at para. 36, and these include the following (sentencing reasons at para. 60):
 - i) Sentencing judges are not bound by sentencing ranges, which are guidelines, not hard-and-fast rules;

- ii) Departing from a range, or failing to refer to a range, is not an error in principle;
 - iii) Sentencing judges have discretion to individualize sentences in method and outcome, and different methods may be required to properly account for relevant systemic and background factors; and
 - iv) The focus is on whether a judge applies the right principles and the sentence is fit, not whether the judge chose the right range, starting point or category in a range.
- g) Ranges are “not judicial straightjackets, and sentencing is an individual process” that considers the “unique circumstances of the offence and the offender, and how the objectives of sentencing can best be achieved in a given case”: at para. 61, citing *R. v. Choi*, 2022 BCCA 90 at para. 3.
- h) Ranges reflect the gravity of an offence, and the sentencing reasons must reflect why a significant departure from a range results in a fit and proportionate sentence. Exceptional circumstances are not necessary to depart from a range, but there must be personal or other circumstances that justify doing so: at para. 62.

[18] I return to the argument that the judge erred in her consideration of *White*, and other cases where the victim was sexually assaulted while sleeping or unconscious, without expressly distinguishing those cases on the basis this aggravating factor was not present in Mr. Amin’s case, namely, *White*; *R. v. Rosenthal*, 2015 YKCA 1; and *R. v. B.A.L.*, 2022 YKTC 11: sentencing reasons at paras. 64–68.

[19] It is true that in *White*, the judge was asked by the Crown to expound upon the proper range of sentencing in sexual assault cases bearing a similar circumstance, that of a sleeping or unconscious victim. The judge in *White* did consider this circumstance to be aggravating because in part it took advantage of the trust of the victim, who in that case had sought assurances from the offender

before sleeping in the bed. The judge in *White* did identify a range of sentences that had been imposed in other sexual assault cases with similar circumstances. But that does not mean that *White* is not relevant to other circumstances of sexual assault or that the sentencing judge in the present case erred in referring to *White*.

[20] As observed in *R. v. Quash*, 2009 YKTC 54 at para. 45, another aggravating factor in *White* was that during the sexual assault the victim woke up and resisted, but the offender continued the assault, thereby increasing his moral culpability. And as noted in *Quash* at para. 46, whether a victim is asleep or awake, the harm to the victim can be just as profound and the sexual assault is just as serious.

[21] Furthermore, in *White*, Justice Gower viewed the range of sentencing “as a ‘continuum’ within which cases may be placed, depending on their facts and their relationship to the principles of sentencing”, citing Justice Newbury’s judgment in *R. v. Bernier*, 2003 BCCA 134.

[22] Here, the sentencing judge referred to this continuum approach to a sentencing range:

[64] In the Yukon, a sentencing range has been described as a continuum within which cases may be placed depending on their facts and their relationship to the principles of sentencing. At one end of the continuum lie the truly serious offences with particularly egregious circumstances. At the other extreme are those offences where there are significant mitigating circumstances. In the middle would be the more typical cases where there are a mixture of aggravating and mitigating circumstances (see *R v White*, 2008 YKSC 34 (“*White*”). A range does not preclude a higher sentence if warranted by denunciation or deterrence or the gravity of the offence; nor does it preclude a lower sentence if personal circumstances warrant it.

[23] I see no error in the judge articulating this approach as it is entirely consistent with her proper understanding of the sentencing principles of proportionality and parity, as set out in cases such as *Parranto*, and as she correctly summarized in the preceding paragraphs 55–62.

[24] It is clear from the whole of the sentencing judge’s reasons that she properly understood the facts of the sexual offences in this case and knew that cases she cited had different facts, including that they involved a sleeping or unconscious

victim. However, on Count 2 there were similarities with the cases she cited: in *B.A.L.*, the assault involved penile penetration and the impact on the victim was profound. In *White*, there was attempted penile penetration, although over a protracted period of time, and although it started when the victim was sleeping, the victim woke up and the offender continued the assault despite her clearly communicated protests of “no” and “I don’t want to”, which she repeated three or four times.

[25] The facts the judge found here in respect of Count 2 involved Mr. Amin’s continued assault progressing to penile penetration, occurring in the victim’s home, despite the victim saying, “I don’t want to do this”, “no, stop”, and repeatedly stating “no”: sentencing reasons at para. 8. The assault had a devastating and lasting impact on the victim: sentencing reasons at paras. 28, 69. These facts were properly considered as aggravating. It was clear from these findings the judge was aware the victim was awake throughout.

[26] The judge also noted that the range identified in *White* was a rather large range of 12 to 30 months.

[27] The sentencing judge found that the circumstances of this case—both the circumstances of the offence and the offender—made an appropriate sanction for Count 2 a sentence of 20 months (before considering the overall sentence and reducing it for totality): sentencing reasons at para. 74.

[28] Clearly, the sentencing judge did not consider *White* to involve equivalent facts: in *White* the sentence imposed was 26 months.

[29] Finally, a number of Mr. Amin’s criticisms of the judge’s reasons for sentence appear to be based on parsing her reasons rather than considering the reasons as a whole. The judge did not, as Mr. Amin suggests, consider that “exceptional circumstances” were required to depart from a sentencing range; consider the number of other assaults and victims when sentencing on Count 2; or fail to

recognize that the duration of the sexual assault in Count 2 was less than the duration in *White*.

[30] In my view, the judge did just what she was tasked to do: she considered other sexual assault cases involving other offenders and circumstances of offence, considered similar and differing aggravating and mitigating factors, all before exercising her own judgment as to what was an appropriate sentence in light of all the relevant circumstances in this sexual assault case.

[31] For these reasons, I would not accede to the argument that the judge erred by referring to *White* and other Yukon sexual assault cases involving unconscious or initially unconscious victims and considering the range that had been imposed in those cases when determining a fit sentence in this instance.

The Weight Given to Other Circumstances — Support Letters and House Arrest Stigma

[32] Mr. Amin also submits that the judge failed to give sufficient mitigating weight to the many support letters for Mr. Amin provided at sentencing. In particular, Mr. Amin says the judge unfairly downplayed the extent of his community support and the fact the offences were out of character.

[33] Further, Mr. Amin submits that when considering whether a CSO was appropriate, the judge erroneously considered that the stigma of serving a CSO under house arrest in Calgary would be less than the stigma of serving a CSO under house arrest in Whitehorse, a smaller community.

[34] I disagree that the judge made an error in principle in her analysis of these factors. In my view, understood in the context of the whole of the judge's reasons, her comments were an appropriate weighing of the arguments advanced by the defence. Mr. Amin's criticisms are a parsing of her reasons, out of context. The broader context is as follows, with the criticized passages underlined for emphasis:

[53] Defence counsel argues that a conditional sentence order can achieve the sentencing objectives of denunciation and deterrence. The stigma, shame, and impact on liberty of house arrest, for example, cannot be

underestimated. It is also consistent with the principle of restraint, a relevant principle in the case of a first-time offender.

...

[56] The primary sentencing objective in sexual assault cases is denunciation and deterrence. Denunciation acts as a condemnation of certain conduct by punishing people who disobey or disregard society's basic values. Deterrence is important not only to deter the offender (specific deterrence) but also to deter others who may commit such offences (general deterrence). These objectives are emphasized in sexual assault cases because of the seriousness of the offence of sexual assault and the higher degree of responsibility associated with committing this kind of offence.

...

[70] On the other hand, Mr. Amin is a first offender. He has been compliant with all release conditions imposed on him. Until recently, when his employment was terminated because of the convictions in this case, he held steady, stable employment. He has the support of family and friends who believe these offences are out of character. He has recently commenced counselling to become educated on boundaries and respect in healthy relationships, and to examine past relationships.

...

[73] Taking into account all of the circumstances and factors, I do not find there are any factors that would take this case out of the rather large range identified by Gower J. of 12 to 30 months. While the collateral immigration consequences are real and I have considered them, they cannot justify reducing the sentence outside of the range. The support letters that state that these offences were out of character for Mr. Amin, while sincere, do not counteract the facts on the counts on which he was found guilty- four assaults on three women within 14 months. It is possible for a person to show positive character traits to friends and family yet still be capable of committing offences such as this in other contexts.

...

[91] The global sentence I have assessed renders Mr. Amin ineligible for a conditional sentence because it exceeds two years. However, even if it did not exceed two years, I do not find that a conditional sentence to be served in the community would be appropriate in this case.

[92] As noted by the Territorial Court of Yukon in *R v RJN*, 2016 YKTC 55 ("*RJN*"), conditional sentence orders in sexual assault cases are rare. This is in part because of the emphasis on the principle of denunciation and deterrence, but also because of other factors, as is apparent from review of the cases provided by defence.

[93] Courts have accepted that a conditional sentence order can fulfil the objectives of denunciation and deterrence. This was explained thoroughly in *R v Proulx*, 2000 SCC 5, and has been followed in many cases, including in the Yukon. It is recognized that strict conditions of house arrest can be punitive and, in some circumstances, can be more so than incarceration. For example, the shame and the loss of esteem felt by an offender in a small

rural community where everyone knows of his or her house arrest and the circumstances leading to it may be a significant psychological punishment.

[94] The principles of denunciation and deterrence are not adequately addressed through a conditional sentence order in this case.

[95] Mr. Amin has relocated to Calgary, a large city centre where he is relatively anonymous, unlike a small rural community in the Yukon. The stigma of house arrest would not be felt by him in Calgary in the same way as it would if he were in a small community where people knew his situation.

[Emphasis added.]

[35] I do not accede to the argument that there was anything wrong with the sentencing judge's weighing of the defence arguments regarding community support and the possibility of a CSO serving the goals of deterrence and denunciation in this case. The judge was not suggesting that there could be no stigma associated with a CSO served in Calgary. Rather, the judge was making the commonsense observation that house arrest in a city where one has relative anonymity might be of a different character than house arrest in a small community where one is well known. In any case, the observations about the stigma of house arrest were *obiter*, given the judge's finding that a CSO would be inappropriate.

Not Guilty Plea and Lack of Insight

[36] Mr. Amin also argues that the judge incorrectly treated his not guilty plea as an aggravating factor and wrongly found that he lacked insight into his behaviour.

[37] I do not agree with either proposition.

[38] This argument focuses on two paragraphs in the sentencing judge's reasons, as follows:

[97] A further distinguishing factor between this case and the cases provided by defence is that the offender in many of the other cases had pled guilty and showed remorse, had apologized, and accepted responsibility. For example: *Ali, RJN, Morgan, Dickson, Phillippo*, and *Cacdac*. While the fact that Mr. Amin has not done so does not add to a sentence and, of course, he has the constitutional right to a trial, it is a distinguishing factor between his case and the cases where conditional sentence orders were ordered.

[98] In some of the other cases the court commented on how the offender showed insight into the problems that led to the offences — for example, *Morgan*. This has not occurred here.

[39] It is clear that the sentencing judge's comments in the above passage were addressing distinguishing factors in the comparator sentencing cases put forward by the defence. In doing so, the judge was correct to note that in some cases the offender pleaded guilty and expressed remorse, which would have been treated as a mitigating factor in sentencing in those cases. Remorse can often persuade a sentencing judge that the offender has been able to form insight into the wrongfulness of their behaviour. These mitigating factors were not present here.

[40] However, the judge expressly did not treat the absence of a guilty plea or remorse as an aggravating factor, correctly noting that it "does not add to a sentence": sentencing reasons at para. 97.

[41] As for Mr. Amin's insight, which may go to his prospects for rehabilitation, the fact is that Mr. Amin committed a number of sexual assaults on women in Whitehorse in a relatively short period of time. His series of offences shows, despite the obvious distress and harm he caused the victims, he did not gain insight into the wrongfulness of his behaviour. Nevertheless, the sentencing judge did credit him for attending counselling and was open to the prospect he could develop insight, finding him to not be a danger to the community and to have decent prospects for rehabilitation: sentencing reasons at para. 100.

[42] I would not accede to the argument that the judge erred in principle in her treatment of Mr. Amin's guilty plea or insight.

Overall Fitness of the Sentence

[43] Mr. Amin argues his sentence for Count 2 was demonstrably unfit. He bases this position on the arguments I have disposed of above, and so this ground of appeal fails as well.

[44] There is an additional reason I do not agree the sentence was demonstrably unfit which is that the range in *White* may no longer reflect contemporary recognition of the wrongfulness and harmfulness of sexual assault.

[45] The Crown points out that sexual assault sentences in other parts of Canada have increased in recent years and are generally higher than those that make up the range in *White*. This is because the Supreme Court of Canada's subsequent decisions in sexual offence cases have emphasized the seriousness and harmfulness of these offences and the need for denunciation and deterrence, such as in *R. v. Goldfinch*, 2019 SCC 38 and *R. v. Friesen*, 2020 SCC 9.

[46] Further, in *Maslehati*, a decision released after Mr. Amin's sentencing, the British Columbia Court of Appeal allowed a Crown appeal of a conditional sentence order of 18 months plus probation imposed for a single count of sexual assault. The Court found this sentence was demonstrably unfit as it fell "too far below the generally applicable range for indictable sexual assault against an adult with aggravating circumstances"; was inconsistent with the fundamental purposes and principles of sentencing; and failed to give effect to the offender's high moral blameworthiness and the sentencing objectives of denunciation and deterrence: *Maslehati* at para. 55.

[47] After reviewing the evolution of sentences for sexual assault, the Court in *Maslehati* suggested a sentence of at least two years' imprisonment is generally required in cases of sexual assault with aggravating circumstances, even for a first-time offender:

[92] However, nothing about those cases precludes us from holding that in the absence of diminished moral blameworthiness or compelling mitigation, a penitentiary term of at least two years' imprisonment will generally be required for an adult sexual assault that is prosecuted by indictment and involves aggravating circumstances, even where that assault is committed by a first-time offender and does not involve penile penetration.

[48] In reviewing cases of sexual assault, the Court in *Maslehati* considered a variety of circumstances, including those involving sleeping victims, those where the victim protested, and different forms of assault, some involving penile penetration and some not. The Court held that even where a sentence of less than two years is imposed, a conditional sentence will not meet the goals of sentencing in the absence

of diminished moral blameworthiness or compelling mitigation: *Maslehati* at para. 115.

[49] The Court set aside the conditional sentence order in *Maslehati* and imposed a sentence of 28 months' imprisonment. In that case the victim was "in and out of consciousness" and communicated non-consent at several points during the sexual assault.

[50] In Mr. Amin's case, in relation to Count 2, there were factors the case law considers aggravating, such as the offence taking place in the victim's home and persistence in the face of communicated non-consent: see *Maslehati* at para. 74. Additionally, there was penile penetration. Mr. Amin received a sentence of less than two years on Count 2, I would not say the sentence imposed was demonstrably unfit because it was too severe.

[51] For all of these reasons, I do not accede to the argument that the judge's sentence of 20 months' incarceration for Count 2 (before reduction on the totality principle) was demonstrably unfit.

Fresh Evidence

[52] In my view, this appeal is really about collateral immigration consequences.

[53] The collateral consequence of a custodial sentence greater than six months is Mr. Amin would lose a right to appeal an expected deportation order on humanitarian or compassionate grounds.

[54] In the reasons for sentence, the sentencing judge acknowledged the collateral immigration consequences that could affect Mr. Amin, setting out the defence submissions as follows:

[50] Defence counsel argues that the collateral immigration consequences of these convictions may be taken into account as part of the offender's personal circumstances. As a permanent resident and not a citizen, Mr. Amin will be deemed inadmissible to Canada on the grounds of serious criminality because he has been convicted of an offence with a maximum sentence of 10 years or more. He will be subject to an order removing him from Canada as a result. The *Immigration and Refugee Protection Act*, SC 2001, c 27 (the

“IRPA”) further provides that if Mr. Amin receives a term of imprisonment for six months or more, he loses his right to appeal that removal order to the Immigration Appeal Division on the basis of humanitarian and compassionate grounds.

[55] The impact of collateral immigration consequences will depend on the offender’s circumstances. Not all offenders experience the same consequences when faced with a deportation order. In this case, if Mr. Amin is deported as a result of his offences, he is not in the same situation as, for example, a person who immigrated to Canada as a young child, grew up in Canada, and has little or no familiarity with the language or culture of the country to which they will be deported.

[56] Mr. Amin was born and grew up in India. He came to Canada after completing high school in India and only approximately three years before the string of offences began. He retained ties with India. Within the time period of his offences, in October 2018, he became romantically involved with the woman who is now his wife. They married in India in October 2022 and lived there until February 2023, when they returned to Canada and settled in Calgary.

[57] Mr. Amin seeks to introduce as fresh evidence on appeal his evidence describing his current family situation (including his employment and community support) and negative family consequences that would occur if he were incarcerated. He and his wife have had a baby since the sentencing decision under appeal. His evidence suggests that his wife’s family lives in India and she does not have family support in Calgary. At the time of his fresh evidence, she was on maternity leave from her employment, and he was the primary source of income for the household. His evidence is silent as to whether her employment income, when she returns to work from maternity leave, can support her and the child. However, his evidence suggests the possibility that his wife “may have to return to India” so her family there can help support her and their baby, if he is incarcerated.

[58] In *R. v. Habib*, 2024 ONCA 830 at para. 47, the Court acknowledged that being unable to care for family members while incarcerated can be a collateral consequence that increases the severity of incarceration and can jeopardize

rehabilitation. Family separation consequences therefore can be considered when determining a proportionate sentence.

[59] Fresh evidence of circumstances occurring between the time of sentencing and appeal may be considered if it is relevant and credible and could reasonably be expected to have affected the result had it been adduced at trial together with the other evidence: *R. v. Sipos*, 2014 SCC 47 at paras. 29–30. This evidence is not routinely admissible because of the danger it undermines the important goal of finality.

[60] While the proposed fresh evidence with respect to Mr. Amin’s baby and family circumstances raises the additional collateral consequence of family separation upon incarceration, in my view, it would not have changed the result in this case. It is therefore not admissible as it does not meet the fourth criterion in *Palmer v. The Queen*, [1980] 1 S.C.R. 759 at 775, 1979 CanLII 8. Further, while the proposed fresh evidence suggests family separation will be challenging for Mr. Amin’s wife and child, I note that it also indirectly lessens the impact of the collateral immigration consequences that could come from deportation. This proposed fresh evidence shows that if Mr. Amin is deported, Mr. Amin’s wife can choose to return to India with their child to keep their family together, where she has additional family support.

[61] Here, the sentencing judge recognized that Mr. Amin would be subject to immigration consequences and correctly understood that this was a factor that could be considered as a personal circumstance of the offender: sentencing reasons at para. 71. This is unlike the case of *R. v. Pham*, 2013 SCC 15, where the sentencing judge was unaware that a reduction of one day in the sentence would avoid collateral consequences related to deportation, justifying the Supreme Court of Canada’s intervention to revisit the sentence.

[62] The sentencing judge was correct in stating that while collateral immigration consequences should be considered, they cannot reduce a sentence below what would otherwise be a fit sentence: sentencing reasons at para. 72, citing *R. v. Ali*, 2022 ONCA 736 at para. 23; see also *Pham* at para. 14.

[63] I come back to Mr. Amin's goal on this appeal to reduce his total sentence by two months and one day to be served as a CSO. I have expressed my view that the sentence was not unfit. However, I would add that even if it was reduced to two years less a day, and then qualified for a CSO, I would not consider a CSO appropriate in the circumstances of this case, for reasons similar to the reasons discussed in *Maslehati*.

[64] For the reasons I have already discussed regarding the increased emphasis on deterrence and denunciation in the sentencing of sexual assault offenders, in my view, the fresh evidence that bears on the collateral consequences would not affect the outcome on sentencing. I would therefore not admit the fresh evidence.

Conclusion

[65] I would grant leave to appeal from sentence. Despite the able arguments of counsel for Mr. Amin, I would dismiss the application to introduce fresh evidence and would dismiss the appeal.

"The Honourable Justice Griffin"

I AGREE:

"The Honourable Justice Manocchio"

I AGREE:

"The Honourable Justice MacNaughton"