COURT OF APPEAL FOR ONTARIO

CITATION: R. v. J.E., 2025 ONCA 409[1]
DATE: 20250603
DOCKET: COA-23-CR-0087

Fairburn A.C.J.O., Roberts and Madsen JJ.A.

BETWEEN

His Majesty the King

Respondent

and

J.E.

Appellant

John Fennel, for the appellant

Roger Pinnock, for the respondent

Heard: May 28, 2025

On appeal from the dangerous offender designation and indeterminate sentence imposed by Justice Eric N. Libman of the Ontario Court of Justice on July 28, 2022, with reasons reported at 2022 ONCJ 346.

REASONS FOR DECISION

[1] The appellant pled guilty to two counts of possession of child pornography and two counts of accessing child pornography. He had previous convictions,

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[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.

This appeal is subject to a publication ban pursuant to s. 486.5 of the *Criminal Code*, R.S.C. 1985, c. C-46.

including for sexual assault involving his six-year-old cousin, and for possession of a large store of child pornography that included highly sadistic abuse of very young children. The Crown brought a successful application to have the appellant designated as a dangerous offender, with the imposition of an indeterminate sentence.

[2] With respect to the present convictions, the appellant was found to be in possession of an extraordinarily large cache of child pornography, including well over one thousand images and numerous videos, again showing violent and sadistic abuse of the victims. The victims depicted in the images and videos ranged from babies to adolescents who came from all over the world. There was significant victim impact evidence led in this case, in particular, from a now adult victim whose images as a child were stored on the appellant's computer. Her evidence palpably revealed the lifetime of trauma and damage suffered by all victims of these crimes.

[3] In the voluminous record before the sentencing judge, there was extensive expert evidence from both Crown and defence psychiatrists. In the course of his psychiatric assessments, the appellant shared that he has a fantasy which involves fathering a female child who could meet his sexual needs, and that he was attracted to sex with bondage of children. He also revealed that in chat rooms with other users of child pornography, he discussed his desire to have sexual intercourse with young children.

[4] The appellant appeals his designation and sentence. He argues that the sentencing judge misapprehended the evidence when concluding that the appellant was intractable for treatment and that there was not a reasonable expectation that he would be controllable in the community. The main focus of the appellant's submissions was that the sentencing judge erred in rejecting as speculative the psychiatric experts' evidence as to the possible efficacy of the treatments available to the appellant that would adequately manage his risk.

[5] At the conclusion of the appellant's submissions, we dismissed the appeal with reasons to follow. These are our reasons.

[6] We disagree that the sentencing judge made any reversible error in his careful and thorough reasons.

[7] The sentencing judge could accept some, all or none of the expert evidence. He accepted both experts' agreed evidence that the appellant has shown an inability to contain his sexual impulses because of his underlying pedophilic disorder, which is a life-long diagnosis. Without treatment, he was at high risk of reoffending with another child pornography offence and a contact sexual offence if he could gain unsupervised access to a female child. The sentencing judge found that the experts were not entirely in agreement as to the efficacy of the treatment and controls required to reasonably manage the appellant's risk to the public. Importantly, with respect to the sex reduction medication that represented the

mainstay of Dr. Gray's recommended treatment, Dr. Gojer opined that it should be used only as a last resort and as an adjunct to other treatments.

[8] The sentencing judge concluded, correctly in our view: "[I]t is a matter of abject speculation whether [the appellant] would agree, in fact, to take sex reduction medication, and even if he overcame his stated reluctance to do so, whether he would be approved to take it, how he would tolerate its side-effects, and whether this would be an effective course of treatment for him."

[9] The appellant had declined to consider taking anti-libidinal medication in the past. Other past treatments had not been successful in deterring the appellant from reoffending. The experts were also equivocal as to whether the appellant's risk would sufficiently attenuate or "burnout" as he aged, especially because the effects of the "burnout phenomenon" are less pronounced with sexual offenders involving children, especially online sexual offenders.

[10] As he was entitled to do, the sentencing judge concluded on the basis of the whole of the evidence that the appellant has a high likelihood of harmful recidivism, and that his violent and sexual conduct is intractable. The sentencing judge found that neither the type of controls to prevent the appellant from having access to the internet nor any course of treatment would offer an adequate measure of control that would lessen the risk the appellant poses. Based on these findings, the sentencing judge imposed an indeterminate sentence.

[11] The standard of review is uncontroversial. Deference is owed to the sentencing judge on issues of fact-finding and credibility, "including the critical question of the reasonable possibility of eventual control of the offender in the community": *R. v. Ramgadoo*, 2012 ONCA 921, 293 C.C.C. (3d) 157, at para. 42, citing *R. v. R.M.*, 2007 ONCA 872, 228 C.C.C. (3d) 148, at para. 53.

[12] The sentencing judge's findings and conclusions were rooted firmly in the record. He properly adverted to and applied the governing legal principles. There is no basis to intervene.

[13] The appeal is dismissed.

"Fairburn A.C.J.O."
"L.B. Roberts J.A."
"L. Madsen J.A."