

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. MacKay, 2026 ONCA 245¹

DATE: 20260407

DOCKET: COA-24-CR-0171

Fairburn A.C.J.O., Simmons and Trotter JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Evan MacKay

Appellant

Neha Chugh and Parmbir Gill, for the appellant

Hannah Freeman, for the respondent

Heard: March 19, 2026

On appeal from the convictions entered by Justice Julie Bergeron of the Superior Court of Justice, on October 6, 2023, and from the sentence imposed on January 18, 2024.

REASONS FOR DECISION

[1] The appellant was charged with ten offences involving sexual abuse of five teenage and pre-teenage girls and one offence of animal cruelty.

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] During closing submissions at the judge alone trial, the Crown indicated it would not be proceeding with two of the charges involving one of the complainants, K.S.

[3] The trial judge found the appellant guilty of eight offences involving the four remaining complainants and not guilty of animal cruelty. She subsequently convicted the appellant of seven offences² and sentenced him to a global sentence of eight years four months' imprisonment, less 201 days' credit for presentence custody.

[4] The appellant appeals against the convictions and seeks leave to appeal sentence.

The Conviction Appeal

[5] We do not read the trial judge's references to the complainants H.L., M.M. and E.A.C. not exaggerating and not embellishing their testimony as bolstering the credibility of those complainants. Rather, we read the trial judge to be saying, as she was entitled to do, that the evidence of those complainants was not undermined during cross-examination or by the defence submissions concerning frailties in their testimony.

² Count 1 of the indictment relating to the complainant H.L. was conditionally stayed pursuant to *Kienapple v. The Queen*, [1975] 1 S.C.R. 729.

[6] In her similar fact ruling, the trial judge found the communications among the complainants M.M., S.D., K.S. and E.A.C. “concerning”, and because of that and for other reasons, dismissed the Crown’s similar fact evidence application. However, that ruling reflects only that the Crown failed to overcome the presumption of inadmissibility of similar fact evidence. Following that ruling, the Crown elected not to proceed with the charges in relation to K.S., whom the trial judge found had communicated with another individual to help with her recollections. It remained open to the trial judge to find, as she did, that although M.M., S.D. and E.A.C. had communicated about their allegations, they had not colluded with one another. Although brief, the trial judge’s reasons concerning this issue, in combination with her findings of credibility in relation to these witnesses, demonstrate that the trial judge was satisfied that these complainants had not fabricated their allegations and that their evidence reflected an honest and accurate account of the offences they alleged.

[7] The appellant faults the trial judge for not addressing the issue of whether the complainants’ evidence was the product of inadvertent tainting. But this was not the position of the defence at trial. The focus was on actual collusion. The trial judge’s reasons were responsive to the case as litigated.

[8] While we acknowledge that the trial judge’s reasons concerning the frailties in the evidence of the complainants H.L., M.M. and S.D. could have been more fulsome, we are satisfied that she was aware of those frailties but nonetheless

accepted their evidence as reliable and credible. It was open to the trial judge to do so.

The Sentence Appeal

[9] As we have said, the trial judge sentenced the appellant to eight years four months' imprisonment less credit for presentence custody. In doing so, she took account of the appellant's young age and first-time offender status. Her reference to his lack of remorse as an aggravating factor is troubling. However, reading her reasons for sentence as a whole, we are satisfied that the trial judge relied on lack of remorse as a factor that affected his risk of committing future offences and potential for rehabilitation.

[10] In our view, the global sentence imposed by the trial judge reflected the seriousness of the appellant's conduct in relation to all four of the complainants. In particular, the egregious abuse of H.L., a 13-year-old girl with whom the appellant had forced vaginal sexual intercourse on six occasions, and for which he received six years' imprisonment, was well within the acceptable range of sentence.

[11] However, while the Crown at trial submitted that a sentence of 11 years' imprisonment was appropriate, the Crown submitted "that eight years is a fit sentence when accounting for totality." The trial judge imposed a sentence in excess of what the Crown submitted was appropriate. In our view, this was unwarranted and we reduce the sentence on count 2 by four months. As the trial

judge imposed a six-year sentence on count 3, concurrent to count 2, we make a corresponding reduction in the sentence imposed on count 3.

Disposition

[12] The appeal from conviction is dismissed. We grant leave to appeal sentence and reduce the sentence imposed on counts 2 and 3 by four months' imprisonment. This results in a reduction of the global sentence of imprisonment to eight years less 201 days' credit for presentence custody. All other aspects of the sentence remain in force.

“Fairburn A.C.J.O.”
“Janet Simmons J.A.”
“Gary Trotter J.A.”