

CANADA / JUDGMENT

R. v. C.M.

2026 ONCA 208

COURT

Court of Appeal for Ontario

DECIDED

20 March 2026

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R. v. C.M. Collection Decisions of the Court of Appeal Date 2026-03-20 Neutral citation 2026 ONCA 208 Docket numbers COA-23-CR-0973 Judges Coroza, Steve A.; George, Jonathon C.; Monahan, Patrick J. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. C.M., 2026 ONCA 208 [1] DATE: 20260320 DOCKET: COA-23-CR-0973 Coroza, George and Monahan JJ.A. BETWEEN His Majesty the King Respondent and C.M. Appellant Gerry Smits, for the appellant Stephanie A. Lewis, for the respondent Heard and rendered orally: March 19, 2026 On appeal from the convictions entered by Justice Kim Carpenter-Gunn of the Superior Court of Justice, sitting with a jury, on December 15, 2022. REASONS FOR DECISION

- [1] This is an appeal from convictions for one count sexual assault and one count of sexual interference. The appellant claims that he received ineffective assistance of counsel. He argues that his trial counsel, 1) failed to bring a pre-trial s. 276 application, 2) failed to adequately advise him on his right to elect as to mode of trial, and 3) effectively precluded him from making a meaningfully informed choice about whether to testify.
- [2] We are unpersuaded by the appellant's arguments. With respect to s. 276, as the appellant has not established that the evidence he says his counsel should have attempted to elicit could have impacted the verdict, the decision to not pursue it was reasonable.
- [3] With respect to both mode of trial and the decision to testify, the appellant has not established either the factual basis for his claims or that there is a reasonable probability that he would have made different decisions had he received competent advice. Of note, when cross-examined on his affidavit, the appellant acknowledged that he had signed a written notice of election and later a written notice of re-election. In both, he states that he acknowledges and understands that he may elect to be tried by a judge sitting alone, either in the provincial court or the superior court, or by a judge sitting with a jury.
- [4] On the question of whether to testify, the appellant's affidavit evidence was significantly undermined during cross-examination. Consequently, the appellant has failed to establish that he was prevented from testifying, that he did not know it was his choice whether to testify, or that his counsel failed to explain why he recommended against testifying.
- [5] The appeal is dismissed. "S. Coroza J.A." "J. George J.A." "P.J. Monahan J.A."

- [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.
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