

CANADA / JUDGMENT

R. v. Calabretti

2025 BCCA 294

COURT

British Columbia Court of Appeal

DECIDED

3 July 2025

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2025 BCCA 294 R. v. Calabretti

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Calabretti,

2025 BCCA 294

Date: 20250703

Docket: CA50453

Between:

Rex

Respondent

And

Martino Calabretti

Appellant/Applicant

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Before:

The Honourable Justice Edelman

(In Chambers)

On appeal from: An order of the Provincial Court of British Columbia, dated

December 3, 2024 (R. v. Calabretti, Vancouver Docket 260829-2-C).

Oral Reasons for Judgment

Counsel for the Appellant/Applicant:

J. Narwal, K.C.

Counsel for the Respondent:

R. Leong

J.A. Billingsley

Place and Date of Hearing:

Vancouver, British Columbia

July 3, 2025

Place and Date of Judgment:

Vancouver, British Columbia

July 3, 2025

Summary:

Application for judicial release pending appeal. The applicant was convicted of trafficking and conspiring to import controlled substances into Canada. He is appealing rulings concerning the Charter compliance of the actions of investigators in his case.

Held: Application granted.

The grounds of appeal that the applicant advances are not frivolous. The applicant was previously on release without conditions without concern. In these circumstances, the public interest in the reviewability of the decision outweighs the interest in enforcing the sentence.

[1] EDELMANN J.A.: This is an application for release pending appeal.

[2] On December 3, 2024, Mr. Calabretti was convicted of offences under s. 465(1)(c) of the Criminal Code, R.S.C. 1985, c. C-46 and s. 5(1) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 of trafficking and conspiring to import significant quantities of controlled substances into Canada. In January 2025, through a joint submission, the applicant was sentenced to serve a term of seven years of imprisonment.

Underlying Facts

- [3] Mr. Calabretti had been under investigation by United States authorities for drug offences. Beginning in September 2015, Sgt. X, who is a United States law enforcement officer, posing as a cocaine supplier from Los Angeles, engaged in text and phone communications with Mr. Calabretti about the purchase of cocaine from the Los Angeles area to be imported into Canada. Mr. Calabretti travelled to Los Angeles to meet with members of Sgt. X's fictitious drug organization.
- [4] In the fall of 2016, the RCMP contacted Sgt. X as part of their own investigation into Mr. Calabretti among other targets in British Columbia. In October 2016, RCMP investigators met with Sgt. X and United States authorities in California. Sgt. X agreed to assist the RCMP with their investigation into Mr. Calabretti's cocaine importation activities and no longer pursued the applicant as a target of his investigation--meaning, Sgt. X would no longer try to facilitate meetings with the applicant or try to identify his sources in southern California, which was the focus of United States investigation at that time.
- [5] In January 2017, RCMP investigators applied for a number of judicial authorizations to track Mr. Calabretti and record his communications. Following the granting of the authorizations, Sgt. X met with Mr. Calabretti in Vancouver and introduced him to two undercover RCMP officers who posed as members of a fictitious drug organization.
- [6] Between September 2017 and March 2018, Mr. Calabretti met with undercover officers at various locations in the furtherance of a conspiracy to import wholesale quantities of cocaine into Canada. In May and June 2017, Mr. Calabretti also sold the undercover officers ten kilograms of MDMA.
- [7] I do not propose to engage in a lengthy discussion of the procedural history at trial. Suffice to say that Mr. Calabretti brought a number of Charter applications that were focused on the interactions of the RCMP with foreign authorities and in particular the recording of communications between Sgt. X and Mr. Calabretti when the latter was in Canada and the manner in which those recordings were provided to the RCMP and the manner in which they were used.

Analysis

- [8] The appeal concerns the rulings of the trial judge surrounding the investigative actions of Sgt. X, in conjunction with the RCMP, and whether those actions resulted in breaches of ss. 7, 8 and 11(d) of the Charter. In particular, the applicant will argue that the trial judge's rulings were based on the following errors:
 - 1) The trial judge erred in finding that Sgt. X was not acting as an agent for Canadian authorities;

- 2) The trial judge erred in finding that the evidence did not establish that Sgt. X had violated s. 633 of the California Penal Code or, alternatively, erred in failing to find that the Crown bore the onus of establishing compliance with s. 633 of the California Penal Code; and
- 3) The trial judge erred in summarily dismissing the applicant's application for declarations and remedies for breaches of the applicant's rights under ss. 7, 8 and 11(d) of the Charter.
- [9] Section 679(3) of the Criminal Code sets out the three-part test that an applicant must meet to be granted bail pending appeal. He must establish that: (a) his appeal is not frivolous; (b) he will surrender as required; and (c) his detention is not necessary in the public interest.
- [10] The Supreme Court of Canada ("SCC") in *R. v. Oland*, 2017 SCC 17 addressed the approach to be taken to the public interest component of s. 679(3):
- [50] That said, where the applicant has been convicted of murder or some other very serious crime, the public interest in enforceability will be high and will often outweigh the reviewability interest, particularly where there are lingering public safety or flight concerns and/or the grounds of appeal appear to be weak: *R. v. Mapara*, 2001 BCCA 508, 158 C.C.C. (3d) 312, at para. 38; *Baltovich*, at para. 20; *Parsons*, at para. 44.
- [51] On the other hand, where public safety or flight concerns are negligible, and where the grounds of appeal clearly surpass the "not frivolous" criterion, the public interest in reviewability may well overshadow the enforceability interest, even in the case of murder or other very serious offences.
- [11] The SCC also noted, in para. 39, that seriousness of the offence will play an important role and the absence of flight or public safety risks will attenuate the enforceability interest.
- [12] The prosecution that resulted in these convictions was initiated by way of a summons, with which the applicant complied. For the duration of the prosecution, from March 2021 to the date sentence was imposed in January 2025, the applicant was not in custody and was not subject to a release order or any other conditions. Aside from these convictions, the applicant has no criminal history. He is currently being held in a minimum-security facility.
- [13] The Crown concedes that the appeal is not frivolous for the purpose of the first prong under s. 679(3), but argues that the public interest in the enforceability of the sentence outweighs the interest in reviewability of the decision given the weak grounds of appeal. I will note that the Crown concedes that there are no residual concerns on either the primary or the secondary grounds. As I have also noted, there were no concerns in terms of the conduct of the appellant over a lengthy period of time not subject to release conditions.
- [14] I do not propose to engage in detail with the grounds of appeal. I am satisfied that the grounds of appeal being advanced by the applicant clearly surpass the not frivolous standard and assessing the strength of those grounds in any detail would require delving into the record and engaging with it in some detail. What is evident on the face of the record is that there were a number of indicia of an agency relationship between the RCMP and Sgt. X that

are set out in the reasons of the trial judge: Ruling of June 27, 2024 on Voir Dire #6 (unpublished) at paras. 40-54.

- [15] In terms of the weighing of the assessment of that relationship, I accept, given the findings of fact that have been made, that the argument made by the applicant may be a challenging one. However, given some of the indicia and the nature of the relationship between Sgt. X and, in particular, what appears to be a dormant investigation in the United States that was not further pursued, I do not see it as an obviously weak ground of appeal.
- [16] The Crown argues that regardless of whether there is or is not an agency relationship, that the ultimate remedy being sought will be challenging to obtain. In my view, the reasoning of the trial judge turns significantly on the agency relationship. The decision to allow the voir dire to proceed at all implied that the agency relationship was relevant. There are a number of arguments, in particular, with the application of *R. v. Hape*, 2007 SCC 26 and *R. v. McGregor*, 2023 SCC 4, in the context where an RCMP agent, in a foreign jurisdiction, is intercepting communications with an individual in Canada. There are also questions with respect to whether the s. 490 regime was applicable and other issues that have been raised by the appellant. I do not see these as frivolous grounds of appeal, but I also do not propose to engage with those in any further detail as they will be engaged with by a division of this Court.
- [17] Given the lack of concerns on both the primary and secondary grounds, I am satisfied the public interest in the enforceability of this sentence is outweighed by the interest in reviewability. Given the timelines of the appeal and the overall timelines in this case, I do not see that the public confidence in the administration of justice would be negatively impacted by the release of the applicant.
- [18] I, therefore, will be ordering the release of Mr. Calabretti pending appeal. I am hopeful the parties have been able to agree on the appropriate conditions of his release in the circumstances.

[Discussion with counsel re: conditions]

- [19] EDELMANN J.A.: I will be ordering the release of Mr. Calabretti with a cash deposit of \$20,000 and with the conditions that have been proposed by the parties with the exception of condition (i), which will be removed.

"The Honourable Justice Edelmann"

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