

CANADA / JUDGMENT

R. v. De Paz

2025 BCCA 380

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 380 R. v. De Paz COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. De Paz, 2025 BCCA 380 Date: 20251003 Docket: CA50976 Between: Rex Respondent And Brian De Paz Appellant Before: The Honourable Justice Dickson (In Chambers) On appeal from: An order of the Provincial Court of British Columbia, dated January 6, 2025 (R. v. De Paz, Vancouver Docket 262365-1). Oral Reasons for Judgment Counsel for the Appellant: C. Paquette Counsel for the Respondent: L.A. Chu Place and Date of Hearing: Vancouver, British Columbia September 19, 2025 Place and Date of Judgment: Vancouver, British Columbia October 3, 2025 Summary: The appellant applies for bail pending the determination of his appeal from a conviction for sexual assault. The Crown opposes his release. Held: Application dismissed. Considering the seriousness of the offence, the weak grounds of appeal, and the very strong Crown case, the enforceability interest outweighs reviewability in determining what is in the public interest in this case.

- [1] DICKSON J.A.: The applicant, Brian De Paz, seeks his release from custody pending the determination of his conviction appeal pursuant to s. 679(1) of the Criminal Code, R.S.C. 1985, c. C-46.
- [2] Mr. De Paz was convicted of sexual assault on January 6, 2025, and later sentenced to five years' imprisonment. On September 12, 2025, he filed a notice of appeal setting out eight grounds of appeal.
- [3] The Crown opposes release on the basis that Mr. De Paz has not established the appeal grounds are not frivolous or, to the extent that one or more may have surpassed that threshold, public confidence requires the application to be dismissed.

Background

- [4] Mr. De Paz is 52 years old. Apart from the conviction at issue he has no criminal record. He lives and works full time in Coquitlam, British Columbia.
- [5] The event in question occurred on August 5, 2019.

- [6] On August 5, 2019, the complainant attended a social gathering at Mr. De Paz's home. She had known him for approximately two years and considered him to be someone she could trust.
- [7] The complainant did not plan to stay overnight at Mr. De Paz's residence. She testified that Mr. De Paz served her three or four beers, which she consumed. She said that at the end of evening after the other guests left, she tried to leave, but, when she stood up, she was having trouble walking and Mr. De Paz insisted she spend the night. The complainant stated that she could barely move her limbs throughout the night but woke up on at least four occasions to find Mr. De Paz sexually assaulting her.
- [8] The complainant went on to say that the following morning she woke up feeling groggy and disoriented. When she asked Mr. De Paz how she became undressed, she said he told her that she had removed her own clothing and put on his shirt when he turned around.
- [9] The complainant reported the incident to the police and attended at the hospital later that evening.
- [10] After the Crown closed its case, Mr. De Paz made a no-evidence motion, contending that the Crown had failed to establish his identity. The Crown responded that the application should be dismissed, or, alternatively, that it should be permitted to re-open its case to recall the complainant to make an in-dock identification. Although I have not seen the ruling, I am advised that the judge allowed the Crown to re-open its case, that it did so, and that the complainant identified Mr. De Paz in the courtroom.
- [11] Thereafter, Mr. De Paz testified on his own behalf. In summary, he stated that he escorted the complainant into the kitchen of his residence and directed her to sleep in his guest room.
- [12] The trial judge accepted the complainant's testimony and convicted Mr. De Paz of sexual assault. In doing so, she concluded that the physical evidence and the evidence of professional witnesses, independent of the complainant, supported the allegation of sexual assault. This evidence included:
- a) Y-STR DNA found inside the complainant's underwear was consistent with Mr. De Paz's paternal family line;
 - b) Toxicologist's evidence that the complainant's blood and urine test did not show positive for alcohol;
 - c) Toxicologist's evidence that the complainant's description of her experience was consistent with drugging from GHB or possibly benzodiazepines; and
 - d) Examining nurse's evidence that the complainant had some tenderness on her neck and a sore throat.

- [13] Taking into consideration the cumulative strength of the Crown's case, the judge found Mr. De Paz's evidence did not raise a reasonable doubt. On September 5, 2025, she sentenced him to five years' imprisonment, which was towards the high end of the two-to-six-year range discussed in *R. v. Maslehati*, 2024 BCCA 207.
- [14] On September 12, 2025, Mr. De Paz filed a notice of appeal consisting of eight grounds of appeal. These grounds of appeal include, among others, that the trial judge erred in:
- a) The procedure and ruling of the appellant's no evidence motion;
 - b) Failing to assess the allegation that the complainant was drugged by the appellant;
 - c) Reversing the burden of proof; and
 - d) Materially misapprehending the evidence. Law
- [15] The three statutory criteria for bail pending appeal are found in s. 679(3) of the Criminal Code. An appeal judge may order that the applicant be released pending the determination of his appeal if the applicant establishes that:
- a) The appeal is not frivolous;
 - b) He will surrender himself into custody in accordance with the terms of the order; and
 - c) His detention is not necessary in the public interest.
- [16] The applicant seeking bail bears the burden of establishing that each criterion is met on a balance of probabilities: *R. v. Oland*, 2017 SCC 17 at para. 19.
- [17] The question of whether an appeal is "not frivolous" under s. 679(3)(a) is "a very low bar": *Oland* at para. 20.
- [18] The second criterion requires the appeal judge to be satisfied that the applicant will not flee the jurisdiction and will surrender into custody as required.
- [19] The public interest criterion has two components: public safety and public confidence in the administration of justice: *Oland* at paras. 26-27.
- [20] The public safety component tracks the secondary grounds governing an accused's release pending trial found in s. 515(1)(b) of the Criminal Code: *Oland* at para. 24. The public confidence part involves weighing two competing interests: enforceability and reviewability: *Oland* at para. 24. Enforceability considerations consist of the gravity of the offence, the circumstances surrounding its commission, and the potential for a lengthy term of imprisonment: *Oland* at paras. 37-39. The reviewability interest involves a pointed assessment of the strengths of an appeal: *Oland* at para. 44.

Analysis

- [21] Mr. De Paz submits the grounds of appeal surpass the "not frivolous" test. According to his counsel, the strongest ground of appeal relates to the judge's handling of the insufficient evidence motion, which should have been allowed and was dealt with in a manner that was unfair. Moreover, she says, the judge made several other errors, including failing to assess the credibility and reliability of the allegation that the complainant was drugged by Mr. De Paz, reversing the burden of proof, and materially misapprehending the corroborative evidence. Considered cumulatively, she says these errors warrant intervention.
- [22] As to the other relevant considerations, Mr. De Paz points to his unblemished record of compliance on bail for more than four years prior to his conviction and his lack of any criminal history. He says the public interest does not require his detention as he does not pose a flight risk, has community support and his continued detention would exacerbate his existing vulnerabilities, including chronic pain, as well as his ability to support his elderly mother. He emphasizes that he will be eligible for day parole in less than 20 months and will have served a significant period of his sentence while waiting to have his appeal heard. All things considered, he says that public confidence in the administration of justice would be preserved by granting his release on strict terms that he articulates, together with a proposed \$1,000 deposit in cash bail.
- [23] Based on my review of the application materials, the judge's reasons and the submissions of counsel, I accept that some of the grounds of appeal may arguably pass the "not frivolous" threshold. However, in my view, they appear to be very weak. In particular, contrary to defence counsel's submission, it is apparent from the record that there was strong evidence of identification prior to the no-evidence motion being brought--the parties knew one another, the DNA was found in her clothing the next day, and Mr. De Paz had exclusive opportunity to have sexual contact with the complainant. I am unable to detect any merit to this ground of appeal, which, as noted, defence counsel characterizes as the strongest ground.
- [24] I accept that Mr. De Paz does not present a flight risk or a public safety risk. Nevertheless, balancing the interests of enforceability and reviewability, I agree with Crown counsel that the public interest criterion supports his detention. The offence is very serious, involving, as the judge put it, a highly invasive, violative and demeaning sexual assault with devastating effect on the victim, leading to a five-year sentence. If the appeal is heard promptly, as it can and should be, I do not accept that Mr. De Paz will have served substantially most of his sentence before the appeal can be heard and resolved. Bearing in mind the very strong Crown case, including the corroborative evidence, and the deferential standard of review, I conclude that the enforceability interests outweigh the reviewability interests and dismiss the application for bail pending appeal. "The Honourable Justice Dickson"

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