

CANADA / JUDGMENT

R. v. Dickens

2025 BCCA 242

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 242 R. v. Dickens

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Dickens,

2025 BCCA 242

Date: 20250704

Docket: CA49801

Between:

Rex

Respondent

And

Preston Cory Dickens

Applicant/Appellant

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Before:

The Honourable Madam Justice DeWitt-Van Oosten

(In Chambers)

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

July 27, 2022 (conviction) and November 3, 2023 (sentence)

(R. v. Dickins, Vancouver Docket 255439-3).

The Applicant/Appellant, appearing in person (via videoconference):

P.C. Dickins

Counsel for the Respondent:

E. Purtzki

Place and Date of Hearing:

Vancouver, British Columbia

June 25, 2025

Place and Date of Judgment:

Vancouver, British Columbia

July 4, 2025

Summary:

The applicant/appellant has filed an appeal from conviction and sentence for multiple sexual offences. He seeks the appointment of a lawyer to assist with the appeal. Among other things, the appellant alleges that the lawyer who represented him at his trial did not put all relevant evidence before the court and this rendered the trial unfair because the judge decided the case on an incomplete evidentiary foundation. HELD: The application for a lawyer on the appeal from conviction is dismissed. There is no reasonable prospect of success on that appeal and in that context, it is not in the interests of justice to appoint a lawyer. A lawyer is appointed to assist with the appeal from sentence. The appellant is a first-time offender who received a cumulative 12-year prison sentence and has arguable issues to raise in relation to possibly unaccounted for mitigation.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

Introduction

- [1] The appellant, Preston Cory Dickins, applies for the appointment of a lawyer on his appeal from conviction and sentence: Criminal Code, R.S.C. 1985, c. C-46, s. 684(1).
- [2] The Crown says an appointment is not warranted for the appeal from conviction because that appeal has no merit and it is not in the interests of justice to grant the order. The Crown takes a different position on the appeal from sentence. Its primary submission is that the appeal is unlikely to succeed; however, the Crown acknowledges that Mr. Dickins has raised at least one issue of arguable merit that may justify an appointment.

Background

Trial

- [3] Mr. Dickins was tried in the Provincial Court for five offences between December 2017 and August 2019: sexual assault, sexual interference, invitation to sexual touching, making child pornography, and possessing child pornography.
- [4] For present purposes, it is not necessary to detail the trial evidence. It will suffice to note that the offences involved Mr. Dickins' interaction with a child he was babysitting. He was found to have committed highly intrusive sexual abuse of the child, multiple times and over a considerable period. When arrested, Mr. Dickins possessed a mobile device containing 23 images (including a video) showing sexual interaction with the child. The device also included more than 3400 images of child exploitation involving other children. The admissibility of the digital evidence was not challenged at trial. The mobile device was searched by police pursuant to a warrant.
- [5] Mr. Dickins was represented by a lawyer at trial. He testified and admitted taking some of the photographs involving the child complainant and making the video. However, he denied that he took the other photographs. He did not deny sexual contact with the child, but said she initiated the contact and performed sexual acts on him without his consent. He said he tried to tell the child's mother about what was happening and to show her the sexually graphic images, but she refused to speak about the child's behaviour and would walk away.
- [6] The judge did not believe Mr. Dickins nor did his evidence raise a reasonable doubt. She did not accept that Mr. Dickins "innocently allowed sexual acts to continue to be performed on him by a little girl for almost a year". For various reasons, including the images on the mobile device, the judge found the appellant's explanation for the sexual contact to be "inconceivable". Ultimately, she concluded that all images involving the child complainant were taken by Mr. Dickins and that "he alone controlled the content". The judge also found as a fact that Mr. Dickins "often orchestrated having [the child] in his care" and that "he took those actions to gain access to [the child] to sexually abuse her".
- [7] For the 3400 images involving other children, Mr. Dickins acknowledged that those images met the definition of child pornography under the Criminal Code but said he did not know how they came to be on his device. The judge did not believe him. She described his testimony as "often border[ing] on the preposterous". He was "often evasive and belligerent under cross-examination".
- [8] The child complainant testified. A statement she provided to the police was also admitted into evidence. The judge found the child to be a "very convincing witness". She was "thoughtful and forthright", took care to be "accurate in her descriptions" of what occurred, and she was "not shaken in cross-examination".

Sentencing

- [9] Mr. Dickins was 30 years old at sentencing and did not have a prior criminal record. His "cognitive abilities" were assessed within the average range. He showed little insight into his conduct. He was assessed as a "significant" risk to re-offend sexually. Although willing to participate in counselling and other forms of treatment, he was not viewed as "overly motivated to change his behaviour as he does not believe there is a need to do so".
- [10] The judge described the material on Mr. Dickins' mobile device as showing "horrific acts of sexual violence". Mr. Dickins was in a position of trust when he offended. The judge found that he committed "hundreds of acts of sexual violence on [the child] over a one-and-a-half-year period". The child was between eight and ten years old. The offences were "significantly and negatively impacting" on her, "even years later, and will likely continue to do so for some period of time". She was "subjected to extensive intrusions to her bodily integrity"; the "acts of violence were often painful"; and the sexual abuse included "disturbing acts of degradation".
- [11] The judge determined that 10 years' imprisonment would be a fit sentence for each of sexual interference and invitation to sexual touching (concurrent). The maximum allowable sentence for each offence is 14 years. The judge was of the view that consecutive sentences of 30 and 18-months' imprisonment would be fit sentences for making and possessing child pornography, respectively. This would have resulted in a cumulative sentence of 14 years' imprisonment. Applying the principle of totality, the judge reduced the sentence by two years and imposed a cumulative 12 years' imprisonment. The conviction for sexual assault was stayed applying the "Kienapple principle" (R. v. Kienapple, [1975] 1 S.C.R. 729, 1974 CanLII 14). Various ancillary orders were made, including orders under the Sex Offender Information Registration Act, S.C. 2004, c.10 and s. 161 of the Criminal Code.

Appeal

- [12] Mr. Dickins filed a notice of appeal on April 19, 2024. He filed out of time, but the Crown does not oppose an extension to the date of filing.
- [13] The notice of appeal identifies various grounds of appeal, including: (a) ineffective assistance of trial counsel (a different lawyer represented him at sentencing); (b) unreasonable delay to trial and sentencing; (c) unconstitutional bail conditions; (d) Crown misconduct (offering a particular sentence in exchange for a guilty plea and then changing the Crown's position at sentencing); (e) wrongful withholding of disclosure; (f) unauthorized overholding of the mobile device by police; and (g) a miscarriage of justice.
- [14] Legal Aid BC ("LABC") has denied funding for the appeal for non-financial reasons. In assessing the appeal from conviction, LABC considered multiple issues, including: (a) whether the judge committed errors of law; (b) whether she erred in assessing the evidence or in finding facts; (c) whether there were procedural errors; (d) the reasonableness of the verdict; and (e) whether there is a basis on which to allege ineffective assistance of trial

counsel. In assessing the appeal from conviction, LABC communicated with Mr. Dickins' trial counsel and presumably took what was said into account.

- [15] On August 22, 2024, I granted a limited appointment under s. 684(1) of the Criminal Code to enable a lawyer to independently assess Mr. Dickins' claim of ineffective assistance of counsel and determine whether there was a sufficient basis to apply for a full appointment. A lawyer completed that assessment. Based on her review of the file, including materials specific to seizure of the mobile device, she did not consider there to be a sufficient basis for a full s. 684(1) appointment. As a result, Mr. Dickins represents himself on the application.

Application for Appointment of Counsel

- [16] The legal test for the appointment of a lawyer under s. 684(1) is well-established.
- [17] To succeed on his application, Mr. Dickins must establish he has insufficient means to obtain legal assistance. He must also establish that an appointment is in the interests of justice. Relevant factors include: (a) the complexity of his appeal; (b) the points to be argued; (c) Mr. Dickins' competency to present the appeal; (d) the need for counsel to find facts, research law, or make argument; (e) the nature and extent of the penalty imposed; and (f) the merits of the appeal. See, for example, *R. v. Costello*, 2021 BCCA 59 at para. 3 (Chambers); *R. v. Myles*, 2020 BCCA 143 at para. 37 (Chambers); *R. v. Silcoff*, 2012 BCCA 463 at paras. 19-27 (Chambers).
- [18] It is generally understood that the interests of justice will not favour an appointment where an appeal has no realistic prospect of success: *R. v. Dancho*, 2024 BCCA 393 at para. 15 (Chambers); *R. v. Hoskins*, 2012 BCCA 51 at paras. 30-32 (Chambers).

Appellant's position

- [19] Mr. Dickins has filed three documents in support of his application: (a) an affidavit (May 16, 2024); and (b) two written submissions (June 28, 2024, and June 13, 2025, respectively).
- [20] In the affidavit, he deposes that he is unable to advance the appeal on his own. He is not legally trained. He has a high school education and some post-secondary training, but not the type or depth of learning needed to effectively frame and marshal an appeal. The affidavit states that the appeal from conviction raises the following issues: "withholding evidence", Charter violations (Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11 [Charter]), and ineffective assistance of trial counsel. Mr. Dickins deposes that "not all evidence was given to [him] or the judge".
- [21] The written submission filed in June 2024 states that Mr. Dickins is unable to represent himself in his appeal due to a "learning disability, several mental health disorders and a lack of legal training". (At sentencing, his lawyer described this as including attention deficit disorder, oppositional defiant disorder, and "several learning disabilities"). The appellant alleges ineffective assistance by trial counsel that deprived him of the ability to show the

Crown's "narrative during the trial was completely false". Charter violations are raised but not specified.

- [22] The written submission filed in June 2025 is 18 pages long and more detailed. It was filed in response to the Crown's application material. In this submission, Mr. Dickins raises a number of issues, including: (a) incomplete disclosure by the Crown; (b) ineffective assistance of trial counsel (he did not advance a full defence); (c) miscarriage of justice (Mr. Dickins "did not do what they said [he] did"); (d) the judge made findings that are not supported by the evidence; (e) there is additional material the judge should have had access to, but did not (such as text messages); (f) unreasonable credibility findings and other findings of fact; and (g) misapprehensions of the evidence. The most significant of these complaints is the allegation of ineffective assistance. Specific to the latter issue, Mr. Dickins says:

I have told everyone involved in my case about the amount of unseen and unreviewed evidence, documents and case law that I say apply to my case

Because of [trial counsel's] inaction I was not able to be heard, I was not able to show the court evidence that backed up my claims, I was not able to show evidence that [the child] lied on the stand, I was not able to show evidence that [her mother] lied, and now because of my ongoing circumstances I am unable to show the Crown's own misconduct. I have found the entire exercise of my case has been one of confirmation bias with no new evidence being welcomed from day one and the repeated call back to one flawed document, the [Reasons for Judgment].

There is prejudice. How can the court hear my side of the case if my lawyer offered only my word and nothing else

His ineffective assistance resulted in prejudice because it undermined the fairness of the trial proceedings. My evidence was not seen and my case was not heard

[Spelling and grammatical errors corrected, emphasis added.]

- [23] What additional evidence is at issue? Although the content of this material has not been described in any detail, Mr. Dickins says the judge was deprived of "other images taken by [him] of [the child's] behaviour, text messages and emails between [himself] and other parties including [the child's] mom other care givers, other people that knew [the mom] as well as friends and family of [his]". Mr. Dickins also contends there may have been a constitutional argument to advance in challenging the admissibility of evidence from the mobile device, which played a significant role at trial. To his understanding, the authority to hold the device pending completion of the criminal investigation had expired and police failed to obtain an extension under s. 490(2)(a) of the Criminal Code. See, for example, R. v. Craig, 2016 BCCA 154 at paras. 181-182.

Crown's response

- [24] The Crown accepts that Mr. Dickins meets the financial criteria for the appointment of counsel. However, it submits it is not in the interests of justice to grant an appointment for the appeal from conviction because that appeal is without merit.
- [25] In support of its position, the Crown points out that LABC has denied funding for non-financial reasons. In other words, it reviewed the file and saw no reasonable prospect of success in challenging the conviction or sentence. The Crown also notes that a lawyer has independently reviewed the matter pursuant to the limited appointment order, including materials surrounding the police handling of Mr. Dickins' mobile device, and saw no basis for launching a full s. 684(1) application. The Crown says I can infer from this that the ineffective assistance claim has no merit.
- [26] The concerns expressed by Mr. Dickins specific to his trial counsel are primarily focused on an alleged failure to adduce additional evidence in support of his version of events. The written material submitted by Mr. Dickins provides only a general sense of what that might consist of, even though it is my understanding he has received a full copy of the Crown disclosure package that was given to his lawyer at trial. The Crown submits that even if there were additional pieces of evidence to adduce or use in cross-examining the Crown's witnesses, it would not have made a difference to the outcome of the trial and there has been no real prejudice: *R. v. Aulakh*, 2012 BCCA 340. Mr. Dickins' version of events, that the child complainant initiated sexual contact and he tried to do everything he could to bring it to her mother's attention, is not only undermined by the video evidence (which the judge found shows him directing the child's behaviour), but would not constitute a legally acceptable defence.
- [27] Because of the child's age, Mr. Dickins could not defend the charges against him by asserting that the child initiated or consented to sexual contact. See, for example, this Court's discussion of sexual offences involving children in *R. v. Alfred*, 2020 BCCA 256 and the Supreme Court of Canada's recent decision in *R. v. R.A.*, 2025 SCC 7.
- [28] The Crown also says that Mr. Dickins' various challenges to the judge's findings of fact fail to appreciate the highly deferential standard of review on appeal. Assessments of credibility and other findings of fact cannot be overturned in the absence of palpable and overriding error. Mr. Dickins has not identified palpable and overriding error. At best, he has pointed to an occasional misstatement by the judge or an interpretation of evidence that he does not agree with. He has not identified in any meaningful way how the evidence he says should have been adduced by his trial counsel, but was not, could realistically undermine or otherwise impact the judge's findings.
- [29] Specific to the appeal from sentence, the Crown says that given the aggravated nature of Mr. Dickins' offences, the cumulative 12-year sentence is unlikely to be set aside, even though it represents the high end of the available range. Sentencing is an inherently individualized inquiry and attracts considerable deference on appeal. However, the Crown acknowledges

that in his material, Mr. Dickins has raised some issues of arguable merit in advancing this aspect of his appeal. In particular, Mr. Dickins claims that he was prepared to plead guilty to one or more of the child pornography offences, but his trial lawyer declined to facilitate those pleas for him. Guilty pleas would have attracted mitigating weight on sentencing. He also says there was information relevant to his personal background (reference letters) that could have been obtained and made a difference to the sentence. Some letters were presented at sentencing; however, the judge expressed concern about whether those letters were properly informed and as a result, they appear to have attracted little, if any, weight.

Analysis

- [30] I have determined it is not in the interests of justice to appoint a lawyer on the appeal from conviction.
- [31] I accept that Mr. Dickins does not have the financial resources to hire a lawyer. I also accept that because of his current incarceration, access to a lawyer would greatly assist in researching the law, framing arguments for purposes of the appeal, and preparing the necessary written material. Among other things, Mr. Dickins wants to advance a claim of ineffective assistance of trial counsel. This can be a complex issue, requires the production of affidavits, and is subject to a practice directive from this Court requiring a waiver of privilege. Although Mr. Dickins clearly has the capacity to prepare written material in support of his position (he has done so for this application), it would not be easy for him to navigate this ground of appeal, particularly from within a custodial setting. Before me, he repeatedly voiced concern that he does not know what would be relevant to an ineffective assistance claim or his other grounds of appeal, or how to marshal the requisite record. Pulling material together for a s. 684(1) application is qualitatively different from substantiating grounds of appeal that seek to challenge convictions based on alleged ineffective assistance, misapprehensions of evidence, or palpable and overriding errors of fact.
- [32] Mr. Dickins is a first-time offender who has been found guilty of grave offences and has received a significant cumulative penitentiary term. This is a relevant factor to consider under s. 684(1).
- [33] However, having reviewed the whole of the material before me, I see no realistic possibility of success on the appeal from conviction. As noted, Mr. Dickins does not deny there was activity of a sexual nature involving the child. Indeed, that activity was captured in still photos and a video, and he has admitted taking some of the photos and making the video. His position at trial was that the child initiated the contact and what occurred with her was essentially beyond his control.
- [34] First, the judge found that this explanation had no credibility (a difficult finding to displace on appeal), and second, Mr. Dickins' explanation of sexual contact with the child does not provide a defence at law. As such, even if there was evidence of the child initiating physical

activity or Mr. Dickins expressing concern about the child's behaviour that could have been placed before the judge (the main issue raised in his ineffective assistance claim), I agree with the Crown that it would not have affected the verdict. At law, he was the one responsible for preventing sexual contact with the child. Based on what I have seen thus far, Mr. Dickins would not be able to establish that the absence of additional evidence that "backed up [his] claims" caused him prejudice.

[35] As made clear by the Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9:

[52] We would note that the personal autonomy interest carries a somewhat different meaning for children than it does for adults. Children under the age of 16 of course lack the capacity to consent to sexual contact with an adult. As we will explain in detail later in these reasons, a child's participation in such contact is not a mitigating factor and should never be equated to consent. Instead, personal autonomy refers to a child's right to develop to adulthood free from sexual interference and exploitation by adults

[148] Parliament has determined that the age of consent to sexual activity in Canada is 16 Subject to the close in age exceptions children under the age of 16 are thus "incapable of giving true consent to sexual acts with adults" Accordingly, courts should avoid language such as "de facto consent" which analogizes a child's participation to consent.

[151] We would add the following to assist judges as they give practical effect to Parliament's decision that sentences for sexual offences against children must increase. First, some courts have seemed to equate a child's non-resistance with "de facto consent" In addition to analogizing a child's participation to consent, this language hints at the belief that submission or a failure to resist constitutes consent, which is a pernicious myth even for adults. Judges' analyses need to be clear that there is no defence of "implied consent" in Canadian law and that a failure to resist or silence or passivity does not constitute consent

[154] Finally, a victim's participation should never distract the court from the fact that adults always have a responsibility to refrain from engaging in sexual violence towards children. Adults, not children, are responsible for preventing sexual activity between children and adults

[Internal references omitted, emphasis added.]

[36] In response to the concern about trial counsel not challenging the admissibility of the mobile device, even assuming that the allegation of overholding is true, it is highly unlikely in the circumstances of this case that the contents of the mobile device would have been excluded from evidence under s. 24(2) of the Charter on that basis. Mr. Dickins does not challenge the lawfulness of the search or seizure, simply the retention. There is nothing in the filed material to suggest that any overholding (if it did occur), was flagrant and done in deliberate disregard of statutory requirements: *R. v. Gill*, 2024 BCCA 63 at paras. 103-105. Finally, as noted, the circumstances surrounding the police handling of the mobile device were reviewed and considered by the limited appointment counsel. I understand the Crown

co-operated in ensuring that she was given access to the relevant material. Although I do not know the specifics of that review, it is safe to assume that if there was a principled basis on which to challenge the admissibility of the mobile device on the basis of overholding and counsel determined this was something Mr. Dickins's trial lawyer should have pursued, we would have seen a full s. 684(1) application on that basis given the judge's degree of reliance on the evidence and the role it played at trial.

- [37] Mr. Dickins may not have received a perfect trial, but he was not constitutionally entitled to one and, on the material before me, I see no reasonable prospect of this Court interfering with the guilty verdicts. This was a judge-alone trial with what appears to have been a thorough and careful review of the evidence and strong credibility and reliability findings. The judge properly instructed herself on the principles established in *R. v. W. (D.)*, [1991] 1 S.C.R. 742, 1991 CanLII 93, and appreciated that she did not have to believe Mr. Dickins before his evidence could raise a reasonable doubt. She was alive to the defence advanced by Mr. Dickins and his challenges to the evidence of the child complainant. She was satisfied those challenges did not detract from the compelling nature of the evidence in support of guilt. That was a determination for her to make. Standing alone, possible mischaracterizations of the evidence or an interpretation different from that of Mr. Dickins does not amount to reversible error. On the face of it, the appeal from conviction has not been shown as arguable.
- [38] I have a different view of the appeal from sentence. Mr. Dickins received a significant cumulative sentence for his offences. There is some indication, at least at this stage, that one or more choices made at the trial on the advice of counsel may have deprived Mr. Dickins of mitigation at sentencing that arguably could have affected the sentence. The Crown accepts that such is the case. Given the length of sentence imposed (which the Crown suggests is an outlier in appellate jurisprudence), and the complexity of marshaling that type of a challenge, I am prepared to order the appointment of counsel for purposes of a sentence appeal. I consider an appointment to be in the interests of justice to ensure Mr. Dickins has full opportunity to assess and argue that the judge committed an error in principle that impacted the sentence or that the sentence is demonstrably unfit. He will need assistance in formulating a focused argument, recognizing the limited parameters of an appeal from sentence. In my view, the appeal from sentence is not strong given the objective gravity of his offences, the aggravating factors of the case, and the deferential standard of review. However, that will be for a division to decide.

Disposition

- [39] For the reasons provided, I grant an extension of time to file the appeal from conviction and sentence to April 19, 2024.
- [40] I decline to appoint a lawyer under s. 684(1) of the Criminal Code for the appeal from conviction. However, I am satisfied it is in the interests of justice to grant an order appointing counsel specific to the appeal from sentence. It shall be a term of this order that

the appointed lawyer has authority to order and file whatever transcripts or other material from the Provincial Court proceeding that may be reasonably necessary to advance the appeal from sentence. This includes authority to take whatever steps may be necessary to gain access to relevant, sealed material in the court below.

[41] I direct that this matter be returned to case management for a determination of next steps in the appeal process.

"The Honourable Madam Justice DeWitt-Van Oosten"

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