

CANADA / JUDGMENT

R. v. Do

2025 BCSC 1025

COURT

Supreme Court of British Columbia

DECIDED

28 March 2025

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2025 BCSC 1025 R. v. Do

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Do,

2025 BCSC 1025

Date: 20250328

Docket: 37206-1, 37206-3

Registry: Vancouver

Rex

v.

Manh Cong Do

Before: The Honourable Justice Fowler

(Summary Conviction Appeal)

Oral Reasons for Judgment

In Chambers

Counsel for the Crown:

B. Dumanowski

Appearing on his own behalf:

M.C. Do

Place and Date of Hearing:

Vancouver, B.C.

March 28, 2025

Place and Date of Judgment:

Vancouver, B.C.

March 28, 2025

- [1] THE COURT: These are my oral reasons for judgment. If a transcript of my reasons is ordered, I reserve the right to edit them for spelling and grammar. Of course, the substance of the reasons will not change.
- [2] On October 17, 2023, an information was filed in the Provincial Court of B.C., charging Mr. Do, who I may also refer to as "the Appellant" or "Applicant," as appropriate, with three offences. Count 1, in summary, alleged that between May 14 and May 25, 2023, he failed to comply with an order to obtain the required building permits, contrary to a specified section of Bylaw 12511. Count 2 reads, again in summary form, that between the same dates, Mr. Do again failed to obtain permits as required by sections of Bylaw 3575. Finally, in Count 3, again between the same dates and again in summary, it was alleged that Mr. Do used or occupied a building on which development had taken place, for which a valid permit had not been obtained, again contrary to a section of Bylaw 3575.
- [3] The matter proceeded to trial on November 6, 2024, before Judicial Justice Osborne. Mr. Do represented himself. At the commencement of the proceedings, counsel for the Crown applied to amend all counts in the information to shorten the time period of alleged offending as occurring between May 19, 2023 and May 25, 2023, rather than May 14 to May 25, as set out in the original information. The time period of the offending is particularly relevant in this case because of the prescribed minimum penalties accruing on a per-day basis. Other dates were amended, but those are not particularly relevant for the purposes of the matters before me today.
- [4] Mr. Do entered pleas of not guilty to each of the three counts. The Crown called one witness, Mark Reed, a property use inspector for the City of Vancouver. Shortly after evidence and submissions had concluded, Mr. Do was convicted of all three counts. Crown counsel advised the Court that the minimum penalty on each count was a \$500 fine for each day of the offending period. It was suggested that each offence was said to have occurred over a period of six days, May 19 to May 25, 2023.
- [5] I note here that each count of the information was worded specifically as, quote, "between May 19th and May the 25th," as opposed to the more usual language of "on or between." As Mr. Do was unrepresented, there was no discussion with the Court as to how many days of offending were captured by the language, in each count of "between May 19th and May the 25th." Arguably, it could be as few as five, May 20th, 21st, 22nd, 23rd, 24th, or as many as seven, May 19th, 20th, 21st, 22nd, 23rd, 24th, and 25th. The Crown, however, proceeded at

sentencing on the basis that it was six days. The Crown agreed to "conditionally stay Count 2, on the basis, it seems, of some measure of compliance." Ultimately, the court imposed a fine of \$6,000; \$3,000 on each of Counts 1 and 3, comprising a \$500 minimum fine for six days of offending, as suggested by the Crown.

- [6] That expansive introduction brings us to the proceedings today. On December 3, 2024, Mr. Do filed a Notice of Appeal against sentence. That sentence appeal was scheduled, at that time, to be heard today, March 28, 2025. On February 28, 2025, Crown counsel filed written submissions responding to the sentence appeal. On March 10, 2025, the Appellant filed three other documents: An amended Notice of Appeal. The amendment is essentially that Mr. Do now wishes to appeal his conviction. No application has been filed seeking an extension of time required to file a conviction appeal outside of the designated appeal period. Secondly, a Notice of Motion staying enforcement of a fine. And the third document, what is described as the Appellant's final reply submission.
- [7] Even more recently, on March 19, 2025, Mr. Do filed another application to use, as he described, the Appellant's transcript rather than the one filed by the Crown. On March 24, 2025, Mr. Do filed what he describes as a chronology of as active permit submissions.
- [8] I am prepared to deal with two of these applications today, although I note that if I provide time for Mr. Do to pay the fine, it has the effect of staying, to some extent, enforcement of the fine. With respect to the motion to use the Appellant's transcript, having heard Mr. Do and counsel for the Crown, it appears that he has proceeded on the basis of a misunderstanding. The transcript that was ultimately filed in court and the transcript that Mr. Do received are identical. I mean no disrespect to Mr. Do, but on the basis of that misunderstanding, there is no merit to his motion. I am satisfied that the certified transcript of proceedings and reasons filed on March 12, 2025, are accurate. Mr. Do's motion is dismissed. I note parenthetically that the timeline that has been submitted is not a motion to adduce fresh evidence. At best, it could be described as a form of written submissions, and it may ultimately become relevant if, in fact, Mr. Do is granted an opportunity to appeal his conviction.
- [9] This brings me to the sentence appeal. Of course, the Crown is correct that a Court of Appeal has limited jurisdiction to intervene. A sentence appeal is not a new sentencing hearing. Deference must be shown to the sentencing judge. In this case, the trial judge explicitly stated that she was going to "stay with the mandatory minimum, which is 500 a day, for Counts 1 and 3." Unfortunately, this was in error, because the mandatory minimum on Count 3, as the Crown now concedes, is in fact \$250 a day.
- [10] The sentencing judge having proceeded on the basis of an error of law, I am satisfied that I have the jurisdiction to intervene, and consequently, the fine on Count 3 will be calculated on the basis of the minimum of \$250 a day, rather than \$500.

- [11] I am also satisfied that in the circumstances of this case, the language of each count stating "between" rather than "on or between" reduces the length of time of the offending period from six days to five days. So, based on those two errors, I am prepared to order today that on Count 1, the fine is reduced from \$3,000 to \$2,500, based on five days times the minimum of \$500 a day. On Count 3, I am prepared to reduce the fine from \$3,000 to \$1,250, based on a calculation of a minimum fine of \$250 a day times five days. The total fine will be \$3,750.
- [12] Mr. Do has pleaded hardship. Although little evidence of the extent of that hardship was provided to the trial judge, and I mean no criticism of Mr. Do, who is representing himself, and no application to submit fresh evidence on this appeal has been made, I am satisfied that whatever hardship does exist - and I am prepared to take notice of the fact that a fine of \$3,750 would be a significant amount for most people - can be ameliorated by providing Mr. Do with time to pay. Mr. Do was originally provided until August 29, 2025, to pay the original fine amount of \$6,000. I am prepared to extend that date to December 31, 2025, to pay the now reduced fine of \$3,750.
- [13] I will end by saying that if Mr. Do wishes to continue to appeal his conviction, he must apply for an extension of time to file a Notice of Appeal, and have that matter set down to be heard either before or at the same time as the conviction appeal.
- [14] Mr. Do, what I mean by that is that sometimes, procedurally, the Court will allow the motion to extend the time period in which to file a Notice of Appeal, to be heard at the same time as the conviction appeal, because some of the factors that the Court has to consider in granting you an extension, are the same kind of factors as they actually consider on the conviction appeal, what we describe as the merits. Is there a good argument? If there is a good argument, the Court may grant you an extension. So, they sometimes hear it together.
- [15] Currently, the Notice of Appeal from conviction, what is described as an amended Notice of Appeal, has the file number 37206-2. From a procedural point of view, the only matter before me is file Number 37206-1, the sentence appeal; 37206-2 is not properly before the Court today, and I have not considered, in any way, the merits of the grounds of appeal against conviction or reasons for why an extension should or should not be granted.
- [16] Thank you. Those are my reasons.

"The Honourable Justice Fowler"

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