

CANADA / JUDGMENT

R. v. F.C.M.

2025 BCSC 2242

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. F.C.M.,

2025 BCSC 2242

Date: 20251114

Docket: 99089

Registry: Kelowna

Rex

v.

F.C.M.

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Before: The Honourable Justice Hewson

Reasons for Judgment Re: Detention following a finding of guilt but before imposition of sentence

Counsel for the Crown:

K. Short

Counsel for the Accused:

N. Acker

Place and Date of Trial:

Kelowna, B.C.

June 16 - 20, 23-24, 2025

Place and Date of Oral Judgment:

Kelowna, B.C.

June 25, 2025

Place and Date of Submissions

re: Detention pre-sentence:

Kelowna, B.C.

June 25, 2025

Place and Date of Judgement

re: Detention pre-sentence:

Kelowna, B.C.

November 14, 2025

Background

- [1] The accused, F.C.M., was convicted of one count of sexual assault and one count of sexual interference on June 25, 2025. Immediately after reasons for judgment were delivered, Crown counsel drew my attention to section 523 of the Criminal Code and advised that he wished to raise the issue of F.C.M.'s custodial status between the finding of guilt and the passing of sentence.
- [2] In British Columbia, the general practice is that bail continues following a finding of guilt until sentence is passed. Defence counsel requested that the matter be stood down briefly while he took instructions from his client. I ordered, on my own motion, that the offender remain in the courtroom with the Sheriff during the morning break. At that point, F.C.M. was effectively taken into custody and detained.
- [3] Following the break, counsel requested more time. I adjourned the matter for a further hour. During that adjournment, F.C.M. remained in custody and was lodged in the Sheriff's cells.

- [4] At noon, the trial resumed. Defence counsel advised that, after consulting with his client, he was unable to provide a current residential address or any sufficient bail plan. I confirmed that F.C.M. was detained, and I adjourned the matter to fix a date for sentencing. I noted that if F.C.M. instructed counsel to bring an application under section 523(2) to review the detention order I would hear it at the first opportunity.
- [5] No such application has been brought. I consider it appropriate to explain the court's jurisdiction to detain an offender following conviction but prior to sentencing, and to enter into the record the reasons for ordering the detention of F.C.M.
- [6] These are my reasons for the detention of F.C.M. following a finding of guilt but before the imposition of sentence.

Discussion

- [7] Liberty is a foundational value of Canadian law. In criminal cases, one of the ways this value is expressed and protected is s. 11(e) of the Canadian Charter of Rights and Freedoms. That section provides that "[a]ny person charged with an offence has the right . . . not to be denied reasonable bail without just cause".
- [8] However, a person can not rely on the protection of Charter s. 11(e) after being found guilty of an offence. As Justice Arbour explained in *R. v. Farinacci*, [1993] O.J. No. 2627 (CA) at para. 9:
9. The right not to be denied reasonable bail without just cause is rooted in the presumption of innocence, which is substantially spent by the conviction. Indeed, the presumption of innocence is spent by the verdict, be it a conviction or an acquittal. A conviction does not create a presumption of guilt. It constitutes a legal, conclusive finding of guilt. Like an acquittal, it is enforceable unless and until reversed. After a conviction, there is no presumption left, one way or the other. There is an enforceable finding of guilt.
- [9] The usual practice in British Columbia has generally been to allow people to remain on release orders following a finding of guilt. The fact that continued release has been the usual practice does not mean that it should be unexpected that the court could review release orders after a finding of guilt or could revoke them when appropriate. That practice may be evolving. The current version of the LSBC's Professional Legal Training Course "Practice Checklist for Judicial Interim Release" suggests that articulated students "[a]dvice the client that bail can be revoked by the court if there is a finding of guilt after trial (usually when the Crown applies for an order for same, but note that bail can also be revoked on the court's own motion)." (See: Law Society of British Columbia, Judicial Interim Release Procedure: Carswell's Form and Precedent Collection: Criminal Law Precedents, 2nd Ed. § 4:9, current to September 4, 2024.)

[10] There are two sources of authority for revoking a release order and remanding an offender into custody after a finding of guilt and before the imposition of sentence. They are sections 523(1)(b)(ii) and 523(2)(a) of the Criminal Code.

[11] Section 523(1)(b)(ii) provides as follows:

523 (1) If an accused, in respect of an offence with which they are charged, has not been taken into custody or has been released from custody under any provision of this Part, the appearance notice, summons, undertaking or release order issued to, given or entered into by the accused continues in force, subject to its terms, and applies in respect of any new information charging the same offence or an included offence that was received after the appearance notice, summons, undertaking or release order was issued, given or entered into,

(a) where the accused was released from custody pursuant to an order of a judge made under subsection 522(3), until his trial is completed; or

(b) in any other case,

(i) until his trial is completed, and

(ii) where the accused is, at his trial, determined to be guilty of the offence, until a sentence within the meaning of section 673 is imposed on the accused unless, at the time the accused is determined to be guilty, the court, judge or justice orders that the accused be taken into custody pending such sentence.

[12] Sections 523(1.1) and (1.2) deal with the process following the receipt of a new information or the preferment of a direct indictment, and are not relevant to the case before me.

[13] Section 523(2)(a) provides as follows:

523 (2) Despite subsections (1) to (1.2),

(a) the court, judge or justice before which or whom an accused is being tried, at any time,

(b) the justice, on completion of the preliminary inquiry in relation to an offence for which an accused is ordered to stand trial, other than an offence listed in section 469, or

(c) with the consent of the prosecutor and the accused or, where the accused or the prosecutor applies to vacate an order that would otherwise apply pursuant to subsection (1.1), without such consent, at any time

(i) where the accused is charged with an offence other than an offence listed in section 469, the justice by whom an order was made under this Part or any other justice,

(ii) where the accused is charged with an offence listed in section 469, a judge of or a judge presiding in a superior court of criminal jurisdiction for the province, or

(iii) the court, judge or justice before which or whom an accused is to be tried,

may, on cause being shown, vacate any order previously made under this Part for the interim release or detention of the accused and make any other order provided for in this Part for the detention or release of the accused until his trial is completed that the court, judge or justice considers to be warranted.

- [14] Until recently, the law in Canada was unsettled as to which of these sections authorized the revocation of bail following a finding of guilt. One line of authority, including *R. v. Iyer*, 2016 ABQB 485, and *R. v. Green* (2006), 210 C.C.C. (3d) 543, held that s. 523(1)(b) recognized the possibility of post-guilt revocation of bail but did not confer power on the trial judge to do so; rather, that power arose only under s. 523(2)(a), and only upon cause being shown by the Crown.
- [15] The alternate line of authority, endorsed in cases including *R. v. B.T.Q.*, 2017 ABQB 715, held that s. 523(1)(b)(ii) itself provided jurisdiction to revoke or vary bail following a finding of guilt, without resort to s. 523(2). It had been interpreted in that way in cases including *British Columbia (Attorney General) v. British Columbia (Provincial Court Judge)*, (1999), B.C.J. No. 2406 (B.C.S.C.) at para. 17-20 as it would apply to Provincial Court judges. The Honourable Judge Doulis considered the issue in *R. v. P.M.M.*, 2019 BCPC 170, without needing to decide it, because the Crown in the case before her had made its application under s. 523 and 524(8) of the Code.
- [16] This uncertainty was addressed by the Alberta Court of Appeal in *R. v. Aheer*, 2020 ABCA 232, a decision that was very recently followed in this province in *R. v. Hayes*, 2025 BCSC 2187. In *Aheer*, the Alberta Court of Appeal held that s. 523(1)(b)(ii) and 523(2)(a), viewed in context, reflect the distinction between release before a finding of guilt and release after a finding of guilt. Section 523(2) governs revocation of bail before or during trial, prior to a finding of guilt, and the Crown must show cause. Once found guilty, however, an accused no longer benefits from the presumption of innocence. After a finding of guilt on evidence heard by the trial judge, s. 523(1)(b)(ii) grants the trial judge jurisdiction on his or her own motion to revoke bail, without a requirement that the Crown show cause. The two sections therefore address two distinct scenarios.
- [17] In the case at bar, I relied on s. 523(1)(b)(ii) after a finding that F.C.M. was guilty of the offences charged.

Application in this case

- [18] In exercising the jurisdiction conferred by s. 523(1)(b)(ii), I considered three principles. First, a conviction should not automatically lead to the revocation of bail, especially where the accused has complied with all conditions up to that point. Detention prior to sentencing will make it more difficult for an offender to marshal their submissions for a sentence hearing and might lead to an unnecessarily harsh penalty in any case in which further incarceration was ultimately found to be unnecessary.

- [19] Second, the finding of guilt results in the loss of the presumption of innocence.
- [20] Third, the decision to detain or release should be assessed under s. 515(10) as adapted to the circumstances. That well-known section sets out the primary, secondary, and tertiary grounds for detention. In simple terms, those three grounds are:
1. To ensure the offender's attendance in court.
 2. To protect the public, including victims and witnesses.
 3. To maintain public confidence in the administration of justice.
- [21] To be clear, s. 515(10) does not strictly apply to consideration of release or detention following a finding of guilt. I reach that conclusion for two reasons. First, the provision begins with the words, "[f]or the purposes of this section", so the words of the section itself restrict its ambit. Second, the abatement of the presumption of innocence and the finding of guilt colour the consideration of all three factors listed in the section, particularly as they require an assessment of the risk of further offences. However, s. 515(10) and the jurisprudence developed under it can still serve as a guide to some of the factors for consideration following a finding of guilt.
- [22] From the trial evidence, including the offender's own testimony, I knew that F.C.M. is about forty years old. He was born in Colombia, where he lived until about age twenty-eight. He then lived in Ecuador for two years with his wife and daughter before moving to Canada. He was employed as a painter. At the time that he committed the offences, he was separated from his wife and living in a rented room in the victim's father's home. His sixteen-year-old daughter now resides in Kelowna with her mother.
- [23] The evidence established beyond a reasonable doubt that F.C.M. sexually assaulted a sleeping seven-year-old child by rubbing his penis against her vulva and by licking his hand and rubbing the saliva on her vulva. The child pretended to be asleep, then asked, "Why are you doing this?" He replied, "Because you are pretty." She said, "Stop. I am tired." He stopped. I was unable to accept F.C.M.'s denial of the incident, or his argument that there was an innocent explanation for the presence of the child's DNA on his penis.
- [24] He was initially taken into custody by police on the night of the offence and released shortly afterward. He has no criminal record and had complied with his release conditions prior to conviction.

Analysis

- [25] As explained above, after finding he was guilty, I ordered on my own motion that F.C.M. remain in the custody of the Sheriff. He was detained at that time, to await a hearing under s. 523(2)(a) to determine whether he would be released again pending the imposition of sentence. He has not yet applied for his release.

- [26] I detained F.C.M. because based on the facts known to me through the evidence heard on his trial, detention was necessary both to ensure his attendance at the sentence hearing and to maintain public confidence in the administration of justice.
- [27] First, detention was necessary to ensure his attendance in court. F.C.M. has limited ties to Canada. He is a permanent resident but remains a Colombian citizen. He could not provide a residential address and has no significant assets in this country. His only connection to the community is his teenage daughter. Since the decision of the Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9, sentences for sexual offences against children have been increasing. The crimes he committed may attract lengthy jail sentences, despite the absence of a criminal record. A lengthy sentence could in turn attract ancillary consequences including deportation. Given the impact on him of the potential consequences in their totality, I concluded there was a high risk of flight. Detention was necessary to ensure F.C.M. attended court for sentencing.
- [28] Next, detention was necessary to maintain confidence in the administration of justice, having regard to all the circumstances.
- [29] Under s. 515(10)(c) of the Criminal Code one of the factors for consideration when determining pre-trial detention is the strength of the Crown's case. Although the prosecution's case has now been proven, the strength of the Crown's case on sentencing is a relevant factor. The evidence on trial, including the parts of F.C.M.'s testimony that were accepted, would suggest that the Crown's case on sentencing is strong.
- [30] The gravity of the offences was a further consideration. These offences - sexual assault and sexual interference against a sleeping seven-year-old child - are among the most grave known to Canadian law. The gravity of offences like these was emphasized in the opening paragraph of *R. v. Friesen*, when the Court described "the profound wrongfulness and harmfulness of sexual offences against children." While the Kienapple principle may be applied to ensure against multiple convictions for the same delict, the goal of maintaining public confidence in the administration must take into account the gravity of what F.C.M. was found to have done.
- [31] The jurisprudence developed in consideration of s. 515(10)(c) has established that consideration of the need to maintain public confidence in the administration of justice is not limited to rare or exceptional cases: See, for example, *R. v. St-Cloud*, 2015 SCC 27. I concluded that a reasonable member of the public who was aware of the circumstances of the case and of the legal principles applicable to the issue of bail would lose confidence in the administration of justice if F.C.M.'s release order was not revoked pending sentence.

Conclusion

[32] For those reasons, I exercised the jurisdiction granted under s. 523(1)(b)(ii) to order his detention following the finding of guilt to ensure his attendance at his sentence hearing and to maintain public confidence in the administration of justice.

"Hewson J."

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