

CANADA / JUDGMENT

R. v. Gomez

2026 ONCA 286

COURT

Court of Appeal for Ontario

DECIDED

20 April 2026

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R. v. Gomez Collection Decisions of the Court of Appeal Date 2026-04-20 Neutral citation 2026 ONCA 286 Docket numbers COA-23-CR-1253 Judges Roberts, Lois B.; Miller, Bradley; Rahman, Moiz Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Gomez, 2026 ONCA 286[1] DATE: 20260420 DOCKET: COA-23-CR-1253 Roberts, Miller and Rahman JJ.A. BETWEEN His Majesty the King Respondent and Danilo Tobar Gomez Appellant Danilo Tobar Gomez, acting in person Nicholas Hay, for the respondent Heard: April 15, 2026 On appeal from the sentence imposed by Justice Andrew J. Goodman of the Superior Court of Justice, on September 25, 2023. REASONS FOR DECISION

- [1] The appellant was convicted of sexual assault and sentenced to four years in custody. His conviction appeal has been bifurcated from his sentence appeal. It is only the sentence appeal that is before the panel.
- [2] The appellant raises the following arguments: 1) the sentencing judge improperly took into account as an aggravating factor his lack of expression of remorse because he was appealing his conviction and did not plead guilty; 2) the sentencing judge incorrectly relied on R. v. Rand, 2012 ONCA 731, 307 O.A.C. 64, in which the appellant says the victim was younger than in the present case; 3) the sentencing judge unfairly considered that the appellant did not participate in programs.
- [3] We are not persuaded that the sentencing judge made any reversible error.
- [4] We disagree that the sentencing judge erred in his survey of the relevant case law, including Rand. His reasons demonstrate that he did not apply the outcome of any particular decision. The four-year sentence is squarely in the middle of the typical three-to-five-year range for penetrative sexual assaults, as set out by this court in R. v. A.J.K., 2022 ONCA 487, 162 O.R. (3d) 721, at para. 77. It also reflects the necessary emphasis that the sentencing judge gave to the predominant sentencing principles of specific and general deterrence and denunciation in the circumstances of this case.
- [5] These circumstances included the serious, aggravating factors that the sentencing judge considered. Notably, the appellant's lengthy criminal record that spans over two decades includes violent offences against women. As well, the circumstances of the index offences

were particularly aggravating, namely, two forced sexual penetrations where he ejaculated without a condom, despite the complainant repeatedly saying no, and that left her bruised. The sentencing judge also considered that, based on her victim impact statement, the victim's life was profoundly affected.

- [6] We do not agree that the sentencing judge took into account the appellant's lack of a guilty plea as an aggravating factor; indeed, he said expressly he did not. However, the sentencing judge properly considered the appellant's lack of remorse with respect to his future rehabilitative prospects, as well as the fact that the appellant showed little insight into his behaviour. In that respect, the sentencing judge noted that the appellant had failed to complete any counselling program offered to him in the past. As the sentencing judge correctly observed, restraint and rehabilitation were secondary sentencing factors here.
- [7] There were few mitigating factors nor strong rehabilitative prospects: the appellant was not a youthful, first-time offender, had little community or family support, or viable employment prospects. While the sentencing judge also considered the collateral immigration consequences for the appellant of a sentence greater than six months, he rightly determined that six months was not a fit sentence in the circumstances of this case.
- [8] The sentence judge's decision contains no reversible error and the sentence is entirely fit. As a result, it is owed considerable deference, and there is no basis to intervene: *R. v. Sheppard*, 2025 SCC 29, 451 C.C.C. (3d) 417, at para. 38; *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 41, citing *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at paras. 123, 125.
- [9] The sentence appeal is dismissed. "L.B. Roberts J.A." "B.W. Miller J.A." "M. Rahman J.A."
- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.

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