

CANADA / JUDGMENT

R. v. Grewal

2025 BCCA 335

COURT

British Columbia Court of Appeal

DECIDED

16 September 2025

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2025 BCCA 335 R. v. Grewal COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Grewal, 2025 BCCA 335 Date: 20250916 Docket: CA50096 Between: Rex Respondent And Neelam Kamaljit Singh Grewal Appellant Before: The Honourable Madam Justice Fenlon The Honourable Justice Fleming The Honourable Justice MacNaughton On appeal from: An order of the Provincial Court of British Columbia, dated July 26, 2019 (conviction) (R. v. Grewal, Abbotsford Dockets 86410-1; 86411-1). Oral Reasons for Judgment Counsel for the Appellant (via videoconference): R. Dhanu, K.C. Counsel for the Respondent: K.L. Torvik Place and Date of Hearing: Vancouver, British Columbia September 16, 2025 Place and Date of Judgment: Vancouver, British Columbia September 16, 2025 Summary: The appellant pleaded guilty to two charges of possession for the purpose of trafficking. He was informed by defence counsel that his guilty pleas would not jeopardize his permanent residency in Canada. He was later issued a deportation order. The appellant claims that he would not have agreed to the pleas had he been properly informed of their consequences. He asks this Court to grant him an extension of time to appeal his convictions, admit fresh evidence, set aside his guilty pleas, and order a new trial. Held: Appeal allowed. Defence counsel misinformed the appellant about the immigration consequences of his plea arrangement. The Crown concedes that allowing the pleas to stand would result in a miscarriage of justice.

- [1] FENLON J.A.: In 2019, the appellant, Neelam Grewal, pleaded guilty to two charges of possession for the purpose of trafficking. He asks this Court to set aside those guilty pleas on the ground that his pleas were uninformed, and allowing them to stand would result in a miscarriage of justice. Mr. Grewal applies for an extension of time to bring this appeal and to adduce fresh evidence.
- [2] The appeal can be addressed summarily because the Crown concedes that a miscarriage of justice has occurred, that an extension should be granted, and that the fresh evidence should be admitted.

- [3] Mr. Grewal left India and moved to Canada in 1991 when he was 18 years old. He became addicted to heroin soon after, although he managed to continue working and supporting his family. In December 2015, and again in June 2016, Mr. Grewal was arrested after police observed him engaged in what appeared to be a dial-a-dope trafficking operation. He was found to be in possession of small quantities of prohibited drugs and was charged in separate Informations for each incident.
- [4] Mr. Grewal initially entered not guilty pleas and set both matters for trial. As a permanent resident and non-citizen, avoiding immigration consequences was one of Mr. Grewal's primary concerns. He had at that point lived in Canada for 27 years; his wife and three adult children resided here and relied on him for support.
- [5] In July 2018, Mr. Grewal retained new counsel who negotiated a joint submission with Crown Counsel for a suspended sentence and probation. Defence counsel advised Mr. Grewal to plead guilty, and assured him that this outcome would avoid immigration consequences.
- [6] It is evident from the transcript of the proceedings below that Mr. Grewal's counsel misinformed him about the immigration consequences of the proposed plea arrangement. Counsel believed that a suspended sentence would not trigger immigration consequences because it did not amount to a sentence of six months or more. However, s. 36(1) of the Immigration and Refugee Protection Act, S.C. 2001, c. 27, provides that a permanent resident will be "inadmissible on grounds of serious criminality" for "having been convicted in Canada of an offence punishable by a maximum term of imprisonment of at least 10 years, or of an offence for which a term of imprisonment of more than six months has been imposed" (emphasis added). Because the maximum punishment for possession for the purpose of trafficking a Schedule I substance is life imprisonment, Mr. Grewal was subject to the provision as soon as he entered a guilty plea, regardless of the type of sentence imposed.
- [7] Mr. Grewal was sentenced in August 2022. In December 2023, he received an interview request from Canada Border Services Agency. It was at this point that Mr. Grewal first discovered that the convictions could impact his immigration status. He was issued a deportation order on July 19, 2024.
- [8] Mr. Grewal deposed that, if properly informed about the immigration consequence of the guilty pleas, he would have continued to trial or explored other options, such as pleading to the lesser included offence of possession or proceeding in Drug Treatment Court.
- [9] I agree with the Crown respondent that Mr. Grewal has met the two-step test for setting aside a guilty plea established by the Supreme Court of Canada in *R. v. Wong*, 2018 SCC 25. He has demonstrated both that he was misinformed about the consequences of entering the guilty pleas, and that the misinformation resulted in prejudice to him.

- [10] It is also notable that the circumstances surrounding the entering of the guilty pleas were not ideal. Mr. Grewal appeared by telephone, a Punjabi interpreter was not made available, and the judge did not conduct a formal plea comprehension inquiry under s. 606(1.1) of the Criminal Code, R.S.C. 1985, c. C-46.
- [11] In these circumstances it would be a miscarriage of justice to allow the convictions to stand. I would therefore grant an extension of time to appeal the convictions, admit the fresh evidence, set aside the guilty pleas, and order a new trial.
- [12] FLEMING J.A.: I agree.
- [13] MACNAUGHTON J.A.: I agree.
- [14] FENLON J.A.: An extension of time is granted, the fresh evidence is admitted, the guilty pleas are set aside, and a new trial is ordered. "The Honourable Madam Justice Fenlon"

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