

CANADA / JUDGMENT

R. v. Hummer

2026 ONCA 185

COURT

Court of Appeal for Ontario

DECIDED

12 March 2026

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R. v. Hummer Collection Decisions of the Court of Appeal Date 2026-03-12 Neutral citation 2026 ONCA 185 Docket numbers COA-24-CR-0984 Judges Gillese, Eileen E.; Dawe, Jonathan; Madsen, Lene Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Hummer, 2026 ONCA 185 DATE: 20260312 DOCKET: COA-24-CR-0984 Gillese, Dawe and Madsen JJ.A. BETWEEN His Majesty the King Respondent and Courtney Hummer Appellant Victor O'Brien, for the appellant Amy Rose, for the respondent Heard: March 6, 2026 On appeal from the conviction entered by Justice Jennifer R. Hoshizaki of the Ontario Court of Justice on May 15, 2024. Gillese J.A.: Overview

- [1] On May 15, 2024, Ms. Hummer (the “appellant”) entered a plea of guilty to one count of fraud. Through her counsel, the appellant agreed she failed to declare over \$50,000 of earnings and COVID-19 benefits while required to do so as a condition of receiving government assistance. As a result, she collected just over \$16,000 through Ontario Works to which she was not entitled.
- [2] Based on a joint submission, the appellant was sentenced to a six-month conditional sentence consisting of “house-arrest” for three months followed by a curfew for an additional three months. She was also subject to a free-standing restitution order in the amount of \$13,625.50.
- [3] The appellant now seeks to set aside her guilty plea on two grounds. First, she submits her plea was involuntary because, when she made it, she was suffering from various mental health conditions. Second, she submits her plea was uninformed because she was unaware that those conditions might have provided her with a defence. Both grounds of appeal turn on fresh evidence the appellant filed regarding her mental health at the relevant times.
- [4] The appellant does not allege ineffective assistance of counsel, although she does allege that her counsel was not aware of the scope of her mental health conditions. This matter has not, and could not have, been tested because the appellant invoked solicitor-client privilege over her trial file.
- [5] After hearing the appellant’s oral submissions, we advised the parties that it was unnecessary to hear from the Crown and the appeal was dismissed.

Background

- [6] The appellant was the sole support parent for one child when she applied for Ontario Works assistance on April 24, 2018. At the time, she worked from home as a registered massage therapist. She was granted assistance based on the information she provided and directed to report all her income going forward.
- [7] Ms. Hummer declared some earnings until January 2019 when she advised Ontario Works that she was focusing on her health concerns. Later, she reported that her basement, where she had her massage practice, had flooded. The appellant reported some earnings in early 2020. However, massage therapy was a prohibited business during the COVID-19 lockdowns and her income ceased as a result. The appellant declared no further earnings.
- [8] In March 2021, an eligibility verification process revealed Canada Revenue Agency tax summaries showing income in amounts greater than what she had declared to Ontario Works. Specifically, the appellant failed to report \$25,571.67 in earnings, as well as pandemic benefits in the amount of \$26,000. This meant that she received \$16,130.50 from Ontario Works to which she was not entitled. She was charged in May 2023 and retained counsel.
- [9] In the 12 months that followed, counsel sought and reviewed disclosure, conducted a pre-trial, discussed a guilty plea with her client, and secured the non-custodial resolution described above.
- [10] At the time of the plea, the facts of the offence were agreed and stipulated. Counsel for the appellant acknowledged, on behalf of her client, that the facts were correct.
- [11] Prior to entry of the appellant's guilty plea, her counsel confirmed to the court that she had conducted a plea inquiry with the appellant "many times". Counsel was aware of the appellant's mental health challenges and advanced them as mitigating circumstances on sentence. She explicitly referred to the appellant's post-traumatic stress disorder ("PTSD") and anxiety disorder. She also brought to the court's attention the appellant's financial struggles at the relevant times and that the conviction had the collateral consequence of rendering the appellant unable to practice as a massage therapist. Fresh Evidence Application
- [12] The fresh evidence the appellant seeks to have admitted consists of her affidavit and its appended medical records. That evidence indicates the following. When the appellant entered the guilty plea, she was suffering from anxiety, depression, PTSD, and insomnia. She retained counsel in this matter because she felt she was innocent and intended to defend herself. However, on the day of the plea, the appellant was not thinking clearly because she had not slept for the three preceding days, and was suffering from heightened anxiety, depression, and PTSD. She attests that she had not fully informed her counsel that she suffered from these conditions.

- [13] The appellant further attests that she did not fully appreciate what she was doing by pleading guilty and that she felt she had no choice. It was only later that the appellant learned, from her current counsel, that her medical conditions might have provided a defence to the charge.
- [14] The court admitted the fresh evidence. When the validity of a guilty plea is raised for the first time on appeal, the reviewing court must examine “the trial record and any additional materials tendered by the parties which, in the interests of justice, should be considered in assessing the validity of the plea”: *R. v. Cherrington*, 2018 ONCA 653, at para. 28.

Analysis

- [15] For a guilty plea to be valid, it must be voluntary, unequivocal, and informed: *R. v. Wong*, 2018 SCC 25, [2018] 1 S.C.R. 696, at para. 3. In my view, the appellant has failed to establish that her guilty plea was either involuntary or uninformed. No issue as to the unequivocal nature of the plea has been raised.
- [16] Guilty pleas should not be set aside lightly. The plea resolution process is central to the criminal justice system as a whole. Maintaining their finality is important to ensuring the stability, integrity, and efficiency of the administration of justice: *Wong*, at para. 3. The Plea was Voluntary
- [17] A guilty plea entered in open court in the presence of counsel is presumed to be voluntary. When an appellant seeks to displace this presumption based on a mental disorder or condition, they face a high bar. They must demonstrate to the reviewing court that they “lacked the capacity to make an active or conscious choice whether to plead guilty”: *Cherrington*, at para. 21. To enter a voluntary plea of guilty, an accused need only be able to understand the process leading to the plea, communicate with counsel, and make an active or conscious choice: *Cherrington*, at para. 21.
- [18] There is nothing in the record or the fresh evidence to suggest that the appellant was unable to understand the process leading to the plea, to communicate with her counsel, or to make a conscious choice to proceed with the plea. This was not a plea entered spontaneously or in haste. On the contrary, the appellant actively participated throughout the year-long process leading to the plea. During that time, she was represented by counsel who appeared with her, or on her behalf, on numerous occasions. At or between appearances, counsel requested further disclosure, conducted a pretrial, and sought adjournments so that she could confer with her client. Of particular note, at the appellant’s first scheduled plea date, counsel deferred the plea to ensure that the appellant’s questions about the joint submission were addressed.
- [19] Further, the appellant attended the plea proceeding and entered the plea in person. Through counsel, the appellant acknowledged that the allegations read in by the Crown were correct. The appellant also participated during sentencing: she told the court she was “sincerely sorry” and had taken steps to obtain counselling and support. When the judge asked the

appellant if she needed any clarification after the sentence was imposed, she thanked the judge. The appellant's counsel also stated on the record that she had conducted a plea-comprehension inquiry with the appellant "many times" prior to the appellant entering the plea. At no point did the appellant express any concern, hesitation, or confusion about what was happening when she entered the plea.

- [20] The record, as amplified by the fresh evidence, does not persuade me that the appellant's mental health conditions rendered her plea involuntary. The general and cursory statements in her affidavit fall short of establishing that she was so incapacitated she was not acting voluntarily. It fails to address how anxiety, depression, PTSD, and insomnia impacted on her ability to participate in the proceeding or to a failure to appreciate the plea process and effect of the plea. While anxiety, depression, PTSD, and insomnia are very real problems, without more, they do not render an accused person incapable of understanding the nature of legal proceedings or of making a conscious decision to plead guilty: *R. v. Baylis*, 2015 ONCA 477, at para. 47. The Plea was Informed
- [21] For a plea to be informed, an accused must be aware of the nature of the allegations, the effect of the plea, and the criminal and legally relevant collateral consequences of pleading guilty: *Wong*, at paras. 3-4. To withdraw a guilty plea on the basis it was uninformed, the appellant must demonstrate subjective prejudice. Subjective prejudice requires an appellant to establish a reasonable possibility that they would have proceeded differently had they been in possession of the missing information: *Cherrington*, at paras. 23-24.
- [22] In my view, the appellant has not established subjective prejudice sufficient to render her plea uninformed.
- [23] The appellant asserts that she would have gone to trial if she had understood that her mental health conditions might have provided her with a defence. However, that assertion is not supported on the record. There is nothing to indicate that the appellant lacked information which might have reasonably changed her course of conduct during the process leading up to the plea proceeding or during the plea proceeding itself. Nor has the appellant indicated how her mental health conditions might have provided a defence to the fraud charge. Finally, it is clear from the record that the appellant's counsel, who benefits from a strong presumption of competence, was aware of her mental health conditions, if not perhaps their full extent.

Disposition

- [24] Accordingly, the appeal is dismissed. Released: March 12, 2026 "E.E.G." "E.E. Gillese J.A." "I agree. J. Dawe J.A." "I agree. L. Madsen J.A."

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Prepared on 26 October 2026 · Esheria