

CANADA / JUDGMENT

R. v. J.H.

2025 ONCA 837

COURT

Court of Appeal for Ontario

DECIDED

1 December 2025

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R. v. J.H. Collection Decisions of the Court of Appeal Date 2025-12-01 Neutral citation 2025 ONCA 837 Docket numbers COA-25-OM-0430 Judges Paciocco, David M. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. J.H., 2025 ONCA 837[1] DATE: 20251201 DOCKET: COA-25-OM-0430 Paciocco J.A. (Motion Judge) BETWEEN His Majesty the King Respondent and J.H. Appellant/Applicant Ramez Ghaly, for the appellant/applicant Manasvin Goswami, for the respondent Heard: In writing REASONS FOR DECISION

- [1] On April 21, 2022, J.H. pleaded guilty to exercising control, direction or influence over the movements of a person providing sexual services contrary to s. 286.3(1) of the Criminal Code, R.S.C. 1985, c. C-46, after spending what the trial judge found to be the equivalent of 270 days in pre-sentence custody. He received the equivalent of a time-served sentence of one day plus one year of probation for this serious offence, but he remained in custody as he was being held on unrelated charges, before he was ultimately released.
- [2] J.H. did not take steps to appeal his conviction for more than three years after his conviction and sentence. In his affidavit in support of this motion, he attests that he did not appreciate the impact that his conviction would have until he found it difficult to secure other employment after losing his job in May 2023, more than a year after his conviction and sentence. He also attested that he did not understand that it was possible to appeal his conviction until he contacted counsel in May 2025. It then took him until September 2025 to retain counsel due to financial circumstances. The notice of appeal he is now relying upon is dated October 31, 2025, approximately three and one-half years after his conviction and sentence.
- [3] An extension may be granted where the justice of the case requires. The legal test for granting an extension of time was described in R. v. Ansari, 2015 ONCA 891, 128 O.R. (3d) 511, at paras. 22-23. The primary factors for consideration include: (1) whether the applicant has shown a bona fide intention to appeal within the appeal period; (2) whether the applicant has accounted for or explained the delay; and (3) whether the proposed appeal has merit. A consideration of these factors would not support an extension of time in the circumstances of this case, and I would deny this motion as contrary to the interests of justice. In coming to this decision, and in the exceptional circumstances of this case, I have

considered the Appellant's Reply Factum as well as a reply affidavit filed by J.H., who was informed through administrative error that he would have a right of reply to the Crown, when in fact there is no such right.

- [4] First, J.H. did not form an intention to appeal within the appeal period. Although he attempted to request a copy of the disclosure four months after his release, based on his affidavit, it was his difficulties in securing employment after his May 2023 job loss that raised concerns in his mind about the impact of his conviction. Even then, he did not move with any dispatch. He did not seek the assistance of counsel until May 2025, and only then appears to have formed the intention to appeal. I appreciate that J.H. was unrepresented for much of the period of delay and I accept that allowances must be made for the challenges faced by unrepresented individuals who are left alone to navigate the legal system. But there is no evidence that J.H. even attempted to do so until he contacted counsel. He has not provided a reasonable explanation for his delay in filing a notice of appeal or seeking an extension of time earlier. Hence the first and second factors do not support an extension.
- [5] There can be no question that granting the extension of time and permitting his appeal to go forward at this late date would cause prejudice by compromising the public interest in finality. It could also cause prejudice to the complainant. Although she was not prepared to cooperate at the time of the plea, circumstances may change, and if the conviction is called into question after the long delay that has occurred it could well resurrect stress and trauma. I accept that extensions of time to appeal are appropriate even after a long delay where there is good reason to doubt the validity of the conviction or there is a real concern that an injustice may have occurred: see *R. v. Menear* (2002), 162 C.C.C. (3d) 233 (Ont. C.A.), at para. 24, leave to appeal refused, [2002] S.C.C.A. No. 116. Here there is no such reason. The merits of the appeal are weak.
- [6] Specifically, J.H. claims that he pleaded guilty to liberate himself from the hardships of incarceration under difficult conditions. In fact, J.H. was not going to be released from custody even with the time-served plea deal because he was also being detained on unrelated charges, after his earlier bail release was revoked when he was arrested and charged with offences relevant to the matter before me. J.H. claims that he honestly believed that if he pleaded guilty, he would be released as soon as possible on the same prior bail conditions for the unrelated charges. Even if that was so, pressure inspiring a decision to plead guilty cannot undermine the voluntariness of a plea unless it rises to the level that it has impaired the ability of the accused to make a conscious choice: see *R. v. Krzehlik*, 2015 ONCA 168, 124 O.R. (3d) 561, at para. 35. The record before me simply cannot support such a finding. There is no evidence that J.H. was particularly vulnerable when incarcerated or mentally incapable of making a conscious and voluntary decision. The conditions he describes as motivating him to choose to plead guilty to gain his release are experienced by many inmates, and absent exceptional circumstances will not rise to the level needed to find a plea to be involuntary. If they did, no guilty pleas would be final, contrary to the public interest. There are no exceptional circumstances here to support a meritorious appeal based

on the involuntariness of the guilty plea.

- [7] Of course, a plea must also be unequivocal and informed. But J.H.'s claim that he did not understand the elements of the offence and the consequence of his plea also lacks merit. The particulars of the offence were amended on consent in open court, in his presence, capturing the theory of the Crown in language there is every reason to believe he understood. He then accepted the facts that supported each of the elements, facts he had been provided with before he entered his guilty plea. His counsel said in court that J.H. had read those facts and that J.H. agrees to them, and J.H. confirmed this himself. It was also clear from the record on the day the plea was entered that the complainant was not cooperating, and that the Crown's case was largely based on electronic intercepts. J.H.'s suggestion that he did not appreciate this is unpersuasive given the record, notwithstanding his claims to the contrary made in his affidavit. Finally, it is not a precondition of a valid plea that a represented accused person has the personal opportunity to review the disclosure. J.H.'s claim that he did not see the disclosure himself does not move the needle. His lawyer said he was given disclosure shortly before the trial but there was no suggestion that the lawyer did not review it.
- [8] J.H.'s suggestion that trial counsel provided ineffective assistance by not ensuring his understanding of the case against him also lacks credibility. His lawyer received the agreed statement of facts, the forfeiture order, and the proposed probation conditions in advance and was given time to review them with J.H. On the day the plea was entered J.H.'s lawyer assured the court that instructions had been settled that morning, and J.H. raised no objection. There is a strong presumption that a lawyer has discharged their obligations. J.H.'s claim that his lawyer failed to do so does not provide good reason to doubt the validity of his conviction or provide real concern that an injustice may have occurred. It is evident from the record taken as a whole that J.H. has simply come to a belated decision to attempt to challenge a conviction that was resolved years ago.
- [9] It is not in the interests of justice to grant J.H.'s motion for an extension of time to appeal. His motion is denied. "David M. Paciocco 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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