

CANADA / JUDGMENT

R. v. Kahin

2025 ONCA 803

COURT

Court of Appeal for Ontario

DECIDED

20 November 2025

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R. v. Kahin Collection Decisions of the Court of Appeal Date 2025-11-20 Neutral citation 2025 ONCA 803 Docket numbers COA-25-OM-0145 Judges Roberts, Lois B. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Kahin, 2025 ONCA 803 DATE: 20251120 DOCKET: COA-25-OM-0145 Roberts J.A. (Motion Judge) BETWEEN His Majesty the King Respondent/Responding Party and Omer Musse Kahin Appellant/Moving Party Omer Musse Kahin, acting in person Colleen Robertshaw, for the responding party Mary Paterson, appearing as amicus curiae, Pro Bono Ontario Heard: November 5, 2025 REASONS FOR DECISION

- [1] The moving party seeks leave to appeal the dismissal of his appeal under Part I of the Provincial Offences Act, R.S.O. 1990, c. P.33 (“POA”) from his conviction for speeding contrary to s. 128 of the Highway Traffic Act, R.S.O. 1990, c. H.8.
- [2] The proceedings were commenced by way of certificate of offence under Part I of the POA. On January 9, 2023, the moving party filed a notice of intention to appear. By notice of trial on January 17, 2024, the moving party was informed that his trial was scheduled for May 16, 2024. He did not attend on that date, nor did he contact the court. He was convicted in absentia under s. 9.1(1) of the POA, which deemed him to not wish to contest the charge, and ordered to pay a set fine of \$180, plus the victim surcharge and court costs, within 15 days.
- [3] On May 17, 2024, the moving party attended the court and submitted an application to reopen on the basis that he was too ill to attend on the scheduled date. This application was dismissed on May 29, 2024.
- [4] On August 26, 2024, the moving party submitted applications for the following relief: an extension of time to file a notice of appeal; an appeal of his conviction; a stay of his conviction pending appeal; and leave to file his appeal without paying the imposed fine. On August 29, 2024, his applications were dismissed.
- [5] On March 3, 2025, the moving party paid the fine totaling \$270.00. The moving party seeks leave to appeal the August 29, 2024 order. He submits that his absence from his trial was because of illness and the failure of the paralegal whom he retained to represent him to attend on his behalf.

- [6] On October 22, 2025, the original return date of the leave motion before this court, George J.A. raised the issue of whether this court has jurisdiction to hear the motion for leave to appeal. The motion was adjourned to November 5, 2025 to allow the parties to consider this issue and make submissions.
- [7] The Crown submits that this court has no jurisdiction to hear the moving party's proposed appeal because it is an appeal from a denial of an extension of time to appeal under s. 85(1) of the POA with respect to proceedings under Part I of the POA. The Crown relies on *R. v. A.E.*, 2016 ONCA 243, 348 O.A.C. 68, for the principle that there is no appeal from the dismissal of an extension of time to appeal for proceedings under Parts I and II of the POA.
- [8] The dismissal of the appellant's appeal followed from the dismissal of his application for an extension of time to appeal; the other three applications for various remedies depended on his being granted an extension of time to appeal. It is therefore the dismissal of an extension of time to appeal that is in issue here.
- [9] In *A.E.*, Feldman J.A., writing for the court, confirmed that this court does not have jurisdiction to grant leave to appeal the dismissal of an application for an extension of time to appeal a conviction in proceedings under Part I of the POA. *A.E.* expressly distinguished between appeals brought in proceedings under Parts I and II from those under Part III. At para. 34, Feldman J.A. noted: "By contrast with Part I and II proceedings, there is good reason to allow a slightly less restricted opportunity to appeal in Part III proceedings, which generally involve more serious offences and which may carry more significant penalties."
- [10] The court in *A.E.* agreed with the analysis of Epstein J.A. in *R. v. Melaku* (2011), 106 O.R. (3d) 481 (C.A.). In *Melaku*, at paras. 43-47, Epstein J.A. explained the rationale for limiting appeals from dismissals of extension of time to appeal under Parts I and II proceedings, concluding that the "dead-end created by s. 85" is consistent with the overall scheme and object of the POA and the intention of the legislature: the POA contemplates an efficient and expedient summary procedure for offences that are less serious and more regulatory than criminal in nature.
- [11] Ms. Paterson, as amicus, argues that the court should apply a further exception like the one carved out for Part III offences in *A.E.* She highlights that the moving party has had no chance for his case to be heard on the merits for reasons beyond his control: he was ill and the paralegal he retained to represent him failed. He was not inattentive, nor did he act in bad faith. He immediately tried to rectify his failure to appear.
- [12] Notwithstanding Ms. Paterson's very able submissions, I conclude that this court has no jurisdiction to hear the motion for leave to appeal because I am bound by this court's decision in *A.E.* that held that there is no appeal from a denial of an extension of time to appeal in proceedings under Part I and II of the POA.

- [13] While the moving party's circumstances are exceptional to him, they are not similar to the narrow exception carved out by this court in A.E. The kind of exception suggested by Ms. Paterson has never been made by this court with respect to appeals from a denial of an extension of time to appeal in proceedings under Parts I and II of the POA. It is not open to me as a single judge of this court to find such an exception.
- [14] As noted in other decisions of this court, the moving party is not without recourse and may be able to seek redress, if appropriate, pursuant to s. 140 of the POA: see, for example, Melaku, at para. 48; R. v. Borges, 2011 ONCA 621, 107 O.R. (3d) 377, at para. 12. Section 140 permits the Superior Court of Justice to, on application, "grant any relief in respect of matters arising under this Act that the applicant would be entitled to in an application for an order in the nature of mandamus, prohibition or certiorari."
- [15] This motion for leave to appeal is therefore dismissed.
- [16] This court is indebted to Ms. Paterson for her very helpful assistance on this matter. "L.B. Roberts J.A."

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