

CANADA / JUDGMENT

R. v. Kubesch

2025 ONCA 763

COURT

Court of Appeal for Ontario

DECIDED

7 November 2025

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

R. v. Kubesch Collection Decisions of the Court of Appeal Date 2025-11-07 Neutral citation 2025 ONCA 763 Docket numbers COA-24-CR-1382 Judges Miller, Bradley; Paciocco, David M.; Favreau, Lise G. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Kubesch, 2025 ONCA 763 DATE: 20251107 DOCKET: COA-24-CR-1382 Miller, Paciocco, Favreau JJ.A. BETWEEN His Majesty the King Respondent and Paul Kubesch Appellant Paul Kubesch, acting in person Étienne Lacombe, for the respondent Heard: November 4, 2025 On appeal from the sentence imposed by Justice Richard Nathanson of the Ontario Court of Justice on December 5, 2024. REASONS FOR DECISION

- [1] Mr. Kubesch, who has an extensive record of child sexual offences dating back to 1996, was declared a dangerous offender on May 10, 2022, and placed on a long-term supervision order after being convicted of a brazen sexual assault of a four-year old child that occurred in public, in a store, in the brief moments when the child became separated from her parents. On October 4, 2024, he was convicted of breaching that long-term supervision order as well as two prohibition orders made under s. 161 of the Criminal Code, R.S.C. 1985, c. C-46, after he attended a religious service in a church in the immediate presence of numerous children, a mere 30 days after being released to the Keele Street Community Correctional Centre. The trial judge imposed a net sentence of 20 months, including 60 days of credit for serving 46 days prior to being sentenced, after the trial judge considered the harsh conditions of his pre-sentence custody.
- [2] Mr. Kubesch, whose bifurcated conviction appeal is pending in the solicitor stream, argued his sentence appeal before us in inmate appeal court, unassisted by duty counsel. After oral submissions were completed, we granted leave to appeal his sentence but denied his sentence appeal for reasons to follow. These are our reasons.
- [3] Mr. Kubesch argues that he should have been given sentence credit for the days he was held in custody after his long-term supervision order was suspended and before charges for the breaches were laid. He submits that the delay in charging him was tactical, intended to prevent him from earning pre-sentence custody credit. His lawyer did not request credit for this period during the sentencing hearing, but instead agreed with the Crown that the duration of Mr. Kubesch's pre-sentence custody at issue was 46 days. His lawyer also did not

raise an abuse of process argument and the record on appeal is inadequate to address whether the delay in his being charged was tactical. There is no basis in those circumstances for finding that the trial judge erred in failing to give the 90 days of credit Mr. Kubesch is now claiming. We therefore dismissed this ground of appeal. Although the issue was not argued before us, we also note that other appellate courts have held that, if subsequently charged and convicted, offenders receive no sentence credit for the period their long-term supervision order was suspended before a charge is laid: *R. v. Wilson*, 2010 BCCA 65 at paras. 13-20, 252 C.C.C. (3d) 117, leave to appeal refused, [2010] S.C.C.A. 108; *Larrivée c. R.*, 2020 QCCA 1774, at paras. 16-31, leave to appeal refused, [2021] S.C.C.A. No. 63.

- [4] Mr. Kubesch also argued that the trial judge erred by allocating pre-sentence credit at a ratio of 1:1.3, instead of 1:1.5, and for refusing to grant an additional Duncan credit for the harsh conditions of detention he endured while in custody prior to being sentenced. We denied this ground of appeal because the trial judge's determination is entitled to deference and was grounded in both authority and the record. Specifically, there is authority supporting the denial of enhanced credit for pre-sentence custody experienced when on a long-term supervision order, since the long-term supervision order continues to run pending sentencing: *R. v. Bourdon*, 2012 ONCA 256, 110 O.R. (3d) 168, at para. 17; *R. v. Ipeelee*, 2009 ONCA 892, 99 O.R. (3d) 419, at para. 10, rev'd on other grounds, 2012 SCC 13, [2012] 1 S.C.R. 433. The trial judge decided not to award a credit of 1:1.5 given that Mr. Kubesch was not a strong candidate for early release due to his criminal history and dangerous offender status. He did award credit at a rate of 1:1.3 because Mr. Kubesch experienced many lockdowns while incarcerated, which results in "considerably harsher time in pre-trial custody". We see no basis for interfering with this decision. The trial judge was entitled to make the findings that he did on the evidence before him and to exercise his discretion in this way.
- [5] The final argument Mr. Kubesch pursued before us was based on his submission that the trial judge imposed the gross sentence of 22 months so that Mr. Kubesch would be detained long enough to obtain treatment in the federal system, but he has in fact served his time in provincial institutions and has not had access to rehabilitation. Mr. Kubesch misreads the sentencing decision. The trial judge imposed the sentence he did with the primary objective of denouncing and deterring the breaches of the orders by Mr. Kubesch. This struck at the heart of the protective objective of the long-term supervision order, in circumstances that posed a serious risk to children, given Mr. Kubesch's history and the fact that he committed the index offence which led to the long-term supervision order while under a s. 161 prohibition. We dismissed this ground of appeal because the sentence imposed was fit and arrived at without error
- [6] Leave to appeal the sentence is granted, but the sentence appeal is dismissed. "B.W. Miller J.A." "David M. Paciocco J.A." "L. Favreau J.A."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/coa/coa/en/item/23681/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-kubesch-2025>

Prepared on 25 October 2026 · Esheria