

CANADA / JUDGMENT

R. v. Kulatheeswaran

2025 ONCA 748

COURT

Court of Appeal for Ontario

DECIDED

30 October 2025

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R. v. Kulatheeswaran Collection Decisions of the Court of Appeal Date 2025-10-30 Neutral citation 2025 ONCA 748 Docket numbers COA-25-CR-0797, COA-25-CR-0905, M56414 Judges Huscroft, Grant Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Kulatheeswaran, 2025 ONCA 748 DATE: 20251030 DOCKET: M56414 (COA-25-CR-0797 & COA-25-CR-0905) Huscroft J.A. (Motion Judge) BETWEEN His Majesty the King Appellant (Respondent/Moving Party) and Thaksan Kulatheeswaran Respondent (Appellant/Responding Party) Akshay Aurora, for the moving party Julia Kirby, for the responding party Heard in-writing REASONS FOR DECISION

- [1] The Crown seeks an order to bifurcate its sentence appeal (COA-25-CR-0797) from the responding party's conviction appeal (COA-25-CR-0905), arising from the same proceedings.
- [2] Mr. Kulatheeswaran, was convicted of several firearms offences in addition to failing to remain at the scene of an accident and refusing to comply with a demand for a breath sample. He was sentenced to a conditional sentence of 2 years less one day. After reducing time for Summers credit, he is presently serving a conditional sentence of 618 days – approximately 20 months.
- [3] The Crown seeks leave to appeal sentence on the basis that it is both tainted by errors in principle and is demonstrably unfit. The Crown seeks a penitentiary sentence of 46-months and requests that the court re-incarcerate Mr. Kulatheeswaran. The Crown has perfected its appeal and is ready to have the appeal listed and heard.
- [4] Mr. Kulatheeswaran is represented by counsel on the sentence appeal but is not represented on his conviction appeal. Little progress has been made on the appeal from conviction. An application for legal aid is pending. In the event legal aid is not granted, he may bring a s. 684 application. The appeal may end up in the inmate stream. No transcripts have been ordered or filed.
- [5] The Crown accepts that appeals from conviction and sentence are normally heard together and that there are good reasons for this, including efficiency and avoiding possibly contradictory outcomes. However, the Crown argues that delay in perfecting the conviction appeal will significantly prejudice its position on the sentence appeal. It points out that Mr.

Kulatheeswaran will have served a considerable portion of his conditional sentence by the time the conviction appeal is heard, and that, as a result, the court may be unwilling to require him to serve a carceral sentence even if the Crown succeeds on its sentence appeal.

- [6] Counsel for Mr. Kulatheeswaran argues that the appeals involve overlapping issues and emphasizes the risk of repetition and conflicting outcomes. The court should not be required to determine the sentence appeal without knowing which of the several convictions may stand after the conviction appeal. The panel hearing the conviction appeal may have to adjust the sentence if that appeal succeeds – even partially – and this gives rise to complicated issues about whether and how the sentencing decision would bind the conviction panel.
- [7] I accept the Crown’s submission.
- [8] This is not a case like *R. v. C.P.*, 2024 ONCA 11, in which the anticipated delay was known and “relatively brief”. The delay here is indeterminate. As noted above, many steps remain to be taken. Even assuming case management, Mr. Kulatheeswaran is many months away from perfecting his appeal from conviction. As a result, he will have served a considerable portion of his conditional sentence by the time the appeal is listed for hearing, and even more by the time it is heard and decided. Even assuming the Crown is successful on its sentence appeal, its ability to secure the substantial carceral sentence it seeks may be reduced considerably.
- [9] The conviction and sentence appeals appear to me to be discrete. In these circumstances, I am satisfied that this is an appropriate case to bifurcate the appeals.
- [10] Accordingly, the motion is granted. “Grant Huscroft J.A.”

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