

CANADA / JUDGMENT

R. v. Moazami

2025 BCCA 102

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 102 R. v. Moazami

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Moazami,

2025 BCCA 102

Date: 20250327

Docket: CA45510

Between:

Rex

Respondent

And

Reza Moazami

Appellant

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Before:

The Honourable Justice Winteringham

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated

March 7, 2018 (summary conviction appeal) (R. v. Moazami, 2018 BCSC 1761, New Westminster Docket X080594).

The Appellant, appearing in person

(via videoconference):

R. Moazami

Counsel for the Respondent:

M.G. Scott

Place and Date of Hearing:

Vancouver, British Columbia

March 7, 2025

Place and Date of Judgment:

Vancouver, British Columbia

March 27, 2025

Summary:

This is the applicant/appellant's second application for an extension of time for leave to appeal a summary conviction appeal judge's dismissal of his extension application. In 2011, the applicant pleaded guilty to assault with a weapon. Almost seven years later, the applicant applied for an extension of time to bring a summary conviction appeal. That application was dismissed. Five months later, the applicant sought leave to appeal to this Court and his application for an extension was dismissed. The applicant again seeks an extension of time to seek leave to appeal the assault conviction, asserting a material change in circumstances warranting reconsideration. Held: Application for extension of time is dismissed. On this renewed application, the applicant has not established there is new material showing that the interests of justice or special circumstances require reconsideration.

Overview

- [1] On March 14, 2011, the applicant, Reza Moazami, pleaded guilty to assault with a weapon (the "Assault Conviction"). Nearly seven years after the Assault Conviction, the applicant applied for an extension of time to bring a summary conviction appeal (the "SCA"). On March 7, 2018, the SCA judge dismissed the application on the basis there was no reasonable explanation for the lengthy delay and the proposed appeal had no chance of success: R. v. Moazami, 2018 BCSC 1761 ("SCA Reasons").

- [2] Five months after the SCA judge's order refusing to grant an extension, the applicant applied to this Court for leave to appeal the order. In January 2020, Justice Frankel dismissed the application, finding there was no merit to the underlying conviction appeal: *R. v. Moazami*, 2020 BCCA 20 at para. 45 ("Justice Frankel's Reasons").
- [3] Now, more than four years after Justice Frankel's decision, the applicant seeks another extension of time to apply for leave to appeal the SCA judge's refusal of an extension to appeal the Assault Conviction.
- [4] For the reasons that follow, I would dismiss the application for an extension of time.

Background

- [5] This application involves a lengthy and complex history involving multiple investigations, convictions, motions, and appeals. I will set out the history relevant to this application.

The Assault Conviction

- [6] The assault with a weapon that led to the Assault Conviction occurred on August 19, 2010 (the "Assault"). The complainant, S.W., first met the applicant in 2009 when she was 16 years old, and subsequently worked for him in the sex trade. At time of the Assault, S.W. had extricated herself from working for the applicant and was living in her own apartment in Coquitlam. According to S.W., on August 19, 2010 the applicant threatened her and held a knife to her throat during an argument, causing a cut on her neck. S.W. did not report the incident to the police, but had asked another man to come to her residence in case there were further problems with the applicant.
- [7] On August 21, 2010, two days after the Assault, members of the Coquitlam R.C.M.P. attended at S.W.'s residence, responding to a call from a person stating that an unidentified male had a gun pointed at him. S.W. suspected the applicant had been the person who called the police. While speaking to S.W., the officers saw the injury on S.W.'s neck and inquired about it. S.W. explained that the applicant had held a knife to her throat during an argument two days earlier. At that time, she provided a statement to the police, alleging that the applicant had previously held her against her will, choked her to the point of unconsciousness, and hung her over a balcony by her ankles (the "Balcony Incident"): Justice Frankel's Reasons at para. 6.
- [8] The applicant was subsequently charged with assault with a weapon. He initially pleaded not guilty, but at the trial on March 14, 2011, the applicant appeared with counsel and changed his plea to guilty.
- [9] At the sentencing hearing on May 16, 2011, the Crown asked the judge to disregard certain allegations in the pre-sentence report and took the position that S.W.'s "minor injuries" were not intentional but had occurred accidentally when the applicant threatened her with the knife. The Crown sought a suspended sentence with probation, given the asserted accidental

nature of the Assault and the applicant's "comparatively minor unrelated record". The judge suspended the passing of sentence and imposed a two-year probation order: *R. v. Moazami* (May 16, 2011), Port Coquitlam 85262-1K (B.C.P.C.)

The Avails Convictions

- [10] On March 17, 2011, the Vancouver Police Department ("VPD") responded to a domestic assault call involving the applicant. This event was the "genesis of the VPD's investigation into [the applicant's] prostitution-related activities": Justice Frankel's Reasons at para. 13. This was also the first time that James Fisher, an officer with the VPD, had encountered the applicant, before becoming involved in the ensuing prostitution investigation (the "Avails Matter") and eventually taking over as lead investigator in 2012: Justice Frankel's Reasons at para. 38.
- [11] In the fall of 2011, the applicant was charged with the first subset of prostitution-related charges. On August 1, 2012, the Crown filed a 36-count direct indictment against the applicant. S.W. was one of eleven complainants who testified in the proceedings.
- [12] On September 15, 2014, following a 61-day trial, the applicant was convicted of 30 counts of prostitution-related, sexual, and human-trafficking offences against eleven complainants between the ages of 14 and 19: *R. v. Moazami*, 2014 BCSC 1727 (collectively, the "Avails Convictions"). The applicant was sentenced to 23 years' imprisonment, less credit for pre-sentence custody: *R. v. Moazami*, 2015 BCSC 2055.

The Obstruction and Breach Convictions

- [13] On January 28, 2016, the applicant was convicted of two counts of breaching the terms of his recognizance by using computers and by contacting J.C., a complainant and witness in the Avails Matter: *R. v. Moazami* (28 January 2016), Vancouver Docket No. 222410-AC-6 (B.C.P.C.) (the "Breach Conviction").
- [14] On February 11, 2016, the applicant was convicted of attempting to obstruct justice and for breaching an order not to communicate with S.W.: *R. v. Moazami*, 2016 BCSC 99 (the "Obstruction Conviction"). From August to October 2012, while on bail in the Avails Matter, the applicant communicated indirectly with S.W. through her friend and attempted to bribe S.W. against testifying at trial and to write a letter to his lawyer stating his innocence. S.W. did not accept the proposal and went to the police. The applicant was sentenced to three years' imprisonment on the obstruction charge and six months' concurrent imprisonment on the breach charge, to be served consecutive to the sentences the applicant was already serving: *R. v. Moazami*, 2016 BCSC 2137.

The Fisher Offences

- [15] In March 2016, following the applicant's trials that resulted in the Avails Convictions, the Breach Conviction, and the Obstruction Conviction, the VPD conducted an investigation into Mr. Fisher for misconduct related to his relationships with some of the complainants in the various investigations (the "Fisher Offences"). Mr. Fisher pleaded guilty to two counts of breach of trust and one count of sexual exploitation relating to a complainant in the applicant's proceedings (not S.W. or J.C.) and a complainant in an unrelated matter. Mr. Fisher received an aggregate sentence of 20 months' imprisonment plus two years' probation: *R. v. Fisher*, 2018 BCPC 210, aff'd 2019 BCCA 33.
- [16] The Fisher Offences have featured heavily in the applicant's various applications and appeals. It is important to note several key facts about the Fisher Offences and its relevance to this application. First, it was the Coquitlam RCMP--and not the VPD, with whom Mr. Fisher was an officer--that responded to the call in August 2010 that resulted in the Assault Conviction: Justice Frankel's Reasons at para. 8. Second, Mr. Fisher did not learn of the applicant until he came onto the investigation of the Avails Matter in March 2011, seven months after the Assault: Justice Frankel's Reasons at para. 4. Third, in the applicant's 2021 appeal of the Avails Convictions, this Court considered the impact of Mr. Fisher's misconduct on the applicant's fair trial rights, and the amount of disclosure owed to the applicant: *R. v. Moazami*, 2021 BCCA 328 (the "Avails Appeal"). The Court held that while Mr. Fisher's conduct was "appalling", it did not constitute an abuse of process that warranted granting the applicant a new trial, which would require the complainants to testify again: *Avails Appeal* at para. 190. With respect to disclosure, the Court found there was insufficient relevance to order further disclosure, and noted the applicant did not make further applications for records despite the Court's invitation to do so: *Avails Appeal* at para. 195.

The Summary Conviction Appeal Decision

- [17] On January 17, 2018, seven years after the Assault Conviction, the applicant filed an application for an extension of time to bring a summary conviction appeal. The applicant submitted there was merit to the appeal on the basis that he had not formed the necessary mental element of the offence, because the Assault had been an accident. He also alleged that Mr. Fisher was involved in the Assault investigation and had caused a miscarriage of justice. He sought to withdraw his guilty plea.
- [18] In his reasons, the SCA judge considered the principles for granting an extension of time set out by this Court in *R. v. Coffey*, 2017 BCCA 359. The SCA judge noted there had been a "massive delay" and found the applicant's reasons for the delay--his preoccupation with other proceedings and his allegation that Mr. Fisher had caused a miscarriage of justice--did not constitute a proper explanation and involved speculation: *SCA Reasons* at para. 20. He also found that requiring the Crown to reactivate a case involving events that occurred eight years ago would clearly unduly prejudice the Crown: *SCA Reasons* at para. 22.

- [19] The SCA judge then focused his analysis on the merits of the appeal, finding that withdrawing the guilty plea was a "major hurdle" for the applicant, as the onus is not easily discharged, especially where an applicant was represented by counsel when they pleaded guilty: SCA Reasons at para. 24, citing Coffey at para. 30 and R. v. Alec, 2016 BCCA 282 at paras. 70-80. On this point, the SCA judge highlighted that whether the Assault had been an accident was a line of defence that the applicant and his counsel were aware of but the applicant had chosen not to pursue it. He also noted the applicant had "rational reasons" for pleading guilty and avoiding a trial, and he had been represented by legal counsel when he had made that choice: SCA Reasons at para. 5. The applicant did not suggest before the SCA judge that he did not understand what he was doing when he pleaded guilty: SCA Reasons at para. 24. The SCA judge also found that the Fisher Offences " [did] not bear directly on the guilty plea and the offence in question": SCA Reasons at para. 28.
- [20] The SCA judge dismissed the application.

Justice Frankel's Decision

- [21] On August 14, 2018, the applicant filed a notice of application for leave to appeal the SCA judge's order refusing an extension of time. On September 7, 2018, the applicant filed a notice of application for an extension of time to apply for leave to appeal the decision. In his affidavit, the applicant deposed that his appeal is based on a breach of constitutional rights, that he had discovered and anticipated receipt of additional fresh evidence, and that he wanted to review additional disclosure relating to the Fisher Offences.
- [22] The applicant's position before Justice Frankel was that Mr. Fisher had interfered with a request he made under the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 [FOIPPA] in January 2011 for information from the VPD about the Balcony Incident. He alleged that Mr. Fisher prevented him from obtaining this disclosure, which he said his counsel could have used to cross-examine S.W. and undermine her credibility in the Assault trial. He said that Mr. Fisher's interference with his ability to do so caused a miscarriage of justice. Further, the applicant alleged that he was charged with, and pleaded guilty to, the "wrong law", because he had not intended to injure S.W., and wanted to advance fresh evidence on this point. He sought to withdraw his guilty plea on these bases.
- [23] The Crown's position was that it was unaware of anything that suggested Mr. Fisher's possible involvement in VPD's response to the disclosure request and that Mr. Fisher did not meet S.W. until October 2011, after the Balcony Incident and the Assault had occurred. The Crown added that if it became aware of any information that could support the applicant's allegations, it would disclose those materials pursuant to its ongoing disclosure obligations.

- [24] Justice Frankel determined that the success of the applicant's attempts to withdraw his guilty plea rested on his ability to establish that Mr. Fisher had prevented him from obtaining information about the Balcony Incident and therefore violated his right to make full answer and defence. On this point, Justice Frankel found there was "not a scintilla of evidence" to support this assertion: Justice Frankel's Reasons at para. 41.
- [25] In an effort to support his allegations about Mr. Fisher, the applicant provided Justice Frankel with a document at the hearing--a one-page report from the Fisher Offences disclosure, created by Mr. Fisher on February 27, 2012. Justice Frankel summarized the contents of the report as follows:
- [42] The first paragraph of the report states that during S.W.'s October 21, 2011 interview, she mentioned having been arrested outside of British Columbia in September 2009. The next paragraph refers to a request Mr. Fisher made on "2011 02 24" for the police report of that arrest. Mr. Moazami argues this lends support to his assertion that Mr. Fisher was aware of both him and S.W. in January 2011.
- [26] Justice Frankel agreed with the Crown that the reference to "2011 02 24" reflected a typographical error and that it was clear the report refers to what Mr. Fisher did in February 2012 to follow up on the October 2011 interview with S.W. As such, Justice Frankel found the report did not establish that Mr. Fisher knew of the applicant or S.W. in 2011 or that he had withheld information relating to them. With respect to the January 2011 FOIPPA request, he found that the applicant had made the request to the VPD; the VPD was unable to identify the relevant records based off the information provided by the application; and though the applicant alleges he tried to follow-up with more details, he did not elaborate on the nature of that follow-up: Justice Frankel's Reasons at paras. 9-11.
- [27] Justice Frankel concluded that the applicant had "failed to demonstrate there is any substance to the allegation of miscarriage of justice that is the lynchpin of his appeal" and determined there was no purpose in extending the time for him to seek leave to pursue this ground of appeal: Justice Frankel's Reasons at para. 45. He dismissed the application.

The Application to Revisit Justice Frankel's Order

- [28] On March 26, 2024, the applicant sent documents to the Registry seeking to review Justice Frankel's decision. In his supplemental argument filed November 7, 2024, the applicant submits that he was "very reluctant to plead guilty to charges that I did not commit" and that he did not know the consequences of pleading guilty to the charges. The applicant submitted that the Assault Conviction impacted the severity of the sentence he received following the Avails Conviction. He further contends that the VPD withheld disclosure from him.

- [29] The applicant also seeks to rely on fresh evidence on this application. He submits this evidence supports his position that he was denied the appropriate disclosure, and as a result of the non-disclosure, he pleaded guilty to the Assault charge without the relevant evidence. He argues that the proposed evidence supports his position on appeal, that he did not form the requisite mens rea for the Assault Conviction. The proposed new evidence includes:
- a) A statement from S.W. to the Port Coquitlam RCMP made in August 2010.
 - b) A police report made to the Port Coquitlam RCMP regarding an unidentified male pointing a gun at the applicant in August 2010.
 - c) S.W.'s statement to Constable Lovell regarding the Assault in August 2010, which was electronically time-stamped with the date of November 30, 2015. The applicant alleges this demonstrates that disclosure was provided to him after he pleaded guilty to the Assault.
 - d) An exhibit the applicant alleges demonstrates that he made a FOIPPA request from VPD for previous incidents involving S.W. and was told that no such information existed.
 - e) Evidence the applicant says he received in November 2023 that relates to a Federal Court judicial review of a Corrections Canada decision.
- [30] The Crown argues that the fresh evidence does not demonstrate a material change of circumstances that warrants a review of Justice Frankel's decision. The Crown submits that the proposed evidence, as it relates to Mr. Fisher, is irrelevant to this application. With respect to the Federal Court judicial review, the Crown asserts that the applicant's submissions "make clear that the 'new evidence' is in fact the 2010 Coquitlam RCMP narrative of their response to S.W.'s residence on August 21, 2010 and the report to Crown counsel in relation to the prostitution offences disclosed to the applicant in 2012". The Crown argues that the details surrounding the January 2011 FOIPPA request is in substance the same information that was before Justice Frankel. The Crown submits that two months after the FOIPPA request, the applicant changed his plea to guilty without having received the desired information. With respect to the applicant's argument that the Assault with the knife had been an accident, the Crown submits that the applicant's sentencing had "expressly proceeded" on the basis that he had not intended to injure S.W.

Legal Framework

- [31] Section 675(4) of the Criminal Code, R.S.C. 1985, c. C-46, does not provide jurisdiction to the Court of Appeal to review an order of a single justice of this Court denying an extension of time to bring an appeal against conviction. In *R. v. O'Malley* (1997), 96 B.C.A.C. 236, 1997 CanLII 3043, leave to appeal ref'd, [1998] S.C.C.A. No. 94, Justice Macfarlane stated:
- [8] It is to be observed that s. 675(4) does not provide for a review by the court of the refusal of an application for an extension of time to bring an appeal, but, instead, deals with refusal of leave to appeal.

[9] The general principle is that in criminal matters there is no right of appeal save as provided by a statute. The [C]ourt of [A]ppeal has no inherent jurisdiction to hear an appeal: see s. 674 of the Criminal Code

[Emphasis added.]

[32] However, Justice Macfarlane went on to state that s. 678(2) of the Criminal Code allows for review if there has been a change of circumstances:

[10] The section which maybe apposite is s. 678(2) which provides:

(2) The [C]ourt of [A]ppeal or a judge thereof may at any time extend the time within which notice of appeal or notice of an application for leave to appeal may be given.

[11] Section 678(2) gives jurisdiction to the court or a judge thereof to grant an extension of time. The authorities hold that a second application must be based on changed conditions or new material showing that the interests of justice or special circumstances require reconsideration. There is no material before us indicating changed circumstances or other special factors.

[Emphasis added.]

[33] This principle was confirmed in *R. v. Miller*, 2000 BCCA 329, where Justice Prowse concluded that this Court " [does] not have jurisdiction to review the order of a single justice denying an extension of time to bring an appeal against conviction" but that it does have jurisdiction to hear a renewed application based on new evidence, pursuant to s. 678(2) of the Criminal Code: *Miller* at paras. 11, 19.

[34] The only question on this renewed application is whether there are "changed conditions" or " new material showing that the interests of justice or special circumstances require reconsideration": *O'Malley* at para. 11. To be successful in his application, the applicant must establish the "threshold facts necessary to require a rehearing": *R. v. Moolla*, 2008 SKCA 143 at para. 3, leave to appeal to S.C.C. ref'd, 32947 (16 April 2009). Arguments that are "substantially similar to the ones heard in the previous motion" will not meet that threshold: *Moolla* at para. 9.

Analysis

[35] I agree with the Crown that the applicant's proposed fresh evidence is, in substance, the same material that was before Justice Frankel. I also find that the applicant's arguments on this application are "substantially similar" to the ones heard--and thoroughly dealt with--in the previous motion before Justice Frankel.

- [36] The thrust of the applicant's argument, as I understand it, is that the "withheld" disclosure would have established that he had not formed the requisite mens rea for the Assault, and had he received adequate disclosure, he would not have pleaded guilty. On this point, the applicant contends that he pleaded guilty to the "wrong law", having not intended to injure S.W., and that he did not plead guilty voluntarily. He also asserts that disclosure regarding the Balcony Incident would have allowed him to undermine S.W.'s credibility.
- [37] The submission that the applicant did not form the mental element of the Assault charge was fully canvassed before the SCA judge in 2018 and before Justice Frankel in 2020. On this point, the SCA judge agreed with the Crown that "even if it was an accident, if there was a threat, that would be sufficient to make out the charge": SCA Reasons at para. 8. I agree. Assault with a weapon contrary to s. 267(a) of the Criminal Code can be made out where there is a threat to assault with a weapon and an ability to do so. Further, it was made clear at the sentencing hearing that "the Crown was not alleging [the applicant] deliberately cut S.W.", a point that Justice Frankel highlighted in his reasons at para. 14. The sentencing proceeded, with the applicant represented by counsel, on the basis that the applicant had not intended to injure S.W. when he committed the Assault. The sentence imposed reflects the applicant's position about his reduced culpability. The applicant's submission does not demonstrate a change of circumstances.
- [38] Relatedly, the applicant submits that the disclosure about the Balcony Incident was important to his defence, in that he could have used that disclosure to cross-examine S.W. and undermine her credibility. This argument was also fully considered in the hearing before Justice Frankel, who found there was "not a scintilla of evidence" to the suggestion that disclosure about the Balcony Incident had been withheld and declined to address that argument further: Justice Frankel's Reasons at para. 39.
- [39] I pause here to note that, even if the applicant received disclosure about the Balcony Incident such that S.W.'s credibility was undermined, the threshold of "showing that the interests of justice or special circumstances require reconsideration" would still not be met: O'Malley at para. 11. I say this for two reasons. First, the SCA judge highlighted that it was the applicant himself who did not want S.W. to testify at a trial for the Assault charges because he was concerned that she might testify about his prostitution business and his other illegal activities. The applicant stated that he pleaded guilty in large part to avoid that exact scenario being carried out at trial: SCA Reasons at para. 4. Second, in his materials, the applicant does not deny holding the knife and causing the injury to S.W., he only denies that he intended to do so, which was consistent with S.A.'s statement to police. I find that the ability to have undermined S.W.'s credibility would not have had a material effect on the outcome of the Assault charge, as S.W. had not alleged the injuries were intentional. As such, disclosure relating to the Balcony Incident does not establish a change in circumstances.

[40] In my view, the applicant has not established the threshold facts necessary to require a review of Justice Frankel's order. There is no new evidence that establishes changed circumstances or special factors and the arguments are substantially similar to the ones heard in the previous motions. It would not be in the interests of justice to revisit Justice Frankel's order and to grant an extension of time.

Disposition

[41] For the reasons provided, I find the applicant has not met his onus under s. 678(2) of the Criminal Code. I dismiss the application.

"The Honourable Justice Winteringham"

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