

CANADA / JUDGMENT

R. v. N.J.

2025 ONCA 817

COURT

Court of Appeal for Ontario

DECIDED

26 November 2025

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R. v. N.J. Collection Decisions of the Court of Appeal Date 2025-11-26 Neutral citation 2025 ONCA 817 Docket numbers M56466 Judges Paciocco, David M. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. N.J., 2025 ONCA 817[1] DATE: 20251126 DOCKET: M56466 (COA-25-CR-0638) Paciocco J.A. (Motion Judge) BETWEEN His Majesty the King Respondent/ Responding Party and N.J. Appellant/ Applicant Myles Anevich, for the applicant Emily Bala, for the responding party Heard: November 25, 2025 REASONS FOR DECISION

- [1] N.J. was convicted of one count of sexual assault and two counts of sexual interference. The complainant is N.J.'s adopted daughter. It is not contested that they often slept in the same bed, including when she was a teenager. N.J. claims that this arrangement was innocent, and the trial judge accepted evidence that the occupants of the residence often "slept in various different beds, with various different combinations of people". The complainant testified at trial that N.J. sexually interfered with her repeatedly when they slept together between 2017 and 2022, when she was 11-15 years old. She described persistent, penetrative acts of sexual violation. N.J. testified at trial and denied the allegations. The trial judge disbelieved his testimony beyond a reasonable doubt. In contrast, she accepted the testimony of the complainant beyond a reasonable doubt. As such, N.J. was convicted and received a global sentence of nine years' imprisonment.
- [2] Evidence was presented during the trial that the complainant made a false criminal allegation of assault against her mother, E.J., and that her mother was previously tried and acquitted on that charge. The complainant acknowledged before the trial judge in this matter that she fabricated the allegation against E.J. after leaving the residence following a fight with her parents, and she admitted that she had in fact punched E.J. in the face. In her reasons for judgement, the trial judge said, "I am not prepared to engage in any re-litigation of the matter, and I am not considering it specifically in my decision", but also said that she does consider this evidence relevant as proving there was a significant argument and supporting the descriptions of the witnesses about what happened in the following days.

- [3] N.J. is seeking release pending appeal. Section 679(3) of the Criminal Code, R.S.C. 1985, c. C-46 governs N.J.'s application: *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at paras. 19-22. N.J. bears the burden of establishing the following three statutory criterion on a balance of probabilities:
- (a) The appeal is not frivolous;
 - (b) The applicant will surrender into custody in accordance with the terms of the order; and
 - (c) The applicant's detention is not necessary in the public interest.
- [4] N.J.'s only proposed ground of appeal is that the verdict was unreasonable and the trial judge misapprehended evidence. He alleges that misapprehension relates to the trial judge's treatment of the complainant's evidence about her prior fabricated allegations against E.J., which he argues goes to the core of the complainant's credibility. His position is that the appeal on this issue is not frivolous.
- [5] On the public interest criterion, N.J. argues that his recent compliance with bail conditions and his proposed bail plan addresses any public safety concerns. Meanwhile, the merits of the appeal are sufficiently strong that public confidence does not require detention.
- [6] The Crown does not contest that N.J. has established that he would attend court if released. It argues that N.J.'s detention is required because he has not established on a balance of probabilities that the appeal is not frivolous. In the alternative, the Crown argues that N.J. has failed to establish that his detention is not necessary in the public interest. Specifically, it is the Crown's position that N.J. has not demonstrated that the reviewability interest outweighs the enforceability interest given the weakness of his ground of appeal, the seriousness of the offences, the nine year prison sentence imposed, and residual public safety concerns which arise from a May 2022 breach of bail conditions. In that incident, N.J. pled guilty to violating a condition to stay 100 meters away from the complainant. The Crown points out that the trial judge found the harm caused to the complainant by N.J. to be serious, and that the complainant has become estranged from the family as the result of these charges, which she has been pressured to recant. The Crown also raises concerns about the suitability of the proposed release plan, in part because N.J.'s wife is one of two proposed non-residential sureties, and she did not report the allegations against N.J. that the complainant disclosed to her.
- [7] I do not agree with the Crown that N.J.'s appeal is frivolous, or weak. There is a serious issue to be tried relating to whether the trial judge materially misapprehended the relevance of the complainant's admission that she levied and persisted in a false allegation of criminality against her mother. In my view this ground of appeal clearly surpasses the not frivolous threshold.

- [8] I accept that the enforceability interest is enhanced by the obvious and disturbing seriousness of the offences and the length of the prison term in light of the aggravating features in the trial judge's findings. However, in my view N.J. has demonstrated that the reviewability interest outweighs the need to begin enforcing his sentence pending appeal. This is a straight credibility case, and the entirely arguable ground of appeal he is proposing challenges that credibility evaluation, which is needed to sustain the conviction.
- [9] I agree that the 2022 breach of bail is worrisome, but it did not involve direct contact with the complainant, and there has been no recurrence since N.J.'s bail plan has included a surety. He has been under the plan that is now proposed for his release for more than three years since the breach occurred, and that plan has been strengthened by adding his wife as an additional financial surety. I am persuaded that N.J. has satisfied the burden of establishing that his appeal is not frivolous, he will surrender into custody, and his detention in all of the circumstances is not necessary in the public interest on either the public safety or public confidence components.
- [10] The motion is granted, and the conditional draft order agreed to by the parties should I order N.J.'s release shall issue. "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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