

CANADA / JUDGMENT

R. v. Oryia

2026 ONCA 166

COURT

Court of Appeal for Ontario

DECIDED

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Judges

Tulloch, Michael H.; Roberts, Lois B.; Rahman, Moiz

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Oryia, 2026 ONCA 166

DATE: 20260309

DOCKET: COA-24-CR-0190

Tulloch C.J.O., Roberts and Rahman JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Mohammad Oryia

Appellant

Nathan Gorham, KC, and Breana Vandebek, for the appellant

Ostap Melnik, for the respondent

Heard: February 2, 2026

On appeal from the sentence imposed by Justice Dominique Kennedy of the Ontario Court of Justice, on February 8, 2024.

Tulloch C.J.O.:

A. overview [1] The appellant, Mohammad Oryia, appeals the sentence of two years' imprisonment, less 32 days of pre-sentence credit, imposed following his guilty pleas to possession of cocaine for the purpose of trafficking and possession of proceeds of crime over \$5,000. Although he advances allegations of error in principle, his primary submission is based on fresh evidence concerning the custodial conditions he experienced during approximately 315 days of incarceration. He asks that the remaining portion of his sentence be served in the community by way of a conditional sentence order.

[2] For the reasons that follow, I conclude that the two-year sentence was fit at the time it was imposed. However, having regard to the fresh evidence concerning the custodial conditions experienced by the appellant, I am satisfied that it is appropriate to vary the manner in which the balance of the sentence is to be served. I would, therefore, allow the appeal in part and substitute a sentence of time served (347 days, inclusive of pre-sentence credit), followed by a conditional sentence of 382 days, resulting in a total sentence of two years less a day.

B. background 1. The Gravity of the Offence [3] The appellant's offences were serious. In late 2020, when he was 19 years old, he possessed 150 grams of cocaine for the purpose of trafficking and more than \$72,000 in proceeds of crime. The drugs and cash were located in a Honda Civic that police had observed him driving. The vehicle also contained a safe, brass knuckles, and items commonly associated with drug trafficking.

[4] The Agreed Statement of Facts further established that the appellant was staying in the bedroom of a 17-year-old associate at the time of his arrest. Police located additional trafficking paraphernalia in that room, including cutting agents, scales, a safe containing cocaine and cash, weapons such as a rifle and pellet gun, and a cookie tin containing 600 grams of cocaine bearing the appellant's fingerprint. Although the appellant did not plead

guilty to possession of those additional items, the sentencing judge was entitled to consider the broader factual context in assessing the gravity of the offences and the appellant's level of involvement.

2. The Circumstances of the Appellant [5] The appellant was born in 2001 and immigrated to Canada with his family later that year. He is the youngest of five children and maintained close family ties throughout his upbringing, taking pride in his Afghan heritage. As a teenager, he assumed increasing responsibilities, including learning carpentry while working for his girlfriend's father, supporting a sister with significant mental health challenges, and helping care for his autistic niece.
- [6] The record indicates that the appellant experienced sustained racialized bullying in middle school, including verbal abuse, physical intimidation, and social exclusion. The pre-sentence report links these experiences to depression, anxiety, and disengagement from school. The sentencing judge accepted that, in high school, he began associating with negative peers in part to gain acceptance. Family members and a close friend attributed his eventual involvement in criminal activity to this period of vulnerability. The report also noted that he has attention deficits and, prior to his arrest, acted impulsively without fully considering consequences.
- [7] After his arrest, the appellant accepted responsibility, entered an early guilty plea, and complied with strict bail conditions for nearly three years without incident. The sentencing judge found that he expressed genuine remorse, severed ties with negative influences, limited his social circle to family, and had no substance abuse issues. The pre-sentence report assessed him as suitable for community supervision, and Crown counsel acknowledged that a conditional sentence would not endanger public safety.
- [8] The appellant also took steps to stabilize his life. He maintained employment as a carpenter, moving from full-time to part-time hours when his employer reduced operations. He was accepted into a truck mechanic college program, which he intends to pursue. He performed some community service, made a charitable donation, and continued to support his family. At sentencing, Crown counsel acknowledged significant mitigating factors and recognized his efforts to improve his circumstances.
3. The Sentencing Decision [9] At sentencing, the Crown sought a two-year custodial term. The appellant requested a conditional sentence of two years less a day.
- [10] The sentencing judge imposed a sentence of two years' imprisonment, less 32 days of pre-sentence credit. She found that the quantity of cocaine, the significant proceeds, and the broader trafficking context indicated organized, profit-driven conduct, rather than behaviour attributable solely to peer influence. Although she recognized the appellant's youth, lack of prior record, guilty plea, and rehabilitative potential, she concluded that his rehabilitative efforts were not exceptional. She identified a custodial range of two to five years and determined that a two-year sentence at the bottom of that range was the lowest proportionate sanction, consistent with restraint and rehabilitation.

4. The Proposed Fresh Evidence [11] After sentencing, the appellant served 315 days in custody, almost entirely at the Maplehurst Correctional Complex. His fresh evidence describes prolonged and difficult custodial conditions. For approximately 223 days, he was housed in a cell designed for two inmates but occupied by three, requiring him to sleep on a mattress placed on the floor beside the toilet. He reports that the mattress was often placed directly on concrete, with limited bedding, and that he was initially provided with bloodstained sheets. He experienced frequent institutional lockdowns, amounting to roughly 40% of his time in custody, including 96 extended periods of full lockdown during which he was confined to his cell for the entire day. During those periods, he had restricted access to showers, clean clothing, laundry services, and personal supplies, and was unable to access outdoor yard time or communal areas. He also reports exposure to institutional violence, including witnessing serious assaults, and being physically intimidated and assaulted by other inmates.
- [12] The appellant attests that these conditions had a pronounced psychological impact on him, given his documented history of racialized bullying, depression, anxiety, and attention deficits. He describes persistent sleep disruption due to overcrowding and cell conditions, heightened anxiety during lockdowns, and a constant sense of vigilance arising from exposure to violence within the institution. He states that he felt unsafe and feared being targeted, which led to ongoing anxiety and hypervigilance. Following his release on bail pending appeal, he reports continued anxiety and residual fear linked to his custodial experience.
- [13] While on bail pending appeal, the appellant complied with approximately twelve months of house arrest. During that period, he remained in the community without incident, assisted his family with household responsibilities, helped care for his autistic niece, and supported his parents, who were experiencing health challenges.

C. analysis [14] I begin by addressing the fitness of the sentence at the time it was imposed. I then turn to the appellant's primary submission: that fresh evidence concerning post-sentence developments warrants appellate intervention.

1. Original Fitness [15] Sentencing is an individualized and discretionary exercise to which appellate courts owe significant deference. Intervention for error in principle is warranted only where the sentencing judge erred in law, failed to consider a relevant factor, or improperly treated a circumstance as aggravating or mitigating in a manner that affected the sentence. The weighing of relevant factors does not amount to error unless the judge's exercise of discretion was unreasonable. Factual findings untainted by error in principle attract deference absent palpable and overriding error: *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, at paras. 25-28; *R. v. L.S.N.*, 2020 BCCA 109, at para. 60.
- [16] The appellant submits that the sentencing judge underemphasized his youth and rehabilitative efforts, overemphasized the involvement of a young person, departed from parity, and failed to justify imposing a two-year sentence rather than two years less a day.

- [17] These submissions do not establish reversible error. The sentencing judge was entitled to find that the appellant's conduct reflected organized, profit-motivated criminality rather than mere peer influence. She was similarly entitled to conclude that his rehabilitative efforts, while positive, were not exceptional. The involvement of a young person in the trafficking, though attenuated by the appellant's own youth, was reasonably treated as aggravating in context. In imposing a sentence at the bottom of the identified range, the judge relied on the appellant's youth, lack of record, guilty plea, and rehabilitative prospects to give effect to restraint. Her conclusion that the aggravating features nonetheless required a penitentiary-length term before accounting for pre-sentence credit was a reasonable exercise of discretion and did not offend parity. The sentence was fit when imposed.
2. Fresh Evidence and Current Fitness [18] I turn to the present fitness of the sentence, beginning with the governing legal principles and then applying them to the facts.
- a. Legal Framework
- [19] The qualitative experience of custody forms part of the severity of punishment. Sentencing courts must consider "how the conditions of confinement ... would affect an individual offender" and recognize the comparatively harsher impact of imprisonment on certain offenders, including youthful adults and those with mental health vulnerabilities: *R. v. Hills*, 2023 SCC 2, 477 D.L.R. (4th) 1, at paras. 86, 135-136, 165.
- [20] On appeal, s. 687(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46, empowers this court to consider the present fitness of a sentence in light of fresh evidence and to vary it where appropriate. Post-sentencing changes in circumstances may justify intervention, even where the sentence was fit when imposed: *R. v. Ghadban*, 2015 ONCA 760, 342 O.A.C. 177, at para. 14.
- [21] Institutional hardship will not ordinarily constitute a material change in circumstances. Courts must guard against undermining finality by placing undue weight on subsequent developments: *R. v. Holden*, 2024 ONCA 393, at para. 9; *Ghadban*, at para. 15.
- [22] Nonetheless, particularly harsh or exceptional custodial effects may warrant mitigation. This court has varied sentences where violence or harassment by other inmates, unusually strict restrictions on residual liberty, or pronounced deterioration in physical or mental health materially increased the severity of punishment. These cases focus on the effect of conditions on the individual offender and do not require proof of fault or Charter breaches: *R. v. Wallace* (1973), 11 C.C.C. (2d) 95 (Ont. C.A.); *R. v. Alfs*, [1974] O.J. No. 1046 (C.A.); *R. v. Fuentes*, 2003 CanLII 54738 (Ont. C.A.); *R. v. Folino* (2005), 77 O.R. (3d) 641 (C.A.); *R. v. Robinson*, 2023 ONCA 205.
- b. Reassessment at the Time of Appeal
- [23] In this case, the cumulative impact of the appellant's custodial experience materially increased the punitive effect of the sentence.

- [24] At the outset, I note that the appellant does not allege misconduct by correctional authorities, nor does this analysis seek to assess institutional management decisions. The focus is confined to the concrete impact of the custodial conditions on this appellant, given his particular circumstances.
- [25] The fresh evidence is admissible. It satisfies the criteria set out in *R. v. Lévesque*, 2000 SCC 47, [2000] 2 S.C.R. 487, at para. 35. The Crown does not dispute that the evidence is reasonably capable of belief and could not have been adduced at sentencing. It bears directly on a potentially decisive issue: whether the conditions of confinement, considered together with the appellant's personal vulnerabilities, have rendered the sentence harsher than anticipated.
- [26] The conditions were unusually harsh. Extended lockdowns and prolonged triple-bunking are mitigating factors even absent individualized impact, as they significantly restrict fresh air, movement, and residual liberty, and confine inmates in cramped, overcrowded spaces. Where such conditions are frequent and coupled with violence and harassment, their severity is amplified: *R. v. Bristol*, 2021 ONCA 599, at paras. 10-12; *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575, at para. 2; *R. v. Jabbour*, [2001] O.J. No. 3820 (S.C.), at paras. 62, 66.
- [27] These conditions had a particularly acute effect on the appellant. He is a youthful first offender with documented mental health challenges and a history of bullying. The violence, harassment, and restrictive confinement exacerbated his anxiety and produced ongoing psychological effects. As recognized in *R. v. Bertrand Marchand*, 2023 SCC 26, 487 D.L.R. (4th) 201, at paras. 148-152, youthful adult offenders with mental health vulnerabilities may experience incarceration more harshly than others. The evidence demonstrates that this was so here.
- [28] Sentences must remain proportionate in their real-world effect. The concrete consequences of this incarceration, including violence, harassment, strict restrictions of residual liberty, and deterioration in mental health, were not anticipated at sentencing and materially alter the proportionality analysis.
- [29] Continued incarceration would exceed what is necessary to achieve the purposes of sentencing. The appellant has served 315 days in custody under these conditions. The objectives of denunciation and deterrence have been substantially met. His compliance, while on bail pending appeal, confirms his commitment to lawful conduct and demonstrates that a conditional sentence would not endanger community safety. Further incarceration risks undermining rehabilitation and long-term public safety: *R. v. Habib*, 2024 ONCA 830, 99 C.R. (7th) 110, at para. 34; *Ghadban*, at paras. 22-24.
- [30] It is, therefore, appropriate to reduce the overall sentence by one day to permit the imposition of a conditional sentence for the remaining time to be served. Although a custodial sentence and a conditional sentence cannot be combined for a single offence, they may be blended where an offender is sentenced on multiple counts, provided the combined total does not exceed two years less a day and the statutory criteria are met: *R. v. Ploumis*

(2000), 150 C.C.C. (3d) 424 (Ont. C.A.), at para. 26 & n.1, leave to appeal refused, [2001] S.C.C.A. No. 69.

D. DISPOSITION [31] For these reasons, I would grant leave to appeal sentence and allow the appeal in part. I affirm that the original two-year custodial sentence was fit when imposed. However, pursuant to s. 687 of the Criminal Code, I would vary the sentence so that the balance of the custodial term is to be served in the community under a conditional sentence order, subject to strict conditions reflecting the seriousness of the offences and the need to protect the public. This result is grounded not in error at sentencing, but in the fresh evidence demonstrating that continued institutional incarceration would now be disproportionate in light of the appellant's experience in custody and his personal circumstances.

[32] I would, therefore, substitute a sentence of time served, inclusive of 32 days' pre-sentence credit, for a total of 347 days' incarceration, followed by a conditional sentence of 382 days. The custodial portion is assigned to the possession for the purpose of trafficking count. The conditional sentence is to be served consecutively on the possession of proceeds of crime count. The resulting global sentence is two years less a day.

[33] The appellant shall comply with the mandatory statutory conditions of a conditional sentence order, namely:

- keep the peace and be of good behaviour;
- appear before the court when required;
- report to a supervisor within four days of this order and thereafter as directed;
- remain within Ontario unless authorized in writing by the court or supervisor; and,
- notify the supervisor in advance of any change of name or address and promptly report any change in employment or occupation.

[34] In addition, the conditional sentence shall include the following optional conditions:

- house arrest at his parents' residence for the duration of the order, with permission to leave only for employment, education, medical or legal appointments, religious observance, travel approved by his supervisor, and between 9:00 a.m. and 12:00 p.m. on Saturdays for personal necessities;
- completion of 100 hours of community service at a schedule approved by his supervisor during the currency of the order; and,
- attendance at, and participation in, any counselling directed by his supervisor, with proof of participation provided upon request.

Release: March 9, 2026 "M.T."

"M. Tulloch C.J.O."

“I agree. Roberts J.A.”

“I agree. M. Rahman J.A.”

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