

CANADA / JUDGMENT

R. v. Purvis

2026 ONCA 187

COURT

Court of Appeal for Ontario

DECIDED

17 March 2026

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

R. v. Purvis

Collection

Decisions of the Court of Appeal

Date

2026-03-17

Neutral citation

2026 ONCA 187

Docket numbers

COA-23-CR-1101

Judges

Tulloch, Michael H.; Huscroft, Grant; Paciocco, David M.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Purvis, 2026 ONCA 187

DATE: 20260317

DOCKET: COA-23-CR-1101

Tulloch C.J.O., Huscroft and Paciocco JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Kyle Purvis

Appellant

Marianne Salih and Ryan Handlarski, for the appellant

Erryl Taggart, for the respondent

Heard: September 2, 2025

On appeal from the sentence imposed on September 20, 2023, by Justice Gethin B. Edward of the Ontario Court of Justice.

Tulloch C.J.O.:

A. Overview [1] The appellant, Kyle Purvis, appeals the 16.5-year penitentiary sentence imposed following his guilty pleas to importing cocaine and possessing cocaine for the purpose of trafficking.

- [2] At the time of sentencing, the appellant was 36 years old and had no prior criminal record. The offences arose from his participation in a large-scale cocaine importation scheme organized and directed by his co-accused, Adam Kaup, an experienced trafficker with a prior conviction for importing cocaine. The scheme involved approximately 1.5 metric tonnes of cocaine.
- [3] The appellant acknowledges that offences of this magnitude warrant a substantial custodial sentence. His appeal focuses instead on the method by which the sentence was determined. He submits that the sentencing judge erred by effectively anchoring his sentence to the 19-year sentence imposed on Mr. Kaup and by failing to adequately account for the material differences between their circumstances, including the appellant's subordinate role, lack of prior record, personal vulnerabilities, and rehabilitative progress.
- [4] In my view, the appeal should be allowed. The sentencing judge committed errors in principle that materially affected the sentence. In particular, the judge relied on the co-accused's sentence as the analytical starting point even though it was imposed pursuant to a joint submission and did not sufficiently reflect the appellant's distinct level of moral culpability and personal circumstances.
- [5] Sentencing is an individualized process. While the principle of parity requires comparable sentences for similarly situated offenders, it does not justify anchoring a sentence to that imposed on a co-accused whose circumstances are materially different.

- [6] Having regard to the gravity of the offences, the appellant's role in their commission, and the governing sentencing principles, a sentence of 12 years imprisonment is appropriate. This term reflects the seriousness of large-scale cocaine importation and the need for denunciation and deterrence, while properly accounting for the appellant's materially reduced moral culpability relative to the organizer of the scheme.

B. background 1. Gravity of the Offences [7] The appellant pleaded guilty to importing approximately 1.5 metric tonnes of cocaine and possessing that cocaine for the purpose of trafficking. The quantity involved was extraordinarily large. If distributed at the kilogram level, the cocaine would have had a street value in the range of \$75 million. Offences of this magnitude are among the most serious in Canadian criminal law.

- [8] The evidence established that the appellant occupied the lowest position within the hierarchy of the importation scheme. The operation was organized and directed by Mr. Kaup, an experienced trafficker with a prior conviction for cocaine importation. Mr. Kaup coordinated the enterprise, arranged financing through an associate, and stood to reap substantial financial benefit. The appellant carried out importing-related tasks at Mr. Kaup's direction and would have received a comparatively modest share of the anticipated profits. Notably, the appellant's name appeared on the importing documentation, exposing him to significant personal risk.
2. Circumstances of the Appellant [9] The appellant's background is marked by significant adversity. He was subjected to physical and verbal abuse by his stepfather and was raised in an environment characterized by domestic conflict and substance misuse. These early experiences were associated with longstanding mental health challenges, including depression, anxiety, ADHD, and post-traumatic stress disorder. He also developed persistent alcohol and cocaine addictions.
- [10] Psychological evidence established that the appellant has an intellectual disability, including an extremely low measured IQ. His cognitive limitations affected his academic progress and adaptive functioning. He did not complete high school and has ongoing difficulty with problem-solving, financial management, and coping with stress.
- [11] Despite these challenges, the appellant maintained steady employment in the construction trades and played an active role in his children's lives. He has maintained positive co-parenting relationships and has strong community supports.
- [12] The appellant's circumstances deteriorated during the COVID-19 pandemic. He experienced job loss, the breakdown of his relationship, and social isolation. His substance abuse escalated, and his mental health declined. It was during this period of instability that he became involved in the importation scheme.

- [13] Following his arrest, the appellant complied fully with strict bail conditions. He abstained from drugs and alcohol use, pleaded guilty, expressed remorse, and took steps to stabilize his life. He strengthened family relationships, cared for his elderly father during the final year of his life, and re-engaged in employment. Letters of support from family, friends, and his employer attest to his rehabilitative efforts and positive character.
3. Sentencing Decision [14] The Crown sought an 18-year sentence, emphasizing the scale of the importation and submitting that the appellant's disability did not prevent him from carrying out his assigned tasks. The defence sought a 10-year sentence, relying on his lack of prior record, relative youth, personal vulnerabilities, and rehabilitative progress.
- [15] The sentencing judge imposed a 16.5-year term. He treated the 19-year sentence imposed on Mr. Kaup as the analytical starting point and applied discrete reductions: one year for the appellant's lack of a prior record and six months each for his lesser role, personal circumstances, and bail compliance. No credit was given for the guilty plea on the basis that Mr. Kaup also pleaded guilty. The sentencing judge concluded that the appellant's background and cognitive limitations did not materially contribute to the offences because they did not prevent him from performing the importing tasks.
- C. analysis [16] The gravity of importing 1.5 tonnes of cocaine cannot be overstated. Offences of this magnitude rank among the most serious in Canadian criminal law. Large-scale cocaine importation attracts substantial penitentiary sentences, and the objectives of denunciation and general deterrence assume particular importance: *R. v. Malanca*, 2007 ONCA 859, 88 O.R. (3d) 570, at para. 58, leave to appeal refused, [2008] S.C.C.A. No. 71; *R. v. Hamilton* (2004), 72 O.R. (3d) 1 (C.A.), at para. 105.
- [17] Even so, appellate intervention is warranted where a sentencing judge commits an error in principle that impacts the sentence imposed: *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, at paras. 26-27. In my view, that threshold is met here.
1. Errors in Principle [18] The principal error arises from the sentencing judge's reliance on the sentence imposed on the appellant's co-accused, Mr. Kaup, as the analytical foundation for determining the appellant's sentence.
- [19] Mr. Kaup received a 19-year sentence pursuant to a joint submission. The sentencing judge treated that sentence as the starting point and then applied incremental reductions to account for differences between the offenders. That approach was flawed.
- [20] As the Supreme Court of Canada explained in *R. v. Anthony-Cook*, 2016 SCC 43, [2016] 2 S.C.R. 204, joint submissions are the product of negotiation and compromise. Courts accept them because they promote certainty and efficiency in the administration of justice. They do not necessarily reflect an individualized determination of a proportionate sentence.

- [21] For that reason, sentences resulting from joint submissions have limited precedential value. As this court has observed, they cannot properly serve as benchmarks for sentencing comparison: *R. v. Buffone*, 2021 ONCA 825, 159 O.R. (3d) 401, at paras. 28-31, leave to appeal refused, [2021] S.C.C.A. No. 393.
- [22] By treating Mr. Kaup's sentence as the analytical starting point, the sentencing judge effectively anchored the appellant's sentence to considerations extraneous to his circumstances.
- [23] Sentencing is an individualized exercise. The parity principle requires similar sentences for similarly situated offenders. It does not require near-identical sentences for co-accused whose circumstances materially differ: *Friesen*, at paras. 31-32.
- [24] Here, the appellant and Mr. Kaup were not similarly situated.
- [25] Mr. Kaup was the organizer and directing mind of the operation. He coordinated the enterprise, arranged financing, and stood to receive the principal financial benefit. The appellant occupied the lowest position in the hierarchy and acted at Mr. Kaup's direction.
- [26] Hierarchical role remains a significant indicator of moral culpability: *Buffone*, at para. 35; *R. v. Buttazzoni*, 2019 ONCA 645, at paras. 65-66.
- [27] The sentencing judge acknowledged this distinction but understated its significance. By beginning with Mr. Kaup's sentence and adjusting downward in discrete increments, the judge effectively collapsed the proportionality analysis. The materially different positions of the two offenders were not adequately reflected.
- [28] A second difficulty arises from the treatment of the appellant's personal circumstances.
- [29] The fundamental principle of sentencing is proportionality – the sentence must reflect both the gravity of the offence and the offender's moral culpability: *Friesen*, at para. 30.
- [30] The appellant's antecedents and vulnerabilities differ markedly from those of his co-accused. He was a first-time offender. His background includes significant childhood adversity, longstanding mental health challenges, and an intellectual disability affecting his cognitive functioning and decision-making.
- [31] These factors – personal adversity, mental health, and mental disability – mitigate moral blameworthiness where they contribute to the circumstances of the offence to some degree. The required nexus need not be direct or exclusive; a contextual connection is sufficient: *R. v. Storey*, 2025 ONCA 599, at para. 64; *R. v. Morris*, 2021 ONCA 680, 159 O.R. (3d) 641, at paras. 75-76; *R. v. Forner*, 2020 BCCA 103, 389 C.C.C. (3d) 94, at paras. 27-28, 43.

- [32] The sentencing judge approached the issue narrowly, focusing on whether the appellant's limitations prevented him from carrying out the importing tasks. That was not the proper inquiry. Rather, the sentencing judge was required to consider all the evidence bearing on whether the appellant's personal circumstances affected or influenced his offending behaviour: *Storey*, at para. 64; *Morris*, at paras. 75-76; *Forner*, at para. 39.
- [33] The record demonstrates that the appellant's childhood adversity, deteriorating mental health, addictions, and cognitive limitations contributed to his vulnerability during a period of significant personal instability. While those circumstances do not excuse the conduct, they bear squarely on the degree of moral responsibility that should be attributed to it.
- [34] The sentencing judge also gave insufficient weight to the appellant's status as a first offender and to his rehabilitative progress.
- [35] A first-time offender must be sentenced with due regard to restraint and the avoidance of crushing sentences that undermine rehabilitation: *Malanca*, at paras. 57-60; *R. v. Hoang*, 2024 ONCA 361, 172 O.R. (3d) 97, at paras. 77-81, leave to appeal refused, [2024] S.C.C.A. No. 221.
- [36] The appellant pleaded guilty, complied with strict bail conditions, abstained from drugs and alcohol, re-established employment, and strengthened his family relationships. These developments reduce the need for specific deterrence and increase the relevance of restraint: *R. v. Richer*, 2025 ONCA 439, 449 C.C.C. (3d) 543, at paras. 61-62; *R. v. Basha*, 2019 ONCA 236, at paras. 22-23.
- [37] Finally, the sentencing judge did not address the potentially harsher impact of incarceration on an offender with significant mental health and cognitive limitations. Such vulnerabilities may render imprisonment more severe and must be taken into account: *R. v. Bertrand Marchand*, 2023 SCC 26, 487 D.L.R. (4th) 201, at paras. 149-151.
- [38] Taken together, these errors undermined the individualized proportionality assessment required by law and materially affected the sentence imposed.
2. Resentencing [39] Where an error in principle has affected the sentence, this court must determine a fit and proportionate sentence.
- [40] The importation of 1.5 tonnes of cocaine is exceptionally serious. The scale of the enterprise and the profits at stake require a sentence that strongly reflects denunciation and general deterrence.
- [41] At the same time, proportionality requires that the sentence reflect the offender's moral culpability.

- [42] The appellant's role in the operation was materially subordinate to that of its organizer. He acted at the direction of a more experienced trafficker and stood to gain significantly less from the enterprise despite facing significantly greater risk. His lack of prior criminal record, personal vulnerabilities, and demonstrated rehabilitative progress further distinguish him from the directing mind of the scheme.
- [43] Comparative authority reinforces the need for differentiation. In *R. v. Frost*, 2011 ONSC 6448, a 16.5-year sentence was imposed for a comparable quantity of imported cocaine. However, that offender occupied a higher position in the hierarchy and did not present the same mitigating circumstances – he had previously imported and trafficked another drug, did not plead guilty, was not experiencing mental health challenges or a mental disability, and had not experienced significant adversity while growing up. Proportionality requires that such distinctions be reflected in the sentence imposed: Friesen, at para. 32.
- [44] Balancing the gravity of the offence, the appellant's reduced moral culpability, and the governing sentencing principles, I am satisfied that a sentence of 12 years imprisonment is fit.
- [45] This substantial penitentiary term reflects the seriousness of the offence and the need for denunciation and deterrence, while recognizing the appellant's materially different circumstances and the individualized assessment required by law.
- D. disposition [46] Leave to appeal sentence is granted. The appeal is allowed. The sentence of 16.5 years' imprisonment imposed by the sentencing judge is set aside. In its place, I would impose a sentence of 12 years' imprisonment.
- [47] The appellant is entitled to credit for time served since September 20, 2023. All ancillary orders remain in effect.

Released: March 17, 2026 "M.T."

"M. Tulloch C.J.O."

"I agree. Grant Huscroft J.A."

"I agree. David M. Paciocco 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/24020/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-purvis-2026>

Prepared on 25 October 2026 · Esheria