

CANADA / JUDGMENT

R. v. Sue

2025 BCCA 363

COURT

British Columbia Court of Appeal

DECIDED

7 October 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCCA 363 R. v. Sue

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Sue,

2025 BCCA 363

Date: 20251007

Docket: CA50300

Between:

Rex

Respondent

And

Kevan Jeffrey Sue

Appellant

Before:

The Honourable Madam Justice Fenlon

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
November 6, 2024 (R. v. Sue, 2024 BCSC 2456,

Vancouver Dockets 25725-2; 25723-3).

Oral Reasons for Judgment

The Appellant, appearing in person

(via videoconference):

K.J. Sue

Counsel for the Respondent:

M.A. Street

Place and Date of Hearing:

Vancouver, British Columbia

October 7, 2025

Place and Date of Judgment:

Vancouver, British Columbia

October 7, 2025

Summary:

The appellant pleaded guilty in December 2011 to assault causing bodily harm. He was sentenced to an 18-month conditional sentence. In 2022, the appellant learned that his father was Indigenous. He applied for an extension of time to appeal his sentence, guilty plea, and bail conditions, contending that his case would have proceeded differently had his Indigenous heritage been known. A summary conviction appeal judge denied the application for an extension of time. The appellant now seeks leave to appeal that decision. Held: Leave to appeal denied. The appellant has not identified any errors of law committed by the summary conviction appeal judge that would justify appellate intervention.

- [1] FENLON J.A.: Mr. Sue applies for leave to appeal from the decision of a summary conviction appeal judge denying his application for an extension of time to file a notice of appeal in that court.

Background

- [2] In October 2009, the appellant and the complainant, Mr. Bruce, attended a party. The following day, in front of a group of their mutual friends, Mr. Bruce accused Mr. Sue of stealing his jacket and attacked him. Mr. Bruce's punch missed Mr. Sue and landed on a concrete wall, resulting in broken bones to his hand. This further angered Mr. Bruce, who began to make threats against Mr. Sue to their mutual friends, which led Mr. Sue to move to the interior of British Columbia.
- [3] Mr. Sue returned to Vancouver two months later on January 22, 2010. That same day, he boarded a bus which Mr. Bruce coincidentally happened to be on. They argued on the bus, and when Mr. Sue got off, Mr. Bruce followed and continued to argue with him. While in a pedestrian walkway, Mr. Sue pulled a jackknife from his pocket and stabbed Mr. Bruce four

times: twice in the chest; once in the armpit; and once in the forearm. Mr. Sue turned himself into police the next day, January 23, 2010, and was released on bail on January 25, 2010. The bail conditions were relatively standard, although they prohibited Mr. Sue from going to Richmond, where he lived at the time. It also meant he could not attend Olympic events held in that city in 2010.

- [4] Upon turning himself in, Mr. Sue gave an audio and video-taped statement to police in which he admitted to stabbing Mr. Bruce. He told the police that he did so in self-defence. He said he could have stopped after stabbing Mr. Bruce once, but that he had to hold his ground. Mr. Bruce was rushed to hospital where he underwent emergency surgery to stop internal bleeding. He ultimately recovered without any long-term health effects.
- [5] Initially, Mr. Sue was charged with aggravated assault. However, after the preliminary hearing and the committal to Supreme Court in March 2011, the Crown laid a C-information, charging the appellant with assault causing bodily harm and elected to proceed summarily. The appellant, who was represented by counsel, pleaded guilty to this new information on December 15, 2011. Although no formal inquiry pursuant to s. 606(1.1) of the Criminal Code was conducted at the time, Mr. Sue affirmed that he wished to plead guilty.
- [6] At that point, a pre-sentence report was ordered and sentencing was adjourned. At the sentencing hearing in March 2012, Crown and defence counsel filed an agreed statement of facts, which included the admission (accepted by the judge) that the force used by Mr. Sue in self-defence exceeded what was reasonable in the circumstances. Crown and defence also made a joint submission for an 18-month conditional sentence order.
- [7] In his submissions on sentence, Mr. Sue's lawyer highlighted that Mr. Sue was a youthful first-offender, had turned himself into the police, had complied with the terms of his bail order, had the support of friends and family, and had accepted responsibility for his actions and shown sincere remorse. The Crown noted indeed that Mr. Sue was "extremely remorseful".
- [8] The sentencing judge observed that the joint submission appropriately took into account the circumstances of the offence and of Mr. Sue, and noted that it did not overlook anything. Accordingly, she sentenced Mr. Sue to an 18-month conditional sentence order.

The Summary Conviction Appeal

- [9] Mr. Sue took no steps to challenge his sentence until after he learned in 2022 that his father is Indigenous. He obtained a Certificate of Indian Status in 2023 and sought an extension of time to appeal his sentence, guilty plea, and bail conditions. Mr. Sue contended that, had his Indigenous heritage been known at the time, his bail conditions, sentence, and the plea itself would have been different. He submitted that the absence of knowledge about his Indigeneity meant that his guilty plea was uninformed and should be set aside.

- [10] The summary conviction appeal judge hearing Mr. Sue's application for an extension of time to appeal to that court gave oral reasons for judgment, indexed at 2024 BCSC 2456.
- [11] In determining whether it would be in the interests of justice to extend the time for an appeal, Justice Ahmad applied the factors listed in *R. v. Gendreau*, 2016 BCCA 141, which both parties agree is the relevant test. Those factors include:
- (a) whether the applicant had a bona fide intention to appeal before the expiration of the appeal period and communicated that intention to the opposing party;
 - (b) whether the opposing party would be unduly prejudiced by an extension of time;
 - (c) the extent of the delay;
 - (d) whether there is a proper explanation for the delay; and
 - (e) the merits of the proposed appeal.
- [12] She found that:
1. The appellant did not have a bona fide intention to appeal within the 30-day appeal period because that intention did not arise until 2022, (some 12 years after the bail conditions were imposed in 2010 and some 11 years after his conviction and sentence) because that was when Mr. Sue found out about his Indigeneity. In effect, she found this to be a neutral factor because, of course, until Mr. Sue knew about his Indigeneity, he had no reason to appeal.
 2. Given the significant passage of time, there would undoubtedly be prejudice to the Crown in the event the court ordered a new trial.
 3. It would be detrimental to the justice system to allow Mr. Sue to restart the process now, more than a decade after entering a guilty plea.
 4. The victim, Mr. Bruce, could potentially be retraumatized given that he could very well have reasonably expected that the litigation was long since over.
 5. The delay in this case was "extremely long".
 6. There was "little to no prospect that an appeal of bail conditions, conviction, or sentencing will be successful".
- [13] With respect to the merits assessment, Justice Ahmad noted that the time in which the appellant could apply for a review of the bail order under s. 520 of the Criminal Code had long expired and there was no other basis on which he could appeal. She further observed that none of the factors set out in para. 77 of *R. v. Alec*, 2016 BCCA 282, militated in favour of permitting the appellant to withdraw his guilty plea, and that nothing in his affidavit suggested his plea was involuntary. Lastly, Justice Ahmad held that it was difficult to suggest that the sentence was demonstrably unfit given that it was based on a significantly reduced charge and based on the joint submissions of counsel.

Analysis

- [14] I turn now to the test for leave to appeal from a summary conviction court. Appellants may seek leave to appeal against a decision from a summary conviction court "in respect of an appeal" pursuant to s. 839(1)(a) of the Criminal Code. To obtain leave under this section, the appellant must establish that: (1) the proposed grounds of appeal involve questions of law alone; (2) the issues raised by the appeal are ones of importance; and (3) there is sufficient merit to the appeal that it has a reasonable possibility of success: *R. v. Winfield*, 2009 YKCA 9 at paras. 11-14. The overriding consideration is whether it is in the interests of justice to grant leave: *R. v. Cai*, 2008 BCCA 332 at para. 26; *R. v. Gill*, 2008 BCCA 259 at para. 3. Leave is granted sparingly: *R. v. Gaudaur*, 2010 BCCA 157 at para. 3. The focus of a leave application is whether the summary conviction appeal judge, here, Justice Ahmad, committed an error of law: *Winfield* at para. 12.
- [15] A question of law includes the application of a legal standard or test to the facts in the case: *R. v. Shepherd*, 2009 SCC 35 at para. 20. In addition, a superior court's refusal to grant an extension of time in which to file a notice of appeal, which is what is before me, is also a decision in respect of an appeal under s. 839(1)(a): *R. v. Klos*, 2022 BCCA 361 at para. 14, leave to appeal ref'd 2023 CanLII 31575 (S.C.C). It follows that the question on this application is whether Mr. Sue has identified any meritorious and important question of law arising from Justice Ahmad's apprehension and application of the legal test for an extension of time to file a notice of appeal. Significantly, in undertaking this assessment, I must apply a deferential standard of review to Justice Ahmad's decision: *R. v. Kleiman*, 2024 BCCA 425 at para. 44. In other words, I cannot easily interfere with it--I am to generally defer to what she has decided in coming to the conclusion she did.
- [16] It is clear, as Mr. Sue acknowledged, that Justice Ahmad applied the correct test for an extension of time to file a notice of appeal:
1. Did the appellant have a bona fide intention to appeal?
 2. When were the respondents informed of the appellant's intention?
 3. Would the respondents be unduly prejudiced by an extension of time?
 4. Is there merit in the appeal?
 5. Is it in the interests of justice that an extension be granted?

The last consideration--the interests of justice--encompasses the other four and "states the decisive question": *R. v. Khungay*, 2020 BCCA 269 at para. 29.

- [17] The appellant's first and primary complaint about Justice Ahmad's decision is that she did not give full effect to the fresh evidence he discovered in 2022. Mr. Sue says that his Indigeneity should have played a role at each step of the proceedings in the Provincial Court, and at each step that factor--his Indigeneity--could have affected the bail conditions, his guilty plea and conviction, and the sentencing.
- [18] Mr. Sue submits that Justice Ahmad failed to recognize that the Provincial Court's lack of awareness of his Indigeneity resulted in a miscarriage of justice arising from the lack of consideration of the application of the principles in *R. v. Gladue*, [1999] 1 S.C.R. 688.
- [19] Turning first to the bail conditions imposed in the Provincial Court, Mr. Sue has not identified an error of law in Justice Ahmad's reasons which are, in my view, unassailable. She correctly recognized there was no authority or avenue of appeal for the Supreme Court to hear an appeal from those bail conditions because s. 520 of the Criminal Code only gives the right to apply for a review of a bail order before the trial of the charge. The bail order, in Mr. Sue's case, was cancelled when he was sentenced on March 22, 2012, and there was no longer a right of appeal after that. The whole question is also entirely moot.
- [20] I turn next to the judge's assessment of the impact of the new evidence on the conviction entered as a result of Mr. Sue's guilty plea. Mr. Sue submits that Justice Ahmad erred because she did not consider the evidence. But, in fact, she repeatedly referred to Mr. Sue's affidavit and the fact of his newly discovered Indigenous heritage.
- [21] In any event, as this Court explained in *R. v. Cavanaugh*, 2025 BCCA 252 at paras. 49-51, the principles that Mr. Sue wishes to rely on--the principles set out in *Gladue*--must be considered in the sentencing of an Indigenous offender. They do not apply to the process of proving the elements of the offence beyond a reasonable doubt. Mr. Sue says his lawyer might have defended the case differently if he had known Mr. Sue was Indigenous--but again, Indigeneity does not create a different legal regime around proving or defending an offence.
- [22] Nor did Justice Ahmad err in her assessment of whether there was a basis to set aside the guilty plea. She recognized that a s. 606(1.1) inquiry had not been conducted by the sentencing judge, but as set out in s. 606(1.2) of the Criminal Code, that failure does not invalidate a guilty plea--it is something that can be taken into account, but on its own, it does not mean that the plea entered is not valid.
- [23] On appeal, Mr. Sue says Justice Ahmad erred by failing to recognize his plea was uninformed because neither his lawyer--who defended the case and encouraged him to enter a plea--nor he himself knew that he was Indigenous. However, as stated by the Supreme Court of Canada in *R. v. Wong*, 2018 SCC 25, at para. 4, in order for a guilty plea to be informed, what is necessary is that the accused must be aware of the criminal consequences of the plea. There was nothing before Justice Ahmad or this Court to suggest that Mr. Sue did not realize these consequences of entering a plea--that is, he would be convicted of the assault and he would have to serve a conditional sentence order of 18

months.

- [24] Finally, Mr. Sue says Justice Ahmad was wrong not to accept his evidence that the plea was not voluntary because he has ADHD, which was, at that time, unmedicated. However, there was no explanation or evidence about how that circumstance played a role in his decision to enter a guilty plea.
- [25] I turn now to the summary conviction appeal judge's assessment of the impact of Mr. Sue's Indigeneity on the sentence imposed.
- [26] Section 718.2(e) of the Criminal Code provides that "all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders". To give proper effect to this provision, judges tasked with sentencing offenders with Indigenous heritage must pay particular attention to two factors--the two factors Mr. Sue stressed in his application today: (1) the unique systemic or background factors that may have played a part in bringing the offender before the court; and (2) the types of sentencing procedures and sanctions that may be appropriate for the offender in the circumstances given his or her heritage: Gladue at para. 66; R. v. Kehoe, 2023 BCCA 2 at para. 40. Failure to consider Gladue principles in a case involving an Indigenous offender constitutes an error in principle justifying appellant intervention: R. v. Ipeelee, 2012 SCC 13 at para. 87.
- [27] In seeking an extension of time to appeal his sentence, Mr. Sue argued his sentence would have been different had the parties been aware of his Indigenous heritage. He did not, however, advance any argument about how he would have been sentenced differently. Specifically, he did not attach a Gladue report, enumerate any unique or systemic background factors that played a part in bringing him before the court, or identify how a conditional sentence order was inappropriate in light of his heritage. Absent provision of this individualized information, Justice Ahmad observed that the court "would be unlikely to conclude that on an appeal, with the information that was available the sentence imposed was demonstrably unfit". She observed, correctly, that there is no automatic reduction in a sentence simply because someone is of Indigenous heritage: Gladue at para. 88; Kehoe at para. 49.
- [28] Mr. Sue is understandably angry that he was not made aware of his Indigeneity until he was in his 30s. He says that, as was the case in Kehoe, he has been disconnected from his heritage and from the potential societal and financial supports that could have made his life better. However, as I have already noted, without "information from the appellant, or about the appellant, that lifts his life circumstances and Indigenous status from the general to the specific", the general fact of his Indigenous heritage, by itself, is not sufficient to result in a change to the appellant's sentence: R. v. Monckton, 2017 ONCA 450 at para. 117; see also R. v. Taylor, 2021 BCCA 283 at para. 27.

- [29] It must be remembered that the sentence imposed in Provincial Court was a conditional sentence order of 18 months, which allowed Mr. Sue to continue to be employed, to continue with some activities, and to remain living in his own apartment, even though the offence involved a serious assault causing significant injuries. The principle in Gladue that courts are to consider non-jail sentences for everyone and in particular for Indigenous offenders was applied here. In other words, the judge accepted the joint submission that Mr. Sue should not be put in jail.
- [30] Taking all of this into account, I can see no error in Justice Ahmad's finding that it is unlikely the court would find the sentence imposed to be demonstrably unfit, even taking into account the newly discovered fact of Mr. Sue's Indigenous heritage.
- [31] In conclusion, Mr. Sue, is understandably angry about his circumstances. He has pursued remedies in a civil action against his parents and against Vital Statistics and perhaps others, but the questions and issues before this Court today are quite different from those relating to any wrongs flowing from the withholding of information about his heritage. With great respect, Mr. Sue has not pointed to any error in Justice Ahmad's reasoning in denying an extension of time to file a notice of appeal in that court that would amount to an error of law that would require intervention by an appellate court.
- [32] For that reason, I am not persuaded that it is in the interests of justice to grant leave to appeal and I would therefore deny the application.

"The Honourable Madam Justice Fenlon"

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://www.bccourts.ca/jdb-txt/ca/25/03/2025BCCA0363.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-sue-2025>

Prepared on 29 October 2026 · Esheria