

CANADA / JUDGMENT

R. v. T.E.C.

2025 BCCA 394

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 394 R. v. T.E.C.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. T.E.C.,

2025 BCCA 394

Date: 20251003

Docket: CA50732

Between:

Rex

Respondent

And

T.E.C.

Appellant

Restriction on publication: A publication ban has been mandatorily imposed under s. 486.4 of the Criminal Code restricting the publication, broadcasting, or transmission in any way of evidence that could identify a complainant or witness, referred to in this judgment by the initials J.R. This publication ban applies indefinitely unless otherwise ordered.

Before:

The Honourable Justice Dickson

(In Chambers)

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

August 1, 2024 (conviction) (R. v. T.E.C., 2024 BCSC 2255,

New Westminster Docket X083753).

Oral Reasons for Judgment

The Appellant, appearing in person

(via videoconference):

T.E. C.

Counsel for the Respondent:

E. Purtzki

Place and Date of Hearing:

Vancouver, British Columbia

September 19, 2025

Place and Date of Judgment:

Vancouver, British Columbia

October 3, 2025

Summary:

The appellant applies for an extension of time to appeal his conviction for sexual assault; an order appointing counsel to pursue the appeal; and bail pending appeal. Held: The application for an extension of time is granted and the applications for the appointment of counsel and bail pending appeal are dismissed. The interests of justice do not favour either the appointment of counsel or bail pending appeal because there is no realistic prospect of success for the appeal and the interests of enforceability outweigh any reviewability interests.

DICKSON J.A.:

Overview

- [1] The self-represented applicant, T.E.C., applies under s. 684(1) of the Criminal Code, R.S.C. 1985, c. C-46 for an order appointing counsel to pursue the appeal of his conviction for two serious sexual offences and for an extension of time to appeal his conviction. He also seeks his release from custody pending the determination of his appeal pursuant to s. 679(1) of the Criminal Code. I heard both applications together on September 19, 2025.

- [2] Crown counsel does not oppose T.E.C.'s motion to extend time to appeal his conviction as he demonstrated a continuing and bona fide intent to appeal. I agree and grant that application. However, for the reasons that follow, I dismiss the applications for the appointment of counsel and bail pending appeal.

Background

- [3] Following a judge-alone trial, T.E.C. was convicted of assaulting and choking the complainant, J.R., during a sexual encounter that took place in T.E.C.'s car on August 4, 2021.
- [4] In summary, T.E.C. and J.R. had been in a sexual relationship for approximately a month prior to the incident. At trial, J.R. testified that they had discussed how to communicate consent during sex, and agreed that if T.E.C. was being too rough, she would tap or slap his hands or arms. She stated that when she did so T.E.C. understood and responded accordingly.
- [5] J.R. testified that she and T.E.C. drove to a parking lot and had consensual sex for about 20 minutes in the car on the night in question. However, she said T.E.C. became violent and struck her repeatedly, despite her requests that he stop. She testified that after repeatedly striking her and while continuing with the sexual intercourse, T.E.C. jammed his forearm against her throat and although she signaled him to stop, he continued. She said that she briefly lost consciousness, then regained consciousness and pushed T.E.C. away, at which point he returned to the drivers' seat. She testified that she was upset and crying at this point, that T.E.C. was angry and defensive, and that eventually he drove her home.
- [6] The day after the incident, J.R. went to the hospital, where she was examined by a forensic nurse. The nurse testified that J.R. had 14 injuries. Photographs taken by police showed that these injuries included a bruise under J.R.'s right eye and a burst blood vessel in her left eye. In text messages exchanged with J.R. when she was at the hospital, T.E.C. wrote "Ouch", "Ya", "That was a rough one", "You okay", "Or you still super choked" and "Or r u going to forgive my strong strangle". In response to J.R. writing that she would have appreciated an apology and had a concussion, T.E.C. wrote " I will NEVER slap or strangle you again now".
- [7] T.E.C. testified at trial, and, in doing so, explained that he had suffered a traumatic brain injury in a car accident in 2010, and had trouble with his memory and cognitive abilities. He stated that the sexual intercourse that took place on the night in question was entirely consensual and when J.R. signaled him to slow or stop, he always responded to her requests. He denied that he put his forearm to J.R.'s neck and testified that when she asked him to stop choking her, he asked why she was being so weak. He said that J.R. replied that she was feeling dizzy and the choking felt too strong. In testifying regarding the text messages, T.E.C. stated that his messages to J.R. related to his comments about her being too weak and her statements that his choking felt too strong.

- [8] The defence also called two other witnesses, N.H. and T.G. N.H. was a co-worker of J.R.'s. She testified that in the days following the incident, J.R. told her in a phone conversation that she was upset with T.E.C. because he was in a relationship with another woman and that their "experimental" relationship was not what she was looking for. J.R. denied saying anything in the call with N.H. The other defence witness, T.G. testified that she encountered J.R. and T.E.C. on the night in question parked across the street from a local pub. She said that J.R. seemed to be intoxicated and was in a happy-go-lucky mood and she did not notice any marks on J.R.'s face. On cross-examination, she agreed that what she was describing could have happened on any summer day in 2021.
- [9] The judge found J.R. to be a credible and reliable witness. In doing so, he expressly rejected defence counsel's submissions that J.R. had a motive to fabricate, and about her apparent behaviour after the incident, finding that these submissions relied on "myths or stereotypes about how a complainant would or should act". As to T.E.C.'s evidence, the judge found that despite having made "all reasonable allowances" for his brain injury, there were "a number of matters of substantial concern in terms of credibility", which he reviewed in his reasons. He found that T.E.C. caused J.R.'s injuries and that although she consented to at least some slapping and choking as part of the sexual activity, she revoked her consent when T.E.C. used excessive force, but he continued to engage in those acts.
- [10] In the result, the judge convicted T.E.C. of sexual assault by choking, suffocating or strangling; sexual assault causing bodily harm; and assault by choking, suffocating or strangling. He conditionally stayed the assault count. He imposed the jointly recommended sentence of two years less one day, followed by three years probation.
- [11] On June 9, 2025, T.E.C. filed a notice of appeal against his conviction and sentence. He applied for court-appointed counsel because he was refused legal aid. A second legal aid assessment also resulted in a denial of the requested funding. On February 28, 2025, he contacted Legal Aid to request reconsideration based on fresh evidence. On May 8, 2025, this application was denied. On June 9, 2025, T.E.C. provided further information to Legal Aid in support of his application, but Legal Aid informed him that they would not consider his application further. The funding refusal was not for financial reasons.
- [12] The Crown opposes T.E.C.'s application for appointment of counsel on the grounds that there is no merit to any of the proposed grounds of appeal, and opposes the bail application on the grounds that the conviction appeal is frivolous (per s. 679(3)(a) of the Criminal Code) or because the applicant's detention is necessary in the public interest (per s. 679(3)(c) of the Criminal Code).

Law

Appointment of counsel

- [13] Section 684(1) of the Criminal Code authorizes the appointment of counsel where doing so is "desirable in the interests of justice" and the applicant does not have "sufficient means" to obtain the assistance of a lawyer.
- [14] The test for the appointment of counsel under s. 684(1) is well-established. To succeed on his application, T.E.C. must establish that he has insufficient means to obtain legal assistance. He must also establish that an appointment is in the interests of justice: *R. v. Dickins*, 2025 BCCA 242 at para. 17.
- [15] Relevant factors include:
- a) the complexity of his appeal;
 - b) the points to be argued;
 - c) the applicant's competency to present the appeal;
 - d) the need for counsel to find facts, research law, or make arguments;
 - e) the nature and extent of the penalty imposed; and
 - f) the merits of the appeal.

Dickins at para. 17.

- [16] It is generally understood that the interests of justice will not favour an appointment where an appeal has no realistic prospect of success: *R. v. Dancho*, 2024 BCCA 393 at para. 15.

Bail pending appeal

- [17] The three statutory criteria for bail pending appeal are found in s. 679(3) of the Criminal Code. An appeal judge may order that the applicant be released pending the determination of an appeal if the applicant establishes that:
- a) the appeal is not frivolous;
 - b) the applicant will surrender himself into custody in accordance with the terms of the order; and
 - c) the applicant's detention is not necessary in the public interest.
- [18] The applicant seeking bail bears the burden of establishing that each criterion is met on a balance of probabilities: *R. v. Oland*, 2017 SCC 17 at para. 19.
- [19] The question of whether an appeal is "not frivolous" under s. 679(3)(a) is "a very low bar": *Oland* at para. 20.
- [20] The second criterion requires the appeal judge to be satisfied that the applicant will not flee the jurisdiction and will surrender into custody as required.

- [21] The public interest criterion has two components: public safety and public confidence in the administration of justice: Oland at paras. 26-27.
- [22] The public safety component tracks the secondary grounds found under s. 515(10)(b) of the Criminal Code governs release pending trial and requires an assessment of whether: (i) there is a "substantial likelihood" that the applicant will commit an offence or interfere with the administration of justice; (ii) there is a "substantial likelihood" that the applicant will endanger the "protection or safety of the public"; and (iii) the applicant's detention is "necessary" for public safety: Oland at para. 24.
- [23] The public confidence element involves weighing two competing interests: enforceability and reviewability: Oland at para. 24. Enforceability considerations consist of the gravity of the offence, the circumstances surrounding its commission, and the potential for a lengthy term of imprisonment: Oland at paras. 37-39. The reviewability interest involves a pointed assessment of the strengths of an appeal: Oland at para. 44.

Analysis

Appointment of counsel

- [24] I accept that T.E.C. has met the insufficient means component of the test for an appointment. The question is whether it is in the interests of justice that I appoint counsel to assist him to advance his appeal.
- [25] In support of his application, T.E.C. submits that he cannot effectively present his appeal without the assistance of a lawyer due to his brain injury, as well as the fact that he is imprisoned and does not have access to a law library or time to research case law. T.E.C. emphasizes that he has been assisted by an inmate with legal training in presenting his application and that his verbal abilities are extremely limited due to his brain injury.
- [26] As to the merits of the appeal, T.E.C. points to fresh evidence that he wishes to adduce, which is presented in the form of an email from a further proposed witness that he says contradicts J.R.'s "story-line" in that the witness says she saw J.R. outside the car on the night in question and she did not appear to be upset. He also says that there was collusion, that his trial counsel was ineffective in failing to cross-examine J.R. adequately, particularly regarding her motive to lie, and that counsel failed to present evidence regarding his brain injury, and, further, that the text messages could have been edited and were inadmissible.
- [27] In my view, the interests of justice do not favour an appointment of counsel because, having reviewed the reasons for judgment and the application materials, I see no realistic prospect of success for the appeal.
- [28] In particular, I see no indication from the record that T.E.C.'s trial counsel was ineffective. There is a strong presumption of competency for defence counsel's strategic and tactical decisions: *R. v. Aulakh*, 2012 BCCA 340 at para. 48; *R. v. Jim*, 2003 BCCA 411 at para. 12.

- [29] The failure to cross-examine J.R. on her potential motive to lie based on jealousy does not arguably lead to a miscarriage of justice. Defence counsel advanced a possible motive to fabricate on the part of J.R. by calling N.H. as a defence witness, and N.H. testified that J.R. told her she was upset the applicant was in a relationship with another woman. Although defence counsel did not put this statement to J.R. on cross-examination, the failure to do so could not amount to a miscarriage of justice given the judge's finding that it was "reasonable to assume" J.R. denied making that statement as she denied saying anything at all to N.H. The same holds true regarding defence counsel's cross-examination of J.R.'s post-incident behaviour, which could not have affected the outcome given that, as the judge recognized, its purported significance would be based in myth and stereotype.
- [30] As to the proposed fresh evidence, in my view, it does not meet the requirements for admissibility, nor would it affect the verdict. Even if, as the proposed witness asserts, she saw J.R. get out of the car after the incident, that observation was peripheral. Moreover, the proposed testimony that J.R. was "all smiles" is substantially the same as that of T.G.
- [31] In my view, the judge gave a thorough, detailed, and well-reasoned decision for convicting T.E.C. He assessed the evidence carefully and applied correct legal principles.
- [32] In the circumstances, I am not persuaded that the interests of justice favour the appointment of counsel in this matter.

Bail pending appeal

- [33] The Crown opposes T.E.C.'s release on the grounds that the appeal is frivolous and that his detention is necessary in the public interest.
- [34] The "not frivolous" test is widely recognized as being a very low threshold: Oland at para. 20. An applicant need not establish a likelihood of success on appeal. However, they must be able to point to a viable ground of appeal that is capable of reasoned argument: R. v. Cashman, 2023 BCCA 48 at para. 14.
- [35] For the reasons I have discussed, in my view, T.E.C.'s appeal does not meet even this low threshold test. The judge's reasons are thorough and well-supported by the evidence and the law. T.E.C.'s complaints concerning his counsel are unsubstantiated and incapable of succeeding, and the proposed fresh evidence adds nothing of apparent significance. As presented, I see no viable grounds of appeal.
- [36] The Crown concedes that T.E.C. is not a flight risk. I agree with this submission. His past performance while released pending his trial and sentencing supports the conclusion that he will surrender himself into custody at the conclusion of a release order, were one to be made.

- [37] However, the Crown submits that releasing T.E.C. would undermine public confidence in the administration of justice. For the reasons that Crown counsel articulates, I agree with that submission as well.
- [38] Enforceability concerns in this case include the fact that this offence occurred in the context of an intimate-partner relationship and the judge found the offences fell on the more serious side of the spectrum for sexual assaults: Reasons for Sentencing at paras. 35-36. Even if the appeal could be said to pass the not frivolous standard, given the strength of the Crown's case, including the strong corroboration for J.R.'s account, the reviewability interests are minimal. Moreover, public safety concerns stemming from T.E.C.'s history of violence toward romantic partners, albeit dated, remain relevant to the public confidence component of the test in s. 679(3)(c) of the Criminal Code and weigh against release. In all of the circumstances, I conclude that the interests of enforceability outweigh any reviewability interests, and that releasing T.E.C. on bail pending appeal would undermine public confidence in the administration of justice.

"The Honourable Justice Dickson"

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