

CANADA / JUDGMENT

R. v. Veerapen

2025 ONCA 881

COURT

Court of Appeal for Ontario

DECIDED

16 December 2025

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R. v. Veerapen Collection Decisions of the Court of Appeal Date 2025-12-16 Neutral citation 2025 ONCA 881 Docket numbers COA-25-CR-1261, M56509 Judges Huscroft, Grant Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Veerapen, 2025 ONCA 881 DATE: 20251216 DOCKET: M56509 (COA-25-CR-1261) Huscroft J.A. (Motion Judge) BETWEEN His Majesty the King Respondent and Vishan Veerapen Applicant (Appellant) Hedieh Kashani, for the applicant Michael Bernstein, for the respondent Heard: December 11, 2025 REASONS FOR DECISION

- [1] This is an application for release pending appeal.
- [2] The applicant was found guilty following a jury trial and convicted of discharging a firearm with intent to wound; aggravated assault by wounding; unauthorized possession of a loaded prohibited firearm; possession of a prohibited firearm knowing not authorized; and occupying a motor vehicle with a prohibited firearm. In light of the jury's findings, the trial judge also found the applicant guilty of possessing a firearm while prohibited from doing so by court order. He was sentenced to a term of imprisonment of 9 years, leaving approximately 8 years to be served after credit for time served.
- [3] The application is governed by s. 679(3) of the Criminal Code, R.S.C. 1985, c. C-46. The applicant bears the burden of establishing the following three criteria on a balance of probabilities:
 - a) The appeal is not frivolous;
 - b) He will surrender into custody in accordance with the terms of the order; and
 - c) His detention is not necessary in the public interest. The appeal is not frivolous
- [4] The applicant argues that his appeal is not frivolous and has merit. He will argue that the Crown's refusal to consent to a re-election to a judge-alone trial prejudiced his defence, that he was wrongly pressured to testify at trial, that the trial judge erred in her treatment of the evidence of post-offence conduct, and that the trial judge erred in instructing the jury that there was no probative value in the evidence of the alternate suspect's propensity for violence.

- [5] The Crown argues that the grounds raised on this application are moot because they are not the errors the applicant referenced in his notice of appeal. However, at the hearing, the applicant undertook to file a supplementary notice of appeal outlining the grounds he argues on this application. I will consider the application on this basis.
- [6] I accept that the grounds of appeal are not frivolous. As this court has made clear, s. 679(3) (a) establishes a very low bar. It is enough, at this stage, that an appeal is not frivolous in the sense that it is not baseless: *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250 at para. 41. However, the strength of the appeal is relevant in weighing the reviewability interest against the interest in immediate enforcement. As I will explain, the applicant's appeal is not nearly strong enough to overcome the significant public interest in immediate enforcement of his sentence. The applicant will surrender into custody in accordance with the terms of the order
- [7] The Crown does not contest the second ground. Accordingly, the application hinges on the public interest test. Detention is necessary in the public interest
- [8] The public interest test has two components: public safety and public confidence in the administration of justice: *Oland*, at paras. 23-27. The question is whether the public interest in reviewing the conviction outweighs the public interest in immediate enforcement of the sentence.
- [9] The applicant's main argument is that he was prejudiced by the Crown's refusal to consent to his re-election.
- [10] The Crown informed the applicant that it would consent to re-election if formal notice was given at least 30 days before trial. It was not – it was given on the eve of the scheduled jury trial once the applicant learned who the trial judge would be. These were the circumstances in which the Crown exercised its discretion not to consent. Additionally, while there is an overarching duty on the trial judge to ensure fairness, the Crown's discretionary decision was not challenged by the applicant and it appears to have been assumed that there was no basis to overrule it. I appreciate that *R. v. Varennes*, 2025 SCC 22, 504 D.L.R. (4th) 583, establishes that some exercises of prosecutorial discretion are reviewable on a standard lower than abuse of process, but there is nothing on the record that renders this a strong ground of appeal.
- [11] I do not think any of the applicant's additional proposed grounds of appeal are strong. The applicant argues that there was pressure on him to testify not only because of the Crown's refusal to allow re-election but because the alternate suspect was located during the trial and testified near the end of the Crown's case. The short answer to this is that the decision to testify was a tactical decision the applicant may have made for any number of reasons.

- [12] As for the post-offence conduct evidence, it is not contested that the applicant left the country immediately following the shooting. It was for the jury to determine the significance of this post-offence conduct, including the significance of the applicant's later return to the country. I note also that this evidence was not the subject of objection as to admissibility at trial.
- [13] Finally, the applicant argues that the trial judge erred in instructing the jury to consider the criminal record of the alternate suspect – a dated drinking and driving conviction and a more recent assault on an intimate partner – only in so far as it affected his credibility. The applicant says that the jury was given a no probative value instruction concerning his record and his propensity for violence. I do not see the error alleged. The trial judge instructed the jury that it was for them to determine whether the alternate suspect's prior convictions suggested a propensity for violence.
- [14] In summary, the applicant's grounds of appeal are not strong. In contrast, the public interest in immediate enforcement of the sentence is great.
- [15] There is considerable overlap between the two components of the public interest test in this case. The applicant has shown that he is willing to use illegal firearms against unarmed people. This makes him a risk to public safety. In the absence of a very strong appeal, it would undermine public confidence to release a person found to have committed such a violent offence.
- [16] The applicant argues that his detention is not necessary in the public interest. He notes that he was on strict bail terms for over two years and there were no allegations that he breached those conditions. He says that he has demonstrated a willingness to comply with court orders and that any public safety issues can be addressed by the imposition of surety supervision with GPS tracking and strict bail conditions.
- [17] This submission fails to come to terms with the nature of the problem. This is a case of serious gun violence – as serious as it can be short of causing death. In her sentencing decision, the trial judge found that, following an argument in a parking lot outside a bar, the applicant shot the victim twice in the abdomen at close range. The trial judge concluded that the jury must have found that the applicant was in possession of a loaded firearm in his car; that he used the firearm to deliberately shoot the victim twice in the abdomen; that he did not act in self-defence; and that his intention was to wound the victim but not kill him.
- [18] The victim is lucky to be alive following his interaction with the applicant. As it is, he was in a coma for three weeks and in the hospital for six. He remains physically and psychologically afflicted. Not only is the victim lucky to be alive, but it was a matter of sheer luck that no one else was injured when the applicant fired his gun. The shooting occurred in a public place with numerous members of the public around. The applicant has shown that he is indifferent to public safety. He is a dangerous man from whom the community is entitled to be protected.

- [19] I am not persuaded that any conditions would adequately address the danger the applicant poses to the community. He has already demonstrated that he will not respect court orders. The shooting in this case occurred while he was subject to a court order prohibiting him from possessing firearms.
- [20] The public interest in immediate enforceability of the applicant's sentence is very strong. Gun violence is a scourge in our community. It causes death and devastation and leads law-abiding people to fear for their safety. In the absence of very strong grounds of appeal, a reasonable member of the public – thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's fundamental values – would not understand why someone convicted of serious, violent offences should be granted release pending appeal. The public is entitled to expect that it will be protected from gun violence.
- [21] In summary, the applicant has not met his burden of establishing that his detention is not necessary in the public interest.
- [22] The application is dismissed. "Grant Huscroft J.A."

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