

CANADA / JUDGMENT

R. v. W.S.

2026 ONCA 69

COURT

Court of Appeal for Ontario

DECIDED

2 February 2026

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R. v. W.S. Collection Decisions of the Court of Appeal Date 2026-02-02 Neutral citation 2026 ONCA 69 Docket numbers COA-25-CR-0660 Judges Trotter, Gary T.; Dawe, Jonathan; Wilson, Darla A. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. W.S., 2026 ONCA 69[1] DATE: 20260202 DOCKET: COA-25-CR-0660 Trotter, Dawe and Wilson JJ.A. BETWEEN His Majesty the King Respondent and W.S. Appellant Colleen McKeown, for the appellant Nicholas Hay, for the respondent Heard and rendered orally: January 30, 2026 On appeal from the conviction entered by Justice Annalisa S. Rasaiah of the Superior Court of Justice, sitting with a jury, on May 29, 2024. REASONS FOR DECISION

- [1] After a trial by judge and jury, the appellant was convicted of one count of sexual interference.
- [2] On appeal, he contends that the trial judge erred in dismissing his application under s. 11(b) of the Charter. The total delay was 36.43 months after the information was laid. After deductions for defence delay, the trial judge found that the net delay was 27.6 months. Alternatively, she found that the delay was not unreasonable because of the impact of the COVID-19 pandemic, to which she attributed 7.1 months.
- [3] The appellant submits the trial judge made three errors in dismissing his s. 11(b) application: (1) the trial judge erred in finding that the timing of the appellant's election caused delay; (2) the trial judge erred in deducting 112 days as defence delay because the appellant did not raise delay concerns in a timely manner, such that it would have permitted the Crown to take steps to mitigate the delay; and (3) the trial judge erred by attributing 7.1 months to the impact of the COVID 19 pandemic as an exceptional circumstance.
- [4] Despite Ms. McKeown's able submissions, we agree with the Crown that the trial judge did not err in her alternative analysis on the impact of the COVID-19 pandemic. This conclusion is dispositive of this appeal.
- [5] It was open to the trial judge to rely on her local expertise of the impact of the COVID-19 pandemic on the scheduling of jury trials in her jurisdiction. Her findings in this regard are entitled to deference.

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- [6] The appellant submits that the litigation schedule that was in place would not have permitted the trial to be completed under the Jordan ceiling even if there had been no COVID-19 backlog. Further, the appellant submits that the Crown did not take sufficient steps to mitigate the effects of the COVID-19 pandemic on the scheduling of this trial.
- [7] We agree with the Crown that the litigation schedule could have been shortened had an earlier trial date been made available. In terms of the Crown's efforts, the trial judge found that the Crown had taken sufficient steps to mitigate the delay. This finding, too, is entitled to deference on appeal.
- [8] The appeal is dismissed. "Gary Trotter J.A." "J. Dawe J.A." "D.A. Wilson J.A."
- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.
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