



SUPREME COURT OF CANADA

CITATION: R. v. Safdar, 2022 SCC 21

APPEAL HEARD: May 18, 2022

JUDGMENT RENDERED: May 18, 2022

DOCKET: 39629

BETWEEN:

Syed Adeel Safdar
Appellant

and

Her Majesty The Queen
Respondent

CORAM: Wagner C.J. and Brown, Rowe, Martin and Jamal JJ.

UNANIMOUS Brown J.

JUDGMENT READ

BY:

(paras. 1 to 6)

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Syed Adeel Safdar

Appellant

v.

Her Majesty The Queen

Respondent

Indexed as: R. v. Safdar

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File No.: 39629.

2022: May 18.

Present: Wagner C.J. and Brown, Rowe, Martin and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Constitutional law — Charter of Rights — Right to be tried within reasonable time — Calculation of delay — Accused charged with several offences involving abuse of his wife — Accused applying for stay of proceedings on basis that right to be tried within reasonable time under s. 11(b) of Canadian Charter of Rights and Freedoms infringed — Trial judge holding that net delay exceeded presumptive ceiling set out in Jordan and staying proceedings — Court of Appeal holding that period between end of evidence and argument at trial and release of decision on stay application should not be included in calculation of delay — Court of Appeal concluding that net delay was below Jordan ceiling and setting aside stay of proceedings — Court of Appeal's decision affirmed.

Cases Cited

Applied: *R. v. K.G.K.*, 2020 SCC 7, [2020] 1 S.C.R. 364; **referred to:** *R. v. J.F.*, 2022 SCC 17.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, s. 11(b).

APPEAL from a judgment of the Ontario Court of Appeal (Feldman, Gillese and Miller JJ.A.), 2021 ONCA 207, 469 D.L.R. (4th) 447, 403 C.C.C. (3d) 91, [2021] O.J. No. 1625 (QL), 2021 CarswellOnt 4322 (WL), setting aside the stay of proceedings entered by Goodman J., 2018 ONSC 7067, 423 C.R.R. (2d) 98, [2018] O.J. No. 6328 (QL), 2018 CarswellOnt 20274 (WL), and remitting the matter for verdict. Appeal dismissed.

Nader R. Hasan and *Caitlin Milne*, for the appellant.

Tracy Kozlowski, for the respondent.

The judgment of the Court was delivered orally by

[1] BROWN J. — The appellant, Syed Adeel Safdar, was tried for offences related to the abuse of his wife. At the conclusion of evidence and submissions, he applied for a stay based on a breach of his right under s. 11(b) of the *Canadian Charter of Rights and Freedoms* to be tried within a reasonable time. The trial judge heard the application while preparing his decision on the

trial proper, then reserved that decision and granted the stay. In his reasons for ordering a stay, he also advised that he had completed his reserved trial decision, which remained under seal pending the outcome of any appeal from his stay order.

[2] The Crown appealed the stay order, arguing that, on the authority of this Court's decision in *R. v. K.G.K.*, 2020 SCC 7, [2020] 1 S.C.R. 364 (which was not available to the trial judge), the trial judge had erred by including as part of the total delay the period from the end of the evidence and argument to the release of the stay decision. Absent that error, the total delay fell under 30 months. The Court of Appeal for Ontario agreed, set aside the stay order and referred the matter back to the trial judge to release his decision on the trial proper. Mr. Safdar now appeals the Court of Appeal's decision to this Court.

[3] We agree with the Court of Appeal that *K.G.K.* is dispositive of the central issue in this appeal. For the purposes of determining whether the total delay exceeded the *Jordan* presumptive ceiling, the time between the conclusion of evidence and argument, and the bringing of the s. 11(b) application in this case, should not have been counted (*K.G.K.*, at paras. 31 and 33; *R. v. J.F.*, 2022 SCC 17, at para. 27).

[4] Nor, in our view, and despite Mr. Hasan's able submissions before us, has Mr. Safdar established that the total delay of 29.25 months was markedly longer than reasonable delay in the broader context of the trial (*K.G.K.*, at paras. 3, 23 and 54-55), taking into account the length of time taken for the application, the moderate complexity of the case, and other institutional factors that he raises (*K.G.K.*, at paras. 65 and 68-72).

[5] We also agree with the Court of Appeal's disposition of the other issues raised by Mr. Safdar in this appeal, substantially for the reasons it gives.

[6] The appeal is dismissed.

Judgment accordingly.

Solicitors for the appellant: Stockwoods, Toronto.

Solicitor for the respondent: Attorney General of Ontario, Toronto.