

SUPREME COURT OF CANADA



Case in Brief: *R. v. Wong*

2018 SCC 25 | Judgment of May 25, 2018 | On appeal from the Court of Appeal for British Columbia

The Supreme Court has refused a man’s request to take back his guilty plea because he didn’t show what he would have done differently if he’d known he could be deported.

Wing Wha Wong came to Canada from China over 25 years ago, but never became a citizen. He was married and had a child who was born in Canada. In 2014, he pleaded guilty to cocaine trafficking. He didn’t know that pleading guilty and being convicted of trafficking could result in him being deported.

While he was in prison, however, he received a call from an immigration officer. Because he was not a Canadian citizen, the officer told him he likely could not stay in Canada because he had committed a serious crime. A crime is “serious” when its possible prison sentence is ten years or more, or where a person receives a sentence of more than six months. A person convicted of cocaine trafficking could get a life sentence. Mr. Wong was sentenced to nine months. His crime was considered serious—and so he could be required to leave Canada—for both these reasons. Mr. Wong was told he would have to attend an immigration hearing when he was released, and could be deported. Immigration rules also said he could not appeal the deportation for any reason.

In criminal law, a guilty plea must be the person’s own personal decision, it must be clear and specific, and it must be based on all the necessary (legally relevant) information. An accused person must understand what might happen once s/he pleads guilty. This includes punishment, but also non-criminal consequences, such as deportation. A person who wants to take back an uninformed plea must show that the missing information was serious and caused him or her harm. Harm occurs where the person shows that s/he would have decided to go to trial, or pleaded guilty under different conditions, if s/he had all the necessary information at the time of the plea.

After serving his sentence, Mr. Wong sought to take back his guilty plea, arguing that he did not know he could be deported. The British Columbia Court of Appeal rejected his arguments because he did not specifically say he would have chosen to go to trial if he knew this. Mr. Wong appealed.

At the Supreme Court, the majority said that Mr. Wong should not be able to take his plea back. Justices Michael Moldaver, Clément Gascon, and Russell Brown, writing together, accepted that Mr. Wong did not have all the legally relevant information when he pleaded guilty. Like the Court of Appeal, however, they noted that he didn’t show that he would have done anything differently. A decision to plead guilty to a crime is deeply personal. Courts must therefore look at the person, and what s/he specifically would have done, when deciding whether to allow the person to take back a plea. They noted that an approach that disregards the deeply personal nature of a guilty plea, and looks instead at what a person in a similar situation would have done, would be difficult for courts to apply. One other judge agreed with Justices Moldaver, Gascon, and Brown.

Justice Richard Wagner (who was not yet Chief Justice when the appeal was heard) disagreed. He would have let Mr. Wong take his plea back and ordered a new trial. He agreed that Mr. Wong didn’t have all the necessary information when he decided to plead guilty. Justice Wagner disagreed that courts should look at the specific accused person. Instead, he said courts should take a more objective view and look at what a person in a similar situation might have done. He said Mr. Wong probably would have done something differently had he known he could be deported, so the process was not fair. Two judges agreed with Justice Wagner.

Most criminal cases end with a guilty plea. For the justice system to work well, it is important that guilty pleas be final. But this is unjust when a guilty plea is flawed. This decision confirms that someone can withdraw a guilty plea by showing s/he did not have legally relevant information at the time, and would have done something differently if s/he had it.

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For more information (case no. 37367):

- [Reasons for judgment](#)
- [Case information](#)
- [Webcast of hearing](#)

Breakdown of the decision:

- Majority: [Moldaver](#), [Gascon](#) and [Brown](#) JJ. ([Rowe](#) J. concurring)
- Dissenting: [Wagner](#) J. ([McLachlin](#) C.J. and [Abella](#) J. concurring)

Lower court rulings:

- Court of Appeal for British Columbia ([appeal judgment](#))
- Provincial Court of British Columbia (trial judgment, not available online)

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