



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *R. v. Summers*, 2026 NLCA 26

Date: July 20, 2026

Docket Number: 202401H0052

BETWEEN:

BLAIR SUMMERS

APPELLANT

AND:

HIS MAJESTY THE KING
as represented by the Attorney General
of Newfoundland and Labrador

FIRST RESPONDENT

AND:

HIS MAJESTY THE KING
as represented by the Attorney General
of Canada

SECOND RESPONDENT

Coram: F.P. O'Brien, F.J. Knickle and G.L.C. Noel JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division, 202401G3041
(2024 NLSC 107)

Appeal Heard: April 13, 2026

Judgment Rendered: July 20, 2026

Reasons for Judgment by: F.J. Knickle J.A.

Concurred in by: F.P. O'Brien and G.L.C. Noel JJ.A.

Counsel for the Appellant: Stephen P. Orr
Counsel for the First Respondent: Duncan J. Allison
Counsel for the Second Respondent: Erin Kennedy and W. Dean Smith K.C.

Authorities Cited:

CASES CITED: *R. v. Summers*, 2023 NLCA 8; *R. v. Summers*, 2018 NLSC 84; *R. v. Summers*, 2023 NLCA 20; *Summers v. His Majesty the King*, 2024 NLSC 107; *R. v. Basque*, 2023 SCC 18; *R. v. McDonald*, 1998 CanLII 13327 (ONCA); *R. v. MacFarlane* (1986), 60 Nfld. & PEIR 63 (PEICA); *Rex v. Patterson*, 1946 CanLII 373 (ONCA); *Paul v. The Queen*, [1982] 1 S.C.R. 621; *R. v. Crocker*, 1991 CanLII 2737 (NLCA); *R. v. Pittman*, 2019 NLCA 28, *R. v. O’Keefe*, 2018 NLCA 11; *R. v. Newhook*, 2008 NLCA 28; *R. v. B.H.*, 2022 NLCA 54; *R. v. Roberts*, 2019 NLCA 43; *R. v. Dergez*, 2025 BCCA 87; *R. v. Hudson (J.N.)*, 1993 CanLII 14912 (MBCA).

STATUTES CONSIDERED: *Criminal Code*, RSC 1985, c. C-46, sections 348(1)(b)-(e), 687, 719, 718.3; *Controlled Drugs and Substances Act*, SC 1996, c. 19, section 5(2).

F.J. Knickle J.A.:

[1] This appeal addresses a judge’s denial of Mr. Summers’ application for *habeas corpus* and what it meant by this Court when it varied a consecutive sentence to a concurrent sentence on appeal.

[2] Mr. Summers argued that he was being unlawfully detained by the respondents (the “Crown”). Mr. Summers asserted that the Correctional Service of Canada (the “CSC”), responsible for administering his period of imprisonment, miscalculated the commencement date of the sentence that he had successfully appealed. Mr. Summers argued that this miscalculation unlawfully lengthened his period of imprisonment and unlawfully delayed his release date.

[3] The Crown submitted that the CSC made no errors in their calculation of the varied sentence, that there was no unlawful detention and that the application for *habeas corpus* should be dismissed. The applications judge agreed and dismissed the application.

[4] Mr. Summers now appeals to this Court seeking to overturn the applications judge’s decision. He asks this Court to find that CSC incorrectly calculated his

period of imprisonment and to issue any further directions as necessary to enforce the “proper calculation” of Mr. Summers’ sentence and release.

[5] For the reasons that follow, I would dismiss the appeal. There was no error by the CSC in their calculation of the commencement date of Mr. Summers’ period of imprisonment and no error committed by the applications judge in dismissing the application for *habeas corpus*. There is no basis for this Court to interfere with the applications judge’s decision.

BACKGROUND

[6] The sole issue on this appeal is the proper calculation of Mr. Summers’ sentence by the CSC, after a majority of this Court varied Mr. Summers’ sentence on appeal (*R. v. Summers*, 2023 NLCA 8) regarding four indictable offences: one count of break and enter into a place other than a dwelling (a pharmacy, where large quantities of prescription drugs were stolen including fentanyl), contrary to section 348(1)(b)-(e) of the *Criminal Code*, R.S.C. 1985, c. C-46 (the “*Criminal Code*”) and three counts of possession of controlled substances under Schedules I, III and IV, for the purpose of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c. 19 (the “CDSA”).

[7] When Mr. Summers was sentenced on August 30, 2019 for these offences, he was already serving another sentence of imprisonment for several other break and enters, also into pharmacies. The date of sentencing for those other break and enters was April 18, 2018 (*R. v. Summers*, 2018 NLSC 84). As of August 30, 2019, the time remaining on the sentence for the other break and enters was two years and one month.

[8] The sole issue at sentencing on the later offences was whether any imprisonment imposed would run consecutively or concurrently to the earlier sentence. Mr. Summers argued that no further time was warranted on the basis that the two sets of offences were part of continuing activity. He argued that had the later offences been dealt with at the same time as the earlier offences, there would have been no further imprisonment imposed. He argued that any further imprisonment imposed for the later offences should run concurrently with the sentence for the earlier offences.

[9] While the federal and provincial Crowns took slightly different positions related to which sentences should run consecutively or concurrently to the earlier

sentence, both were in agreement that any period of imprisonment for the trafficking offences should run consecutively to the earlier sentence as the trafficking offences were separate and distinct from any of the offences of break and enter.

[10] The sentencing judge agreed that the trafficking offences should run consecutively to the earlier sentence for the other break and enters. He determined that five years imprisonment would be the fit sentence for the most serious trafficking offence, possession for the purposes of trafficking of Schedule I substances (fentanyl). The other trafficking offences for which Mr. Summers was to be sentenced warranted lesser periods of imprisonment and they were ordered to run concurrently with the sentence for the Schedule offence. The sentence for the break and enter was made to run concurrently with the earlier sentences for the other break and enters.

[11] After awarding credit for remand time spent by Mr. Summers, the sentencing judge ultimately imposed a total period of imprisonment of 1619 days, or approximately four years and five months and to run consecutively to the earlier sentence. The combined effect of imposing a further consecutive period of imprisonment of four years, five months with the unexpired portion of the earlier imprisonment of two years, one month resulted in a total period of imprisonment, as of the sentencing date of August 30, 2019, of approximately six years, seven months.

[12] Mr. Summers appealed the sentence to this Court arguing that the sentence was demonstrably unfit and that the sentencing judge erred in principle in ordering the sentence to run consecutively to the earlier sentence. A majority for this Court agreed and set aside the sentence imposed by the sentencing judge (2023 NLCA 8). While the majority varied the sentence on the most serious trafficking offence to seven years imprisonment, an increase of two years, that sentence was ordered to run concurrently with the earlier sentence for the other break and enters.

[13] The majority decision did not explicitly order that the varied sentence take into account remand time as did the sentencing judge. On an application to the Court to amend the order varying sentence, the Court confirmed that the varied sentence of seven years imprisonment was intended to be reduced by the appropriate credit for time spent on remand (*R. v. Summers*, 2023 NLCA 20). At paragraph 10 of that decision, clarifying the order, this Court stated:

The five year sentence of imprisonment as determined by the trial judge is set aside and substituted with a sentence of seven years imprisonment, less remand credit as granted

by the trial judge, to be served concurrently with the four year and eight month sentence imposed for the February and March offences.

[14] Although the Court referred to the earlier sentence as a “four year and eight month sentence”, as stated above, when Mr. Summers was sentenced for the offences in August 2019, the period of time remaining on the earlier sentence was two years, one month. The majority decision made no reference to the start date of the varied sentence, only that it was to run “concurrently” to the earlier sentence.

[15] In administering the varied sentence, the CSC interpreted the start date of the concurrent sentence to be August 30, 2019, the date the sentence was imposed by the sentencing judge. The effect of this date as the start date of the varied sentence was to shorten the period of time Mr. Summers would spend in prison by 23 days. That this is the effect of the start date of August 30, 2019 is not in dispute by the parties. But it was because of this effect that Mr. Summers brought the *habeas corpus* application.

The submissions of Mr. Summers

[16] Before the applications judge and this Court, Mr. Summers contended that the interpretation by the CSC of the start date of the sentence was incorrect because it did not adequately reduce the length of time he was to spend in custody. Mr. Summers contended that the majority decision of this Court intended to reduce the overall sentence and, as such, could not have intended this start date.

[17] Mr. Summers submitted that the start date of this Court’s sentence, as a sentence concurrent to the earlier sentence, should have the same start as earlier sentence, that is April 18, 2018, and that this was within the powers of the Court in varying the sentence on appeal.

[18] Mr. Summers submitted that this was the proper interpretation of the majority’s decision because, if the start of the sentence for the subject offences were the same as the start of the earlier sentence, Mr. Summers would serve no more time in prison and 10 months less than he was expected to serve under the CSC’s interpretation of the start date. In Mr. Summers’ view, starting the sentence as of April 2018 achieved the intention of the majority decision to reduce the overall sentence.

The submissions of the Crown

[19] The Crown submitted that there was no error by the CSC in their calculation of the start date of the sentence.

[20] The Crown asserted that a sentence commences when it is imposed, which in the context of varying a sentence on appeal, was the date as imposed by the sentencing judge. The Crown submitted that Mr. Summers' interpretation of the commencement date would be to "backdate" the sentence; that is, to start the sentence on a date earlier than when he was found guilty of the offences and sentenced. The Crown asserted that backdating a sentence is impermissible and therefore it would have been impermissible for the CSC to interpret the order of the Court in this way.

[21] The Crown further asserted that nowhere in the majority decision did the Court state that the commencement date of the varied sentence was the April 18, 2018 date, only that the varied sentence was to run concurrently to the earlier sentence. The majority decision must be interpreted as being in conformity with the law. In so doing, the Crown submitted that the sentence must commence on the date it was imposed, that is, the date of sentencing by the sentencing judge, August 30, 2019.

The applications judge's decision

[22] The applications judge agreed with the position of the Crown. The judge agreed that neither the majority decision nor the order imposed stated that the sentence was to commence on April 18, 2018, only that the two sentences were to run concurrently. The judge accepted that the order had to be interpreted as being in conformity with the law, agreed that the law did not permit a sentence to be backdated and that the commencement date of the sentence could not be the start date of the earlier sentence. The applications judge stated, at paragraphs 52 and 53 of his oral decision (*Summers v. His Majesty the King*, 2024 NLSC 107):

[52] What the Court has to determine is whether the CSC correctly interpreted the amended Order of the Court of Appeal according to its terms. A court order, unless plainly stated otherwise, must be interpreted as being in accordance with the law. A governing statute, which in this case is the *Criminal Code*, can be used for guidance and as an interpretive aid.

[53] The provisions of the *Criminal Code* and the case law make it clear that a sentence cannot be backdated, except where a relevant enactment otherwise provides. See the British Columbia Court of Appeal decisions in *R. v. Cummins*, 2010 BCCA 253, and in *R. v. April*, 2016 BCCA 418, with respect to this.

[23] The applications judge then cited sections 687 and 719 of the *Criminal Code* as support for his conclusion that the sentence, as a concurrent sentence, commenced on August 30, 2019. At paragraphs 57 and 58, the applications judge stated:

[57] The effect of sections 687 and 719 of the *Criminal Code* is that a varied sentence by a court of appeal takes effect as if it was the sentence imposed by the trial judge, except where a relevant enactment provides otherwise. In this case that means that the second sentence takes effect on August 30, 2019.

[58] The Court rejects the suggestion that a relevant enactment here allows the amended Order of the Court of Appeal to be interpreted as starting on any date other than August 30, 2019, the date that the second sentence was imposed by the Provincial Court. An appeal of the first sentence was not before the Court of Appeal, only an appeal of the second sentence.

[24] The judge reasoned that as the majority did not state that the sentence was to commence in April 2018, there was no basis to suggest that this was the intention of the Court. The judge stated that if there was concern as to the whether the order imposed by this Court accurately reflected the intention of the majority decision, it would have been open to Mr. Summers to make an application to the Court to amend the order, as was done in relation to the majority's omission regarding whether remand time was to be deducted on the varied sentence.

[25] The applications judge concluded that the order as stated must be interpreted according to law and that this meant that the start date of the varied sentence was the August 30, 2019 date. There was no dispute that his conclusion meant that the detention was lawful and the application for *habeas corpus* had to be dismissed.

DISCUSSION

[26] Whether the applications judge erred in these circumstances turns on the correct interpretation of this Court's order to vary Mr. Summers' sentence of imprisonment from a consecutive sentence to a concurrent sentence. This is a question of law.

[27] I see no error in the reasoning of the applications judge.

[28] A sentence commences when it is imposed, except as otherwise permitted by an enactment. Section 719(1) of the *Criminal Code* states:

A sentence commences when it is imposed, except where a relevant enactment otherwise provides.

[29] Section 719(1) has been interpreted by the Supreme Court as a codification of the principle that a sentence cannot be backdated. That is, it cannot start on a date earlier than when it is imposed (*R. v. Basque*, 2023 SCC 18, at paras. 2, 47). In distinguishing backdating a sentence from awarding credit for remand time in custody, the Supreme Court in *Basque* stated at paragraph 47:

[47] **The principle that credit can be granted for pre-sentence custody serves to mitigate certain injustices arising from the application of the principle that a sentence may not be backdated, now codified in s. 719(1). While Canadian law does not permit courts to backdate a sentence in order to reduce it, courts may nevertheless consider the time spent in pre-sentence custody in determining the period that must be served prospectively by an offender** (*Sloan*, at pp. 198-99; see also *Patterson*; *R. v. Wells* (1969), 4 C.C.C. 25 (B.C.C.A.), at pp. 36-37, per Bull J.A., dissenting; A. Manson, “Pre-Sentence Custody and the Determination of a Sentence (Or How to Make a Mole Hill out of a Mountain)” (2004), 49 *C.L.Q.* 292). The application of this common law rule allowing credit to be granted is therefore not equivalent to backdating a sentence.

[Emphasis added]

[30] In *Basque*, at paragraphs 6 and 12, the Court was clear that judicial backdating of a sentence is not permitted by section 719(1) and to do so would be an error (see also *R. v. McDonald*, 1998 CanLII 13327 (ONCA), at paras. 28-29; *R. v. MacFarlane* (1986), 60 Nfld. & PEIR 63 (PEICA); and *Rex v. Patterson*, 146 CanLII 3832 (ONCA)).

[31] A well-established variation of section 719(1)’s statement that a sentence commences when it is imposed, is the principle that sentences for different offences should be consecutive, now codified in section 718.3 of the *Criminal Code* (see also *Paul v. The Queen*, [1982] 1 S.C.R. 621; *R. v. Crocker*, 1991 CanLII 2737 (NLCA); *R. v. Pittman*, 2019 NLCA 28, at para. 9; *R. v. O’Keefe*, 2018 NLCA 11, at para. 30; *R. v. Newhook*, 2008 NLCA 28, at paras. 13, 17-19; and *R. v. B.H.*, 2022 NLCA 54, at paras. 14-15, 23-24).

[32] Determining whether a sentence should run consecutively or concurrently to another sentence includes consideration of another sentence being served by the offender at the time of sentencing on the new offences. Section 718.3(4)(a) explicitly directs a sentencing judge to consider whether a sentence will run consecutively to a sentence already imposed. Section 718.3(4)(a) states:

(4) The court that sentences an accused shall consider directing

(a) that the term of imprisonment that it imposes be served consecutively to a sentence of imprisonment to which the accused is subject at the time of sentencing; ...

[33] But when considering whether a new sentence should run consecutively or concurrently to a sentence already being served pursuant to section 718.3(4)(a), the sentencing court is concerned solely with the *unexpired* portion of the earlier sentence. As stated by this Court in *R. v. Roberts*, 2019 NLCA 43, at paragraph 66:

[66] Secondly, since it is the impact of current proposed incarceration on whether [an] overall period of incarceration is unduly long or harsh, it is only the unexpired portion of the existing sentence that can be added to the other sentences to determine whether the combined period of incarceration will be unduly long or harsh. The portion of a prior sentence that has already been served is spent and therefore not relevant to this question. This has been emphasized in other cases (*Johnson*, at paragraph 25; *Park*, at paragraph 10).

[34] The principle that the portion of a sentence that is already served is not relevant to the question of whether a new sentence should run consecutively, follows logically from section 719(1)'s prohibition on backdating a sentence. If the new sentence runs concurrently with the sentence already being served, it can only, as a matter of law, run concurrently with the *unexpired* portion of the sentence. It cannot run concurrently with that portion of the sentence that is already served, as that would be backdating the sentence (see also *R. v. Dergez*, 2025 BCCA 87, at para. 45). As stated in *Roberts* in the above reference and in *Basque*, at paragraph 6, sentencing is a prospective determination that is forward looking.

[35] A court that varies a sentence on appeal also applies these principles, subject to a specific enactment that states otherwise.

[36] The powers of this Court on a sentence appeal are outlined under section 687 of the *Criminal Code*. Section 687 states:

Powers of court on appeal against sentence

687(1) Where an appeal is taken against sentence, the court of appeal shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may on such evidence, if any, as it thinks fit to require or to receive,

(a) vary the sentence within the limits prescribed by law for the offence of which the accused was convicted; or

(b) dismiss the appeal.

Effect of judgment

(2) A judgment of a court of appeal that varies the sentence of an accused who was convicted has the same force and effect as if it were a sentence passed by the trial court.

[37] The authority to vary the sentence on appeal under section 687 does not, contrary to Mr. Summers' submissions, mean that the sentence may be backdated to start on the same date as the April 2018 sentence.

[38] Firstly, section 687(1)(a) requires that any variation in sentence be "within the limits prescribed by law". The limits prescribed by law would include the limits as prescribed by section 719(1), that a sentence commences when it was imposed. It would also include section 718.3(4)(a), that whether a sentence will run consecutively or concurrently to a sentence already imposed refers solely to the unexpired portion of the sentence that was already imposed, as interpreted in *Roberts*.

[39] The sentencing judge would not have had the authority to order that the sentence commence on a date contrary to section 719, or to consider the expired portion of the earlier sentence in determining whether to make the new sentence concurrent or consecutive. Accordingly, it is difficult to see how a court of appeal would be empowered to so do.

[40] Secondly, section 687(2) specifically states that the effect of a variation in sentence is that the sentence has the "same force and effect as if it were a sentence passed by the trial court." In other words, the varied sentence takes effect as if it were imposed by the sentencing judge. The words "same ... effect as if it were passed by the trial court" would have to include the date that the sentencing judge

imposed the sentence (see *R. v. Hudson (J.N.)*, 1993 CanLII 14912 (MBCA), at para. 18).

[41] In summary, while an appeal court may vary a sentence, the variation must be “within the limits as prescribed by law”. One limit is the prohibition on backdating a sentence, as per section 719(1) of the *Criminal Code*, unless otherwise permitted by an enactment. Mr. Summers has pointed to no authority that would have permitted either the sentencing judge, or the majority in varying the sentence to backdate the sentence to commence with the April 2018 sentence. As explained, the *Criminal Code* and sentencing authorities state the contrary.

[42] Further, whether a sentence runs concurrently or consecutively to a sentence already imposed, by virtue of section 718.3(4)(a) in conjunction with 719(1), it is only the unexpired part of the already imposed sentence that is at issue, as per *Roberts*.

[43] The interpretation of the majority’s sentencing order must accord with the above law, in particular sections 687, 719 and 718.3(4)(a) of the *Criminal Code*. By virtue of sections 687 and 719, the varied sentence commenced on the date Mr. Summers was originally sentenced by the sentencing judge and, by virtue of section 718.3(4)(a), as per *Roberts*, the concurrent nature of the sentence applied solely to the unexpired portion of the earlier sentence, not to the entirety of the earlier sentence, as submitted by Mr. Summers.

[44] Finally, while not necessary to decide the appeal, I would observe that if the majority had intended that Mr. Summers should receive no further imprisonment for the subject offences than had been imposed for the other offences in light of the time that Mr. Summers had already served (as was argued by Mr. Summers), the Court might have varied the sentence to either impose no further time, or stayed the execution of any imprisonment imposed. The majority chose instead to sentence Mr. Summers to a period of imprisonment of seven years to run concurrently with the earlier sentence.

CONCLUSION

[45] For the above reasons, I would dismiss the appeal. The applications judge correctly concluded that the CSC properly calculated the start date of Mr. Summers’ sentence to be August 30, 2019. Consequently, there was no error in calculating his release date. There was no basis to find that Mr. Summers was unlawfully detained

and the applications judge made no errors in dismissing the application for *habeas corpus*.

DISPOSITION

[46] I would dismiss the appeal.

F.J. Knickle J.A.

I concur : _____
F.P. O'Brien J.A.

I concur : _____
G.L.C. Noel J.A.