



Case in Brief: **R. v. Hanan**

Judgment of April 17, 2023 (written reasons issued May 5, 2023) | On appeal from the Court of Appeal for Ontario
Neutral citation: 2023 SCC 12

The Supreme Court sets aside convictions of manslaughter and other firearm offences due to unreasonable trial delays.

On December 24, 2015, Mr. Dia ‘Eddin Hanan was charged with crimes relating to the shooting of two men in the driveway of his home. He was scheduled to be tried by jury in Windsor, Ontario in November 2018. However, on the night before the trial, Crown counsel announced that its only eyewitness refused to testify. It also disclosed new evidence. This change risked suspending the proceedings. To avoid delay, the accused offered to proceed to a trial by judge alone, without a jury. The Crown refused. The judge proposed to reschedule the trial to June 2019, but counsel for the accused was not available. The trial was ultimately postponed to the end of October 2019, nearly a year later than its original start date. Due to the delay, Mr. Hanan asked the judge to stop the trial, claiming that his right to be tried within a reasonable time under section 11(b) of the *Canadian Charter of Rights and Freedoms* had been violated. This type of request is known as a stay of proceedings based on unreasonable delay. A stay results in the end of the trial without an acquittal or a finding of guilt.

In an earlier unrelated judgment (*R. v. Jordan*), the Supreme Court established a presumption that an accused’s right to be tried within a reasonable time under section 11(b) of the *Charter* is violated if the time between charging the accused and the end of the trial in a superior court exceeds the 30-month ceiling. Cases in which charges were brought before *Jordan* are also subject to this new framework. However, a “transitional exceptional circumstance” may apply if the Crown convinces the court that the parties were justified in relying on the law as it stood prior to *Jordan*. The exception accounts for the fact that the parties’ behaviour cannot be judged strictly against the new ceiling in *Jordan* for which they had no notice. Since Mr. Hanan was charged before *Jordan* was decided in 2016, his case fell into this category of transitional cases.

The trial judge dismissed Mr. Hanan’s request for a stay of proceedings. He determined that a total of 47.5 months had elapsed between the day the accused was charged and the end of his trial. He deducted some delay attributable to the defense, concluding that the net delay stood at around 35 months. He ruled that although the net delay exceeded the 30-month ceiling established in *Jordan*, it was justified because the parties had reasonably relied on the law before that case was decided.

Mr. Hanan was ultimately tried and convicted by jury of manslaughter and other firearm charges. He appealed to the Ontario Court of Appeal, where two of the three justices dismissed his arguments and affirmed the convictions. The accused appealed as of right to this Court. An appeal “as of right” is available in some criminal cases where one judge on the court of appeal has dissented on a point of law, as was the case here. This means the appellant does not need to apply to the Supreme Court of Canada for permission to have their case heard. The case can be heard if the appellant simply files a notice to this effect.

The Supreme Court has allowed the appeal. The judgment was delivered orally by Justice Côté on the day of the hearing, with written reasons to follow.

The delay was unreasonable and no transitional exceptional circumstance applied.

In their reasons, Justices Côté and Rowe, who were writing for a unanimous Court, ruled that the trial judge made a mistake in deciding a transitional exceptional circumstance applied in this case. The delay of 35 months was unreasonable and contrary to section 11(b) of the *Charter*. They concluded the parties did not actually rely on the pre-*Jordan* state of the law because they had consciously scheduled the original trial within the 30-month ceiling as required by *Jordan*.

Moreover, the parties had ample time to adapt to the *Jordan* framework. The delay was due to the Crown's refusal to agree to a trial by judge alone, despite being warned of the possible consequences of delay, and despite *Jordan* having been decided almost two and a half years earlier. As the justices stated, "[w]ere it not for the Crown's decision, the trial would have occurred within the ceiling".

Justices Côté and Rowe concluded that no transitional circumstance applied and the almost 35 month delay was therefore unreasonable and contrary to section 11(b) of the *Charter*. They allowed the appeal, set aside the convictions and ordered a stay of proceedings.

Breakdown of the decision: *Unanimous*: Justices [Côté](#) and [Rowe](#) allowed the appeal, set aside the convictions and ordered a stay of proceedings (Justices [Martin](#), [Kasirer](#) and [Jamal](#) agreed)

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