

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* W.E.B., 2014 SCC 2, [2014] 1 S.C.R. 34 | **Date:** 20140116  **Docket:** 35089 |

**Between:**

**W.E.B.**

Appellant

and

**Her Majesty The Queen**

Respondent

**Coram:** McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ.

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| **Reasons for Judgment:**  (paras. 1 to 4) | Moldaver J. (McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell and Wagner JJ. concurring) |

R. *v*. W.E.B., 2014 SCC 2, [2014] 1 S.C.R. 34

W.E.B. Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.*** W.E.B.

2014 SCC 2

File No.: 35089.

2014: January 16.

Present: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ.

on appeal from the court of appeal for ontario

*Criminal law — Trial — Ineffective assistance of counsel — Accused challenging competence of his trial counsel on several grounds — Court of Appeal rejecting accused’s submissions of ineffective assistance — Whether miscarriage of justice occurred — Court of Appeal’s findings as to accused’s ineffective assistance claims entitled to deference — Court of Appeal’s findings supported by the record — No error in Court of Appeal’s analysis or conclusion.*

**Cases Cited**

**Referred to:** *R. v. Yumnu*, 2012 SCC 73, [2012] 3 S.C.R. 777.

APPEAL from a judgment of the Ontario Court of Appeal (O’Connor A.C.J. and MacPherson and Cronk JJ.A.), 2012 ONCA 776, [2012] O.J. No. 5309 (QL), 2012 CarswellOnt 14252, affirming the conviction of the accused for sexual assault, sexual touching and invitation to sexual touching entered by Scott J. Appeal dismissed.

Michael A. Crystal and Heather Cross, for the appellant.

Holly Loubert, for the respondent.

The judgment of the Court was delivered orally by

[1] Moldaver J. — The sole issue in this appeal is whether the appellant’s trial counsel provided him with ineffective assistance, thereby resulting in a miscarriage of justice. The appellant challenges the competence of his trial counsel on a number of grounds, the most serious being that she prevented him from testifying at trial.

[2] The Court of Appeal rejected the appellant’s submissions (2012 ONCA 776 (CanLII)). While the court did not specifically address all of the appellant’s many, and continually growing list of ineffective assistance claims, it found that they either lacked an evidentiary foundation or did not result in prejudice. In so concluding, the court carefully considered the record at trial, along with the fresh evidence filed on the appeal, and applied the correct legal principles. It made findings of fact based on this record. In making these findings, the Court of Appeal acted as a court of first instance. Its findings, like those of a trial judge, are entitled to deference (see *R. v. Yumnu*, 2012 SCC 73, [2012] 3 S.C.R. 777, at para. 17).

[3] The Court of Appeal’s findings are supported by the record. Contrary to the appellant’s submissions, the court found that he had agreed with counsel that he would not testify. The court also rejected the appellant’s argument that trial counsel had acted incompetently by failing to prepare him to testify. The court noted that the appellant could have been granted an adjournment had there been any suggestion he wanted to testify, and that extensive preparation was unnecessary. Moreover, the court found that trial counsel had not acted ineffectively in failing to call the father of one of the complainants as a witness because there was no evidence before the court, other than the appellant’s assertion, indicating what this witness would say or how he could be located. Finally, the Court of Appeal found that while counsel’s cross-examination of one of the complainants was “perhaps not stellar” (at para. 24), it did not fall outside the realm of reasonable professional assistance.

[4] In sum, we see no error in the Court of Appeal’s analysis or conclusion. For these reasons, we would dismiss the appeal.

*Judgment accordingly.*

Solicitors for the appellant: Crystal Cyr Barristers, Ottawa.

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