



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

Citation: *R. v. Moylett*, 2025 NLCA 25

Date: July 22, 2025

Docket Number: 202401H0022

BETWEEN:

ANDREW MOYLETT

APPLICANT/APPELLANT

AND:

HIS MAJESTY THE KING

RESPONDENT

Coram: F.J. Knickle J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division 202201G5008
(2024 NLSC 33)

Application Heard: July 22, 2025

Judgment Rendered (Orally): July 22, 2025

Judgment Filed: July 22, 2025

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

Counsel for the Applicant/Appellant: Self-represented

Counsel for the Respondent: David L. Hearn and Paul Thistle

Authorities Cited:

CASES CITED: *R. v. Ryan*, 2008 NLCA 42; *R. v. Ikkusek*, 2009 NLCA 39; *R. v. R.J.H.*, 2012 NLCA 28; *R. v. Marshall*, 2011 NLCA 26; *R. v. Higdon*, 2021 NLCA 33; *R. v. D.R.*, 2021 NLCA 54; *R. v. Starkes*, 2019 NLCA 4; *R. v. Normore*, 2019 NLCA 12.

STATUTES CONSIDERED: *Criminal Code*, RSC 1985, c. C-46, sections 684(1), 684(2)

F.J. Knickle J.A.:

INTRODUCTION

[1] Andrew Moylett has appealed his convictions and sentences for armed robbery and other offences. He was convicted after a trial by judge and jury. He was represented by counsel at trial. The only issue at trial was whether Mr. Moylett was one of two persons who committed the robbery. The evidence that Mr. Moylett was one of the two persons responsible for the robbery was circumstantial, with the exception that a police officer testified that he recognized Mr. Moylett from security video footage recorded during the robbery.

[2] Mr. Moylett now applies to this Court to have counsel appointed for him for the appeal under sections 684(1) and (2) of the *Criminal Code*, RSC 1985, c. C-46.

[3] Sections 684(1) and (2) state:

684 (1) A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the court or judge, it appears desirable in the interests of justice that the accused should have legal assistance and where it appears that the accused has not sufficient means to obtain that assistance.

(2) Where counsel is assigned pursuant to subsection (1) and legal aid is not granted to the accused pursuant to a provincial legal aid program, the fees and disbursements of counsel shall be paid by the Attorney General who is the appellant or respondent, as the case may be, in the appeal.

[4] Whether it is in the interests of justice to appoint counsel for an appellant, to be paid by the Attorney General in a criminal matter, is a discretionary decision. This Court has repeatedly stated the factors to be considered in the exercise of this discretion (*R. v. Ryan*, 2008 NLCA 42; *R. v. Ikkusek*, 2009 NLCA 39; *R. v. R.J.H.*, 2012 NLCA 28; *R. v. Marshall*, 2011 NLCA 26; *R. v. Higdon*, 2021 NLCA 33; *R. v. D.R.*, 2021 NLCA 54; *R. v. Starkes*, 2019 NLCA 4; and *R. v. Normore*, 2019 NLCA 12). Those considerations include:

1. Whether the appellant has the financial means to engage counsel;
2. If the appellant does not have the financial means, whether or not Legal Aid will be made available to assist the appellant;
3. Whether there are serious issues to be tried on the appeal; and
4. Whether the appellant can adequately present his or her case and will the court be able to decide the case without the assistance of counsel.

[5] Applying the above considerations, I am not satisfied that in the circumstances of this case, it is in the interests of justice to appoint counsel for Mr. Moylett. While I am satisfied that materials filed establish that the first three considerations have been met (keeping in mind that the threshold as to whether or not there are serious issues to be tried on the appeal is a very low threshold), I am not satisfied the fourth criterion has been met: that Mr. Moylett cannot adequately present his case without the assistance of counsel or that the Court will not be able to decide the case without the assistance of counsel.

[6] Although not all of the grounds articulated by Mr. Moylett raise a serious issue (for example, the fact that blood found in a syringe at the scene did not belong to him, is inconsequential), the overall complaint of Mr. Moylett can be characterized that there was insufficient evidence to establish that he participated in the robbery. This raises a valid issue for the appeal. In legal terms this is an argument that the verdict of guilty is unreasonable and not supported by the evidence.

[7] Whether a verdict is reasonable and supported by the evidence is governed by well-established principles that are not difficult to understand and I am satisfied that Mr. Moylett is more than able to present his arguments as to why the evidence did not establish him as one of the individuals who committed the robbery.

[8] Three of the grounds raised in Mr. Moylett's materials raise issues regarding the admissibility of evidence: a backpack that was found relatively near the scene of the robbery and delivered to the police (one of the individuals who committed the robbery wore a similar backpack), evidence that the police believed that Mr. Moylett lived near the robbery at the time, and, finally, what might be characterized as evidence of "bad character", as Mr. Moylett submits the evidence created a "negative" view of him in front of the jury.

[9] This Court is familiar with the principles governing the admissibility of evidence. In this case, whether any of this evidence should have been admitted does not require complex analysis. I am satisfied this Court can address this ground without the assistance of counsel and that Mr. Moylett can well articulate his views as to why the evidence should not have been admitted. Although he did not use formal legal language in outlining why the evidence should not have been admitted, his arguments, as presented in the materials to date, articulate his reasons for why there was error.

[10] Mr. Moylett has completed his high school equivalency and has also completed trades programs while incarcerated. Although unemployed at the time of the robbery, he has held long-term employment in the past. Mr. Moylett appears astute and capable. He is literate and can express his arguments in writing.

[11] Although Mr. Moylett has also applied for leave to appeal sentence, he has not articulated his grounds. There is insufficient information before me to assess the merits of this application as it relates to whether it is in the interests of justice to appoint counsel.

[12] For the above reasons, I am not satisfied that it is in the interests of justice to appoint counsel. The issues in the appeal are straightforward questions about the sufficiency or admissibility of the evidence which Mr. Moylett can adequately address and this Court can resolve without the assistance of counsel.

[13] I would dismiss the application for the appointment of counsel.