



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

Citation: *R. v. Wells*, 2026 NLCA 2

Date: January 29, 2026

Docket Number: 202501H0088

BETWEEN:

LEVI WELLS

APPLICANT /
INTENDED APPELLANT

AND:

HIS MAJESTY THE KING

RESPONDENT

Coram: G.L.C. Noel J.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador,
St. John's

Application Heard: January 13, 2026

Judgment Rendered: January 29, 2026

Reasons for Judgment by: G.L.C. Noel J.A.

Counsel for the Applicant/

Intended Appellant: Self-Represented

Counsel for the Respondent: Shawn I. Patten

Authorities Cited:

CASES CITED: *R. v. Patriquin*, 2003 NSCA 89; *The Law Society of Newfoundland v. Fahey*, 2000 NFCA 19; *R. v. White*, 2023 NLCA 28; *R. v. Brenton*, 2016 NLCA 66; *R. v. Roberge*, 2005 SCC 48, [2005] 2 S.C.R. 469; *R. v. Greeley*, 1990 CanLII 6479 (NLCA); *R. v. Sawicki*, 2013 NLCA 35; *R. v. Barter*, 2024 NLCA 40; *R. v. Hillier*, 2016 NLCA 21; *R. v. G.W.*, 1999 CanLII 18973 (NLCA); *Rowe v. Newfoundland and Labrador*, 2017 NLCA 17; *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089; *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424; *R. v. Sheppard*, 2025 SCC 29; *R. v. Hutchings*, 2012 NLCA 2; *R. v. Mahoney*, 2018 NLCA 16; *R. v. Frampton*, 2018 NLCA 23; *R. v. Flynn*, 2018 NLCA 61; *R. v. Duncan*, 2016 ONCA 754; *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575.

STATUTES CONSIDERED: *Criminal Code*, RSC 1985, c. C-46, sections 675(1)(b), 606(1.1), 343-344(1), 354(1)(a), 145(2)(b), 8(3), 675(1.1), 678(1), 678(2), 687, 718-718.2; *Supreme Court Act*, RSC 1985, c. S-26, sections 58(1)(a), 59(1).

RULES CONSIDERED: *Court of Appeal Criminal Rules, 2025*, rules 9(1)(a), 20(2).

G.L.C. Noel J.A.:

INTRODUCTION

[1] Levi Wells pleaded guilty and was convicted of the indictable offence of robbery, and the summary conviction offences of possession of property obtained by crime and failure to attend court. He is seeking an extension of time to file a Notice of Appeal with this Court. Mr. Wells is beyond the 30 days after which the trial Judge imposed sentence. He filed his application approximately one month and one week past the filing deadline.

[2] In his application, Mr. Wells indicated his intention to appeal against both conviction and sentence. At the hearing of the application, he abandoned the appeal of the convictions. Because he is now seeking to appeal only his sentence, leave of

this Court is required pursuant to section 675(1)(b) of the *Criminal Code*, RSC 1985, c. C-46.

[3] In deciding whether this Court should grant Mr. Wells an extension of time to seek leave to appeal his sentence, two areas of law are engaged – the legal test for an extension of time to file a notice of appeal, and the legal test for leave to appeal sentence only. With regards to the potential merits of the appeal, both tests engage the same analysis.

[4] The Crown conceded at the hearing that the justice of this case for an extension of time, having regard to the well-established factors the Court takes into consideration in this discretionary exercise, turns solely on whether Mr. Wells can demonstrate that there is any potential merit to his sentence appeal.

[5] Mr. Wells represented himself in this Court and at his sentencing hearing.

ISSUE

[6] The sole issue is whether there is any discernible merit to justify the extension of time permitting Mr. Wells to seek leave to appeal his sentence.

BACKGROUND

[7] During the trial proceedings, following a breakdown in the solicitor-client relationship between Mr. Wells and his counsel of record, trial counsel for the Crown applied for an order appointing *amicus curiae*. The Provincial Court Judge made an order dated January 27, 2025, appointing an *amicus curiae* “to review the case against Levi Wells and prepare to assist the Court with the legal and factual issues which will likely arise during the course of the trial”.

[8] On June 4 and June 5, 2025, in the Provincial Court of Newfoundland and Labrador (Judicial Centre of St. John’s), during his trial, Mr. Wells changed his plea to guilty to the offences of robbery, possession of property obtained by crime (“possession of stolen property”), and failure to attend court. The indictable offence of robbery and the summary conviction offences arose out of different fact situations on different dates. The possession of stolen property occurred on September 16, 2023, the failure to attend court on October 6, 2023, and the robbery on February 14, 2024.

[9] Mr. Wells was self-represented at the time of his guilty plea with *amicus curiae* present. Before accepting the guilty pleas, the Judge ensured Mr. Wells understood the consequences of his guilty pleas in accordance with section 606(1.1) of the *Criminal Code*. The Judge inquired of Mr. Wells whether he had any issues with the facts that the Crown put before the Court to support each of the charges. Mr. Wells acknowledged he agreed with the facts respecting each charge as presented by the Crown.

[10] At Mr. Wells' request, the Judge requisitioned a Pre-Sentence Report with a *Gladue* component. The Adult Probation Officer completed the Pre-Sentence Report on August 22, 2025.

[11] On August 26, 2025, the Judge conducted a sentencing hearing and enlarged the matter for the sentencing decision.

[12] On September 26, 2025, the Judge sentenced Mr. Wells as follows:

Robbery (section 343-344(1) of the *Criminal Code*) – 48 months or 1440 days custody, less 885 days remand time served (590 days x 1.5), with 555 days of remaining custody to be served;

Possession of property obtained by crime (section 354(1)(a) of the *Criminal Code*) – 30 days custody (concurrent);

Failure to attend court (section 145(2)(b) of the *Criminal Code*) – 30 days custody (concurrent); and

Ancillary orders – 12 months probation, a section 109 lifetime firearms prohibition, a primary designated offence DNA order, and waiving of the victim fine surcharge.

[13] Mr. Wells filed a Form B Notice of Appeal (Or Notice Of Application For Leave to Appeal) on December 4, 2025. Under the grounds or reasons why he was appealing, he stated only "Abuse of Process 8 C.C – 8-(3) Part 1: General".

[14] I note, as did the Crown in its submissions, that section 8(3) of the *Criminal Code* has no relevance to Mr. Wells' intended sentence appeal. In his oral submissions before me, Mr. Wells made no attempt to suggest otherwise.

[15] In his application for extension of time, Mr. Wells stated that the reason for the delay was: “I have a cognitive learning disability”.

ANALYSIS

Governing Legislation and Authorities

[16] Mr. Wells was sentenced on the indictable offence and the summary conviction offences at the same time, by the same judge. Pursuant to section 675(1.1) of the *Criminal Code*, this Court has jurisdiction to hear the appeal of sentence from both the indictable offence and summary conviction offences, as the definition of the summary conviction offences being “tried” with an indictable offence includes sentencing (*R. v. Patriquin*, 2003 NSCA 89, at paras. 3-10).

[17] Mr. Wells’ notice of application for leave to appeal his sentence was to be filed “not later than 30 days after the date of sentence”, as per rule 9(1)(a) of the *Court of Appeal Criminal Rules, 2025*, and section 678(1) of the *Criminal Code*. However, section 678(2) of the *Criminal Code* permits this Court or a judge thereof to extend the time within which “notice of an application for leave to appeal may be given”.

[18] The granting of an extension of time for filing a notice of appeal is a discretionary exercise. Factors for consideration include those listed in rule 20(2) of the *Court of Appeal Criminal Rules, 2025*, and particularly for this case rule 20(2)(b) “in the case of a failure to file a notice of appeal, the potential merits of the appeal”.

[19] The factors to be considered in applications to extend the time for filing a notice of appeal include:

1. Whether the appellant had a *bona fide* intention to appeal within the appeal period;
2. Whether there is a reasonable excuse for the failure to comply with the rule;
3. The potential merits of the appeal; and
4. The presence of any exceptional or special circumstances justifying or working against the fairness of an extension.

(*The Law Society of Newfoundland v. Fahey*, 2000 NFCA 19, at para. 3; *R. v. White*, 2023 NLCA 28, at para. 67; and *R. v. Brenton*, 2016 NLCA 66, at para. 3).

[20] The Supreme Court of Canada in *R. v. Roberge*, 2005 SCC 48, [2005] 2 S.C.R. 469 dealt with its discretion to grant an extension of time under sections 58(1)(a) and 59(1) of the *Supreme Court Act*, RSC 1985, c. S-26, when an accused was seeking an extension of time to serve and file an application for leave to appeal the order of the appellate court for a new trial. The Supreme Court noted several factors bearing on the exercise of discretion, at paragraph 6, including:

1. Whether the applicant formed a *bona fide* intention to seek leave to appeal and communicated that intention to the opposing party within the prescribed time;
2. Whether counsel moved diligently;
3. Whether a proper explanation for the delay has been offered;
4. The extent of the delay;
5. Whether granting or denying the extension of time will unduly prejudice one or the other of the parties; and
6. The merits of the application for leave to appeal.

These factors are substantially similar to those set out by this Court. In contrast to the present application, in *Roberge* the applicant was represented by legal counsel, which required the Supreme Court to consider whether counsel moved diligently in filing a leave application.

[21] Goodridge, C.J.N. of this Court, in an application by the Crown for an extension of time to apply for leave to appeal, additionally noted the consideration “whether an important question of law is in issue” (*R. v. Greeley*, 1990 CanLII 6479 (NLCA), at para. 13).

[22] As both the Supreme Court of Canada and this Court have reiterated, the ultimate question in the exercise of discretion is always whether, in all the circumstances and considering the factors referred to above, “the justice of the case

requires that an extension of time be granted” (*Roberge*, at para. 6; *Greeley*, at paras. 11, 14; and *R. v. Sawicki*, 2013 NLCA 35, at para. 9).

[23] The Crown acknowledged at the hearing that, although Mr. Wells offered no substantiation that he suffers from “a cognitive learning disability”, the Crown was prepared to concede, owing to the extent of the delay and that Mr. Wells was incarcerated and self-represented, that the dispositive issue is whether at this stage Mr. Wells has demonstrated any merit to an appeal from his sentence. Considering the Crown’s concession that the only contentious factor is “the potential merits of the appeal”, I am satisfied there is no need to address in my analysis each of the factors identified.

[24] If I were to extend the time for Mr. Wells to file his Notice of Appeal, the test to be applied for leave on an appeal as to sentence only would be whether the appeal is “frivolous in the sense of having no arguable basis or sufficient merit” (*R. v. Barter*, 2024 NLCA 40, at para. 27, citing *R. v. Hillier*, 2016 NLCA 21, at para. 7). The Court in that context would, however, be applying the test with the benefit of having the appeal perfected – the filing of the appeal book and factums – with the submissions of the parties to follow.

[25] The appropriate test at this stage then is whether the Court can make an informed judgment, based on the existing material before the Court and after hearing the submissions, as to whether the justice of the case requires that I grant an extension of time. If Mr. Wells cannot demonstrate “any discernible merit” to the appeal, there can be no justification for an extension of time: (*R. v. G.W.*, 1999 CanLII 18973 (NLCA), at para.13). This Court has interpreted merit in the extension of time analysis to mean “an arguable point” (*Rowe v. Newfoundland and Labrador*, 2017 NLCA 17, at para. 16).

The Materials Before the Court and the Court’s Approach to the Hearing

[26] The Crown filed the relevant portion of the record that was before the Provincial Court, including:

The Informations sworn February 16, 2024, March 25, 2024, and October 13, 2024, together with each corresponding Form 2 stating the dates of each court appearance;

The Pre-Sentence Report; and

The Audio recordings of the proceedings on June 4th & 5th, August 26th, and September 26th, 2025.

[27] At the commencement of the hearing, I confirmed with Mr. Wells that he was in receipt of the Crown's Factum and materials as well as the additional caselaw that the Court Registry, upon my direction, provided to the parties prior to the hearing.

[28] I am satisfied that all the pertinent record in the court below is before this Court for my consideration in determining whether there is "any discernible merit" or an "arguable point" to the appeal. Effectively, the application hearing proceeded as if the appeal were perfected.

[29] Being mindful that Mr. Wells claims to have a learning disability and is self-represented, I gave him considerable leeway during the hearing to make oral submissions. The oral hearing exceeded one hour and most of the hearing time was devoted to Mr. Wells' oral submissions.

[30] I attempted to keep Mr. Wells focused on explaining why he was grounding his appeal on an "abuse of process", as well as whether there were any further grounds he was seeking to raise. The only explanation he provided was that the Crown improperly, in his submission, released the contact information of the victim of the convenience store robbery. Following the sentencing, Mr. Wells contacted the victim by telephone to advise him he was in receipt of his contact information that the Crown should not have released. I inquired how that could constitute grounds to reduce his sentence. He acknowledged in answer to my inquiry that, "Perhaps I'm in the wrong fight here." Mr. Wells made submissions about his "spirituality" and spoke in general terms about the "inequality" and "injustice" of the "colonial justice system" that he wants to expose.

No Discernible Merit or Arguable Point to the Appeal

[31] There is no "discernible merit" or "arguable point" to justify granting Mr. Wells the extension of time to seek leave to appeal his sentence. The total sentence the Judge imposed fell well within the acceptable range. The sentencing Judge considered the proper principles of sentencing and crafted a sentence tailored to the circumstances of Mr. Wells, including his mental health, *Gladue* factors and pre-sentencing incarceration conditions. No question of law is raised.

[32] Trial judges have a broad discretion to impose a sentence they consider appropriate within the limits established by law. While section 687 of the *Criminal Code* provides the power for an appellate court to vary a sentence from the one imposed by the trial judge, they “may not intervene lightly”. An appellate court should only intervene if the sentence is “demonstrably unfit”, or if there is an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors (*R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 38-41; *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, at para. 3; *R. v. Sheppard*, 2025 SCC 29, at para. 39).

The Sentencing Judge’s Reasons

[33] The Judge’s oral reasons considered that Mr. Wells was 34 years of age with a criminal record dating to 2017 in this province with 70 convictions, including multiple convictions for thefts and breaches of court orders, breaking and entering into a dwelling, assault, uttering threats, possession of a weapon and possession of a weapon dangerous to the public. Mr. Wells had a criminal record as an adult in Alberta before coming to Newfoundland and Labrador, which included multiple convictions for breaches of court orders, possession of a weapon, break and enter, uttering threats, assault, driving offences, and one conviction for robbery in November 2013 for which he received a 28-month sentence.

[34] The Judge noted the Crown was seeking a sentence of 4 years and 6 months for the robbery, 30 days concurrent for the possession of stolen property, and 30 days consecutive for the failure to attend court. Mr. Wells indicated to the sentencing Judge that he should receive a sentence of time served.

[35] The Judge acknowledged during sentencing submissions that she had concerns about Mr. Wells’ mental health. The writer of the Pre-Sentence Report indicated that Mr. Wells had been diagnosed with ADHD and that he became addicted to alcohol when he was 16 years old. The Judge stated that unfortunately she did not have more information on his mental health to inform her reasons.

[36] The Judge reviewed the facts of the robbery and considered them to be “very serious”. She noted that Mr. Wells had pleaded guilty but, after the victim had testified. Mr. Wells walked into a convenience store in the middle of a snowstorm and brandished a gun. The Judge acknowledged that the gun was determined to be an imitation, but that his victim would not have known that during the robbery.

[37] The Judge stated that this Court has spoken quite clearly on the sentencing range of 3 to 5 years for convenience store robberies (*R. v. Hutchings*, 2012 NLCA 2, at para. 104; *R. v. Mahoney*, 2018 NLCA 16, at para. 22; *R. v. Frampton*, 2018 NLCA 23, at paras. 9, 14; and *R. v. Flynn*, 2018 NLCA 61, at paras. 15-16, 28). The Judge stated convenience store workers are quite vulnerable, offering an important public service and often for minimal pay.

[38] The Judge explained that general and specific deference are the primary sentencing principles engaged in Mr. Wells' matter, however that all the applicable sentencing provisions of the *Criminal Code* (sections 718-718.2) formed the basis of the sentence. She took account of Mr. Wells' indigenous heritage and the *Gladue*-informed component of the Pre-Sentence Report, her concerns about his mental health but also the "very aggravating" facts of the robbery, and his lengthy, uninterrupted and related criminal record.

[39] Although there was no formal *Duncan* application before her, the Judge nevertheless said she had concerns for the remand time that Mr. Wells had served at His Majesty's Penitentiary, and considered a *Duncan* reduction as a mitigating factor that also informed her total sentence (*R. v. Duncan*, 2016 ONCA 754).

[40] At the time of sentencing, Mr. Wells had served 590 straight remand days. The Judge gave him *Summers* credit (1.5 x 590 days) for a total of 885 days of time served, leaving Mr. Wells with 555 days of custody to be served (*R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575).

CONCLUSION

[41] The Judge's reasons reveal no error. The sentence imposed could have been higher but for the *Gladue* factors and mitigating circumstances that the Judge duly accounted for in her decision.

[42] Despite giving wide latitude to Mr. Wells in his oral submissions to demonstrate an arguable ground to appeal his sentence, he failed to do so. Applying the appropriate legal test, I am satisfied there is no discernible merit or arguable point to the sentence appeal. The justice of this case therefore requires that I dismiss the application to grant an extension of time.

DISPOSITION

[43] For the foregoing reasons, I dismiss the application of Mr. Wells for an extension of time to seek leave to appeal his sentence.

G.L.C. Noel J.A.