



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

Citation: *R. v. PS*, 2026 NLCA 28

Date: July 22, 2026

Docket Number: 202601H0032

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BETWEEN:

PS

APPLICANT/APPELLANT

AND:

HIS MAJESTY THE KING

RESPONDENT

Coram: F.J. Knickle J.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador,
Clarenville (01619A00335)

Application Heard: July 22, 2026

Judgment Rendered (Orally): July 22, 2026

Judgment Filed: July 27, 2026

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

Counsel for the Applicant/Appellant: Peter E. Ralph K.C.

Counsel for the Respondent: Dana E. Sullivan

Authorities Cited:

CASES CITED: *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250; *R. v. Price*, 2022 NLCA 25; *R. v. Greenham*, 2018 NLCA 70; *R. v. Farinacci*, 1993 CanLII 3385 (ONCA); *R. v. Ferwerda*, 2018 NLCA 14; *R. v. Mare*, 2023 ONCA 640; *R. v. A.S.*, 2023 ONCA 649; *R. v. Castellano*, 2021 ONCA 272.

STATUTES CONSIDERED: *Criminal Code*, RSC 1985, c. C-46, sections 679, 515; *Sex Offender Information Registration Act*, SC 2004, c. 10.

F.J. Knickle J.A.:

INTRODUCTION

[1] In May 2024, PS was convicted of several historical criminal offences by a judge of the Provincial Court of Newfoundland in Labrador, including sexual interference, sexual exploitation, and two counts of uttering threats towards the victim of the sexual offences and her mother. The offences occurred between December 1, 2006 and December 31, 2008. Although convicted in May 2024, due to ongoing medical issues and arranging medical clearances, it was not until May, 2026 that he was sentenced. He received a global sentence of 40 months imprisonment plus ancillary orders for the offences.

[2] PS has appealed his convictions to this Court and seeks judicial interim release pending the resolution of his appeal under section 679 of the *Criminal Code*, RSC 1985, c. C-46 – the section of the *Code* that governs judicial interim release pending appeal.

[3] The Crown objects to his release, citing the risk to public safety. The Crown submits that the concern for public safety makes his release contrary to the public interest.

[4] For the reasons that follow, I am satisfied that PS can be released pending the resolution of his appeal.

The principles governing release

[5] The criteria for release pending appeal under the *Code*, section 679(3), are as follows:

- (a) the appeal or application for leave to appeal is not frivolous;
- (b) he will surrender himself into custody in accordance with the terms of the order;
and
- (c) his detention is not necessary in the public interest.

[6] The onus is on the accused to establish on a balance of probabilities that these criteria support that his detention is not required pending appeal (*R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at para. 19).

[7] With respect to the first criterion, the Supreme Court in *Oland* described the threshold as “very low” (para. 20). There must be an “arguable basis” to the relevant grounds (*R. v. Price*, 2022 NLCA 25, at para. 9). As long as one ground of appeal is viable, then this criterion can be said to have been met (*R. v. Greenham*, 2018 NLCA 70, at para. 15).

[8] With respect to the second criterion, the concern is self-evident, namely, whether the applicant will flee the jurisdiction (or, otherwise, remain at large in Newfoundland and Labrador).

[9] With respect to the third criterion, whether the detention is necessary in the public interest, there are two aspects to the public interest: whether there are concerns related to public safety, and maintaining confidence in the administration of justice.

[10] Concerns related to public safety overlap with the considerations under the secondary ground in section 515(10)(b) of the *Code*, that is, whether there is a “substantial likelihood” that the offender, if released, will commit a further offence or interfere with the proper administration of justice. In *Oland*, at paragraph 24, citing *R. v. Farinacci*, 1993 CanLII 3385 (ONCA), Moldaver J. affirmed that concerns over public safety will consider many of the same considerations of the “secondary ground” under section 515(10)(b):

Justice Arbour did not delve into the public safety component. She found that it related to the protection and safety of the public and essentially tracked the familiar requirements of the so-called “secondary ground” governing an accused’s release pending trial (pp. 45 and 47-48)...

[11] The question of whether detention is necessary to maintain confidence in the administration considers two further competing interests: the enforceability of the conviction, and the reviewability of the conviction on appeal (*Oland*, at paras. 24-26).

[12] The interest in ensuring that a conviction is enforced respects “the general rule of the immediate enforceability of judgments” (*Oland*, at para. 25).

[13] In contrast, the importance of the reviewability of judgments is an acknowledgement that the justice system is not “infallible” and that the availability of appellate review must be “meaningful” (*Oland*, at paras. 25, 45).

[14] The reviewability of the conviction reflects the need to ensure that PS does not remain in custody longer than is necessary. The stronger the case for an appeal, the more it is in the public interest that the individual not be detained pending appeal. As stated in *Oland*, at paragraph 25, a meaningful review process would not require an individual to serve their sentence pending appeal, only to learn that the conviction upon which the sentence is based was “unlawful”.

[15] Further, the reviewability of the convictions involves a more in-depth assessment of the merits of the appeal than whether the appeal is merely not frivolous.

DISCUSSION

a. Section 679(3)(a): The appeal is not frivolous

[16] I am satisfied that the grounds of appeal raised by PS are not frivolous in the sense as explained in *Oland*. PS has raised the ground of ineffective assistance by his trial counsel and that that ineffective assistance resulted in a miscarriage of justice. He asserts that there has been a miscarriage of justice because his former counsel consented to the admission of inadmissible evidence, upon which PS asserts the trial judge relied to convict him.

[17] PS submits further that even if the admission of the evidence does not establish that his counsel provided ineffective assistance, the trial judge nonetheless erred in admitting the evidence in question without subjecting it to a *voir dire* or articulating the basis upon which the evidence could be admitted.

[18] PS submits that had the trial judge not made these errors, the evidence would not have been admitted, and in the absence of such evidence, he may have been acquitted of the offences.

[19] I am satisfied that these grounds of appeal are not frivolous.

b. Section 679(3)(b): Will PS surrender himself into custody?

[20] PS has a troubling criminal record for violence and breaching court orders, including two occasions on which he failed to appear for Court: in 1998 and in 2000. However, I am satisfied that PS will surrender himself into custody should he be unsuccessful in his appeal. The convictions for failing to appear in court are dated, and he has significant ties to his community. This is unlike, for example, the circumstances in *R. v. Ferwerda*, 2018 NLCA 14, where the offender with a violent criminal history had few ties to the province of Newfoundland and Labrador. His dated convictions for failure to appear are not enough to warrant detaining him in custody on that basis alone.

[21] PS has otherwise appeared for court as required, particularly as required in relation to the offences under appeal. Nor do I accept that because he has been convicted of the offenses now under appeal that he is at more of a risk to flee the jurisdiction.

c. Section 679(3)(c): Is PS's detention necessary in the public interest?

[22] The real concern on this application for release pending appeal is whether PS's detention is necessary in the public interest, particularly given his criminal history and the circumstances of these offences. This was the primary ground upon which the Crown opposed PS's release. As stated, there are two aspects to this assessment: the risk to public safety and the maintenance of public confidence in the administration of justice.

i) *The concerns related to public safety*

[23] In these circumstances, the evidence supports that there is a likelihood that PS will commit further offences if released.

[24] Firstly, PS has a criminal history that spans over 30 years. His criminal history is very serious for offences of violence and breaches of court orders. All of his offences of violence are perpetrated against females, which includes his former intimate partners or their children, as is the case relating to the offences under appeal. The pre-sentence report prepared for his sentencing refers at one point to counselling between him and one of his intimate partners being stopped because the counsellor was concerned that to continue with the counselling was putting the victim at more of a risk for further violence by PS.

[25] Apart from the subject offences under appeal, PS has been convicted of sexual assault on five previous occasions. He has one conviction for assault causing bodily harm in which he fractured the bones in his former partner's face, who is also the victim's mother in this appeal, and five convictions for common assault. He has also been convicted of mischief.

[26] He has been convicted of breach of probation nine times and breach of the terms of judicial interim release three times. He has also been convicted of breaching a peace bond. Many of the convictions for breaching probation are the result of committing the above assaults. More recently, in 2019 and in 2024, he was convicted of failing to comply with the terms of an order under the *Sex Offender Information Registration Act*, SC 2004, c. 10 ("SOIRA"). Both breaches occurred in 2019, one prior to being charged with the offences under appeal.

[27] In 2021, PS was convicted of an indictable assault committed in 2017 for which he received a six month conditional sentence of imprisonment and eighteen months probation.

[28] The pre-sentence report prepared for his sentencing on the offences under appeal stated that he is at a medium risk to re-offend generally but at a high risk to re-offend sexually.

[29] I am satisfied, based on his criminal history and the nature of the offences before the Court, and the assessment in the pre-sentence report, that there is a likelihood that if released, PS would commit a criminal offence or interfere with the proper administration of justice.

[30] His history of breaching all manner of court orders also illustrates that there is reason to be concerned whether he will abide by a further court order. His history of failing to abide by court orders supports that a simple order from this Court will not be enough to secure his good behavior while his appeal is pursued. Clearly something more is required to impress upon PS the need to stay within the law pending resolution of his appeal.

[31] The question is whether the risk that PS poses can be managed without having to deny PS his liberty while waiting for the resolution of his appeal. In my view, notwithstanding the criminal history above, the totality of the evidence supports that this risk can be managed without detaining PS in custody pending the resolution of his appeal.

[32] PS is now 62 years of age, with a heart condition that I accept has impacted his overall health and for which he takes medication.

[33] Further, while he garnered two convictions while he was at large in relation to the offences under appeal, these convictions related to conduct that predated being charged with the offences under appeal. In relation to the offences under appeal, they themselves are of a historical nature having occurred almost twenty years ago, and he was not arrested by the police but was served with a summons. The Crown sought no conditions for his release at that time. Pending the resolution of these offences, there is no evidence of further criminal conduct for a period of over five years. This may be due to his medical issues, but it evidences that he can maintain a law-abiding lifestyle.

[34] I also note that PS has previously been released by this court pending the resolution of an appeal. When he appealed his convictions in 2009, for offences having been committed between 2006 and 2008, including sexual assault and the assault causing bodily harm on his former partner, this Court released him on conditions and he was at large for almost two years. This Court was satisfied to release PS despite that the proximity of his violent past was much closer in time than it is today.

[35] His criminal history shows that he has engaged in no violent conduct in almost ten years. The above supports that he is capable of being in the community without committing further criminal offences.

[36] Given the long gap of any violent conduct since 2017, I am satisfied that a suitable surety, able to promise a substantial cash amount, as well as a cash deposit from PS for a further sum of money in the event that he fails to abide by the terms of any release order, can provide, as part of a more structured release plan, the necessary assurances to the Court that he will not commit further offences while at large pending his appeal.

[37] To that end, LC, his current intimate partner, testified that she was prepared to not only allow PS to reside with her but was also willing to promise further monies to guarantee PS's good conduct.

[38] In light of PS's violent history towards females, particularly former intimate partners, the Crown expressed a legitimate concern that LC was not in a position to exercise a supervisory role over PS as a surety. I agree that this was a very real concern. However, LC has attested to being in no fear of PS and I accept her testimony.

[39] LC presented in Court as articulate and credible. She is an independent professional businesswoman. She has been in a relationship with PS since 2017. She and PS appear to have a good relationship with her family and friends. Her sister attended Court with her at the hearing of this application. LC was forthright about PS's past. She is familiar with his criminal history and the circumstances of his appeal before the Court.

[40] Although the date of the commencement of their relationship means that she was in a relationship with him when he breached his SOIRA orders twice in 2019, I accept her testimony that she has not seen the violent side of PS as represented by his criminal history. Her testimony is supported by the lack of evidence of violent conduct since 2017, a period of almost 10 years, as well as the fact that he has been at large for over five years pending the resolution of the offences under appeal.

[41] For the above reasons, despite my initial concerns that she could be capable of supervising PS as a surety, upon hearing her testimony and upon review of her affidavit and all of the material, I am satisfied that she is a suitable surety.

[42] Further, PS is willing to abide by a curfew and reporting conditions. He is also willing to remain away from the victims, and such conditions will be imposed. I note there has been no suggestion that he has contacted either of the victims pending resolution of the matter.

[43] I am satisfied that the totality of these conditions are sufficient to manage the risk he poses to public safety. However, that is not the end of the analysis.

ii) Is PS's detention necessary to maintain confidence in the administration of justice?

[44] As stated, whether the detention is necessary in the public interest to maintain confidence in the administration of justice involves competing interests: the interest in the enforceability of the convictions and the interest in the reviewability of the convictions.

The enforceability interest of the convictions is high

[45] PS was convicted of serious sexual offences and uttering threats towards the victim and her mother. As stated in *Oland*, at paragraph 50, “lingering” concerns over public safety for someone who has been convicted of a serious offence supports the public interest in the enforceability of the convictions (see also *R. v. Mare*, 2023 ONCA 640, at paras. 12-14, 16; *R. v. A.S.*, 2023 ONCA 649, at para. 13; and *R. v. Castellano*, 2021 ONCA 272, at paras. 37-38).

[46] The concerns for the safety of the public in these circumstances are not lingering concerns. PS poses as a risk to the safety of the public. There is a strong interest in the enforcement of these convictions.

The reviewability interest of the convictions is also high

[47] PS has raised several grounds of appeal that support the interest in ensuring a meaningful review of the convictions. He has asserted that his counsel at trial was ineffective which, if established, would constitute a miscarriage of justice. He also alleges that whether or not his counsel was ineffective, the trial judge misapplied legal principles in admitting certain evidence and that the admission of this evidence contributed to the trial judge's reasons as to why PS was guilty of the offences.

[48] Whether counsel was ineffective is an easy ground of appeal to raise but not necessarily easy to establish. I agree with the Crown that there is little before the Court to illustrate the extent to which this assertion has substance. PS submits that counsel improperly consented to the admission of witness statements and the statements made by him to the police, but this, standing alone, is not evidence of ineffective assistance of counsel. Consenting to the admission of evidence may be a tactical decision that falls well within the ambit of reasonable choices made by trial counsel.

[49] However, the admission of the impugned evidence by the judge, without explanation as to its purpose and without articulation by the judge as to how this evidence was used in arriving at the verdict, raises credible legal issues that may constitute error on the part of the judge. If the judge improperly admitted and relied on this evidence, this could constitute legal error that might warrant intervention by this Court.

[50] I am also satisfied these grounds are not just abstract arguments. PS has pointed to parts of the record, such as the trial judges' written reasons for judgment, of which PS submits illustrate errors by the trial judge. Nowhere in his reasons did the trial judge articulate the legal basis upon which the statements of the victim and her mother were admissible or how they were to be used in determining the issues at trial. PS asserts that some of the content in the statements contain evidence of bad character regarding him, and because of this, it was important that the judge articulate how the statements were to be used.

[51] That is not to say that PS will be successful in establishing legal error on the part of the trial judge, but only to say that on the basis of the materials before me, I am satisfied that this ground of appeal well surpasses the frivolous threshold.

[52] For these reasons, I am satisfied that the reviewability of the convictions in these circumstances is high and outweighs the enforceability concerns, notwithstanding that the offences under appeal are serious.

[53] As stated in *Oland*, at paragraph 47, the measure of the confidence in the administration of justice is through the eyes of a "reasonable member of the public". I am satisfied that, in these circumstances, a reasonable member of the public would not lose confidence in the administration of justice if someone in PS's circumstances were to be released pending resolution of his appeal on the conditions that will be imposed.

[54] In summary, under the public interest criterion of section 679(3)(c) of the *Code*, while I am satisfied there is a risk to public safety, that risk can be managed by the appropriate terms of release. The maintenance of the public confidence in the proper administration of justice also favours release.

CONCLUSION

[55] When I balance all three criteria under section 679, the balancing favours release. PS's appeal is not frivolous. It is likely that he will surrender himself into custody and his detention is not necessary in the public interest. Although the offences under appeal are serious, for which he received a lengthy sentence, and his criminal history is serious, his recent good conduct of well over five years, his ties to the community, his current state of health and his plan for release satisfy me that PS meets the criteria for release pending appeal.

DISPOSITION

[56] The application for release pending appeal is allowed.

F.J. Knickle J.A.