



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

Citation: *R. v. Goudie*, 2026 NLCA 29

Date: March 17, 2026

Docket Number: 202501H0029

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BETWEEN:

JAMES GOUDIE

APPLICANT/APPELLANT

AND:

HIS MAJESTY THE KING

RESPONDENT

Coram: F.P. O'Brien J.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador,
1721A00151

Application Heard: March 17, 2026

Judgment Rendered (Orally): March 17, 2026

Judgment Filed: July 28, 2026

Counsel for the Applicant/Appellant: Taylor R. Starrett
Counsel for the Respondent: Jeffrey A. Summers

Authorities Cited:

CASES CITED: *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250; *R. v. Payne*, 2018 NLCA 2; *R. v. Strapp*, 2022 NLCA 48; *R. v. Price*, 2022 NLCA 25; *R. v. Ferwerda* 2018 NLCA 14.

STATUTES CONSIDERED: *Criminal Code*, RCS 1985, c. C-46, sections 271, 679(3).

F.P. O'Brien J.A.:

[1] Following a trial in the Provincial Court of Newfoundland and Labrador, James Goudie (the “Applicant”) was convicted of one count of sexual assault contrary to section 271 of the *Criminal Code*, RSC 1985, c. C-46. He was sentenced to 3 years and 4 months imprisonment, less time spent in custody before sentencing. He is appealing the conviction.

[2] The Applicant applied for judicial interim release pending disposition of the appeal. To be granted release pending appeal, the Applicant was required to meet three requirements as set out in section 679(3) of the *Criminal Code*, namely that:

(a) the 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.

[3] The burden is on an applicant to demonstrate on a balance of probabilities that all requirements are met (*R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at para. 19; and *R. v. Payne*, 2018 NLCA 2, at para. 5).

[4] At the hearing, the application for judicial interim release was granted. The Applicant was released on conditions until the appeal was heard, and a decision on

appeal was filed. What follows are the reasons for granting release, with reference to the requirements of section 679(3).

First Requirement – Whether the appeal is frivolous

[5] The Supreme Court of Canada has indicated, in *Oland* at paragraph 20, that the threshold for determining that an appeal is not frivolous is a low one. It is sufficient if there is an “arguable basis” to the grounds of appeal (*R. v. Strapp*, 2022 NLCA 48, at para. 6; and *R. v. Price*, 2022 NLCA 25, at para. 9).

[6] A review of the record indicates there are seven grounds of appeal in the notice of appeal, including whether the judge erred: in failing to find that alleged contradictions in the Complainant’s evidence, or the Complainant’s alleged lack of memory in certain instances, impacted the Complainant’s credibility or the reliability of the evidence; and in denying an application to admit fresh evidence at the trial.

[7] The Crown acknowledges that the threshold is low. While the Crown argues that the grounds of appeal in this case are weak, the Crown concedes that “some [of the grounds of appeal] may meet the “not frivolous” test” (Crown’s Response to the Application, at para. 16).

[8] Without determining the ultimate strength or weakness of the Applicant’s grounds of appeal, the record is sufficient to determine at this stage that the appeal is not frivolous, as that requirement has been interpreted when considering release pending appeal under section 679(3). Accordingly, the Court agrees with the Crown’s submission that the not frivolous requirement is satisfied, and that the low threshold in section 679(3) has been met in this instance.

Second Requirement – Whether the Applicant will surrender himself into custody

[9] The Applicant’s position is that he will surrender himself into custody, in accordance with the terms of an order, should he be required to do so after the appeal is determined. The Applicant acknowledges that he does have a criminal record, which contains convictions for breaches of court orders, but argues that the record is dated in this regard and there have been no convictions of this nature since 2013.

[10] The Applicant was not held in custody during the trial in this matter. While the Applicant was represented by counsel at trial, he did not always attend the court

proceedings. The Crown notes that, at one point during the proceedings in Provincial Court, he did not attend and his attendance was required to be compelled by the Provincial Court.

[11] However, there is nothing in the record to indicate that the Applicant was attempting to abscond or leave the jurisdiction, or that he would otherwise fail to surrender himself if ordered to do so. The application indicates strong ties to the community where the Applicant would reside if released pending appeal. He was at large and living in the same community from the time he was charged with the offence, throughout the trial, and until his conviction. There was no indication of any flight risk during that period.

[12] Accordingly, based on the record, the Court concludes that the second requirement in section 679(3) is met. There is no evidence to indicate the Applicant is a serious flight risk. Any residual concerns in this respect can be addressed by a condition of release that the Applicant report in person to local police three times weekly while released pending appeal, and that he surrender any passport during the release period.

Third Requirement – Whether the Applicant’s detention pending determination of the appeal is necessary in the public interest

[13] The third requirement, that the Applicant’s detention is not necessary in the public interest, entails consideration of two separate components: public safety and public confidence in the administration of justice (*Oland*, at paras. 23-27). Any determination regarding interim release in this context involves the balancing of enforceability and reviewability factors, as referenced in *Oland*:

[25] According to Arbour J.A., the enforceability interest reflected the need to respect the general rule of the immediate enforceability of judgments. Reviewability, on the other hand, reflected society’s acknowledgement that our justice system is not infallible and that persons who challenge the legality of their convictions should be entitled to a meaningful review process — one which did not require them to serve all or a significant part of a custodial sentence only to find out on appeal that the conviction upon which it was based was unlawful (pp. 47-49).

[14] With respect to the public confidence consideration, the Supreme Court of Canada indicated in *Oland*:

[29] Fortunately, cases like this tend to be more the exception than the rule. Appellate judges across the country deal with applications for bail pending appeal on a regular basis. Of those, only a fraction are likely to involve the public confidence component. Rarely does this component play a role, much less a central role, in the decision to grant or deny bail pending appeal. ...

[15] A determination regarding whether to grant interim release pending appeal requires a contextual analysis, considering all relevant factors (for example, see *R. v. Ferwerda*, 2018 NLCA 14).

[16] In this case, there is no public safety issue that cannot be properly addressed by the terms of the release order. The terms of release in this case include conditions and restrictions with respect to the Applicant's residence, notifying the police of any change of residence, a nighttime curfew, reporting to police three times weekly, a prohibition on communicating with the Complainant or visiting the Complainant's community, and restrictions on consumption of drugs and possession of weapons.

[17] In terms of balancing enforceability and reviewability, the Court recognizes the public interest in having sentences served after they have been imposed. The Court also recognizes the public interest in having decisions meaningfully reviewed through the appeal process.

[18] In this case, a relevant factor is that the Applicant had already served a significant portion of his sentence. That is, the Applicant has been in custody since November 2024. As of March 2026, he had served approximately 16 months of the sentence. Further, the record indicated that the Applicant's full parole eligibility date was in March 2026, although he remained in custody at that time.

[19] Should the ultimate appeal be unsuccessful, the Applicant would be subject to serving the remaining part of the sentence. Release pending appeal will, at most, delay the continuation of the sentence. However, in these circumstances, there would be less concern with enforceability given the significant proportion of the sentence that has already been served.

[20] On balance, I would conclude that the Applicant's release in the circumstances would not offend the principle of public safety or undermine public confidence in the administration of justice, and that the third requirement of section 679(3) is satisfied as detention, pending appeal, is not necessary in the public interest.

Disposition

[21] Having considered the matter, including the materials in the record, and the oral and written submissions of counsel, it was determined that the statutory requirements of section 679(3) of the *Criminal Code* were met. Accordingly, the application was granted and the Applicant was released, pending the determination of the appeal, on conditions set out in the release order that was filed in this matter. The Court further directed that the appeal should be expedited.

F.P. O'Brien J.A.