IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR

Citation: *R. v. Gushue*, 2026 NLCA 37
Date: November 5, 2026
Docket Number: 202601H0064

BETWEEN:

MICHELLE GUSHUE

APPLICANT/APPELLANT

AND:

HIS MAJESTY THE KING

RESPONDENT

Coram: K.J. O'Brien J.A.

Court Appealed From:	Supreme Court of Newfoundland and Labrador, General Division, 202201G4980 (2026 NLSC 115)
Application Heard:	November 3, 2026
Oral Judgment Rendered:	November 5, 2026
Written Judgment Issued:	November 5, 2026
Reasons for Judgment by:	K.J. O'Brien J.A.
Counsel for the Applicant:	Self-Represented
Counsel for the Respondent:	Dana E. Sullivan

Authorities Cited:

CASES CITED: *R. v. Voisey*, 2026 NLSC 115; *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. PS*, 2026 NLCA 28.

STATUTES CONSIDERED: *Criminal Code*, RSC 1985, c. C-46, section 679(3).

K.J. O'Brien J.A.:

[1] Michelle Gushue applies for judicial interim release pending appeal pursuant to section 679(3) of the *Criminal Code*, RSC 1985, c. C-46.

BACKGROUND

[2] Ms. Gushue pleaded guilty to one count of fraud over $5000 for fraudulently redirecting approximately $8000 of Canada Emergency Response Benefit payments belonging to her niece in May 2020.

[3] On September 11, 2026, Ms. Gushue was sentenced to 10 months of imprisonment and 24 months of probation. Additionally, she was ordered to make restitution in the amount $8000 and prohibited from seeking, obtaining, or continuing any employment, or volunteering in any capacity, that involves having authority over another person's real property, money, or valuable security for 20 years (*R. v. Voisey*, 2026 NLSC 115).

[4] Ms. Gushue has appealed both conviction and sentence. She is self-represented and prepared her own notice of appeal. Her grounds of appeal are brief:

> I spent the majority of this case without legal counsel. I had pled not guilty then changed my plea to guilty under duress and pressure by the Crown / Judge for not having a lawyer. [The judge] was very threatening in sentencing me without a lawyer. I made mistakes due to not having anyone represent me. I also filed a complaint against [the judge] in November 2025 and he still remained on my file and sentenced me.

THE LAW

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

a) the appeal is not frivolous;

b) the appellant will surrender himself or herself into custody in accordance with the terms of the order; and

c) the appellant's detention is not necessary in the public interest.

[6] The onus is on Ms. Gushue to establish these criteria on a balance of probabilities (*R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R 250, at paras. 19, 35).

[7] The second criterion is not at issue in this application. The Crown concedes that Ms. Gushue has substantial ties to this province and does not appear to be a flight risk. The Crown is satisfied that any concerns of flight could be addressed by requiring Ms. Gushue to file her passport(s) with the Court of Appeal. I agree with the Crown's position.

[8] As such, I am left to consider the first and third criteria.

IS THE APPEAL FRIVOLOUS?

[9] Ms. Gushue's appeal centers on her allegations that she entered her guilty plea under duress and pressure, and that the sentencing judge was threatening and not impartial.

[10] Ms. Gushue submits that her appeal is not frivolous. She alleges that the judge's threatening behavior took place in late 2024 in court, prior to her changing her plea to guilty. She states that she did not file a complaint against the judge with the Canadian Judicial Council until November 2025, after she had spoken with a lawyer. To her knowledge, her complaint remains outstanding.

[11] The Crown submits that Ms. Gushue's appeal has no merit and that her application for judicial interim release should be denied on this ground alone.

[12] In support of its position, the Crown filed email correspondences between the Crown attorney who had carriage of the file for plea and sentencing, Ms. Gushue, and a lawyer who was designated *amicus curiae* for Ms. Gushue's trial. *Amicus curiae* is an independent lawyer appointed by the court to render assistance and help ensure a fair trial. There is nothing in these emails to support Ms. Gushue's allegations of being under duress or being pressured to change her plea to guilty.

[13] The Crown also filed audio recordings of court appearances on March 20 and 21, 2025. On March 20, Ms. Gushue indicated that she wanted to change her plea to guilty; on March 21, Ms. Gushue entered a guilty plea. Prior to accepting her plea, the judge carefully canvased the conditions for accepting a guilty plea set out in section 606(1.1) of the *Criminal Code* with Ms. Gushue. There is no indication of any threatening behaviour by the judge or legal counsel on these recordings. There is nothing on the recordings to support Ms. Gushue's allegations of being pressured or being under duress.

Analysis of whether the appeal is not frivolous

[14] The threshold for determining that an appeal is not frivolous is "a very low bar" (*Oland*, at para. 20). It is sufficient if there is an "arguable basis" for at least one of the grounds of appeal raised (*R. v. Price*, 2022 NLCA 25, at paras. 7, 9, 22; *R. v. Greenham*, 2018 NLCA 70, at paras. 5,15; and *R v. PS*, 2026 NLCA 28, at para. 7).

[15] One of Ms. Gushue's grounds of appeal is that she changed her plea to guilty under duress and pressure by the Crown and judge; the other relates to impartiality of the judge. Ms. Gushue alleges that the judge's threatening behavior and the fact that she filed a complaint against him with the Canadian Judicial Council establish that he was not impartial when he imposed the sentence.

[16] These are very serious allegations and there is nothing before me other than Ms. Gushue's bare assertion to support them. The material filed by the Crown does not cover the court appearance during which Ms. Gushue alleges the threatening behavior occurred. As such, I am unable to evaluate the accuracy of what Ms. Gushue states happened in late 2024.

[17] If Ms. Gushue's assertions are true, then the appeal would have merit. Although there is a strong presumption of judicial impartiality, that presumption can be displaced with proof. While there is nothing in the material filed by the Crown to

give credence to Ms. Gushue's assertions, I cannot conclude that the appeal is frivolous without a transcript or recording covering the court appearance which is at the heart of her allegations. At this stage, I am satisfied that there is at least an arguable basis for it.

IS DETENTION NECESSARY IN THE PUBLIC INTEREST?

[18] The Crown submits that Ms. Gushue's continued detention is necessary in the public interest. Ms. Gushue must establish that it is not.

[19] There are two components to the public interest criterion: public safety and public confidence in the administration of justice (*Oland*, at paras. 23, 26).

[20] The public safety component relates to the protection and safety of the public and essentially asks whether there is a substantial likelihood that the offender, if released, will commit a further offence or interfere with the proper administration of justice (*Oland*, at para. 24; and *PS*, at para. 10).

[21] The public confidence component involves weighing two competing interests: (i) the need to respect the general rule of the immediate enforceability of judgments; and (ii) society's acknowledgement that our justice system is not perfect and that people who challenge the legality of their convictions are entitled to a meaningful review process. This latter interest is often referred to as "reviewability" and it recognizes the inherent unfairness of requiring someone 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 (*Oland*, at para. 25).

[22] The public safety component and the public confidence component are not treated as silos. Even if the public safety threshold has been met by an applicant seeking bail pending appeal, residual public safety concerns or the absence of any public safety concerns remain relevant and should be considered in the public confidence analysis (*Oland*, at para. 27).

Analysis of whether detention is necessary in the public interest

[23] I am satisfied that there is risk that Ms. Gushue will commit a further offence or interfere with the proper administration of justice if she is released. She has an extensive criminal record for crimes of dishonesty. Her pre-sentence report states she has over 120 convictions, most of which are for financial offences such as fraud

and forgery. She also has convictions for failure to comply with probation and failure to attend court.

[24] However, since early 2020 when the offence under appeal was committed, Ms. Gushue has not had any known criminal involvement. This includes the almost five-year period between when she was charged with the offence under appeal and when she was sentenced. During that time, Ms. Gushue was not in custody and was not subject to any conditions.

[25] Although fraud is not an offence which is generally considered to have a high public safety risk (when compared to violent or other serious crimes), dishonesty offences are not victimless and do put the public at risk.

[26] Yet, Ms. Gushue has had approximately six years of presumably law-abiding conduct. She is pursuing counseling services to help her deal with past traumas and patterns. For the past eight or nine months she has been working with a company that is involved in car rally organization. The company owner testified on Ms. Gushue's behalf. He considers her to be a valuable employee who has been positively contributing to the company's efforts. He would like Ms. Gushue to return to work once she is released. He is aware of the nature of Ms. Gushue's present offence and that she has a criminal record, although he did not know its full extent. He testified that due to Ms. Gushue's background, none of the company's finances or money are being handled by her.

[27] If released, Ms. Gushue's plan is to live with her husband and her adult son who is disabled and requires care. Her husband is supportive of Ms. Gushue's release and testified that he holds her "to a high level of accountability". Although he is willing to act as Ms. Gushue's surety, her husband is unable to do so as he has no assets of any significant value and is currently living cheque-to-cheque.

[28] Ms. Gushue states that she has $2500 in a bank account that she would deposit, or promise, to secure her release.

[29] As previously noted, it has been over six years since Ms. Gushue's last known criminal activity. For approximately five years between when she was charged with the offence and when she was sentenced by the judge, she lived in the community under no conditions and had no reported incidents. Despite there being risk that Ms. Gushue will reoffend if released, her recent history of compliance satisfies me that

the risk can be managed with strict conditions (particularly concerning financial matters) and the requirement of a cash deposit.

[30] Consequently, I find that Ms. Gushue's detention pending appeal is not necessary for public safety because there is not a substantial likelihood that she will reoffend if released.

[31] I turn next to the public confidence criteria and the balancing of the enforceability and reviewability interests.

[32] Although fraud is not among the most serious crimes, fraud over $5000 is a serious offence. Despite that the amount of the fraud in this case is not particularly high, the act involved Ms. Gushue's abuse of a position of trust toward her niece. This adds to the seriousness of the offence and weighs in favour of immediate enforceability of the judgment.

[33] I would also assess the strength of Ms. Gushue's appeal as weighing in favour of enforceability. Although I am satisfied that Ms. Gushue's appeal passes the "not frivolous" threshold, nothing filed before me would lead me to assess her grounds of appeal as strong. If the transcript or audio recording of court proceeding in late 2024 ultimately supports Ms. Gushue's statement that the judge was "very threatening", then her appeal will have merit. If her statement is not supported, then I would assess the merit as very low.

[34] The reviewability interest, however, weighs strongly in Ms. Gushue's favour. On September 11, 2026, Ms. Gushue was sentenced to 10 months in prison. She has already served well over a month of that sentence. I am told by court staff that the transcript for the appeal is not expected to be ready until May 2027. After the transcript is filed, each side will have to prepare and file their factums, and a hearing date will then be set. If Ms. Gushue remains in prison, it is highly likely that her sentence will be served before the appeal is decided.

[35] The enforceability interest is significant, however, it ultimately does not outweigh the reviewability interest. On balance, I conclude that Ms. Gushue's continued detention is not necessary in the public interest.

DISPOSITION

[36] Ms. Gushue's application for release pending the determination of the appeal is allowed, on conditions that will be finalized with input from both parties. Those conditions will include that Ms. Gushue surrender her passport to the Court and make a cash deposit of $2000.

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K.J. O'Brien J.A.