



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

**Citation:** *R. v. Strapp*, 2022 NLCA 48

**Date:** August 5, 2022

**Docket Number:** 202201H0047

**Restriction on Publication:** By court order made under subsection 486.4(1) of the *Criminal Code*, information that may identify the person described in this judgment as the complainant shall not be published in any document or broadcast or transmitted in any way.

**BETWEEN:**

NOEL STRAPP

APPLICANT/APPELLANT

**AND:**

HER MAJESTY THE QUEEN

RESPONDENT

**Coram:** Knickle J.A.

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

**Application Heard:** August 2, 2022

**Judgment Rendered (Orally):** August 2, 2022

**Memorandum of Disposition Filed:** August 5, 2022

**Counsel for the Applicant/Appellant:** Ian S. Patey

**Counsel for the Respondent:** Sheldon B.J. Steeves

**Authorities Cited:**

**CASES CITED:** *R. v. Oland*, 2017 SCC 17, [2017] 1 SCR 250; *R v. Price*, 2022 NLCA 25; *R. v. Chandler*, 2021 NLCA 7.

**STATUTES CONSIDERED:** *Criminal Code*, RSC 1985, c. C-46, sections 153, 271, 679.

**MEMORANDUM OF DISPOSITION**

**Knickle J.A.:**

[1] After a trial by judge alone in the Provincial Court of Newfoundland and Labrador, the applicant was convicted of offences under the *Criminal Code*, RSC 1985, c. C-46: sexual assault contrary to section 271, and sexual exploitation contrary to section 153.

[2] The applicant was sentenced to a period of imprisonment totaling 4 years. Several ancillary orders were also imposed.

[3] The applicant filed a Notice of Appeal in this Court against his convictions. He has now filed an application for judicial interim release pending the appeal of these matters.

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

- (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.

[5] The onus on the accused to establish this criteria is the balance of probabilities (*R. v. Oland*, 2017 SCC 17, [2017] 1 SCR 250, at para. 19).

**A. The appeal is not frivolous**

[6] The Supreme Court in *Oland* described the threshold for this criteria as “very low”. There must be an “arguable basis” to the grounds (*R v. Price*, 2022 NLCA 25, at para. 9).

[7] As is often the case with allegations of sexual offences, whether or not the offences were established turned on the credibility of the witnesses. The applicant submits that the trial judge erred in her approach to the assessment of the credibility of the victim, J.L., and Mr. Strapp, by failing to properly reconcile inconsistencies not only between the victim J.L. and other witnesses, but also within J.L.'s own narrative as to when and where incidents of sexual contact occurred. It is also alleged the trial judge failed to consider relevant evidence, and misapprehended yet other evidence.

[8] For the purpose of the first criteria for judicial interim release, that the appeal is not frivolous, this criteria for release has been met. The assessment of credibility is the province of the trial judge, but that assessment is not immune from review. If there were errors made in applying the wrong principles to the assessment of credibility, there may be error committed by the trial judge.

**B. Will the applicant surrender himself into custody?**

[9] The crown conceded this criteria, and I agree, there is no issue in respect of this criteria. The applicant has no previous criminal record. He was released on conditions pending his trial and abided by those conditions without incident. He has provided three sureties and is prepared to deposit cash to ensure his release. He has a reasonable plan proposed for his release and I am satisfied he will attend court as required, and surrender himself into custody if his appeal is dismissed.

**C. Is the applicant's detention necessary in the public interest?**

[10] I am also satisfied it is not necessary in the public interest to detain the applicant. There is no issue of public safety that cannot be addressed by the terms of the release order. Nor is there concern that it is necessary to detain the applicant to maintain public confidence in the administration of justice.

[11] As pointed out in and out of *Oland*, at para. 49, whether detention is necessary in the public interest requires a balancing between the enforceability of the conviction against the reviewability of the conviction on appeal.

[12] While the offences are serious and the enforcement of the convictions is in the public interest, it is also in the public interest that convictions not be obtained at the expense of the proper application of the principles governing the assessment of witness testimony.

[13] The circumstances here are similar to those in *R. v. Chandler*, 2021 NLCA 7, and I echo the words as stated by Goodridge J.A.:

[15] I agree with Crown's position that the offence is serious, but at the same time, I am of the view that an arguable issue has been raised and it would warrant appellate intervention if established. This does not mean that the prospect of success on that ground of appeal is good, but only to say that, in my opinion, based on the limited information now available, it clearly surpasses the "not frivolous" criterion.

[14] In these circumstances, as the other two criteria have clearly been met and there is a good plan in place to address the terms of release, I am satisfied that the balance favours release.

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F.J. Knickle J.A.