

In the Court of Appeal of Alberta

Citation: R v Rodrigez, 2026 ABCA 283

Date: 20260902
Docket: 2601-0162A
Registry: Calgary

Between:

His Majesty the King

Respondent

- and -

Aldo Alberto Hernandez Rodrigez

Applicant

**Reasons for Decision of
The Honourable Justice Karan M. Shaner**

Application for Judicial Interim Release

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Introduction

[1] Following a trial, the applicant was convicted of assault causing bodily harm and unlawful confinement, contrary to ss 267(b) and 279(2) of the *Criminal Code* RSC 1985, c C-46 [*Criminal Code*] respectively. The complainant was his intimate partner. The applicant received a sentence of one year imprisonment to be followed by twelve months' probation. The applicant has served just under four months of the custodial portion of his sentence.

[2] The applicant has filed an appeal from conviction on the grounds the trial judge failed to properly consider his evidence and failed to provide sufficient reasons for conviction.¹ He seeks release pending the appeal pursuant to s 679(1)(a) of the *Criminal Code*. The Crown opposes the application primarily on the basis that continued detention is necessary in the public interest.

[3] The application is dismissed for the following reasons.

Background

[4] In 2023, the applicant paid for a return flight for the complainant to come to Canada from Mexico. She arrived in July and was scheduled to return to Mexico on December 6, 2023. She initially stayed with the applicant, upon whom she was completely dependent, both financially and linguistically. The applicant forced her to work illegally, took her wages, and inflicted physical violence on her. She was eventually able to move into a basement suite.

[5] The applicant contacted the complainant on December 3, 2023, and the two agreed to meet a short distance from the complainant's basement suite to say goodbye. During their meeting, the complainant received a phone call, angering the applicant. He took her phone from her and broke it. He then followed the complainant to her basement suite. The complainant went inside and the applicant shouted at her from outside until she finally went to speak to him. At that point, the applicant told the complainant he had another cell phone at his house and could give her the SIM card so she could access her plane ticket. The complainant agreed to go with him.

[6] When they arrived, the applicant attacked the complainant, repeatedly striking her on her head and face. The attacks continued throughout the night, causing painful injuries to the complainant. On December 6, the day the complainant was to return to Mexico, the applicant

¹ When this application was argued, the applicant's counsel indicated the third ground of appeal, that there was no evidence to support the finding of unlawful confinement would not be pursued.

prevented her from leaving and she missed her flight. The applicant continued to inflict physical violence on the complainant in the days that followed.

[7] On December 15, the complainant went to the Mexican consulate where she was able to obtain assistance in contacting the police. Both the consular official and the police officer who took the complainant's statement and photographed her injuries testified at trial. The photographs were tendered as evidence.

[8] The applicant gave brief evidence at his trial in which he primarily denied or claimed to have no knowledge of the events underpinning the allegations.

[9] Following his arrest, the applicant entered into a release order on December 21, 2023, which contained the condition that he was to have no contact with the complainant. The complainant reported to the police on April 17, 2024, that the applicant had tried to contact her over 100 times. He was charged with breaching his release order and with criminal harassment. Those charges were not prosecuted; however, there is no dispute between the parties that the applicant did in fact contact the complainant repeatedly while the release order was in effect. In his affidavit in support of the application, the applicant deposes he has not attempted to contact the complainant since May 2024 and has no intention of contacting her again.

[10] The applicant's proposed release plan would, among other things, require him to live with his surety at her home, comply with a curfew, surrender all passports, and refrain from any form of communication with the complainant. The surety signed a promise to pay \$1,000.00 in the event of the applicant's non-compliance.

Discussion

[11] The applicant must establish the following on a balance of probabilities:

- a) The appeal is not frivolous;
- b) He will surrender himself into custody in accordance with the terms of the release order, if granted; and
- c) His detention is not necessary in the public interest.

R v Oland, 2017 SCC 17 at para 19 [***Oland***].

[12] "Not frivolous" is a low threshold. ***R v Haevischer***, 2023 SCC 11 at paras 67-68; ***Oland*** at para 20. If an applicant can establish the appeal will not fail, that is enough to demonstrate it is not frivolous. ***R v Maharaj***, 2023 ABCA 346 at para 9. The Crown concedes, and I agree, the applicant's grounds of appeal meet this threshold. As explained below, however, a closer look at

the relative merits of the appeal is necessary in assessing the public interest component of the test. *Oland* at para 24.

[13] The Crown does not dispute that the applicant will surrender himself as required by any release order. As noted, however, the Crown argues the applicant's detention pending appeal is necessary in the public interest. There are two components to public interest: public safety and public confidence in the administration of justice. *Oland* at para 23-24, 28-40. The Crown argues both are relevant and should operate to defeat the application for release.

[14] Public safety is concerned with the likelihood of re-offending and considers the nature of the offences, whether there is a substantial likelihood the applicant will commit another offence while on release, and whether the applicant's release plan will sufficiently attenuate any safety risks. *R v Bremner*, 2025 ABCA 238 at para 8, citing *R v RYM*, 2022 ABCA 148 at para 16. The Crown's concerns about public safety stem primarily from the applicant's previous breaches of the no-contact provision of the previous order. The Crown contends this raises the risk the applicant is likely to breach any no-contact provision of an order granting release pending appeal. While the applicant offers little in the way of an explanation for breaching conditions in the past, his proposed release plan is far more robust than the conditions imposed in the previous one, most notably through the inclusion of a surety who will provide supervision, and a curfew requirement. In my view, the proposed plan sufficiently attenuates the risk the applicant would breach the release order. I also note the applicant has not contacted the complainant since May 2024 and that he did not breach the previous release order in any other manner.

[15] The public confidence analysis requires two interests be considered: enforceability and reviewability. Enforceability reflects "the need to respect the general rule of the immediate enforceability of judgments", while reviewability reflects the acknowledgement that the justice system is imperfect and individuals challenging "the legality of their convictions should be entitled to a meaningful review process". *Oland* at paras 24-26. There is no precise formula applicable to balancing these competing interests. *Oland* at para 49. The assessment is conducted on the standard of "a reasonable member of the public who, although not a legal expert, is nonetheless properly informed about the philosophy underlying the legislative provisions, *Charter* values and the actual circumstances of the case". *R v St-Cloud*, 2015 SCC 27 at para 167; *R v SDH*, 2022 ABCA 411 at para 4.

[16] The applicant argues the enforceability aspect of public confidence in this case is of minimal importance and that the reviewability aspect should prevail. With respect to enforceability, he states the offences are "not especially serious". I disagree. Assault causing bodily harm and unlawful confinement are objectively serious offences. Moreover, the circumstances surrounding the offences are concerning, featuring sustained periods of physical violence against a financially and linguistically vulnerable individual who was the applicant's intimate partner. As stated in *Oland* at para 37, "The more serious the crime, the greater the risk

that public confidence in the administration of justice will be undermined if the accused is released on bail ... pending appeal”.

[17] Turning to the reviewability analysis, the strength of the appeal has a central role. *Oland* at para 40. The grounds of appeal must be assessed to determine if they “clearly surpass the minimal standard required to meet the ‘not frivolous’ criterion”, although appellate judges can ultimately form their own assessment of the strength of the appeal based on their knowledge and experience. *Oland* at paras 44-45. The applicant argues the grounds of appeal surpass the minimum standard. He alleges the trial judge did not meaningfully engage with his evidence, nor with inconsistencies in the complainant’s evidence. He also points out that, having served nearly half of the custodial portion of his sentence, if he is denied release pending appeal, he will probably serve the entire sentence before the matter is heard.

[18] In my view, the applicant’s grounds of appeal are weak and do not meet the required threshold. While framed as a failure to properly apply the analytical framework set out in *R v W(D)*, 1991 CanLII 93, [1991] 1 SCR 742 at 758, the applicant’s chief concern is that the trial judge did not believe him and accepted the evidence the Crown tendered. The standard of review on factual and credibility findings is deferential, requiring an appellant to demonstrate palpable and overriding error. As noted, the applicant’s evidence was brief and consisted primarily of denials or a lack of knowledge of the events. The complainant’s evidence was corroborated by other witnesses, unconnected to the parties, as well as photographic evidence. Notably, in her reasons the trial judge specifically engaged with the applicant’s evidence and explained why she rejected it. She went on to explain why she found the Crown had proved the two charges beyond a reasonable doubt.

[19] The final balancing of the enforceability and reviewability requires public confidence to be assessed through “the eyes of a reasonable member of the public”. *Oland* at para 47. The applicant was convicted of serious crimes with aggravating factors. His grounds of appeal are very weak. That he may be finished serving the custodial portion of his sentence before his appeal is concluded is an important consideration but standing alone, it cannot justify release. Balancing enforceability and reviewability, I conclude allowing the application for release pending appeal would erode public confidence in the justice system.

Disposition

[20] The application is dismissed.

Application heard on August 19, 2026

Reasons filed at Calgary, Alberta
this 2nd day of September, 2026

Shaner J.A.

Appearances:

Z. Lakhoo
for the Respondent

C. Sprague
for the Applicant