In the Court of Appeal of Alberta

Citation: R v Burnett, 2026 ABCA 352

Date: 20261102
Docket: 2503-0117A
Registry: Edmonton

Between:

His Majesty the King

Respondent

- and -

Donald Earl Burnett

Applicant

Restriction on Publication

Identification Ban – See the *Criminal Code*, section 486.4.

By Court Order, information that could identify the victims or the witness must not be published, broadcast, or transmitted in any way.

NOTE: Identifying information has been removed from this judgment to comply with the ban so that it may be published.

The Court:

The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Anne Kirker
The Honourable Justice Jane Fagnan

Memorandum of Judgment

Application to Appoint Counsel

Memorandum of Judgment

The Court:

[1] The applicant seeks state funded counsel pursuant to s 684 of the *Criminal Code*, RSC 1985, c C-46 for his sentence appeal. With the benefit of counsel, the applicant pleaded guilty to offences against five women, including assault causing bodily harm to his intimate parter, obstruction of justice involving another intimate partner, sexual assault of two different women and unlawful confinement. He was sentenced pursuant to a joint submission to a global sentence of 3285 days, reduced to 2256 days for pre-sentence custody, leaving 6 years and 66 days to be served. The applicant received 1.5 days of credit for his days in remand.

[2] While the applicant had initially advanced concerns in his notice of appeal regarding property issues, he is now claiming that he should have received more credit for his time in remand, where he claims to have been physically and mentally abused.

[3] The applicant has filed an affidavit in support of his application in which he alleges that: he was denied legal aid because they refused to help him recover property back from the police; he cannot pay for a lawyer because he is in jail, lacks income and has financial need; he has poor education, very limited English language skills and is not able to obtain the needed evidence himself; he is appealing the credit for the time he spent in the Edmonton Remand Centre; and the Edmonton Remand Centre has proof of his injuries and of a reprimand to a guard for his treatment.

[4] Section 684 of the *Criminal Code* provides that the court may assign counsel to act on behalf on an accused person where it appears desirable in the interests of justice that the accused have legal assistance and the accused has not sufficient means to obtain that assistance.

[5] The test applied is discretionary and involves consideration of the following factors:

(a) whether the applicant demonstrates insufficient means to obtain counsel;

(b) whether there is sufficient arguable merit to the appeal to justify public funding of counsel;

(c) whether the issues in the appeal transcend the issues of this particular applicant and engage broader societal concerns; and

(d) whether the submissions to be made are sufficiently complex that the applicant would be unable to advance them without assistance.

See *R v McKechnie*, 2021 ABCA 257 at para 4.

[6] We accept that the applicant has insufficient means to obtain counsel. However, the remaining factors weigh against granting the application.

[7] The applicant is seeking to set aside the credit he received for pre-sentence custody in a sentence that resulted from a plea agreement involving multiple proceedings and a joint submission on sentence (except for pre-sentence custody credit) made with the benefit of counsel. The plea agreement included guilty pleas by the applicant and the withdrawal by the Crown of several charges, to the benefit of the applicant. Except for the pre-sentence custody calculation, the applicant does not argue that the sentence is demonstrably unfit for the multiple serious charges of which he was convicted.

[8] The standard of review applicable on sentence appeals is stringent. Appellate intervention will only be warranted if the sentencing judge made an error in principle that impacted the sentence or where the sentence is demonstrably unfit: *R v Lacasse*, 2015 SCC 64 at paras 44, 52.

[9] The applicant alleges in his oral submissions that his counsel did not comply with his instructions. This allegation does not appear in his notice of appeal or the affidavit filed in support of his application. In our view, the proposed appeal does not have sufficient merit to justify public funding of counsel.

[10] Further, the issues the applicant proposes to raise do not transcend the appeal or engage broader societal concerns.

[11] The applicant claims that he has very limited English language skills. The Crown advises that this is the first time this concern has been raised by the applicant. The applicant was able to explain his position at the hearing of the application and respond to the Crown's written memorandum and oral submissions. It is our view that the issues the applicant proposes to raise are not so complex that they could not be advanced by him without the assistance of counsel.

[12] In the circumstances, we are not satisfied that it would be in the interests of justice to appoint legal counsel. The application is dismissed.

Application heard on October 20, 2026

Memorandum filed at Edmonton, Alberta
this 2nd day of November, 2026

Strekaf J.A.

Kirker J.A.

Fagnan J.A.

Appearances:

T.L. Couillard, KC
for the Respondent

Applicant D.E. Burnett