

In the Court of Appeal of Alberta

Citation: R v Neville, 2026 ABCA 245

Date: 20260722
Docket: 2503-0253A
Registry: Edmonton

Between:

His Majesty the King

Respondent

- and -

Anthony Pierre Neville

Applicant

The Court:

**The Honourable Justice Kevin Feehan
The Honourable Justice Kevin Feth
The Honourable Justice Tamara Friesen**

Memorandum of Judgment

Application for Bail Review

Memorandum of Judgment

The Court:

I. Overview

[1] On June 18, 2025, Anthony Neville was convicted of possessing fentanyl for the purpose of trafficking, contrary to s 5(2), and unlawfully producing fentanyl, contrary to s 7(1) of the *Controlled Drugs and Substances Act*, SC 1996, c 19, serious offences for which he received a sentence of eight years.

[2] On December 3, 2025, Mr Neville filed a Notice of Conviction Appeal. On December 23, 2025, immediately following his sentencing, he made an urgent application for interim release pending appeal pursuant to s 679 of the *Criminal Code*, RSC 1985, c C-46. The bail judge delivered an oral decision on that date and denied bail. Mr Neville made a second, fresh application for interim release before a second bail judge which was denied on May 11, 2026.

[3] Mr Neville asks this panel to review the earlier decisions denying him judicial interim release pending appeal, pursuant to s 680 of the *Code*.

[4] For the reasons below, the application for review is dismissed.

II. Background

[5] Two confidential informants advised the Edmonton Police Service that Mr Neville and a co-accused were producing and distributing fentanyl from a location in Mill Woods, Edmonton.

[6] During the ensuing investigation, one of the investigating officers conveyed information about Mr Neville to the Canada Border Services Agency. As a result, on November 25, 2015, after returning from a trip to China, Mr Neville and his co-accused were stopped by CBSA agents at the Vancouver International Airport and subjected to what CBSA refers to as a “secondary examination.” The CBSA agents conducting the secondary examination searched Mr Neville's digital devices and located information related to fentanyl production.

[7] On December 31, 2015, following a period of police surveillance, Mr Neville and his co-accused were arrested as they exited a house in the Mill Woods area of Edmonton. Mr Neville's hands were dyed green from the production of fentanyl pills, and his co-accused was carrying a bag filled with byproducts of fentanyl production. Pursuant to a search warrant, police located inside that residence a bedroom containing a fully functioning fentanyl lab, complete with a hydraulic pill press and over 5,800 fentanyl pills. At the time of the arrest, Mr Neville had a key unlocking the door to that room containing the fentanyl lab. For various reasons, the investigating officers delayed Mr Neville's access to counsel for six hours following his arrest.

[8] Mr Neville and his co-accused were charged with producing and possessing fentanyl for the purpose of drug trafficking. Mr Neville subsequently filed *Charter* challenges related to the search and seizure that occurred at the airport on November 25, 2015, and his arrest and detention on December 31, 2015.

[9] Prior to trial, the case management judge held two separate *voir dires* to address the *Charter* challenges. He found the search and seizure conducted by the CBSA agents violated Mr Neville's s 8 right to be secure against unreasonable search and seizure, and further found that the six-hour delay in providing access to legal counsel violated Mr Neville's s 10(b) rights.

[10] The case management judge ultimately found that although evidence seized on December 31, 2015 had been obtained in a manner that infringed or denied Mr Neville's constitutional rights, the evidence could still be admitted at trial under s 24(2) of the *Charter* pursuant to the test in ***R v Grant***, 2009 SCC 32, [2009], 2 SCR 353, as its admission did not bring the administration of justice into disrepute. He concluded that the details provided by the confidential informants were compelling, including their description of the kinds of drugs being distributed and that the appellant was operating a fentanyl lab with a co-accused, using a pill press that could make a high volume of pills, and was planning a trip out of the country with his co-accused to obtain fentanyl supplies.

[11] The matter then proceeded to trial before a different judge. The trial judge found that both accused "had knowledge of the character of the drugs within the room, that they knowingly put or kept the objects in the room" and were guilty of possession. He found they "knew that fentanyl was being produced and that they aided in the manufacturing of that [fentanyl,] ... there was clear evidence of the production of fentanyl", and "all ... of the precursor chemicals and equipment required for the production of fentanyl". He said: "[i]t is not reasonable to suggest that there is an innocent purpose to this room. The room was equipped and set up for the production of fentanyl". In result, the trial judge also found Mr Neville guilty of the production of fentanyl.

[12] On December 22, 2025, Mr Neville was sentenced to eight years in prison. On December 23, 2025, he made an urgent application for interim release pending appeal, and the bail judge delivered an oral decision on that date, later released in written form: ***R v Neville***, 2026 ABCA 117. He then made a second, fresh application for judicial interim release pending appeal which was dismissed on May 11, 2026: ***R v Neville***, 2026 ABCA 159. Leave to bring a review application before a panel was granted on June 11, 2026: ***R v Neville***, 2026 ABCA 190. The present application, which is a review of both earlier decisions, was heard on July 13, 2026. Mr Neville's appeal is set for December 3, 2026.

[13] Mr Neville focused his application for review on the first bail judge's reasons, as the second bail judge's reasons for denying release were based on her assessment that the further elaboration of appeal grounds Mr Neville argued before her was not "material so as to call into question the

initial justice’s assessment of the strength of the grounds and the role of that factor in the public interest assessment”, para 13. We will do the same.

III. Guiding Principles on Review

[14] The principles guiding this panel’s review of the bail judge’s decision under s 680 of the *Criminal Code* were set out in ***Oland***, para 61:

First, absent palpable and overriding error, the review panel must show deference to the judge’s findings of fact. Second, the review panel may intervene and substitute its decision for that of the judge where it is satisfied that the judge erred in law or in principle, and the error was material to the outcome. Third, in the absence of legal error, the review panel may intervene and substitute its decision for that of the judge where it concludes that the decision was clearly unwarranted.

IV. Law on Interim Release Pending Appeal

[15] Convicted persons have lost the presumption of innocence and therefore, when dealing with release pending appeal, the onus shifts from the Crown to the accused to show they should not be detained on a balance of probabilities: ***R v Oland***, 2017 SCC 17, paras 19, 35, [2017] 1 SCR 250; ***HMTK v Inuktalik***, 2026 NWTCA 5, paras 4, 6; ***R v McNaughton***, 2010 ABCA 97, para 14, 26 Alta LR (5th) 126; ***R v St-Cloud***, 2015 SCC 27, para 111, [2015] 2 SCR 328; ***R v Farinacci*** (1993), 109 DLR (4th) 97, 102, 86 CCC (3d) 32 (ONCA); ***R v Beckow***, 2024 ABCA 414, paras 5-8; ***R v King***, 2025 ABCA 160, paras 6-9; ***R v McDermott***, 2025 ABCA 421, para 6; ***R v Barry***, 2025 NWTCA 7, para 15.

[16] Section 679(3) of the *Criminal Code* provides that a single judge of the Court of Appeal may release an appellant from custody pending determination of the appeal, upon the applicant establishing that:

- (a) the appeal or application for leave to 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.

[17] The applicant must first demonstrate that the proposed grounds of appeal are “not frivolous”: ***Oland***, para 20; that means the appeal will not necessarily fail: ***R v Passey***, 1997 ABCA 343, para 7, 121 CCC (3d) 444. This is a low bar: ***Oland***, para 20; ***Passey***, para 7; ***R v Haevischer***, 2023 SCC 11, paras 67, 68, [2023] 1 SCR 416; ***R v Maharaj***, 2023 ABCA 346, paras 7-9; ***King***, para 10; ***McDermott***, para 13; ***Barry***, para 6; ***Inuktalik***, para 9.

[18] The applicant must then satisfy the Court that they will not abscond and will surrender into custody when required: *Oland*, para 21; *Barry*, para 8; *Inuktalik*, para 14.

[19] The final stage, which requires the applicant to illustrate that their continued detention is not necessary in the public interest, involves two components: public safety and public confidence in the administration of justice: *Oland*, paras 23, 24, 38-40; *Farinacci*, 113; *Barry*, paras 9, 14; *Inuktalik*, para 18. Public safety is concerned with the likelihood of reoffending. Public confidence requires weighing two competing interests: enforceability and reviewability. Enforceability reflects the need to respect the “general rule of immediate enforcement of judgments,” while reviewability reflects an “acknowledgment 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”: *Oland*, para 25, citing *Farinacci*. That review process should not require an offender to serve all or a significant part of a sentence prior to the appeal being heard: *Oland*, para 25; *R v Warsame*, 2017 ABCA 239, paras 4, 5; *Beckow*, para 23.

[20] The final balancing of factors that inform public confidence “is to be measured through the eyes of a reasonable member of the public”: *Oland*, para 47; *St-Cloud*, paras 74-80; *Warsame*, para 8; *R v Iyer*, 2021 ABCA 69, para 18; *Beckow*, para 24; *King*, paras 16, 17; *Barry*, para 17; *Inuktalik*, para 19.

[21] In *Oland*, paras 31, 37, 40-45, 50, the Supreme Court held that the criteria used to consider public confidence in the justice system in the context of a s 679 application should be informed by the criteria set out in s 515(10)(c) of the *Code*: the apparent strength of the grounds of appeal, gravity of the offence, circumstances surrounding the commission of the offence, and penalty imposed in the Court below. The more serious the offence and its facts, and the longer the sentence imposed, the greater the risk public confidence will be undermined if an offender is released pending appeal: *Oland*, para 37. Therefore, for serious offences like the present ones, the inquiry into the likelihood of success can be more probing, and a more pointed consideration of the strength and merits of the appeal is generally undertaken: *Oland*, paras 43, 44.

[22] When considering the impact of continued detention on public confidence, relevant factors include: past performance while on release, the nature of the issues raised on appeal, the applicable standard of review, whether all or a significant portion of the sentence will be served before the appeal can be heard and decided, and what type of conditions might be imposed: *McNaughton*, para 12; *R v Sidhu*, 2015 ABCA 308, para 6, 607 AR 395; *R v Corbeil*, 2017 ABCA 400, para 35; *Oland*, para 48.

[23] It follows that considering the public confidence component involves a balancing of all the factors relevant to the competing interests of enforceability and reviewability and “no precise formula ... can be applied”: *Oland*, para 49; *Sidhu*, para 6. That said, the balancing must accord with the standard of ordinary, reasonable, fair-minded members of society, informed about the philosophy of the legislative provisions, *Charter* values, and the actual circumstances of the

case: *St-Cloud*, paras 79, 167; *Oland*, para 47; *McNaughton*, para 9; *R v SDH*, 2022 ABCA 411, para 4; *Beckow*, paras 27-29; *King*, paras 20-22; *McDermott*, paras 27-29.

[24] In the circumstances of this case, whether or not the applicant should have been released pending appeal turned on the balance of enforceability and reviewability.

V. The Criteria before the first Bail Judge

[25] The bail judge found under the first branch of the test that the appeal was not frivolous; s 679(3)(a).

[26] The Crown conceded under the second branch of the test that Mr Neville would surrender himself into custody in accordance with the terms of any order given and was not a flight risk; s 679(3)(b).

[27] It therefore fell to Mr Neville pursuant to the third branch of the test, s 679(3)(c), to demonstrate that his continued detention was not necessary in the public interest. With respect to the first component, public safety, the Crown expressed some concerns, but did not ultimately argue that public safety, on its own, was a reason for denying bail in this case.

[28] The bail judge observed Mr Neville had no criminal record other than the convictions at issue, had been on release for many years before trial with no proven breaches, although he was charged with additional drug trafficking-related offences in 2021, for which he continued to enjoy the benefit of the presumption of innocence, and he was on bail with respect to those 2021 charges. The bail judge found that “any residual public safety concerns can be taken into account in the assessment of the second component of public interest, being public confidence in the administration of justice”.

[29] The issue before the bail judge was therefore narrowed to only determining whether detention was necessary in balancing enforceability and reviewability.

[30] This is where Mr Neville says the bail judge made an error of law. Summing up her preliminary assessment of the merits, she said “the applicant has a reasonable appeal but not an overwhelming appeal”. In discussing reviewability on the grounds for arrest, she said “on a preliminary basis, I am satisfied that the applicant has reasonable arguments, but I do not find them to be overwhelming”. On her analysis of the strength of appeal under s 24(2) of the *Charter*, she again said that “the applicant also has a reasonable appeal ..., but again not an overwhelming appeal ...”.

[31] Mr Neville says those remarks reveal the bail judge misapprehended a “threshold” to be applied in balancing reviewability and enforceability. He says that where the strength of the appeal “clearly surpasses” the not frivolous standard at the first stage of s 679(3), a threshold is crossed and the balance almost invariably favours interim release. He relies on comments in *Oland* at

paragraph 51 that “where public safety or flight concerns are negligible, and where the grounds of appeal clearly surpass the “not frivolous” criterion, the public interest in reviewability *may* well overshadow the enforceability interest, even in the case of murder or other very serious offences” [emphasis added]. He submits the strength of an appeal clearly surpasses the “not frivolous” criterion where the grounds are legally plausible and founded in the record, or have arguable merit: ***Oland***, para 44; ***McDermott***, para 30; ***R v IJM***, 2024 ABCA 364, para 15; and ***R v DPT***, 2023 ABCA 218, para 21.

[32] Mr Neville argues that a “reasonable appeal” satisfies that threshold. He contends the bail judge incorrectly applied the threshold of an “overwhelming appeal”, which improperly elevated his burden in demonstrating the strength of the appeal.

[33] We do not agree that ***Oland*** established a threshold, which if satisfied, presumptively or almost invariably demands release. Nor do we accept that the bail judge applied such a threshold or that she required Mr Neville to establish an “overwhelming appeal” before granting release.

[34] In balancing reviewability and enforceability, bail judges often draw on the language of ***Oland***, including by asking whether the grounds “clearly surpass” the not frivolous standard: ***R v EGM***, 2026 ABCA 23, para 39; ***R v Carbert***, 2025 ABCA 234, para 26; ***R v Barrionuevo***, 2023 ABCA 363, para 9; ***R v HB***, 2022 ABCA 240, para 19; ***R v Cupid***, 2021 ABCA 339, para 25; ***R v CEK***, 2018 ABCA 372, para 28; ***R v RB***, 2025 ONCA 828, para 6. However, the focus is on whether the “not frivolous” standard is exceeded rather than creating another threshold inquiry. ***Oland*** at paragraph 44 cautioned against “categories and grading schemes” to assess the merits of an appeal, which might “devolve into a set of complex rules that appellate judges will be obliged to apply in assessing the category into which a particular appeal falls”.

[35] Mr Neville is correct that in evaluating the strength of the appeal under the third branch, balancing reviewability and enforceability, there is no need to surpass a threshold of proving an “overwhelming” case on appeal. However, the bail judge never required Mr Neville to prove that his case on appeal was “overwhelming”.

[36] In our view, the Crown accurately describes the wording chosen by the bail judge as “merely a descriptor for the weight [she] ascribed to [Mr Neville's] prospect of success on appeal in the public interest assessment”. It says the bail judge was “properly measuring the strength of the appeal as *one* of the factors to be considered in her assessment of whether the public interest mandated the detention of the appellant”, including merits of the appeal but also “the seriousness of the crime, including its gravity; the circumstances surrounding the commission of the offence and length of sentence; and any residual public safety concerns”.

[37] Before the bail judge, the parties agreed that if the court found the “not frivolous” standard was met at the first stage, the merits should be weighed in a more pointed analysis at the third stage. They diverged as to the strength of the appeal; the Crown argued the grounds were frivolous

or extremely weak while Mr Neville argued they were “very strong”. The bail judge, after setting out the “goalposts” in describing the submissions made for her preliminary assessment of the merits, as somewhere between not frivolous and overwhelming, stated the proper test:

When public confidence is in issue, consideration of the weight given to enforceability in a given case, involves factors such as: the seriousness of the crime, including the gravity of the offence; the circumstances surrounding commission of the offence and length of sentence; and any residual public safety concerns or residual concerns about flight risk. With respect to reviewability, a preliminary assessment of the merits plays an important role. The greater the likely merits of the appeal, the more heavily reviewability is weighed in the analysis.

[38] The bail judge’s comments correctly reflect that “a finding that grounds of appeal clearly surpass the ‘not frivolous’ threshold does not, in every case, end all further consideration of the strength of an appeal” and the “stronger the appeal, the more likely it is that reviewability will overcome the enforcement consideration”: *R v JP*, 2024 ONCA 700 at para 13. The bail judge engaged in that exercise in finding that Mr Neville’s appeal was “reasonable” but “not overwhelming”.

[39] The bail judge also took “into account that a reasonably informed member of the public would appreciate the importance of offenders having a full opportunity to enforce their *Charter* rights”. She ultimately found that “doing a balancing from the perspective of a reasonably informed member of society *vis-a-vis* confidence in the administration of justice ... enforceability outweighs reviewability in this case”. She explained the way she balanced the various factors:

The serious nature of the offences, including the contribution of deadly fentanyl into the supply chain that does so much harm to society, weighs heavily in favour of enforcing the sentence pending appeal. Reviewability is very important, but the merits of the appeal based on my preliminary assessment are not such that they or any other factors relating to reviewability outweigh the importance of enforceability in this particular case. A reasonable member of the public properly informed would, in my view, lose confidence in the administration of justice if I ordered the release of the applicant pending his appeal in the circumstances.

[40] This Court finds that the bail judge did not make a palpable and overriding error, and did not err in law or principle in articulating and applying the test for judicial interim release pending appeal, as elaborated above. Accordingly, this panel owes deference to her discretionary decision denying release on these serious convictions. Even in the absence of legal error, we are not satisfied that her decision was clearly unwarranted.

[41] As the merits of the appeal will soon be considered by a panel of this Court on appeal, we decline to comment in greater detail about the strength of the various arguments.

VI. Conclusion

[42] The application for review of the decisions of the bail judges of December 23, 2025 and May 11, 2026 is dismissed.

Application heard on July 13, 2026

Memorandum filed at Edmonton, Alberta
this 22nd day of July, 2026

Feehan J.A.

Feth J.A.

Friesen J.A.

Appearances:

J. Kerber

K. Streeper (No appearance)
for the Respondent

P. Sankoff
for the Applicant