NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Sandeson*, 2023 NSCA 76

Date: 20231031
Docket: CAC 523366
Registry: Halifax

Between:

William Michael Sandeson

Appellant

v.

His Majesty the King

Respondent

Judge:	Farrar J.A.
Motion Heard:	October 26, 2023, in Halifax, Nova Scotia in Chambers
Held:	Application dismissed
Counsel:	William Sandeson, appellant, self-represented Mark Scott, K.C., for the respondent

Decision:

Introduction

[1] Mr. Sandeson is self-represented. He appeals his conviction of second degree murder of Taylor Samson. Pursuant to s. 679 of the *Criminal Code*, he applied for bail pending the decision on his appeal. The Crown opposed his release. After a hearing in chambers on October 26, 2023, I reserved decision with reasons to follow. These are my reasons.

Background

[2] On February 18, 2023, Mr. Sandeson was convicted of second degree murder following a jury trial presided over by Justice James L. Chipman. On April 20, 2023, Justice Chipman sentenced Mr. Sandeson to life in prison with parole ineligibility set at 15 years (*R. v. Sandeson*, 2023 NSSC 130).

[3] Mr. Sandeson appeals, arguing his trial was an abuse of process, there were alleged breaches of s. 8 of the *Charter*, and the trial judge made errors in his charge to the jury. He also seeks leave to appeal the length of his parole ineligibility. Mr. Sandeson acknowledges his sentence appeal is not relevant to the issues on this application.

[4] His appeal is presently scheduled to be heard on June 13, 2024.

The Trial

[5] This was Mr. Sandeson's second trial for the death of Mr. Samson. In his first trial he was convicted of first degree murder. This Court overturned his conviction for first degree murder and ordered a new trial (*R. v. Sandeson*, 2020 NSCA 47).

[6] Mr. Sandeson did not give evidence at his first trial. He gave evidence at his second trial. His evidence revealed that after an exchange of text messages over a few days, on August 15, 2015, Mr. Samson attended at the apartment of Mr. Sandeson for what Mr. Samson thought was to be a drug deal.

[7] Mr. Sandeson admitted he shot and killed Mr. Samson, but that he did so in self-defence.

[8] The jury rejected the self-defence argument and convicted Mr. Sandeson of second degree murder.

[9] Justice Chipman, in sentencing Mr. Sandeson, found he lured Mr. Samson to his apartment under the guise of a drug deal, but it was really for the purpose of robbing him of the drugs Mr. Samson was intending to sell to Mr. Sandeson.

[10] Within three minutes of his arrival, Mr. Samson was shot and killed by Mr. Sandeson. Mr. Sandeson then cleaned his apartment and placed Mr. Samson's body in a duffle bag.

[11] The next morning, he drove to Colchester County and disposed of Mr. Samson's body, his phone, and other evidence. He dumped Mr. Samson's body at an aboiteau leading into the Salmon River in Colchester County.

[12] Between August 16 and 18, 2015, Mr. Sandeson continued to dispose of evidence.

[13] Mr. Samson's remains have never been found.

Mr. Sandeson's Proposed Plan

[14] Mr. Sandeson proposed being released on bail with five sureties—his mother and father and three brothers—and to be fitted with a GPS ankle bracelet. He proposed to live with his parents at the family farm in Truro and to have one of his sureties be with him at all times. He also proposes to provide police with access to the video cameras installed at the family home and to ensure the constant operation of the cameras.

[15] Mr. Sandeson's proposed conditions also include the standard conditions to keep the peace, attend court as required, and surrender himself into custody in advance of appeal.

Analysis

[16] Bail pending appeal is dealt with in accordance with s. 679 of the *Criminal Code* which sets out three criteria:

> **Circumstances in which appellant may be released**
>
> (3) In the case of an appeal [against conviction], the judge of the court of appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that
>
> (a) the 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.

[17] Bail on appeal is materially different from bail pre-trial (known as judicial interim release). Mr. Sandeson no longer enjoys the presumption of innocence that applied at the time of his trial. Mr. Sandeson had the burden of establishing, on a balance of probabilities, that he met each of the s. 679(3) criteria.

[18] Mr. Sandeson failed to persuade me that he should be released.

[19] Mr. Sandeson's application fails on the public interest criterion. His grounds of appeal, which I consider to be weak, are also relevant to consideration of the public interest.

[20] I am not placing much emphasis on the first two criteria in s. 679(3). I will address the strength of appeal within the public interest analysis.

[21] As for Mr. Sandeson establishing that he would surrender himself into custody as required by s. 679(3)(b) of the *Criminal Code*. I am satisfied he would surrender himself into custody. The Crown raises the concern that he is a flight risk because he is now subject to a penitentiary sentence. While it is a factor to be considered, the fact he is now subject to serving a penitentiary sentence—which the Crown is seeking to have increased by way of cross-appeal—is not enough to suggest he will not surrender himself into custody.

Section 679(3)(c) of the Criminal Code – Public Interest

[22] The public interest criterion has two components: public safety and public confidence in the administration of justice (*R. v. Farinacci* (1993), 86 C.C.C. (3d) 32 (Ont. C.A.)).

[23] In *R. v. Oland*, 2017 SCC 17, the Supreme Court of Canada endorsed *Farinacci* as good law:

> [26] Almost a quarter of a century has passed since *Farinacci* was decided. The public interest framework which it established has withstood the test of time. It has been universally endorsed by appellate courts across the country [citations omitted]. Moreover, all of the parties and interveners in this appeal are content with the *Farinacci* framework. None has spoken against it; none has asked us to revisit it — and I see no reason to do so. *Farinacci* remains good law in my view.

[24] The public confidence component involves the weighing of two competing interests: enforceability and reviewability.

[25] In *Oland*, the Court addressed these components:

> [24] Justice Arbour did not delve into the public safety component. She found that it related to the protection and safety of the public and essentially tracked the familiar requirements of the so-called "secondary ground" governing an accused's release pending trial (pp. 45 and 47-48). ***The public confidence component, on the other hand, was more nuanced and required elaboration. It involved the weighing of two competing interests: enforceability and reviewability.***
>
> [25] According to Arbour J.A., the enforceability interest reflected the need to respect the general rule of the immediate enforceability of judgments. Reviewability, on the other hand, reflected society's acknowledgement 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 — one which did not require them 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 (pp. 47-49).
>
> [Emphasis added.]

[26] As *Oland* explains, the enforceability component reflects the need to respect the general rule of the immediate enforceability of judgments. Put another way, it is expected that Mr. Sandeson will be held to account by continuing to serve the sentence imposed on him. The reviewability component reflects the recognition that our criminal justice system is not fail safe and that the appellant challenging the legality of their convictions should be entitled to a meaningful review.

[27] *Oland* directs appellate courts when considering motions for bail pending appeal to apply the factors relevant to the public interest criterion for pre-trial release with appropriate modifications:

> [31] In section 679(3)(c) of the *Code*, Parliament has not provided appellate judges with any direction as to how a release pending appeal order is likely to affect public confidence in the administration of justice. Fortunately, it has done

> so in the admittedly different but related context of bail pending trial. Under s. 515(10)(c), Parliament has identified four factors that judges may consider in assessing whether a detention order is necessary to maintain public confidence in the administration of justice:
>
> > **515** . . .
> >
> > **(10)** For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:
> >
> > . . .
> >
> > **(c)** if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including
> >
> > **(i)** the apparent strength of the prosecution's case,
> >
> > **(ii)** the gravity of the offence,
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> > **(iii)** the circumstances surrounding the commission of the offence, including whether a firearm was used, and
> >
> > **(iv)** the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.
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> [32] ***While these factors are tailored to the pre-trial context, a corollary form of the interest underlying each exists in the appellate context. In my view, these same factors — with appropriate modifications to reflect the post-conviction context — should be accounted for in considering how, if at all, a release pending appeal order is likely to affect public confidence in the administration of justice.***
>
> [Emphasis added.]

[28] In assessing a reviewability interest, the strength of the appeal plays a central role, again referring to *Oland*:

> [40] The remaining factor that Parliament has identified as informing public confidence under s. 515(10)(c) is the strength of the prosecution's case (s. 515(10)(c)(i)). In the appellate context, this translates into the strength of the grounds of appeal — and, as I will explain, in assessing the reviewability interest, the strength of an appeal plays a central role. I say this mindful of the fact that some authorities have expressed concerns about assessing the merits of an appeal beyond the s. 679(3)(a) "not frivolous" criterion: see *R. v. Allen*, 2001 NFCA 44, 158 C.C.C. (3d) 225, at paras. 31-52; *Parsons*, at paras. 55-59. With respect, I do not see this as a problem.

> [41] In my view, allowing a more pointed consideration of the strength of an appeal for purposes of assessing the reviewability interest does not render the "not frivolous" criterion in s. 679(3)(a) meaningless. On the contrary, the "not frivolous" criterion operates as an initial hurdle that produces a categorical "yes" or "no" answer, allowing for the immediate rejection of a release order in the face of a baseless appeal. [footnote omitted]

[29] In my view, Mr. Sandeson's grounds of appeal are weak. Although I do not have a complete record of the trial proceedings, I do have the trial judge's sentencing decision and his reasons on the *voir dires* for abuse of process and the s. 8 exigent circumstances search.

Abuse of Process

[30] Mr. Sandeson anchors this ground of appeal to this Court's remark in the decision which granted him a new trial where we stated:

> [106] In my view, Sandeson had crossed that threshold and a mistrial should have been ordered. It would be entirely possible for a judge to find the police conduct revealed by the undisclosed information could amount to an abuse of process. […] However, the determination of whether it amounts to an abuse of process is for the judge hearing the new trial. My comments here are only to illustrate a viable argument can be made. Whether it will be successful is not for me to decide.

[31] Justice Chipman was very aware of this Court's comments in his *voir dire* decision (*R. v. Sandeson*, 2022 NSSC 111). He set them out in considerable detail at ¶179-183. Justice Chipman correctly noted this Court did not find that there was an abuse of process nor that a stay was warranted.

[32] The purpose of this Court ordering a new trial was to allow the defence the opportunity to adduce evidence and to make detailed arguments on the issue.

[33] Justice Chipman's decision on the motion properly recited the law on abuse of process. He made numerous findings of fact on evidence which was not before the original trial judge or this Court.

[34] The defence got the opportunity to present evidence and argue the police conduct amounted to an abuse of process. In a well-reasoned decision, Justice Chipman found although the police action in this case was regrettable and must be discouraged it did not warrant a stay (at ¶236).

[35] I see no error of law or patent injustice resulting from his decision which would be required for appellate intervention.

Exigent Circumstances

[36] In his brief, Mr. Sandeson says the following on this ground of appeal:

> 27. The second ground of appeal concerns the exigent search of William's apartment. It is submitted that the Justice erroneously excused the police's ignorance and discounting of relevant and reliable information which undermined the justification for such a search. The police knew, or should have known, that Samson was not in medical distress due to his liver condition, nor was it reasonable to expect Samson to be present at William's apartment. The police created the exigent circumstances of their own accord and searched William's apartment in a manner that was both unreasonable and inconsistent with the proposed justification for the incursion.

[37] Mr. Sandeson faults the trial judge for his acceptance/reliance on police evidence regarding the medical condition of Mr. Samson and the immediate need to search Mr. Sandeson's apartment.

[38] The trial judge's decision (*R. v. Sandeson*, 2022 NSSC 254) appreciated the arguments of both parties, correctly stated the law, and then made findings of fact, some of which were grounded in the credibility assessment. The standard of review for the trial judge's findings of fact will be highly deferential.

[39] Once again, I can see no basis for appellate intervention.

Instructions to the Jury

[40] Likewise, I am not satisfied Mr. Sandeson's complaints about the trial judge's lack of charging the jury on provocation and his charge on after the fact conduct are likely to succeed. Simply stating Justice Chipman erred in his charge to the jury on these issues is not enough. Mr. Sandeson must show why it was in error and how the error may have impacted the outcome. He has not done so. Perhaps for good reason—it is difficult to see how any error would have impacted the result.

[41] The ultimate determination of the merits of appeal will be left to the Panel hearing it. However, Mr. Sandeson faces a significant hurdle to make out the errors he alleges. There is a high level of deference accorded to judicial determinations of abuse of process, admission of evidence, and the sufficiency of a jury charge.

Conclusion

[42] *Oland* directs us that there is no precise formula that can be applied to resolve the balance between enforceability and reviewability:

> [49] In the final analysis, there is no precise formula that can be applied to resolve the balance between enforceability and reviewability. A qualitative and contextual assessment is required. In this regard, I would reject a categorical approach to murder or other serious offences, as proposed by certain interveners. Instead, the principles that I have discussed should be applied uniformly
>
> [50] That said, where the applicant has been convicted of murder or some other very serious crime, the public interest in enforceability will be high and will often outweigh the reviewability interest, particularly where there are lingering public safety or flight concerns and/or the grounds of appeal appear to be weak: *R. v. Mapara*, 2001 BCCA 508, 158 C.C.C. (3d) 312, at para. 38; *Baltovich*, at para. 20; *Parsons*, at para. 44.

[43] Mr. Sandeson has admitted to shooting Mr. Samson, and his plea of self-defence was not successful. The only logical conclusion is the jury found he intended to kill Mr. Samson. The evidence for conviction for second degree murder was strong. The grounds of appeal appear to be weak. This is one of those circumstances where the public interest in enforceability is very high and outweighs the reviewability interest.

[44] The motion for bail pending appeal is dismissed.

Farrar J.A.