NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. G.S.*, 2025 NSCA 22

Date: 20250319
Docket: CAC 539154
Registry: Halifax

Between:

G.S.

Appellant

v.

His Majesty the King

Respondent

Restriction on Publication: s. 486.4 of the *Criminal Code*

Judge:	Bourgeois, J.A.
Motion Heard:	March 6, 2025, in Halifax, Nova Scotia in Chambers
Held:	Motion for bail pending appeal dismissed
Counsel:	G.S., appellant Glenn Hubbard, for the respondent

Order restricting publication — sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

Mandatory order on application

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

Victim under 18 — other offences

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

Mandatory order on application

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

(a) as soon as feasible, inform the victim of their right to make an application for the order; and

(b) on application of the victim or the prosecutor, make the order.

Child pornography

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

Limitation

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

Decision:

[1] On March 6, 2025, I heard a motion brought by the appellant, G.G.S., Jr.[1] After hearing evidence, the submissions of the parties and considering the material on file, I dismissed the motion. I promised written reasons to follow. These are my reasons.

Background

[2] Following a lengthy trial in the Provincial Court, the appellant was convicted on August 9, 2024 of several offences under the *Criminal Code of Canada*: two counts of sexual assault (s. 271); assault causing bodily harm (s. 267(B)), unlawful confinement (s. 279(2)) and uttering threats to cause bodily harm (s. 264.1(1)(A)). The complainant in relation to the above offences was the appellant's former intimate partner. I also note that at the commencement of trial, the appellant plead guilty to two other charges, failure to attend court as directed (s. 145(2)(B)) and failure to comply with an undertaking (s. 145(4)).

[3] The appellant was sentenced on December 3, 2024 to a total term of incarceration of 2340 days (6.5 years). The appellant was found to have accumulated pre-trial credit of 1791 days. Deducting this, the sentencing judge determined the appellant was to serve a "go-forward" sentence of 549 days.

[4] The appellant filed a Notice of Appeal on December 10, 2024 in which he challenges both his convictions[2] and sentence. On the same day, he filed a motion for bail pending appeal. By virtue of a tele-chambers appearance on December 31, 2024, the hearing of the motion was scheduled for February 13, 2025.

[5] On February 13, 2025 the appellant appeared in chambers as did his two proposed sureties, his father, G.S. Sr., and friend, S.M. However, neither surety had filed an affidavit in support of the motion. At that time, I explained to the appellant it would be difficult to assess the suitability of the sureties, the strength of his proposed release plan or their commitment to it without affidavits. Further, it was noted the appellant's written submissions in support of the motion referenced principles relating to pre-trial bail not those relating to bail pending appeal. I gave the appellant the opportunity to adjourn the hearing to permit him to

[1] The Notice of Appeal identifies the appellant as "G.S.".
[2] Other than those for which he entered guilty pleas.

file submissions addressing the principles relevant to bail pending appeal, and for his proposed sureties to file affidavits. He took that opportunity.

[6] As noted above, the motion was heard on March 6, 2025. The sureties had filed affidavits and were cross-examined by the Crown. The Crown did not seek to cross-examine the appellant. The Crown opposed the appellant's release.

Legal Principles

[7] In order for the appellant to be released on bail pending determination of his appeal, he must establish, on a balance of probabilities, he meets all criteria set out in s. 679(3) of the *Criminal Code*. It provides:

> **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.

[8] The above provision was considered by the Supreme Court of Canada in *R. v. Oland*, 2017 SCC 17. Unlike pre-trial detention, once a conviction has been entered, the presumption of innocence is displaced and s.11(e) of the *Canadian Charter of Rights of Freedoms*[3] no longer applies. As such, it is the appellant who bears the burden of establishing detention is not warranted (*Oland* at para. 35; *R. v. S.O.*, 2024 NSCA 73 at para. 5).

[9] The first criterion, establishing that the appeal is not frivolous, has been repeatedly recognized as engaging a low-threshold. In *Oland*, Justice Moldaver wrote:

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[3] Section 11: Any person charged with an offence has the right . . . (e) not to be denied reasonable bail without just cause.

> [20] The first criterion requires the appeal judge to examine the grounds of appeal with a view to ensuring that they are not "not frivolous" (s. 679(3)(a)). Courts have used different language to describe this standard. While not in issue on this appeal, the "not frivolous" test is widely recognized as being a very low bar: see *R. v. Xanthoudakis*, 2016 QCCA 1809, at paras. 4-7 (CanLII); *R. v. Manasseri*, 2013 ONCA 647, 312 C.C.C. (3d) 132, at para. 38; *R. v. Passey*, 1997 ABCA 343, 121 C.C.C. (3d) 444, at paras. 6-8; G. T. Trotter, *The Law of Bail in Canada* (3rd ed. (loose-leaf)), at pp. 10-13 to 10-15.

[10] Further, with respect to the second criterion, Justice Moldaver noted:

> [21] The second criterion requires the applicant to show that "he will surrender himself into custody in accordance with the terms of the [release] order" (s. 679(3)(b)). The appeal judge must be satisfied that the applicant will not flee the jurisdiction and will surrender into custody as required.

[11] It is the third criterion, detention is not necessary in the public interest, which was the focus of the Court in *Oland*. The Court endorsed the continuing applicability of the *Farinacci* framework (*R. v. Farinacci* (1993), 86 C.C.C. (3d) 32 (Ont. C.A.)), in which Justice Arbour (as she then was) opined the public interest criteria consisted of two components: public safety and public confidence in the administration of justice.

[12] Public safety relates to the protection of the public, whereas the public confidence component involves the weighing of two competing interests, the enforceability of judgments and reviewability. In *Oland*, Justice Moldaver warned against viewing public safety and public confidence as necessarily discrete considerations:

> [27] In so concluding, I should not be taken to mean — nor do I understand *Farinacci* to have said — that the public safety component and the public confidence component are to be treated as silos. To be sure, there will be cases where public safety considerations alone are sufficient to warrant a detention order in the public interest. However, as I will explain, where the public safety threshold has been met by an applicant seeking bail pending appeal, residual public safety concerns or the absence of any public safety concerns remain relevant and should be considered in the public confidence analysis.

[13] An appellant has the obligation to demonstrate that their plan of release does not pose a risk to the public. This engages a consideration of the seriousness of the offence, the terms of release being proposed, and where sureties are involved, their ability to ensure the appellant abides by the terms of release. If the public safety

component is satisfied, the two aspects of the public confidence are then considered.

[14] In considering the enforceability interest, the seriousness of the crime, including the circumstances surrounding the commission of the offence, is central. However, other factors can be taken into account where appropriate. "[P]ublic safety concerns that fall short of the substantial risk mark — which would preclude a release order — will remain relevant under the public confidence component" (*Oland* at para. 39).

[15] The reviewability interest engages a consideration of the strength of the grounds of appeal. Justice Moldaver explained:

> [45] In the end, appellate judges can be counted on to form their own "preliminary assessment" of the strength of an appeal based upon their knowledge and experience. This assessment, it should be emphasized, is not a matter of guesswork. It will generally be based on material that counsel have provided, including aspects of the record that are pertinent to the grounds of appeal raised, along with relevant authorities. In undertaking this exercise, appellate judges will of course remain mindful that our justice system is not infallible and that a meaningful review process is essential to maintain public confidence in the administration of justice. Thus, there is a broader public interest in reviewability that transcends an individual's interest in any given case.

[16] In balancing the two competing factors, appellate judges "should keep in mind that public confidence is to be measured through the eyes of a reasonable member of the public. This person is someone who is thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's fundamental values" (*Oland* at para. 47).

The Record

[17] In addition to the written submissions of the appellant which attach a variety of documents, he has also filed the following:

- A partial transcript of a court appearance on June 15, 2022;
- The written submissions of the Crown dated July 26, 2024, constituting closing arguments in the trial;

- The undated submissions of the defence, prepared by the appellant's trial counsel;
- The Crown's written sentencing submissions dated September 11, 2024;
- The written sentencing submissions of the Defence, dated October 25, 2024, prepared by the appellant's trial counsel; and
- A Pre-Sentence Report in relation to the appellant, dated September 10, 2024, including his sentencing history for previous criminal offences.

[18] The Crown provided the following additional information on the motion:

- A transcript of the Crown and Defence final trial submissions given August 2, 2024;
- A transcript of the trial judge's conviction decision rendered August 9, 2024;
- A transcript of the Crown and Defence oral submissions with respect to sentencing on November 4, 2024;
- A transcript of a sentencing hearing held December 3, 2024 in relation to the appellant's request for Duncan credit;
- A Bail Report prepared by the Public Prosecution Service setting out the appellant's criminal record; and
- The trial judge's sentencing decision.

[19] From reviewing the above material, I am aware that prior to the trial judge rendering his conviction decision, a trial transcript had been prepared. Indeed, both the Crown and the Defence made reference to aspects of the transcript in their respective closing submissions to the trial judge. Further, the appellant's Notice of Appeal makes specific reference to direct quotes from the complainant's trial evidence. However, despite it being available, the trial transcript has not been provided on the motion for my review. Although not required to be filed on the motion, given the arguments advanced by the appellant, it would have been informative to review the trial transcript to assess with a greater degree of certainty what evidence had been adduced at trial.

[20] From the materials before me, it appears that:

- The appellant and complainant commenced their relationship in January 2020;
- The first sexual assault charge arose between May 1 and June 30, 2020. The parties were residing together at that time. In the Crown's written trial submissions[4] (filed by the appellant in support of the bail motion), the complainant's trial evidence is summarized as follows:

> We were only dating four months. Moved in in May. Two months into moving in, he raped me. So I'm laying in bed, sleeping in or something, and he crawls in and I'm like "no I'm not feeling this right now. Sorry", And he continued (p. 42) to try and like pull my pants down and stuff and it's like "No I don't want this". And I think he put me on my stomach and forced himself inside me. I should have screamed for help, but I didn't. I said "No, like, I don't . . ." and I'm crying too, okay? I think he like pulled me, my stomach up so I'm more on my knees, we'll say doggy-style. And I just crawled away off the end of the bed, and I was like "I'm done, nor more." And I went to walk, cause the way this room's set up there's two exits and I went to walk into the exit where there was a walk in closet that attached to the bathroom, and he just threw me back on the bed and said "No, little girl" or whatever, cause he always called me "little girl". And went and go me back on my stomach and he ended up cuming inside of me, and he laid there for, it felt like 10 minutes, could have been five until at least his penis wasn't erect anymore, and he was patting my head, saying how this connects us, it was so creepy. Like how our bodies (p.44) touching creates emotional bonds (p.45). I was shocked and then I said "I have to go to work" and I came home later I said "man, you like, you raped me. Like what is wrong with you?" he's like "Well you were drunk one time you said "if I say no, it means yes or whatever, I thought that's what you wanted" and he truly made me believe – this is why I forgave him right? I was clear as I could be I wasn't into it. But I forgave him and I'd just moved in with him. Things fizzled after that because Cheticamp happened. (p.45)

- In August 2020, the parties visited the Cheticamp area. While there, an altercation occurred between them. Police were involved and released the appellant on an undertaking that he was to have no contact with the complainant. The appellant and complainant ended their relationship. Charges followed. The appellant went to trial and in September 2022

[4] The excerpts from the Crown's written trial submissions have not been edited to correct punctuation or typographical issues.

was convicted of assaulting the complainant, unlawfully confining her, uttering threats to cause her death or bodily injury, taking the complainant's motor vehicle without consent and a breach of probation.[5] The appellant received a custodial sentence of 45 days with a term of probation of 18 months;

- On September 18, 2020 the appellant, contrary to the undertaking given to police in August, attended at the complainant's home. He plead guilty to this charge at the commencement of the trial in the present matter; and
- The parties re-initiated their relationship in or around January 2021. They resided in a rural and isolated location near Shelburne. The charges from Cheticamp were outstanding. It is here, that the complainant alleged further incidents of violence and confinement, and the incidents giving rise to the other convictions under appeal arose.

[21] In the absence of the trial transcript, I again turn to the Crown's written submissions as a means of ascertaining the evidence presented at trial. Although the appellant argues the complainant's testimony should not have been accepted by the trial judge, he has not taken issue with the accuracy of the Crown's summary of her evidence.

[22] With respect to the allegations arising in Shelburne, I note the following aspects of the Crown's description of the complainant's evidence relating to the sexual assault and assault causing bodily harm charges:

> In Shelburne when she moved back in, she was on the couch wearing little shorts and one morning woke up to him fondling her vagina through the pant hole or the shorts (p. she crossed her legs and told him she didn't want this. she had the blanket she was sleeping with that she tried to wedge the best she could so if he was going to get through her legs he'd need to get through a blanket – eventually he wrestled me so hard we ended up on the floor which hurt, it's a wooden floor. (p.10) he got my pants down and he inserted his penis inside me and thrusted I don't know how many times (p.11) it lasted probably 20 – 30 seconds and he said something like "you're a dead fish" "I didn't rape you I didn't even cum inside you";

[5] From the Pre-Sentence Report (filed by the appellant) it would appear that at the time of the Cheticamp incident, he was serving a term of probation relating to two previous convictions of criminal harassment against a different former intimate partner, the offences having occurred on December 2, 2018 and between November 6, 2018 and December 3, 2018.

The next day I wore my overalls because at least this way, you know, I'm not going to get raped so easily, if that's what's going to happen . . .;

Next day I was upstairs in the bedroom – my cat was at that house, - he came at my in the upstairs bedroom, grabbed me from behind and took the straps from behind and threw me on the bed, cause I'm wearing overalls right? There was a struggle – I don't think he full on penetrated me or anything at that time. I don't remember, but I do remember him licking my butthole and he was upset I didn't want it. (p.12);

When he was trying to get my buckles undone, I dead-weighted and he was lifting me from the back of the straps. He got them undone and pulled them down and I remember him assaulting me by licking my butthole. Absolutely did not consent. The whole point of me wearing those overalls was to prevent it, because I had been assaulted, I think it was the day before. (p.108);

He had gone to Yarmouth to get me a bike . . .I happened to go on his laptop – and saw what I considered to be child pornography – very disturbing (Described on page 15 of transcript) she confronted him about it – he told her they were classy women – she's standing by the fireplace and he's in the living room – she goes to the kitchen to the fridge (p.16) – I took a bottle of mayo and threw it and that cracked a little and some mayo splatted – I think I threw a bottle of tartar sauce, maybe ketchup (p.17) he was going off and laughing – I can't remember his exact words. She swiped things off the coffee table, not towards him. She threw the ash bucket – there were no ashes in it. It hit the middle of the floor between him and I and slid towards him (p.17) He got up and he was like "you're not breaking my effing shit." And his eyes were bulged and he was red in the face, so angry – it was like the same face I seen when, when he picked me up in Cheticamp and drug me behind that building and strangled me, right?

He came over and he picked me up by my arms, you could feel he's squeezing tighter and tighter – I'm lifted off the ground – takes me from the living room, down the hallway past – took me into the bedroom I stayed in the first night with the single bed that smelled like soot – took me in there, threw me on the bed, put his knees down, had my arms held down, I couldn't move, I seen his hand coming and I closed my eyes, it was back and forth back forth – he hit me at least 5 times. I think I said 3 times but it was five. After he assaulted me, he left the room – I'm just laying there in total shock (p.18) I go to the bathroom which was basically across from where I was at and look at myself I can see I've got a black eye forming (two sets of knuckle prints on each side). I was crying. I was more heartbroken and in shock (20) he was laughing and said "there's nothing wrong" and then he backhand flicks me in the other eye and basically breaks another blood vessel in the opposite eye. That was not nearly as bad as the one eye, but I still ended up with two black eyes and knuckle prints. Felt defeated. drank and

> smoked the bong – he had taken her laptop and she believed her phone at that point. Even that night, I remember my face hurt so bad I couldn't sleep on either side. My leg hurt really bad, too, there was a big bruise on the side of my thigh – the whole weight of him on top of me. (20). Slept with two pillows on the side of my face. I had a broken finger at the time – that he did not do. I did that to myself by accident, my car door.

[23] With respect to the complainant's evidence supporting the charge of unlawful confinement, the Crown described her testimony as follows:

> This is when things get really hard, cause I'm held against my will. I start to realize I'm being held against my will. The next day [following the assault causing bodily harm] I was like "I want out of here, I want to go." And he parks his car – I had a Volvo at the time, and he, I had it parked in, a garage you could park your car into – a mini barn sort of thing. Pretty sure he had the keys – cause the side door locks and unlocks to get into the garage. He had taken my car key and parked his Nissan in front of the bay door. So, there was no leaving. He told me I wasn't leaving. I begged and I pleaded (21);
>
> I ended up going outside and screaming for help I screamed "Fire" whatever I could to get somebody's attention – he ended up coming out and putting his hand over my face, and my face was so injured from the assault, I couldn't bother to fight anymore. I think I may have tried to bite him, but couldn't.
>
> I was basically only allowed to stay in the bedroom unless he called me downstairs.
>
> Very next day he started coming up, trying to get me to poop in a pan in front of him, he explained to me that it was his fetish and trying to justify looking up the hidden toilet cameras – talking to me like I'm a little five year old girl "little girl" – saying "come on, little girl, it's big poop time." Very disturbing. This goes on the whole week. I'm refusing to drink. I'm refusing to eat. He brings up, like 10 drinks a day (22)
>
> Tried to scream off the balcony but he came and took a dirty sock of mine that had been on the floor and shoved it in my throat, like in my mouth – taking a tie off a bathrobe and tying it around. I think he had another tie tied around my hands, behind my back. I was gagging when he was shoving it down my throat. I puked-spit up. He kept the sock in the mouth (23)
>
> . . .
>
> I tell him my health is declining. I've got this broken finger – I could get an infection – I've got visible marks all over my face and bruises on my body. But

> he's not budging. He's standing by the fireplace and I'm standing by the fridge right next to the door that leads outside – the back side door – I decided to run for it. I grabbed that door and I ran. And he caught me maybe just past where his vehicle was parked. I didn't get too far. I was running on gravel – p.27 He caught me, I'm deadweight at this point – he's dragging me back to the house – he's panting, he's sweating, he's red, his eyes are bulging (p. 28) he's telling me I'm going to regret this and he's freaking out. I thought "I am going to die. This is it. He's going to drag me into that kitchen and stab me or he's going to strangle me. Like, this is it". This was the scariest – even scarier than when he picked me up and took me to the bedroom and hit me, okay? I thought I was going to die, I'm never going to see this pl . . like, outside of this again, I might not even see the upstairs, I might not see my cat". So he takes me right upstairs to that bedroom of his, or ours, he leaves me there, goes downstairs. I grabbed a journal and I wrote a will . . .I don't even think I dated it, because I didn't know what date it was. I thought he would try and make it look like I killed myself. I even put that in there. I put in there I didn't kill myself and [G] did this to me" something along those words. (28) and I hid that in one of my travel bags…
>
> Next day he tries to kill himself- Downs a whole bottle of pills in front of me . . . he said that if the cops show up, I'll kill you and I'll kill myself – and he said that twice throughout that whole week of being there, so that scared the crap out of me.
>
> Didn't know what pills they were, but watched him take the bottle – I don't know how many pills, but at least a mouthful of pills – and he takes them, and goes and smashes his head off the fireplace. Goes outside and take a 2 x 4 because we had been making patio furniture and takes a piece of wood and smashes himself in the head with it (p.30) I thought he was going to kill himself in front of me.

[24] There is no dispute that near the end of May 2021, the appellant drove the complainant from the Shelburne property to her mother's house outside of Liverpool. The Crown asserted the complainant had, out of desperation, pretended to be working on her relationship with the appellant in order to convince him to let her leave. In their submissions the Crown set out the complainant's testimony in this regard:

> After that – him taking the pills, I started being like "maybe we can make this work, you know" maybe we can work things out, but I'm going to need space and time – saying whatever I think I can to make him let me go, but also truly believe that I'll be with him after this because this is the only way I am getting out of here (p. 31 Trial Transcript)
>
> I had supervised access to my laptop and I wrote him a big old 10-page letter, how we could move forward and that I'd need time at my mom's – I put "honey"

> and “babe” to make him think yeah she’s really in this, she’s going to stay with me. Made a “honey-to-do list” – pg. 31 – he started to say – “you know what? Tomorrow, I think I’ll take you to your mom’s”.
>
> Next day I said “do you still think you’ll take me to my mom’s?” and he got right mad, took my laptop, threw it on the ground, so I think the corner of it dented but it still wasn’t broken, then he opened it up and snapped it, broken (p. 32) – he opened it as far as it could until it broke. And I though, “here we go again, I’m never getting out of here”.
>
> The next day, he woke up that morning and said “can I have sex with you, if you love me, you’ll have sex with me.” And I’m thinking: this is it. This is the only way I’m going to get out of here. If I say no to him, but we’re still together and working on things, how is he going to believe me?” so I said, I have to get this guy have sex with me if I ever want to see the outside of these walls again.” It was one of the things, if not the thing I’m most ashamed of because I let him do it, and it wasn’t just once. He had sex with me and came inside of me. I’m laying there, like a dead fish as he’d call it. I laid there emotionless just close my eyes waiting her this hell to be over with” it was the worst time I’ve been through in my life. (pg. 32)

[25] The appellant testified at trial. Although aspects of his evidence are set out in the materials before me, they are not as detailed as the descriptions of the complainant’s evidence. From what I have been given to review in support of the motion, I understand the appellant’s evidence included:

- He denied ever engaging in sexual contact with the complainant without her clear and continuous consent;
- He described the complainant as suffering from serious mental health issues during the course of their relationship. She was verbally and physically abusive to him on multiple occasions;
- He denied he had confined the complainant in any way. She always had access to her phone and laptop, except for the day before she returned to her mother’s home. He acknowledged breaking the complainant’s laptop when he discovered she was inappropriately communicating with other men;
- The complainant’s complaint of confinement was nonsensical as his documentary evidence showed he had left the house on many occasions and she could have left. Further, the appellant introduced email communications between him and the complainant that

demonstrated she was not held against her will and that she was not misused by him in anyway;

- He acknowledged slapping the complainant on one occasion when he awoke to her pouring boiling water on him. He reflexively struck out, making contact with her face;
- He acknowledged shoving a sock in the complainant's mouth, however, it was not dirty. He explained doing so because she had been outside for an extended period screaming he was a "pedophile" and "pervert";
- He described that the complainant had mentally deteriorated during the last period they resided together to the point she was afraid to go to the bathroom. She delusionally believed if she went into the bathroom, he would try to drown her. Because the bedroom was starting to smell like urine, he brought a glass plate to her to use as a bedpan; and
- He did not seek medical attention for the complainant.

Analysis

The grounds of appeal are not frivolous

[26] In his Notice of Appeal the appellant sets out the following grounds of appeal:

> 1. 19 mistakes in law and fact by Trial Judge (see attachments for details)
>
> 2. Breaching of accused's Charter Rights to Fair Trial, Fair Bail, Trial in Reasonable Time
>
> 3. Defence Councel (*sic*) representation issues.

[27] In reviewing the material attached to his Notice of Appeal, the appellant raises a number of concerns including with the trial judge's credibility determination, the delay in having his trial completed, and prosecutorial misconduct.

[28] It is not necessary for me to consider the merits of the appellant's submissions at this stage. It is enough for me to be satisfied that he has raised at

least one ground of appeal that surpasses the low-threshold of demonstrating his appeal is not frivolous. I am so satisfied.

The appellant will surrender himself into custody

[29] This criterion addresses whether the appellant, if released, would constitute a flight risk. Although the appellant has a concerning history of not abiding by court orders (which will be discussed below), it is more probable than not, if released he would remain in the jurisdiction and would surrender himself into custody should his motion for bail pending appeal be granted.

Detention is not necessary in the public interest

[30] The Crown placed its emphasis on the public interest criterion, arguing that neither the public safety or public confidence components were met. For the reasons I set out below, I agree.

i) Public safety

[31] The appellant says he does not pose a risk to the public safety. He relies heavily on the opinion of his psychologist Dr. Colin Perrier. The appellant has submitted an email prepared by Dr. Perrier dated September 28, 2022 which he asserts demonstrates his suitability for release pending appeal.

[32] Dr. Perrier's email states:

> I first met with [G.S.] on January 30, 2019 and last saw him on January 28, 2021 . . .Through the course of my meetings with [G.S.], I never found him to be someone who presented as a risk to others. Moreover, and specific to my knowledge of the romantic relationship in which he was involved at that time, my advice to him was to end the relationship because he was reporting that he was dating someone who appeared severely personality disordered and may be a risk to his wellbeing. Although I have not spoken to [G.S.] since early 2021, my opinion based on my previous interactions with him is that he, at that time, did not present as a danger to others, was not someone included toward initiating violence, and did not exhibit mental health symptoms of a sufficient frequency or severity to warrant a diagnosis of a mental illness. Thus, I would see no reason based on that history to not grant bail.

[33] I can give no weight to the above opinion for the following reasons:

- Dr. Perrier has not provided evidence on the motion. It is not even clear he is aware that the email is being used in the present motion;
- The email does not meet the requirements of the *Civil Procedure Rules* for the admission of expert opinion;
- The Crown has been given no opportunity to cross-examine Dr. Perrier on his opinion;
- The opinion of Dr. Perrier was prepared well in advance of the conclusion of the appellant's trial. In expressing his view regarding the safety risk of the appellant being released, Dr. Perrier did not have the benefit of reviewing the trial evidence nor considering the trial judge's findings; and
- There is nothing to suggest Dr. Perrier's opinion, expressed in 2022, has remained the same.

[34] I am not satisfied the appellant has demonstrated his release pending the hearing of his appeal would adequately protect the public. In reaching this conclusion, I have considered the gravity of the offences the appellant has been convicted of, his criminal record including his history of not abiding by directions or conditions imposed on him, and his proposed release plan.

[35] I recognize the appellant challenges the findings of the trial judge. I further acknowledge he views the offences that were before the court as being at the low-end of the spectrum in terms of seriousness. However, for the purposes of considering the public safety component, I must make my determination based on the findings of the trial judge.

[36] The trial judge found the complainant to be credible and accepted her evidence. The trial judge did not believe the appellant's evidence where it differed from that given by the complainant. The evidence the trial judge accepted permitted him to convict the appellant of assault causing bodily harm, sexual assault, uttering threats and confinement. In his sentencing decision the trial judge referred to the appellant as having been convicted of "very serious crimes", that the "offences are grave" and "the accused is highly culpable".

[37] For the purposes of this motion, I reject the appellant's suggestion that his offences constituted a singular slap or a temporary physical confinement of the

complainant to prevent her from acting out violently towards him. The evidence accepted by the trial judge painted a disturbing picture of intimate partner abuse including sexual violence, additional acts of physical violence, threats, and confinement. Any release plan would need to reflect the seriousness of these convictions.

[38] However, it is not only the seriousness of the convictions on appeal that would factor into requiring robust conditions of release. The appellant has a criminal history of engaging in other concerning behaviour. The appellant has been convicted of assaulting and confining the complainant on a different occasion. Further, the appellant was serving a term of probation at that time which was a result of him being found guilty of twice criminally harassing another former intimate partner. He pled guilty to not attending court when ordered and attending at the complainant's home contrary to an undertaking of release.

[39] If released, the appellant proposed to reside with his father in his Halifax condo. He would have a daily curfew from 8 p.m. to 6 a.m. He proposed his father would act as a surety, as would his friend S.M. Each would pledge the sum of $5,000.00 to secure his release.

[40] Although the appellant expected to be with his father regularly, as they would be residing together, his proposed plan did not require him to be in the presence of a surety at all times. He asserted, however, that S.M. in particular could monitor his whereabouts by virtue of installing various tracking applications on his cellular phone. The appellant did not provide details of what monitoring programs or applications would be used or how they would function.

[41] I do not consider the release plan proposed by the appellant to have met the public safety criterion. Given the concerns outlined above, an adequate plan at a minimum, would require the appellant to be supervised at all times by a suitable surety.

[42] S.M. lives in Dartmouth and works from his home. Although he testified he could arrange to be in the appellant's presence on occasion if required, he did not indicate he was willing or able to supervise the appellant on a 24 hour basis. I am not satisfied that remote monitoring would be adequate. Further, although S.M. presented as sincerely wanting to assist his friend, and willing to abide by directions of the Court, I am concerned he may not have a full appreciation of the

nature of the risks which may arise should the appellant be released. S.M. advised he had not attended any of the appellant's court appearances, nor had he read any of the material filed in relation to this motion[6]. His knowledge of the appellant's offences is based exclusively on what the appellant has told him.

[43] With respect to G.S. Sr., I am not satisfied he is a suitable surety. Although he also presented as sincerely willing to abide by any terms of release the Court may impose, I have grave reservations about his ability to do so. I am unable to conclude he would be able to provide the type of consistent monitoring the Court would need to consider granting the appellant's bail pending appeal.

[44] G.S. Sr. is 81 years of age. Notwithstanding the appellant asserting his father is a suitable surety, his own words suggest otherwise. Indeed, it would appear that one of the appellant's motivations for being released, is to provide care to his father. In his written submissions filed on February 25, 2025 the appellant asserts:

> It would be helpful to be able to accompany my father on his errands and to be able to do his errands for him. This is due to his risk of a fall or illness in cold or wet weather, as this could be devasting given his age.
>
> . . .
>
> The bulk of my time will be taken up at home working on my business and legal work. Also helping Dad (hard for him to bend over or lift) with meal prep, cleaning condo, laundry, diabetes, and the online parts of his educational charity (he is tech challenged)

[45] During a pre-motion hearing held on February 5, 2025, the appellant raised serious concern regarding his father's health. He said:

> My father is - is not doing well. I haven't seen him in four years. He's very ill, he's not going to make it through the year.

[46] Based on the above, I am not satisfied G.S. Sr. has the capability to act as a surety. Furthermore, it appears the appellant, if released, will be undertaking a caregiver role for his father. This gives me concern whether, given this dependency, G.S. Sr. would report any breaches that come to his attention.

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[6] Other than his own affidavit.

[47] The appellant has failed to meet the public safety component. I could end my analysis here, but will go on to briefly address the second aspect of the public interest criterion.

ii) Public confidence

[48] As set out earlier in these reasons, the public confidence component balances two competing interests: enforceability and reviewability.

[49] In terms of enforceability, the offences are very serious, the appellant has a concerning history of not abiding by conditions imposed, and he has proposed an inadequate release plan that would not meet public safety concerns.

[50] The reviewability interest engages a consideration of the strength of the appeal. It is the appellant's burden to demonstrate the grounds of appeal are sufficiently meritorious to overcome the opposing enforceability component. The appellant has set out a number of grounds of appeal; however, the material provided in support of the motion does not permit me to adequately assess their strength. What is apparent is that the trial judge's credibility determination will, absent a clear error of law, be afforded deference. I am satisfied after reviewing the submissions of counsel and the trial judge's conviction decision, that his reasons addressed the arguments advanced by both the Crown and the defence.

[51] Further, the appellant's claim of ineffective assistance of counsel has not, at this stage, been accompanied by an evidentiary foundation. Given the presumption that counsel has acted competently, much more was required to demonstrate this ground of appeal was meritorious. Indeed, the appellant has made numerous references to documents that are not before me but could have been.

[52] In my view, the only consideration that pulls in favour of bail pending appeal is that the appellant has served a large portion of his sentence. He anticipates being released in December 2025 and submits that if he is not released his appeal will be rendered nugatory.

[53] In the final balancing, enforceability outweighs reviewability.

Conclusion

[54] For the reasons outlined above, I dismiss the appellant's motion for bail pending appeal. I direct the Crown to bring the matter forward to an early date in tele-chambers to address the status of the appellant's application for representation from Nova Scotia Legal Aid and the scheduling of the appeal hearing, if appropriate.

Bourgeois, J.A.