

In the Court of Appeal of Alberta

Citation: R v Alleyne, 2026 ABCA 317

Date: 20261006
Docket: 2603-0221A
Registry: Edmonton

Between:

His Majesty the King

Respondent

- and -

Cassius Alleyne

Applicant

Restriction on Publication

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

By Court Order, information that could identify the victim or witness must not be published, broadcast, or transmitted in any way.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

**Reasons for Decision of
The Honourable Justice Kevin Feehan**

Application for Judicial Interim Release Pending Appeal

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I. Overview

[1] Cassius Alleyne applies for judicial interim release pending appeal, pursuant to s 679(1)(a), and the criteria in s 679(3) of the *Criminal Code*, RSC 1985, c C-46, r 16.25 of the *Court of Appeal of Alberta Criminal Appeal Rules*, (2018) SI/18-34, and **R v Oland**, 2017 SCC 17, [2017]1 SCR 250.

[2] On May 7, 2026, Mr Alleyne was convicted of sexual interference of a nine-year-old child, contrary to s 151 of the *Criminal Code*. He was sentenced on September 8, 2026 to three and half years' incarceration.

[3] For the reasons below, the application is allowed.

II. Law on Judicial Interim Release Pending Appeal

[4] As a convicted person, Mr Alleyne has lost the presumption of innocence: **R v McNaughton**, 2010 ABCA 97, para 14, 26 Alta LR (5th) 126; **Oland**, paras 32-35; **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 EGM**, 2026 ABCA 23, para 5.

[5] But s 679(3) of the *Criminal Code* and **Oland**, para 19, provide 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.

[6] The applicant seeking judicial interim release bears the burden of establishing that each criterion is met on the balance of probabilities: **Oland**, para 19; **EGM**, para 7.

[7] Where the application is granted, the appellant may be released on terms: the giving of an undertaking, with or without conditions, or entering into a recognizance, with one or more sureties, deposit of money or other valuable security, both security and deposit, or neither security nor deposit: s 515(2).

[8] Conditions of release, s 679(5), include those conditions for judicial interim release before trial as set out in s 515(4), (4.1), and (4.2).

i. Not frivolous

[9] At the first stage, the applicant must demonstrate that the proposed grounds of appeal are “not frivolous”: *Oland*, para 20; that they 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; *EGM*, para 10.

[10] Mr Alleyne advances two proposed grounds of appeal. He says the trial judge:

- (a) misstated and misapplied the law in finding that his bare denial could not reverse the burden of proof; and
- (b) failed to consider the evidence of the complainant's mother which he says contradicted the complainant, supported his evidence, and ought to have been weighed in the context of the whole evidence.

[11] The evidence of the complainant was that Mr Alleyne began kissing her on the lips at the end of her piano lessons. She said this kissing became “more enthusiastic” over time, involving movement of his lips, occasionally kissing her neck, and touching her buttocks while kissing her. She said the touching progressed, including touching of her genital and breast areas over her clothing during the lessons, and these incidents occurred multiple times between January 2022 and January 2023. The trial judge found the complainant “to be a credible and reliable witness”.

[12] Mr Alleyne categorically denied all allegations. He testified to the structure of lessons, the presence of adults in the home, and the affectionate behavior initiated by the children, which he claimed he did not reciprocate. The trial judge did not accept his evidence. Utilizing the framework in *R v W(D)*, [1991] 1 SCR 742, 758, 63 CCC (3d) 397, as clarified in *R v Ryon*, 2019 ABCA 36, para 51, 371 CCC (3d) 225 and *R v Achuil*, 2019 ABCA 299, para 18, 92 Alta LR (6th) 270, she said “I do not believe Mr Alleyne’s evidence. Even if I am mistaken, it does not raise a reasonable doubt and no reasonable doubt arises from other evidence or lack of evidence. On the whole of the evidence, I am satisfied beyond a reasonable doubt that the offence occurred”. Mr Alleyne says his detailed denial should have raised a reasonable doubt.

[13] As to the evidence of the complainant's mother, she merely said “JR did not witness the alleged incidents and the Crown conceded that her evidence contained material inconsistencies. I give her evidence no weight in determining guilt”.

[14] As indicated, this initial criterion has a low bar. It cannot be said that Mr Alleyne's submissions are frivolous, vexatious, or hopeless. His submissions will not necessarily fail. The first criterion is met.

ii. Flight risk

[15] The second criterion requires the Court to be satisfied the applicant will not abscond and will surrender into custody when required: **Oland**, para 21.

[16] Mr Alleyne says he is 62 years of age, has an electrical engineering degree from Cambridge University, and has lived in Canada for 41 years. He has been married for 39 years and has lived with his wife in the same residence for over 15 years. He says his wife is employed as a full-time social worker, and they have three grown children. He has no previous criminal record, and no outstanding charges. He has been out of custody until his sentencing without concern.

[17] The Crown agrees that Mr Alleyne has met his burden on this criterion. As a result, the second criterion is met.

iii. Public Interest

[18] At the third stage, public interest, the Court must consider the two components: public safety and public confidence in the administration of justice: **Oland**, paras 23, 24, 38-40; **Farinacci**, 113; **EGM**, para 30. 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 rule of immediate enforcement of judgments, while reviewability reflects an acknowledgment that our justice system is not infallible, appellants should be entitled to a meaningful review process, and that process should not necessarily require an offender to serve all or a significant part of a sentence prior to the appeal being heard: **R v Warsame**, 2017 ABCA 239, paras 4, 5; **Beckow**, para 23. In this case, the Crown says enforceability outweighs reviewability.

[19] The final balancing of factors "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; **EGM**, para 31.

a) Public Safety

[20] The crime for which Mr Alleyne has been convicted is serious, the sexual interference of a nine-year-old child, but Mr Alleyne says there is no basis upon which to find he poses a public safety risk, and his release conditions will adequately address any public safety concerns.

[21] The Crown does not argue that Mr Alleyne poses a public safety risk if released at the present time. This first branch of the third criterion is therefore met. There is no reasonable risk to the public if Mr Alleyne is released at this time, pending appeal.

b) Public Confidence

[22] In *Oland*, paras 31, 37, 40-45, 50, the Supreme Court held that the consideration of public confidence in the justice system should mirror those criteria found in s 515(10)(c) of the *Criminal 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, the greater the risk public confidence will be undermined if an offender is released pending appeal. Therefore, the inquiry into the likelihood of success should be more probing, and a more pointed consideration of the strength and merits of the appeal should be undertaken. Although serious offences do not necessarily preclude release pending appeal, emphasis on enforceability is high and will often outweigh reviewability.

[23] Such considerations as past performance while on release, the issues raised, 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, are relevant: *R v Sidhu*, 2015 ABCA 308, para 6, 607 AR 395; *R v Akasse*, 2017 ABCA 329, para 25; *R v Corbeil*, 2017 ABCA 400, para 35; *Oland*, para 48.

[24] While the public confidence component involves a balancing of the competing interests of enforceability and reviewability, there is “no precise formula that can be applied”: *Oland*, para 49; *Sidhu*, para 6. The balance must be assessed on 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; *R v McNaughton*, para 9; *R v SDH*, 2022 ABCA 411, para 4; *Beckow*, paras 27-29; *King*, paras 20-22; *McDermott*, paras 27-29.

[25] Whether or not the applicant should be entitled to judicial release pending appeal turns on the balance of enforceability and reviewability.

[26] Mr Alleyne says his appeal has strong merit, which should weigh in favour of reviewability over enforceability. He particularly identifies his second ground of appeal in that regard. He says the complainant’s mother’s testimony contradicted the complainant’s testimony. The complainant’s mother said she was always present when the accused left at the end of lessons and the complainant did not see him out alone. He says this contradicted the complainant’s testimony that the accused kissed the complainant when she was leaving. He says the complainant’s mother also did not testify that the complainant told her that the accused kissed the complainant, nor that she then told the complainant this may have been an accident, but the complainant testified that this interaction occurred. Mr Alleyne says these contradictions should be weighed in considering

Mr Alleyne's denials, and the reliability and credibility of the complainant's evidence. He says it is an error of law to fail to consider this evidence in the whole circumstances, and his conviction is unsafe because of these errors.

[27] The Crown replies that Mr Alleyne's detention is necessary for public confidence in the justice system. It says in considering reviewability, the strength of the proposed grounds of appeal plays a central role and engages "a more pointed consideration of the strength of the appeal" than in the not frivolous criterion: *Oland*, paras 37-41.

[28] The Crown says on balancing reviewability and enforceability, this case heavily favours enforceability because the grounds of appeal are without merit and Mr Alleyne exploited his position as a teacher to sexually violate a young student in the sanctity of her own home in a breach of trust. It says a reasonable member of the public, informed of the weakness of Mr Alleyne's appeal grounds and the gravity of the conviction, would agree that enforceability outweighs reviewability.

[29] On the balance of enforceability and reviewability, allowing Mr Alleyne judicial interim release pending appeal would not erode public confidence in the justice system, based upon the apparent strength of the grounds of appeal, gravity of the offence, circumstances surrounding the commission of the offence, and the penalty imposed by the Court below.

[30] In this circumstance, emphasizing the public interest in reviewability is appropriate. A reasonable, fair-minded member of society informed about the philosophy of the legislative provisions, after weighing the enforceability and reviewability interests, would conclude Mr Alleyne's release is not contrary to the public interest. This third criterion is met.

III. Conclusion

[31] Mr Alleyne is granted judicial interim release pending appeal. The parties are requested to settle the appropriate terms and conditions for release, and submit them to the Court for approval. They must use their best efforts to advance the appeal.

Application heard on October 1, 2026

Reasons filed at Edmonton, Alberta
this 6th day of October, 2026

Feehan J.A.

Appearances:

D. E. Green
for the Respondent

A. Attia (no appearance)
D.J. Royer
for the Applicant