

CANADA / JUDGMENT

R. v. O'Neill

2025 ONCA 683

COURT

Court of Appeal for Ontario

DECIDED

1 October 2025

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R. v. O'Neill Collection Decisions of the Court of Appeal Date 2025-10-01 Neutral citation 2025 ONCA 683 Docket numbers COA-25-CR-1188, M56333 Judges Paciocco, David M. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. O'Neill, 2025 ONCA 683 [1] DATE: 20251001 DOCKET: M56333 (COA-25-CR-1188) Paciocco J.A. (Motion Judge) BETWEEN His Majesty the King Respondent (Respondent) and Patrick O'Neill Appellant (Applicant) Devin Bains and Natalie Simpson, for the applicant Kevin Chan, for the respondent Heard: September 29, 2025 by video conference REASONS FOR DECISION

- [1] Patrick O'Neill seeks release pending appeal relating to his convictions of two counts of indecent assault against the daughters of his then-partner, when they were approximately 9 and 13 years old. Mr. O'Neill is now 83 years old. The offences occurred in the late 1970s, approximately 50 years ago.
- [2] After filing his notice of application for release pursuant to s. 679(1) of the Criminal Code, R.S.C. 1985, c. C-46, Mr. O'Neill received a conditional sentence for the offences. The Crown and Mr. O'Neill then jointly filed a revised draft order pursuant to ss. 683(5.1) and 683(5) for the court's use should release be ordered. During submissions counsel clarified that although the Crown assisted with the filing, the s. 683 application was Mr. O'Neill's. It is Mr. O'Neill's position that if his application for release pending appeal fails, the conditional sentence should be permitted to run. The Crown did not bring an application to suspend Mr. O'Neill's conditional sentence.
- [3] There can be no question that Mr. O'Neill is entitled to proceed with his release pending appeal application notwithstanding that he has received a conditional sentence. This court has recognized that a conditional sentence order is a form of "custody" within the meaning of s. 679(1): R. v. Vallance, [1998] O.J. No. 1615 (C.A.), at para. 1; R. v. W. (2005), 75 O.R. (3d) 38 (C.A.), at para. 6; and R. v. Marchant, 2022 ONCA 406, 414 C.C.C. (3d) 548, at para. 12. The power conferred by s. 679(1) of the Criminal Code is to "release an appellant from custody pending the termination of his appeal". If a s. 679(1) application for release pending appeal succeeds, the ensuing order for release from custody therefore necessarily suspends the conditional sentence order. However, in Marchant, Trotter J.A. noted that in 2008, Parliament amended s. 683(5) by providing appeal courts with statutory authority to

suspend conditional sentence orders and order the release of offenders pending appeal where it is “in the interests of justice”: Marchant, at para. 11. He concluded that since s. 683(5)(f) addresses conditional sentence orders directly, it is the more appropriate avenue of relief where a conditional sentence order has been imposed: Marchant at para. 13. Without deciding the question, he suggested that where an application pursuant to s. 683(5) is brought by an appellant/offender, the factors outlined in s. 679(3) would be reflected in considering the “interests of justice” standard: Marchant, at para. 14. I agree. The jurisprudence that has developed relating to s. 679(3) identifies those considerations that are of primary importance in determining whether a custody sentence should be set aside, and an applicant should be released from custody pending appeal. As I have indicated, a conditional sentence is a form of custody. I am therefore proceeding with this application under ss. 683(5) and 683(5.1), but considering the factors developed under s. 679(3) to determine whether the conditional sentence order should be set aside pending appeal. I am granting that application and releasing Mr. O’Neill from custody on the terms the parties agreed to should his application be successful. In the circumstances, those conditions are fit and appropriate conditions of release pending appeal. The following reasons explain why I am making this order.

- [4] There is no issue that Mr. O’Neill will surrender himself into custody if he is granted release pending appeal, and there is no basis for finding that he poses any public safety concern. The Crown acknowledges this. It resists the application by arguing that Mr. O’Neill has failed to establish that his grounds of appeal are not frivolous. In the alternative, the Crown argues that Mr. O’Neill has failed to show that the immediate enforcement of the sentence is not required to maintain public confidence, given the seriousness of the offences and that his grounds of appeal, if not frivolous, do not clearly surpass the “not frivolous” criterion.
- [5] In my view, Mr. O’Neill has established that his ground of appeal relating to the trial judge’s admission of extraneous bad character evidence clearly surpassed the “not frivolous” criterion. The “not frivolous” standard is a “very low bar”: *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at para. 20. It follows that a ground of appeal need not be strong to surpass the “clearly not frivolous” standard. The ground of appeal Mr. O’Neill raises may well have merit.
- [6] The evidence in question was the testimony of one of the complainants that Mr. O’Neill picked her up after a singing lesson and drove her down a gravel road that was not the way home, leading her to become fearful and jump out of the moving vehicle, before Mr. O’Neill chased her with the car. I reject the Crown’s position that this testimony is not evidence of Mr. O’Neill’s bad character. Evidence of a fear on the part of the complainant intense enough to provoke such a drastic response casts a shadow of suspicion over Mr. O’Neill, even without evidence of the basis for that fear. There is merit in the submission that this evidence was not admissible unless it satisfied the similar fact evidence test.

- [7] The Crown brought a pre-trial application to admit discreditable conduct evidence, including cross-count similar fact evidence and evidence of Mr. O'Neill's extraneous prior discreditable conduct involving one of the complainants. The allegation that one of the complainants got out of a moving car to avoid Mr. O'Neill was put before the application judge and assessed in the context of that extraneous prior discreditable conduct application. The application judge dismissed the Crown's application to admit cross-count similar fact evidence. While the application judge admitted evidence of two prior incidents of physical abuse by Mr. O'Neill against the complainant as extraneous prior discreditable conduct, his ruling on this issue is silent about the moving vehicle allegation. It is arguable by implication that the application judge therefore found the moving vehicle allegation to be inadmissible as prior discreditable conduct. Without revisiting that ruling or conducting a new admissibility voir dire, the trial judge allowed this evidence to be presented and equated this incident with the two other incidents of physical abuse which had been admitted as explaining the delay in reporting and the complainant's fear of Mr. O'Neill, in addition to disclosing a pattern of abusive conduct toward that complainant.
- [8] I am persuaded that Mr. O'Neill's claim that the trial judge erred in admitting and relying on this prima facie inadmissible evidence of bad character surpasses the minimal standard required to meet the "not frivolous" criteria, and that it does so clearly. Although this incident arose only in the testimony of one of the complainants, it may be found to bear on the charges involving both complainants since it was used to undercut the credibility of Mr. O'Neill's testimony that he never drove the girls anywhere, a finding that hurt his credibility generally in denying both charges.
- [9] I am therefore persuaded, without the need to address the remaining grounds of appeal, that notwithstanding the seriousness of the offences, the reviewability interest raised by Mr. O'Neill's appeal outweighs the immediate enforceability interest. This is not one of the "fraction" of cases where enforceability concerns under the public confidence component would warrant denying release pending appeal: see Oland, at para 29. I reiterate that there is no concern about Mr. O'Neill fleeing or that he is a threat to public safety. He is ill and elderly. Even though the presumption of innocence no longer operates, his release pending resolution of an appeal that is not clearly without merit should not cause reasonable members of the public to lose confidence in the administration of justice: see Oland, at paras. 47, 51.
- [10] The parties have agreed on the terms of Mr. O'Neill's release should I grant the application. That release plan is viable, and the surety is suitable. Those terms of release will apply. "David M. Paciocco J.A."
- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.

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Prepared on 29 October 2026 · Esheria