

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Matthews, 2026 ONCA 379

DATE: 20250528

DOCKET: M57032 (COA-26-CR-0560)

Thorburn J.A. (Motion Judge)

BETWEEN

His Majesty the King

Responding Party  
(Respondent)

and

Martin Roy Matthews

Moving Party  
(Applicant/Appellant)

Stephanie Brown, for the moving party

Matthew Morley, for the responding party

Heard: May 19, 2026

REASONS FOR DECISION

[1] This is an application for bail pending appeal.

[2] On August 27, 2025, the applicant was convicted of impaired operation of a motor vehicle causing death contrary to s. 320.14(3) of the *Criminal Code*, R.S.C., 1985, c. C-46. He received a custodial sentence of twelve years and a lifetime driving prohibition on October 22, 2025.

[3] The applicant has been in custody since his sentence was imposed. He filed an inmate notice of appeal against conviction and sentence on November 18, 2025. He retained counsel and filed a solicitor's notice of appeal on May 8, 2026.

## **BACKGROUND**

[4] On August 13, 2021, Mr. Crimeli was riding his motorcycle home. While stopped at a red light, the applicant drove his van into Mr. Crimeli's motorcycle from behind without braking. The force of the collision propelled Mr. Crimeli onto the applicant's windshield and then approximately fifteen feet forward into the intersection. The applicant's vehicle continued forward and struck a second vehicle, pushing Mr. Crimeli's motorcycle further into the intersection, and underneath a third vehicle. Mr. Crimeli died of his injuries.

[5] The paramedic who attended at the scene administered fentanyl to the applicant for pain management. Blood was taken from the applicant and analyzed.

[6] Fentanyl was detected in the applicant's blood at a concentration of 43 nanograms/mL. The Crown's expert toxicologist testified that this concentration far exceeded the amount administered by the paramedic. A second drug, flualprazolam, was also detected in the applicant's blood at twenty-two nanograms/mL. The toxicologist testified that flualprazolam is not approved for medical use and is a recreational drug which can impair an individual's ability to

operate a motor vehicle. Lastly, the test indicated that Methadone, a prescription drug, was present at a concentration consistent with therapeutic use.

[7] The trial judge concluded that the applicant was impaired at the time of the collision. In doing so, he relied not only on the toxicologist's testimony but also on witness descriptions of the applicant's behaviour at the scene following the collision. The applicant was found guilty of impaired operation of a motor vehicle causing death.

[8] The sentencing judge observed that the applicant was under a driving suspension at the time of the incident, a statutory aggravating factor under s. 320.22 of the *Criminal Code*. He also took note of the appellant's significant number of prior infractions under the *Highway Traffic Act*, R.S.O. 1990, c. H.8, and noted there were "few mitigating factors" in the applicant's favour. He sentenced the applicant to twelve years in custody and prohibited him from driving for life.

[9] The applicant was self-represented throughout the trial and sentencing. *Amicus* was present to assist with submissions.

### **THE TEST FOR BAIL PENDING APPEAL**

[10] Pursuant to s. 679(3) of the *Criminal Code*, in order to obtain bail pending appeal the applicant must establish: (a) that the appeal is not frivolous; (b) that, if granted bail, he will surrender into custody in accordance with the terms of the release order; and (c) that his detention is not necessary in the public interest.

[11] The applicant has the burden of establishing that each criterion is met on a balance of probabilities: *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at para. 19.

## **RELIEF SOUGHT**

[12] The applicant submits that he meets all three criteria set out in s. 679(3) of the *Criminal Code*.

[13] First, he claims the appeal is not frivolous. He submits that he was prejudiced by being unrepresented at trial although *amicus* was appointed to assist him. The trial involved expert evidence about the absorption rates and his alleged impairment due to the substances found in his blood sample. He was not advised that he could (or should) call his own expert witness or that he could challenge the admissibility or weight of the Crown expert's evidence.

[14] Further, the applicant submits that the toxicologist's evidence should not have been admitted given the difficulty of "determin[ing] a direct correlation between the consumption [of fentanyl] and the resulting level of drug in the bloodstream". He submits that the reliability of this evidence was critical given the need to prove with certainty that the applicant was driving while impaired. He also claims the expert evidence about the adverse effects of flualprazolam was weak and should not have informed the trial judge's finding of impairment, as it was based on a single scientific study correlating concentrations between 5.5 and 26

nanograms/mL with indicators of impairment such as weaving, leaving the roadway, and collisions.

[15] The applicant also argues that the twelve-year sentence is excessive as he did not flee the scene or impede efforts to provide medical assistance to the victim. Although he has a lengthy record of driving infractions, his prior record for impaired driving was over twenty years old at the time of the offence.

[16] Second, the applicant submits that he will surrender himself into custody in accordance with the terms of the draft order. The applicant was released on his own recognizance in May 2022 before the trial and sentencing and complied with the conditions of his release. He agrees to live with his sureties, his wife and mother, and not be in the front seat of a motor vehicle.

[17] Third, he submits that although the crime is serious, his grounds of appeal are strong, and the proposed additional conditions of release are sufficient to address any public safety concerns. Accordingly, he says, it is in the public interest that he be released on bail pending appeal.

### **THE CROWN'S RESPONSE**

[18] The Crown submits that the applicant has not met the public interest component and therefore opposes bail pending appeal. While the Crown acknowledges that the grounds of appeal are not frivolous, they are weak and

given the seriousness of the offence and the length of the sentence, his continued detention is necessary.

## **ANALYSIS**

[19] The only issue in dispute is whether the applicant meets the third criterion for bail pending appeal. The public interest criterion has two components: public safety and public confidence in the administration of justice.

### **a. Public Safety**

[20] Bail is denied for those who pose a “substantial likelihood” of committing an offence or interfering with the administration of justice, where this “substantial likelihood” endangers “the protection or safety of the public”. Detention must be “necessary” for public safety: *R. v. Morales*, [1992] 3 S.C.R. 711, at p. 737.

[21] The applicant has an extensive history of impaired driving and non-compliance with court orders. He has accumulated sixty-nine convictions under the *Highway Traffic Act*, including offences for driving while suspended. His driver’s license was suspended at the time of the offence. Despite numerous prior interventions aimed at modifying his behaviour, and notwithstanding his license suspension, the applicant continued to engage in impaired driving. Although he did not breach his recognizance while on bail pending the hearing of this matter, he was previously arrested for driving while suspended on June 25, 2021, just two months before the collision.

[22] I am therefore satisfied that the applicant poses a safety risk if released on bail pending appeal.

[23] Public safety considerations alone may prevent a release order pending appeal: *R. v. B.N.*, 2025 ONCA 534, at para. 9; *R. v. Jacko*, 2023 ONCA 38, at paras. 21-22; *R. v. Abdullahi*, 2020 ONCA 350, 150 O.R. (3d) 790, at paras. 19-24. Moreover, I believe that his release would undermine public confidence in the administration of justice for the reasons I will outline below.

**b. Public Confidence**

[24] Public confidence involves weighing the competing interests of enforceability and reviewability. Enforceability refers to the public's interest in ensuring that judgments are enforceable upon imposition of the sentence. Reviewability refers to an appellant's entitlement to a meaningful review before having to serve all or a substantial part of their sentence. There is no precise formula for this balancing exercise, which is to be undertaken through the eyes of a reasonable member of the public: *Oland*, at paras. 23-26, 47, 49; *R. v. Farinacci* (1993), 86 C.C.C. (3d) 32 (Ont. C.A.), at paras. 41, 44; *R. v. I.W.*, 2021 ONCA 628, at para. 16.

(i) *Enforceability*

[25] Enforceability is informed by factors such as the gravity of the offence, the circumstances surrounding the commission of the offence, and the length of the

sentence. It also includes an assessment of the plan of release. The more serious the crime, the more public confidence in the administration of justice may be undermined if the person is released from custody pending appeal: *Oland*, at paras. 37-39.

[26] The enforceability interest in this case is high given the seriousness of the offence. The applicant was found to be impaired while driving, which resulted in the death of Mr. Crimeli. The twelve-year sentence underscores the seriousness of the offence and is a significant factor in assessing the enforceability interest: *Farinacci*, at para. 48.

[27] The applicant's history of violating court orders including those designed to prevent him from driving motor vehicles raises the enforceability interest. The appellant has over fifty convictions for driving while suspended, driving without insurance, driving without a license, and speeding. Although several of these infractions, and his record of impaired driving, are dated, they remain a significant factor in assessing enforceability. The applicant's past conduct diminishes confidence that he will comply with his release conditions.

[28] The applicant relies on this court's decision in *R. v. Robson*, 2025 ONCA 497, at para. 15, to suggest that the dangerousness of the applicant's conduct relates only to driving, and that this concern will be clearly managed because he will be restricted from driving on bail pending appeal.

[29] I have explained my concerns with the applicant's record of non-compliance and *Robson* is distinguishable for other reasons.

[30] The trial judge in *Robson* was left with a reasonable doubt about whether the accused was impaired while driving. Ultimately, he was convicted of dangerous operation causing death and sentenced to four years in custody, which is far lower than the twelve-year sentence imposed here. Given the length of the sentence and the merits of the appeal, the motion judge in that case cautioned that the appellant could end up serving significant time pending appeal on a charge for which he is ultimately exonerated. The unique facts of that case led the motion judge to conclude that dismissing the application for bail pending appeal could place the administration of justice into disrepute and engage the disproportionate or unfair use of the criminal law power. That is not the case here.

[31] Moreover, the applicant's evidence suggests weaknesses in his proposed release plan. As explained in the applicant's pre-sentence report, testing revealed drug use from 2021 to 2025, with one positive result dated September 3, 2025, while the applicant was living with his proposed sureties on bail, after his trial but before sentencing. There are also concerns about the applicant's consumption of illicit substances while living with the proposed sureties which suggest they are not fully able to control his actions and it does not appear that the applicant plans to be part of any rehabilitation programs to address substance abuse if released.

[32] For these reasons, there is a strong enforcement interest.

(ii) *Reviewability*

[33] Weighing the reviewability interest requires a “more pointed consideration” of the strength of the appeal beyond the “very low bar” set by the “not frivolous” standard: *Oland*, at paras. 20, 40-41. The reviewability analysis focuses on the strength of the proposed grounds of appeal and whether the merits of the appeal clearly surpass the “not frivolous” threshold.

[34] In my view, while the appeal passes the “not frivolous” threshold, the grounds of appeal are not strong.

[35] First, although the applicant claims the toxicologist’s evidence should not have been admitted, he does not offer any evidence indicating that the toxicologist was not qualified to opine on the drug concentration calculations. To the extent that the toxicologist proffered an opinion based on novel or contested science, which is subject to a more stringent reliability standard, the applicant has not identified why the toxicologist’s evidence is novel or contested. In any event, there were several witnesses who testified that the applicant was visibly impaired following the collision and the trial judge relied on those accounts.

[36] Second, while the applicant was unrepresented at trial, he was assisted by *amicus* and there is no evidence that the trial judge failed to assist him throughout the trial. As noted by the Crown, this is not a case like *R. v. David*, 2026 ONCA

198, where there were several procedural deficiencies including a failure to advise of, and facilitate, the accused's right to call witnesses.

[37] Third, it appears the sentence imposed was within the range for impaired driving causing death where the offender has a prior criminal or driving offence record: *R. v. Altiman*, 2019 ONCA 511, 56 C.R. (7th) 83, at para. 70. See also: *R. v. Bush*, 2012 ONCA 743, 112 O.R. (3d) 626; *R. v. Robertson*, 2026 ONCA 281, at paras. 58-60.

(iii) *Balancing the Enforceability and Reviewability Factors*

[38] The enforceability interest in this case is strong. The reviewability interest is influenced by the absence of strong grounds of appeal.

[39] Moreover, in balancing the enforceability and reviewability interests, the timing of the appeal is relevant: *Oland*, at para. 48. The applicant's appeal will be heard when there is still considerable time left to serve his sentence. Accordingly, the reviewability interest is partially preserved even without release until the appeal is heard.

[40] Viewed from the perspective of a reasonable member of the public, the enforceability interest predominates and outweighs the reviewability interest given the less than strong grounds of appeal, the seriousness of the crime, and the "lingering public safety ... concerns": *Oland*, at para. 50.

[41] For these reasons, I find that the reviewability interest is outweighed by the enforceability interest.

**DISPOSITION**

[42] The application for bail pending appeal is dismissed.

“Thorburn J.A.”