

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Abu, 2026 ONCA 244

DATE: 20260331

DOCKET: COA-26-OM-0107 & COA-26-OM-0108

Dawe J.A. (Motion Judge)

BETWEEN

His Majesty the King

Responding Party

and

Mohamed Abu

Moving Party

Elek Reitsma, for the moving party

Katherine Beaudoin, for the responding party

Heard: March 31, 2026

REASONS FOR DECISION

[1] Mohamed Abu seeks an extension of time to appeal two different lifetime registration orders under the *Sex Offender Information Registration Act*, S.C. 2004, c. 10 (“*SOIRA*”). The Crown consents to the extension of time, although Ms. Beaudoin raises a potential jurisdictional issue.

[2] In November 2018, Mr. Abu was sentenced in the Ontario Court of Justice in Hamilton for various offences, including offences related to prostitution –

specifically, receiving a material benefit (*Criminal Code*, R.S.C. 1985, c. C-46, s. 286.2(1)); advertising sexual services (s. 286.4); and two counts of procuring (s. 286.3(1)). The trial judge imposed a custodial sentence, and also imposed a lifetime *SOIRA* order.

[3] In May 2019, Mr. Abu was sentenced on other charges in the Ontario Court of Justice in Newmarket. These charges included additional counts of receiving a material benefit (s. 286.2(1)), and procuring (s. 286.3(1)). Mr. Abu again received a custodial sentence, and the sentencing judge also imposed a lifetime *SOIRA* order.

[4] Mr. Abu has long since finished serving his custodial sentences. However, he seeks extensions of time to file appeals against the lifetime *SOIRA* orders, which he contends were unlawfully imposed. He has brought two motions to this end. The first (COA-26-OM-0107) related to the 2018 proceedings in Hamilton, and the second (COA-26-OM-0108) relates to the 2019 proceedings in Newmarket.

[5] At the relevant time, the prostitution-related offences at issue here, which did not involve persons under the age of 18, were “designated offences” under s. 499.011(b) of the *Criminal Code*. As such, a mandatory *SOIRA* registration order under s. 490.012(1) was not available. Rather, the imposition of a *SOIRA* registration order was governed by s. 490.012(2), which provided that a *SOIRA*

registration order could only be made if the Crown proved beyond a reasonable doubt that Mr. Abu committed the designated offences with the intent to commit an offence referred to in s. 490.011(1)(a), (c), (c.1), (d), (d.1) or (e).

[6] The Crown appears to have made no attempt to prove this in either the Hamilton or the Newmarket proceedings against Mr. Abu. Moreover, even if the statutory precondition for making *SOIRA* orders under s. 490.012(2) had been met, the maximum duration of the orders would have been 20 years, not life: *Criminal Code*, s. 490.013(2)(b).

[7] Mr. Abu thus has a strong argument that the *SOIRA* orders imposed on him were made without lawful authority.

[8] A complication is that this court has previously held that *SOIRA* orders, despite being made at the time of sentencing, do not form part of the offender's sentence, and thus cannot be appealed pursuant to the sentence appeal provisions in the *Criminal Code*: see *R. v. R.P.*, 2018 ONCA 473, at paras. 7-14; *R. v. E.H.*, 2024 ONCA 74, at paras. 83-97. Although Mr. Abu originally framed his motions as seeking an extension of time within which to seek leave to appeal sentence, counsel now agree that Mr. Abu cannot challenge the *SOIRA* orders by way of sentence appeals.

[9] However, Mr. Abu appears to fall within the category of persons who had a right to appeal a *SOIRA* order under s. 490.014, as this provision existed in 2018 and 2019. At that time, s. 490.014 provided:

490.014 The prosecutor, or a person who is subject to an order under subsection 490.012(2), may appeal from a decision of the court under that subsection on any ground of appeal that raises a question of law or of mixed law and fact. The appeal court may dismiss the appeal, or allow it and order a new hearing, quash the order or make an order that may be made under that subsection. [Emphasis added.]

[10] Because Mr. Abu was convicted of offences that were designated offences under s. 490.011(1)(b), a *SOIRA* order could only have been imposed on him pursuant to s. 490.012(2). This arguably puts him into the class of persons who had a right of appeal under s. 490.014, as it existed at the relevant times.

[11] Parliament did not define the meaning of the term “appeal court” in s. 490.014. While I cannot decide questions of jurisdiction sitting as a single judge, I am satisfied that there is a strong argument that, at least in cases where the underlying designated offences were prosecuted by indictment, the term “appeal court” should be interpreted as meaning the same thing as “court of appeal” as defined in s. 2 of the *Criminal Code*, and that s. 490.014 thus provides Mr. Abu with a right of appeal to this court.

[12] Ms. Beaudoin, for the Crown, notes that it is possible that one or both of the courts that made the *SOIRA* orders may have erroneously believed that they had jurisdiction to impose a mandatory *SOIRA* order pursuant to s. 490.012(1). She

raises the question of whether, if so, this would bar Mr. Abu from appealing under s. 490.014, since in 2018 and 2019 it only provided rights of appeal against orders imposed under s. 490.012(2).

[13] It is not clear on the record before me whether either of the sentencing judges who imposed the *SOIRA* orders made this legal error. In any event, the question of whether Mr. Abu could appeal a *SOIRA* order made improperly pursuant to s. 490.012(1), when he was convicted of offences that only permitted an order to be made, if at all, under s. 490.012(2), raises a jurisdictional question that I cannot decide sitting as a single judge. If this issue does arise on the full record in this case, it will be for a panel to resolve.

[14] I am accordingly prepared to treat Mr. Abu's motions as motions to extend the time for him to appeal under s. 490.014. I note that appeals under this provision, unlike sentence appeals, do not require leave.

[15] Although Mr. Abu is well out of time to file his notices of appeal under r. 8(6) of the *Criminal Appeal Rules*, the Crown consents to extensions of time being granted. I agree that in the circumstances it is in the interests of justice to grant the extensions sought.

[16] The motions are accordingly granted. Mr. Abu shall have 30 days from today's date to file notices of appeal against the *SOIRA* registration orders made against him, pursuant to s. 490.014 of the *Criminal Code*.

"J. Dawe J.A."