

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Hawke, 2026 ONCA 254<sup>1</sup>

DATE: 20260408

DOCKET: COA-25-CR-0558

Fairburn A.C.J.O., Simmons and Trotter JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Jordan Hawke

Appellant

Erin Dann, for the appellant

Emily Marrocco, for the respondent

Heard: March 17, 2026

On appeal from the convictions entered by Justice Michael Carnegie of the Superior Court of Justice, on May 3, 2024, and from the sentence imposed on April 11, 2025.

**Simmons J.A.:**

[1] The main issue on appeal is whether the application judge erred in failing to stay 37 human-trafficking related charges against the appellant under ss. 24(1)

---

<sup>1</sup> This appeal is subject to a publication ban pursuant to s. 486.4 of the *Criminal Code*, R.S.C. 1985, c. C-46.

and 11(b) of the *Charter* for violating the appellant's right to a trial within a reasonable time.

[2] The appellant's s. 11(b) motion was heard in December 2023 and February 2024, well in advance of his anticipated trial date. The application judge calculated the anticipated total delay as 1506 days (49 months and 15 days), being the number of days between June 11, 2020 (the date the original information was sworn) to July 26, 2024 (the anticipated end date of the scheduled 12-week Superior Court jury trial).

[3] After deducting time periods she attributed to defence delay and exceptional circumstances arising from discrete events, the application judge found the remaining delay was 982 days (or 32.3 months), a period still above the presumptive *Jordan*<sup>2</sup> ceiling of 30 months.

[4] Nonetheless, on March 4, 2024<sup>3</sup>, the application judge dismissed the appellant's s. 11(b) *Charter* application. She concluded that the Crown had met its onus of demonstrating this was a "particularly complex" case and had developed and followed a "concrete plan" to help minimize the delay caused by the complexity<sup>4</sup>.

---

<sup>2</sup> *R. v. Jordan*, 2016 SCC 27, [2016] 1 SCR 631.

<sup>3</sup> The application judge dismissed the s. 11(b) application on March 4, 2024 for reasons to follow, which were released on June 10, 2024.

<sup>4</sup> *Jordan*, at paras. 71, 77 and 79.

[5] Following the dismissal of his s. 11(b) application, on May 3, 2024, the appellant was found guilty of 10 human-trafficking related charges<sup>5</sup> based on an agreed statement of fact (the “no contest plea”). He was subsequently sentenced to a total of 15 years 6 months’ imprisonment less presentence custody.

[6] On appeal, the appellant does not challenge the application judge’s finding that this was a particularly complex case falling within the exceptional circumstances category. However, he submits that the evidence did not support the application judge's finding that the Crown developed and followed a concrete plan to minimize the delay caused by the complexity of the case. He also challenges two deductions made by the application judge for discrete exceptional circumstances (21 days for pre-arrest delay and 60 days for pandemic related delay) and a 20-day deduction for defence delay involving an adjournment of his bail hearing to finalize a bail plan.

[7] The Crown acknowledges that the application judge should not have deducted 20 days to reflect the adjournment of the appellant’s bail hearing – finalizing the bail plan was part of intake and disclosure was still ongoing<sup>6</sup>. However, the Crown submits that, on appeal, the s. 11(b) analysis should reflect

---

<sup>5</sup> The agreed statement of fact established the appellant’s guilt to: three counts of human trafficking, three counts of procuring sexual services, one count of distributing intimate images without consent, one count of receiving a material benefit from sexual services, one count of assault and one count of laundering proceeds of crime.

<sup>6</sup> Adding this period to the “remaining delay” calculated by the application judge would increase it to 1002 days, or 32.9 months.

the reality that the appellant did not proceed to trial but rather entered the no contest plea on May 3, 2024, prior to the anticipated commencement date of his trial.

[8] For the reasons that follow, I would dismiss the appeal.

### **Background**

[9] The appellant was originally charged on June 11, 2020 on a nine-count information involving one complainant. However, the number and complexity of the informations and charges increased over time as additional complainants came forward and the police continued to investigate.

[10] A consolidated information was sworn on June 22, 2022 laying 58 charges that spanned a seven-year time frame (the “consolidated information”). The consolidated information involved seven complainants from several jurisdictions and five co-accused. Fifty-three of the charges involved the appellant. The charges against one of the co-accused (“R.R.”) were eventually withdrawn<sup>7</sup> and a further information was sworn on August 24, 2022 laying six charges against the appellant and naming R.R. as the complainant.

[11] Although the original information was laid on June 11, 2020, the appellant was not arrested until September 8, 2021. On the s. 11(b) application, the appellant

---

<sup>7</sup> There were nine charges involving R.R. on the consolidated information. She was co-accused with the appellant on eight of those charges, which sometimes included another co-accused. One of the charges related to R.R. alone.

conceded that he was attempting to evade arrest from the date of a police media release on July 13, 2020<sup>8</sup> seeking information regarding his whereabouts.

[12] The appellant elected to be tried by a judge and jury. On August 26, 2022, a preliminary inquiry was set for February 27 to March 10, 2023, with motions scheduled for January 24 and 25, 2023<sup>9</sup>.

[13] On January 20, 2023, just prior to the commencement of the motions for the preliminary inquiry, the Crown preferred a direct indictment against the appellant and his three remaining co-accused. The direct indictment included 40 charges, 37 of which involved the appellant.

[14] On May 12, 2023, a twelve-week trial was set for May 6 to July 26, 2024, with pre-trial motions to be heard on January 15 and 16, February 7 to 9, and March 11 to 15, 2024.

## **Discussion**

### **1. Standard of Review**

[15] Characterization of periods of delay and the ultimate decision concerning whether there has been unreasonable delay are reviewable on a standard of correctness. However, the application judge's underlying findings of fact are

---

<sup>8</sup> The Crown filed a police officer's affidavit on the application. That affidavit indicates the first police media release was on July 14, 2020. However, as the application judge and the parties have used July 13, 2020 as the relevant date I do so as well.

<sup>9</sup> On August 26, 2022 the motions were scheduled for November 21 and 22, 2022, but the motion dates were subsequently changed on October 17, 2022 to January 24 and 25, 2023 due to the unavailability of the trial judge for the November dates.

reviewable on a standard of palpable and overriding error: *R. v. Pauls*, 2020 ONCA 220, 149 O.R. (3d) 609, at para. 40, aff'd *R. v. Yusuf*, 2021 SCC 2, [2021] 1 S.C.R. 5, at para. 2; *R. v. Jurkus*, 2018 ONCA 489, 363 C.C.C. (3d) 246, at para. 25, leave to appeal refused [2018] S.C.C.A. No. 325. Absent an error in principle, the application judge's assessment of whether exceptional circumstances exist are factual inquiries subject to deference on appeal, including: i) whether a period of delay flows from a discrete event and whether the Crown took reasonable steps to mitigate that delay, and ii) of the complexity of a case and whether the Crown implemented and followed a concrete plan to minimize delay: *R. v. Majeed*, 2019 ONCA 422, at paras. 10-11; *R. v. Mengistu*, 2024 ONCA 575, at para. 14; *Ontario (Labour) v. Nugent*, 2019 ONCA 999, at paras. 24, 27-28, leave to appeal refused [2020] S.C.C.A. No. 53; *R. v. Morash*, 2021 ONCA 335, at para. 35.

## **2. The Concrete Plan Issue**

[16] The application judge accepted the Crown's position that this was a particularly complex case falling within the exceptional circumstances category based on both the nature of the evidence<sup>10</sup> and the nature of the issues<sup>11</sup>. She relied primarily on two factors to support a finding that the Crown demonstrated a

---

<sup>10</sup> These included the multiplicity of charges spanning a lengthy period and several jurisdictions, voluminous disclosure, several witnesses falling into the vulnerable category who would each require significant preparation time and the need for expert evidence.

<sup>11</sup> These included the trial time anticipated, the number and complexity of the legal issues, and the fact that the Crown was proceeding jointly against four co-accused.

concrete plan to mitigate the delay arising from complexity: preferring a direct indictment and streamlining the number of counts.

[17] As I have said, the appellant does not challenge the application judge's finding that this was a particularly complex case falling within the exceptional circumstances category.

[18] However, the appellant submits that the evidence does not support the application judge's finding that the Crown had a concrete plan to mitigate delay arising from complexity.

[19] The appellant points out that, in her reasons, the application judge accepted that the Crown ought to have "been on notice" as early as July 2020 that "this matter was or was at least becoming a complex matter." By that date, the appellant was facing charges in relation to three complainants for conduct that was alleged to have occurred in multiple jurisdictions.

[20] Further, as of the date of the appellant's arrest on September 8, 2021, there was a fourth complainant from another jurisdiction, one other co-accused had been arrested, and a third co-accused would be arrested within days.

[21] On the s. 11(b) application, the Crown essentially acknowledged that it did not recognize the complexity of the case until May 2022 – and that it was only then

that it began taking steps to mitigate delay including seeking a direct indictment and streamlining the counts on the informations from 64<sup>12</sup> to 40.

[22] In all the circumstances, the appellant submits that the steps taken by the Crown to mitigate the delay in this case can only be characterized as reactive and that they lack the proactive characteristics inherent in a concrete plan created to mitigate the delay caused by a decision to initiate a complex prosecution. He says that in assessing whether the Crown met its burden, the application judge erred by failing to take account of several matters, including:

- her finding that the Crown should have been on notice as of July 2020 that this was or was at least becoming a complex matter;
- the timing of the direct indictment, which was not preferred until January 2023, more than 16 months after the appellant's arrest;
- the minimal impact of the Crown's "streamlining" the number of counts in the direct indictment on the time required for trial as the reduction in counts largely eliminated duplicative counts; and
- the initiatives taken by his counsel to move the case forward.

---

<sup>12</sup> The application judge and the parties refer to a reduction from 65 counts to 40 counts. I refer to 64 counts based on the difference between the number of counts originally included in the consolidated information and the August 24, 2022 information and the number of counts in the direct indictment. I also recognize that one of the counts in the consolidated information that involved R.R. alone was subsequently withdrawn.

[23] I would not accept these submissions. Although the application judge was critical of the actions of the Crown in some respects, overall she accepted that, unlike what might be the situation in a project case, the complexity of this matter evolved over time and that, while not perfect, the Crown's plan in the form of a direct indictment and streamlined counts was sufficient in all the circumstances.

[24] In reaching her conclusion, the application judge took account of many factors. This case began with a single complainant and a nine-count information in June 2020. Complainants continued to come forward over time and, in some cases, made additional statements. The initial complaints were made during the height of the pandemic. Further, the police were initially focusing their attention on locating the accused persons "who were a threat to public and who were making sophisticated attempts to evade police." The co-accused were arrested at different times<sup>13</sup> and initially charges were spread out over different informations. In the case of R.R., although she was initially a co-accused, she eventually became a complainant<sup>14</sup> and the charges against her were withdrawn. One of the complainants died in June 2021. Although the charges related to her were eventually withdrawn because of a disclosure error, an initial reasonable decision was made to proceed with the charges relating to her, necessitating an anticipated hearsay application.

---

<sup>13</sup> The final co-accused was arrested in relation to the London charges on February 3, 2022.

<sup>14</sup> R.R. made a statement to the London police on May 25, 2022.

[25] The application judge accepted that the trial Crown began the process of applying to the Attorney General for a direct indictment in the summer of 2022 and that to do so, full or substantial voluminous disclosure had to have been completed. As a result of obtaining the direct indictment on January 20, 2023, the case bypassed motions scheduled for January 24 and 25, 2023 and the preliminary inquiry scheduled for February 27 to March 10, 2023<sup>15</sup> and was able to have a first appearance in the Superior Court on February 14, 2023. On the application judge's calculations, the number of counts in the direct indictment was reduced by roughly 38% from those contained in the consolidated information and the August 24, 2022 information relating to R.R. In reducing the counts in this way, at a minimum, the Crown eliminated at least some of the counts that would have required particularly complicated jury instructions.

[26] In the end, taking account of these circumstances, the application judge was satisfied that the Crown acted reasonably in accordance with a concrete plan to prosecute a complex case that had evolved over time. She had previously taken account of the appellant's trial counsel's organizational efforts in declining to make any deduction from the total delay for defence counsel's lack of availability at certain times. I am satisfied that, in coming to her conclusions, the application judge took account of all relevant circumstances and that her findings were

---

<sup>15</sup> In her reasons, the application judge noted that although it had been agreed that 15 days were required for the preliminary inquiry, only 12 days had been scheduled. There was accordingly some possibility that it would not have been completed and that time would be required for a decision.

supported by the record. Her findings are entitled to deference on appeal, and I see no basis for appellate interference.

### **3. The 21-day deduction for pre-arrest delay**

[27] As I have said, although the original information was laid on June 11, 2020, the appellant was not arrested until September 8, 2021. The application judge characterized the intervening period as 454 days<sup>16</sup> (or 14 months and 28 days).

[28] On the s. 11(b) application, the appellant conceded that 423 days of the 454 days should be attributed to defence delay, *i.e.* the period from July 13, 2020 (the date of the first police media release) to September 8, 2021 (the date of the appellant's arrest).

[29] The application judge concluded that 21 of the 32 days from June 11, 2020 to July 13, 2023 should be treated as a discrete event because she found the police made attempts to locate the appellant during this period. She said, "when the police are actively searching for someone and are unable to locate them, that period should be deducted as a discrete event.

[30] The appellant submits that there was no evidentiary basis for the application judge's finding.

---

<sup>16</sup> On appeal, the Crown characterizes this time period as 455 days, while the appellant adopts the application judge's characterization. Nothing turns on this difference in characterization.

[31] I disagree. The Crown filed an affidavit from a police officer who deposed that the London Police Service issued a warrant for the appellant's arrest on June 11, 2020 and began concerted efforts at locating him. The officer described these efforts as, among other things, searching for the appellant at last known addresses, conducting surveillance on places that the appellant was known to frequent and conducting surveillance on the appellant's family members. Although no dates were provided concerning when these efforts were made, the police officer was not cross-examined on his affidavit. In the circumstances, it was open to the application judge to make the findings she did on the record before her. I see no basis on which to interfere.

#### **4. The 60-day deduction for the COVID-19 pandemic**

[32] The appellant submits that the application judge erred in deducting 60 days as a discrete event because of the COVID-19 pandemic. He says that to be subtracted as an exceptional circumstance, delay must be attributable to the pandemic in some articulable sense. Here, even with the direct indictment, the parties were not in a position to request Superior Court trial dates for a twelve-week trial with three weeks of pre-trial motions until April 2023. The trial date was eventually set on May 12, 2023 for May 6, 2024 to July 26, 2024. The appellant submits that there was nothing in the record to support a finding that pandemic backlogs contributed to the delay in this case, nor do the application judge's reasons reveal anything within her local knowledge to support such a finding.

[33] I disagree. As the application judge noted, the appellant elected to have a jury trial and it was well-documented in local decisions that jury trials in London were significantly affected by the impacts of the pandemic. For example, in *R. v. Nawabi*, 2022 ONSC 7258, it was noted that the London courthouse was unable to accommodate two concurrent jury trials until October 19, 2021.

[34] Given the local caselaw and her knowledge of local conditions, it was open to the application judge to conclude that pandemic backlogs of jury cases continued to impact scheduling when the trial dates were set and that a deduction of a minimum of 60 days as a discrete event for this in-custody jury trial was appropriate. This was a fact-specific determination for the application judge and I see no basis on which to interfere.

### **Conclusion**

[35] After deducting periods she attributed to defence delay and discrete exceptional circumstances, the application judge found the remaining delay for the appellant was 982 days – or 32.3 months – a period still above the presumptive *Jordan* ceiling of 30 months. However, she concluded that the overall time to trial was justified on the basis of complexity.

[36] I agree with the parties that the application judge erred in deducting 20 days to reflect the adjournment of the appellant's bail hearing. Adding this period to the "remaining delay" of 982 days, or 32.3 months, calculated by the application judge

increases that delay to 1002 days, or 32.9 months<sup>17</sup>. In my view, this increase of 20 days in net delay is not sufficient to alter the application judge's conclusion that the overall time to trial was justified on the basis of complexity.

[37] In the circumstances, it is unnecessary to address the Crown's submission that, on appeal, the s. 11(b) analysis should reflect the reality that the appellant did not proceed to trial but rather entered a no contest plea prior to the anticipated commencement date of his trial.

[38] Based on the foregoing reasons, I would dismiss the appeal against conviction. I would also dismiss the sentence appeal as abandoned.

Released: April 8, 2026 "J.M.F."

"Janet Simmons J.A."  
"I agree. Fairburn A.C.J.O."  
"I agree. Gary Trotter J.A."

---

<sup>17</sup> I have used 30.417 to divide days into months (365 divided by 12): *R. v. Shaikh*, 2019 ONCA 895, 149 O.R. (3d) 369 at footnote 2.