

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Thangarajah, 2025 ONCA 897

DATE: 20251224

DOCKET: M56225 (COA-25-OM-0229)

Favreau, Copeland and Dawe JJ.A.

BETWEEN

His Majesty the King

Respondent/Responding Party

and

Jude Thangarajah

Appellant/Moving Party

Jude Thangarajah, acting in person

Patrick Quilty, for the responding party

Heard: December 1, 2025

On review of the order of Justice Lois B. Roberts of the Court of Appeal for Ontario, dated July 15, 2025, with reasons reported at 2025 ONCA 525.

By the Court:

[1] The moving party, Mr. Thangarajah, seeks to review the decision of the motion judge dismissing his motion for an extension of time to appeal from a conviction and sentence imposed in 2017.

[2] The Crown argues that the court does not have jurisdiction to review or hear an appeal from the order of a single judge in relation to a motion for an extension of time under s. 678(2) of the *Criminal Code*, R.S.C. 1985, c. C-46. In the alternative, the Crown argues that the motion judge made no error in dismissing the motion for an extension of time.

[3] We agree with the Crown's submission that this court does not have jurisdiction to review or hear an appeal from the order of the motion judge. In our view, the reasoning from *R. v. J.M.*, 2021 ONCA 735, 158 O.R. (3d) 81, applies to the circumstances of this motion. In *J.M.*, the court held that a panel of the court had no jurisdiction to review or hear an appeal from the order of a single judge dismissing a motion to appoint counsel under s. 684 of the *Criminal Code*. The court reasoned as follows. Rights of appeal are created only by statute. There is no inherent jurisdiction for appeals in criminal matters: *J.M.*, at para. 20. Section 684 of the *Criminal Code* provides authority for a single judge or a panel of the court to appoint counsel to an accused on appeal where it is in the interests of justice and the accused does not have the means to obtain counsel. However, s. 684 contains no provision authorizing an appeal from a decision to grant or dismiss a motion to appoint counsel, nor does any other section of the *Criminal Code*: *J.M.*, at para. 21.

[4] The court further held that s. 7(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, cannot create rights of appeal in criminal proceedings because the

province does not have constitutional competence to legislate in relation to criminal law or procedure: *J.M.*, at paras. 25-26; see also *R. v. Scherba* (2001), 155 C.C.C. (3d) 512 (Ont. C.A.), at paras. 10-11.

[5] The same reasoning applies here. The power to grant an extension of time is found in s. 678(2) of the *Criminal Code*. Section 678(1) provides that notice of appeal must be given “in such manner and within such period as may be directed by rules of court.” Section 678(2) provides that a single judge or a panel of the court may extend the time within which notice of appeal may be given. The structure of s. 678(2) is the same as s. 684 in that the jurisdiction to extend time to give notice of appeal may be exercised either by a single judge or by a panel of the court. It is also the same as s. 684 in that s. 678 does not provide for any right of review or appeal from a decision regarding an extension of time. Because criminal appeals must be created by legislation and there is no right of review or appeal in the *Criminal Code* from a decision in relation to an extension of time, there is no right of appeal or review from a decision of a single judge on a motion to extend time under s. 678(2) of the *Criminal Code*.

[6] Decisions of other provincial courts of appeal support the conclusion that a panel of a court of appeal does not have jurisdiction to review or hear an appeal from a decision of a single judge of the court dismissing or granting a motion for an extension of time under s. 678(2): *Arcand c. R.*, 2009 QCCA 74, at para. 1; *R. v. Harness*, 2005 ABCA 245, 200 C.C.C. (3d) 431, at paras. 16-20, 33;

R. v. O'Malley (1997), 119 C.C.C. (3d) 360 (B.C.C.A.), at paras. 9-19, leave to appeal refused, [1998] S.C.C.A. No. 94; *R. v. Butchko*, 2004 SKCA 159, 257 Sask. R. 41, at paras. 11-14; *R. v. Aggek (D.I.)* (1999), 209 N.B.R. (2d) 16, 535 A.P.R. 16 (C.A.); *R. v. Giesbrecht (E.H.)*, 2008 MBCA 102, 237 C.C.C. (3d) 203, at paras. 9-21.

[7] Mr. Thangarajah referred the court to the recent decisions of *R. v. Mohammad*, 2024 ONCA 494, leave to appeal refused, [2024] S.C.C.A. No. 483, and *R. v. Muirhead*, 2025 ONCA 53, where panels of the court heard and dismissed motions to review a dismissal by a single judge of a motion for an extension of time to file an appeal. In both of those decisions, the court referred to decisions of the court under s. 7(5) of the *Courts of Justice Act* in explaining the standard of review. However, the panels dismissed both motions on the basis that the motion judge did not err in their decision to deny the request for an extension; neither panel decided the issue of jurisdiction.

[8] Because the issue of jurisdiction was not decided in *Mohammad* or in *Muirhead*, these cases are not determinative of jurisdiction: *Heegsma v. Hamilton (City)*, 2024 ONCA 865, 174 O.R. (3d) 793, at para. 23; *Singh v. Heft*, 2022 ONCA 135, at para. 15; *CIBC Mortgages Inc. (FirstLine Mortgages) v. Computershare*, 2015 ONCA 846, 342 O.A.C. 49, at para. 12. As explained above, appeal rights in criminal matters must be created by federal criminal legislation.

Section 7(5) of the *Courts of Justice Act* cannot provide authority for a panel of the court to review a decision of a single judge on a criminal motion.

[9] Although the court in *J.M.* held that there is no jurisdiction for a panel of the court to review or hear an appeal from a decision of a single judge dismissing a motion to appoint counsel under s. 684 of the *Criminal Code*, the court also held that in appropriate circumstances, a panel of the court may exercise its jurisdiction under s. 684 of the *Criminal Code* to consider a motion to appoint counsel afresh even though a single judge has already denied such a motion. Section 684(1) provides that a motion to appoint counsel can be heard by a single judge or by the “court of appeal”. The effect of this language is that a panel of the court has concurrent jurisdiction with a single judge to hear a s. 684 motion. A panel of the court will consider exercising its concurrent jurisdiction to consider the motion afresh where circumstances have changed sufficiently since the motion judge’s decision to warrant a reassessment: *J.M.*, at paras. 31-34.

[10] The Crown resists the application of this principle from *J.M.* to a motion to extend time under s. 678(2) of the *Criminal Code*. The Crown argues that for an extension of time, unlike a s. 684 motion to appoint counsel, if the motion is dismissed, there is no longer an ongoing appeal before the court.

[11] It is not necessary for us to decide this issue in this case.¹ Assuming, without deciding, that a panel of the court can exercise concurrent jurisdiction to hear a subsequent extension of time motion where there is a material change in circumstances after the dismissal of an extension motion by a single judge, we are not satisfied that there has been a material change in circumstances in this case since the dismissal of the extension of time motion by the motion judge. Although the moving party has filed some additional documentation that was not before the motion judge, none of the new documentation materially changes the information that was before the motion judge or would impact her reasons for dismissing the motion. Further, none of the additional documentation is actually new – it is all information that could have been placed before the motion judge.

[12] We would add the following. Although we decide this motion on the basis that we do not have jurisdiction to review the motion judge’s order and that there has been no material change that would warrant exercising any concurrent jurisdiction we may have to reassess the request for an extension of time afresh, we also see no errors in the motion judge’s analysis. She applied the correct legal analysis for consideration of an extension of time to give notice of an appeal. Her factual findings are grounded in the record and are entitled to deference.

¹ We note that other provincial courts of appeal which have considered this issue have held that a panel can exercise concurrent jurisdiction to hear a subsequent extension of time motion under s. 678(2) of the *Criminal Code*, if there has been a material change in circumstances: *O’Malley*, at paras. 11-14; *Harness*, at paras. 21-23; *Giesbrecht*, at paras. 34-38; *R. v. Walker* (1978), 46 C.C.C. (2d) 124, at p. 125 (Q.C.C.A.).

[13] The motion to review the order of the motion judge is dismissed.

Released: December 24, 2025 “L.F.”

“L. Favreau J.A.”
“J. Copeland J.A.”
“J. Dawe J.A.”