

COURT OF APPEAL OF YUKON

Citation: *R. v. Tuel*,
2026 YKCA 3

Date: 20260219
Docket: 23-YU909

Between:

Rex

Respondent

And

Malakal Kwony Tuel

Appellant

Before: The Honourable Justice Iyer
(In Chambers)

On appeal from: An order of the Supreme Court of Yukon, dated February 17, 2023 (conviction) and November 29, 2023 (sentence) (*R. v. Tuel and Wuor* and *R. v. Tuel*, 2023 YKSC 12 and 2023 YKSC 73, Whitehorse Docket 21-01503).

Oral Reasons for Judgment

Counsel for the Appellant
(via videoconference):

P. Ndlovu

Counsel for the Respondent
(via videoconference):

L. Whyte

Place and Date of Hearing:

Whitehorse, Yukon
February 19, 2026

Place and Date of Judgment:

Whitehorse, Yukon
February 19, 2026

Summary:

The appellant applies under s. 684(1) of the Criminal Code for counsel to be appointed to act on his behalf. Counsel had been appointed previously for the limited purpose of assisting the appellant on this application. HELD: Application dismissed. It is not in the interests of justice to appoint counsel because the appeal has little merit. Although the appeal is complex and a 10-year sentence is significant, counsel was unable to identify any arguable ground of appeal.

[1] **IYER J.A.:** Malakal Kwony Tuel applies for an order pursuant to s. 684(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, that counsel be assigned to act on his behalf in his conviction appeal. The Crown opposes his application. In November 2024, Justice Butler made an order appointing counsel for the limited purpose of assisting Mr. Tuel on this application.

[2] On February 17, 2023, Mr. Tuel was convicted at a judge-alone trial of eight offences under the *Criminal Code* and one offence under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19. The offences included discharging a firearm with intent to wound, aggravated assault, drug offences, firearms offences, and possession of proceeds of crime offences. After trial, he was sentenced to a 10-year global sentence, reduced by six years for pre-sentence custody.

[3] On December 13, 2023, Mr. Tuel filed a notice of appeal.

[4] Mr. Tuel applied to the Yukon Legal Services Society (“YLSS”) for legal aid. On July 23, 2024, the YLSS denied Mr. Tuel’s application on the basis that his conviction appeal lacked sufficient merit. Mr. Tuel unsuccessfully appealed that denial to the Board of Directors of YLSS.

[5] On a denial of legal aid, s. 684 of the *Criminal Code* permits the Court of Appeal, or a single judge of the Court, to assign counsel to act on behalf of an accused who is a party to an appeal, where it appears desirable in the interests of justice that the accused have legal assistance for the appeal, and the accused has insufficient means to obtain that assistance: *R. v. J.J.P.*, 2019 YKCA 16 at para. 8 (Chambers), citing *R. v. Butler*, 2006 BCCA 476 at para. 3 (Chambers).

[6] The interests of justice must be considered taking into account all the factors relevant to the individual as well as societal concerns, including “the fundamental principle that both sides in a legal dispute have a right to be heard and that the court has a duty to fully hear and consider those opposing views”: *J.J.P.* at para. 9.

[7] Relevant factors include:

- a) The complexity of the case;
- b) The points to be argued on appeal;
- c) Any point of general importance in the appeal;
- d) The applicant’s competency to present the appeal;
- e) The need for counsel to marshal facts, research law, or make argument;
- f) The nature and extent of the penalty imposed; and
- g) The merits of the appeal.

See: *International Forest Products Ltd. v. Kern*, 2001 BCCA 632 at para. 6 (Chambers); *R. v. McDiarmid*, 2015 YKCA 19 at para. 15 (Chambers); *J.J.P.* at para. 10.

[8] Assessment of the merits is on the low standard of whether the appeal is arguable, not whether it will succeed. That said, even if the other factors favour an appointment, it is not in the interests of justice to appoint counsel if the appeal has no prospect of success: *R. v. Silcoff*, 2012 BCCA 463 at paras. 24, 26 (Chambers).

[9] As there is no dispute that Mr. Tuel lacks sufficient means to properly argue his appeal, the only question is whether it is in the interests of justice to grant Mr. Tuel’s application.

[10] The Crown concedes, and I agree, that Mr. Tuel’s case was complex and the penalty imposed was significant. As set out in the sentencing decision, indexed at

2023 YKSC 73, Mr. Tuel's very difficult background circumstances put him at a disadvantage in presenting his appeal as a self-represented person. That increases the need for counsel to marshal facts, research law, and make arguments. All these factors support appointment of counsel.

[11] That leaves consideration of the merits and the importance of the appeal.

[12] In his notice of appeal and his affidavit for the appointment of counsel, Mr. Tuel identified the grounds of appeal as an unreasonable verdict or one not supported by the evidence, error of law, miscarriage of justice, failure to consider the evidence as a whole, reliance on inferences, and bias.

[13] I agree with the Crown that these grounds boil down to two questions: whether the verdict was unreasonable or unsupported on the evidence, and whether there was a miscarriage of justice based on bias. Justice Butler appointed counsel to assist Mr. Tuel in making submissions on the first ground, finding the bias allegation was without merit (at para. 32).

[14] With respect to the other ground, Justice Butler wrote:

[31] Without more detailed submissions from Mr. Tuel, it is difficult to arrive at the conclusion that there is no arguable merit to his appeal. I find the reasoning in *R. v. Fraser*, 2019 BCCA 425 (Chambers) helpful in these circumstances. In that case, Justice Hunter was unable to find, based on Mr. Fraser's submissions before him, that the appeal was arguable. However, because he was convicted of murder and facing life in prison, Justice Hunter found it was not in the interests of justice for him to "present his own appeal on what appears to be meritless grounds without at least some advice as to whether he has viable grounds for an appeal": *Fraser* at para. 13.

[15] Mr. Tuel's counsel had the opportunity to review the voluminous evidence and the lengthy reasons for judgment in detail. However, neither his written nor oral submissions identify any arguable ground of appeal. Mr. Tuel made a submission on his own behalf that the conviction was unsound because key physical evidence was not tendered in evidence at trial. However, as the Crown noted, Mr. Tuel's admissions at trial obviated the need to do so.

[16] I am mindful of Mr. Tuel's very difficult circumstances and the adverse impact they will have on the prosecution of his appeal. However, there is no indication his appeal has any merit. In these circumstances, I conclude that it is not in the interests of justice to grant Mr. Tuel's application for the appointment of counsel under s. 684(1) of the *Criminal Code*.

[17] The application is dismissed.

"The Honourable Justice Iyer"