

In the matter of an application for Bail by Breen [2009] ACTSC 172 (31 December 2009) – Australian Capital Territory Supreme Court

‘Aboriginal and Torres Strait Islander people’ – ‘Bail’ – ‘Emotional and psychological abuse’ – ‘People with mental illness’ – ‘Presumption against the grant of bail’ – ‘Threatening to kill’

Charge/s: Threatening to kill, failing to surrender firearms x 3, possessing a quantity of cannabis.

Appeal type: Appeal against refusal to grant bail.

Facts: Mr Breen, an Aboriginal man, was in a relationship with a woman and they had three children. Mr Breen rang the mother of his partner, asking if she knew where his partner was. He was extremely agitated and said, ‘If we were married, we would now be divorced’ and ‘I’ve got big problems with my head’. Mr Breen then said, ‘and if [his partner] gets boyfriends out of this, I will get my gun and blow all their heads off. I will kill us all. Better that than have them molested as I was’. Mr Breen stayed on the phone to his partner’s mother for an hour and on two occasions he threatened to kill the whole family. When police later arrived, Mr Breen said he was depressed and ‘wanted to end it all’. A search of the property uncovered three unregistered rifles and cannabis. He was arrested and was refused bail by a magistrate for ‘mental health issues’ and his access to ‘illicit’ firearms.

Issue/s: Whether Mr Breen should be granted bail.

Decision and reasoning: Section 9B of the Bail Act meant that the presumption in favour of bail did not apply. Refshauge J noted that, in determining whether to grant or refuse bail, the court had to engage in an assessment of ‘future risk’. Given that refusal of bail is tantamount to preventative detention, the court should not make a decision on the basis of suspicion or speculation (See [57]-[61]). His Honour stated, ‘the appropriate initial view was that this was a serious offence which was engendered in emotional circumstances where very serious violence, at least to Mr Breen himself if not to his partner and children, was threatened and where there were apparent means to carry out such a threat. This was exacerbated by the fact that Mr Breen clearly [had] some mental health issues which [made] the likelihood of unpredictable outcomes greater’ at [61].

However, on the basis of tendered evidence, Refshauge J was satisfied that the imposition of strict bail conditions could manage these concerns (See [91]). Mr Breen's behaviour was caused by a mental impairment that was treatable (and treatment were already occurring). While Mr Breen had a worrying fascination with guns and weapons, he was not in a realistic position or had the immediate capacity to carry out his threat. There was no evidence to satisfy Refshauge J that Mr Breen's partner would be in danger with the provision of suitable bail conditions. Mr Breen had work available and his parents were prepared to offer a cash surety.