

***Viavattene v R* [2018] NSWCCA 197 (5 September 2018) – New South Wales Court of Criminal Appeal**

‘Bail’ – ‘Evidence’ – ‘Self-represented litigants’ – ‘Unacceptable risk and best interests’

Charges: Stalking or intimidation with intent to cause fear of physical or mental harm x 9; Knowingly contravene an apprehended violence order x 1; Using a carriage service in a manner that was menacing, harassing or offensive x 4.

Appeal type: An application pursuant to s 49 of the *Bail Act 2013 NSW* for release on bail pending the hearing of an appeal to the District Court against convictions recorded in, and sentences imposed by, the Local Court.

Facts: The applicant applied for release on bail pending the hearing of an appeal to the District Court against convictions recorded in, and sentences imposed by, the Local Court. The applicant was charged with nine offences of stalking or intimidation with intent to cause fear of physical or mental harm, one charge of knowingly contravening an apprehended violence order and four charges of using a carriage service in a manner that was menacing, harassing or offensive.

Issues: Whether bail should be ordered.

Decision and reasoning: Bail was refused as the Court was not satisfied that cause was established by the applicant. At the time of sentencing, the applicant was 49 years old. He also had health difficulties and family responsibilities. However, the Court noted that the evidence led by the prosecution, his prior criminal record and the Presiding Magistrate’s comments suggested that he was a substantial menace to the community. Evidence of the difficulties that the applicant was experiencing in custody was inadequate ([27]). His Honour nevertheless accepted that the applicant’s family was experiencing hardship as a result of his absence, and that he was experiencing some problems in custody. To the extent that the matters relevant to unacceptable risks can inform whether a show cause was established, the Court noted that there was not any proper bail proposal put forward to the Court which would alleviate the risks to the various persons who experienced the applicant’s behaviour in previous years.