

***Butler v The Queen* [2020] SASC 74 (16 April 2020) – South Australia Supreme Court**

‘Aboriginal and Torres Strait Islander people’ – ‘Application for review of bail’ – ‘Physical violence and harm’ – ‘Relevance of covid-19 pandemic to bail application’ – ‘Weapon-protection order’

Offences: Aggravated assault x 2, contravention of intervention order

Proceedings: Application for review of bail

Issue: Whether special circumstances exist for the granting of bail.

Facts: The appellant man was charged with aggravated assault against his female former partner on two separate occasions and contravention of an intervention order. The appellant punched the back of the victim’s head, struck her with a water bottle, and punched and kicked her in the head on several occasions. A Magistrate refused bail but the appellant sought a review of this decision, contending that special circumstances existed for the granting of bail, pursuant to s 10A Bail Act 1985 (SA).

Judgment: Kourakis CJ dismissed the appellant’s application for review of the bail decision, holding that no combination of the appellant’s circumstances was sufficient to constitute special circumstances indicating that he, as someone charged with assaulting a domestic partner in breach of an intervention order, should be admitted to bail [5]. His Honour did note the systematic and endemic disadvantage of Indigenous people [7] (particularly where they are imprisoned [8]) and the burden of being imprisoned during the COVID-19 pandemic with its attendant restrictions [9]. However, His Honour ultimately held that the presumption against bail applies to all bail (even home detention bail) [14] and the appellant failed to establish special circumstances. Furthermore, the appellant had breached bail orders and intervention orders in past and the charged offences were serious in themselves [4]. His Honour highlighted that "the underlying problem is not [the appellant’s] relationship with the victim ... but the alleged resort to violence in dealing with interpersonal conflict" [15]. His Honour did provide that a fresh review of the question of bail would arise, however, if it appeared in the future that a trial was a long way off or that the appellant’s mental health was deteriorating [17].