

AUSTRALIA / JUDGMENT

Galey-Newbury v R

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Court of Criminal Appeal Supreme Court New South Wales Medium Neutral Citation: Galey-Newbury v R [2026] NSWCCA 140 Hearing dates: 2 September 2026 Date of orders: 2 September 2026 Decision date: 02 September 2026 Before: Ward P at [1] Hamill J at [2] Fagan J at [17] Decision: Bail granted with conditions Catchwords: CRIMINAL APPEAL – release application – bail – where Court allows appeal on the day of hearing – re-trial ordered – power to grant bail – “show cause” offence – cause shown in not breaching bail in period of remand and period in custody since conviction set against length of non-parole period – bail concerns – whether risk mitigated by conditions – no unacceptable risks in the circumstances – bail granted Legislation Cited: Bail Act 2013 (NSW), ss 16B, 16B(1)(a), 17, 17(2)(a), 17(2)(b), 17(2)(d), 18, 19, 30, 67(1)(a) Crimes Act 1900 (NSW), s 61JA(1) Cases Cited: Barr (a pseudonym) v Director of Public Prosecutions (NSW) (2018) 97 NSWLR 246; [2018] NSWCA 47 Director of Public Prosecutions (NSW) v Brooks [2015] NSWCCA 190 Director of Public Prosecutions (NSW) v Tikomaimaleya [2015] NSWCA 83 Director of Public Prosecutions (NSW) v Tony Mawad [2015] NSWCCA 227 Moukhallaletti v Director of Public Prosecutions (NSW) [2016] NSWCCA 314 Paulley v R [2026] NSWCCA 75 Texts Cited: N/A Category: Principal judgment Parties: Caleb Galey-Newbury (Applicant) Rex (Respondent) Representation: Counsel: A Cook SC (Applicant) E Nicholson SC (Respondent) Solicitors: Peninsula Law (Applicant) Office of the Director of Public Prosecutions (NSW) (Respondent) File Number(s): 2026/00351142 Publication restriction: N/A EX TEMPORE JUDGMENT (REVISED) WARD P: I invite Hamill J to deliver the first judgment on the release application. HAMILL J: Caleb Galey-Newbury makes a release application pursuant to the provisions of the Bail Act 2013 (NSW). This Court, as presently constituted, has just made orders extending time to appeal against the conviction, granting leave to appeal, allowing the applicant’s appeal against his convictions in relation to four counts of what might be called “aggravated sexual intercourse without consent”, and ordering a re-trial. A co-accused, Jayden Paulley, successfully appealed against his conviction earlier this year: Paulley v R [2026] NSWCCA 75. Mr Paulley was granted conditional bail when the matter was returned to the District Court at Gosford and his re-trial has now been listed to commence on 2 August 2027. It is expected that the two men will again be tried jointly. This Court has power to entertain the release application pursuant to s 67(1)(a) of the Bail Act. The Director of Public Prosecutions does not oppose the grant of bail on the particular conditions proposed with some slight adjustments that were discussed in argument. A chronology relevant to the application is as follows: 21 November 2021 – the alleged offences were committed. 16 December 2021 – the applicant was charged by police, bail was refused and the applicant was remanded in custody. 28 January 2022 – the applicant was granted bail by the Local Court in Wyong. 19 September 2023 – the joint trial with Mr Paulley

commenced. 16 October 2023 – the jury returned verdicts of guilty, the Prosecutor’s detention application (which was not opposed) was granted and the accused was taken back into custody. 1 March 2024 – the applicant was sentenced to an aggregate term of imprisonment of 9 years with a non-parole period of 4½ years. The sentence was ordered to commence on 30 August 2023 and the non-parole period would have expired on 29 February 2028. 2 September 2026 (that is, today) – the conviction and sentence were quashed. Two things may be noted about that chronology. First, the applicant has spent a little less than three years in custody to this point. If he remained in custody until the trial, he will have been incarcerated for around four years. Those periods must be considered against the non-parole period of 4½ years imposed by the learned sentencing Judge. Secondly, the applicant was on conditional bail for 1 year, 8 months and 18 days before he was detained following the guilty verdicts. He attended his trial and, apart from speaking with Mr Paulley during the remand period, there is nothing to suggest that he otherwise breached bail during that period of conditional liberty. One of the offences with which the applicant is charged is an offence under s 61JA(1) of the Crimes Act 1900 (NSW). That is an offence carrying a maximum penalty of life imprisonment. For that reason, s 16B(1)(a) of the Bail Act requires the applicant to show cause why his detention is not justified. The content and operation of the “show cause” requirement has been considered in a large number of cases in this Court and in the Court of Appeal: see, for example, Barr (a pseudonym) v Director of Public Prosecutions (NSW) (2018) 97 NSWLR 246; [2018] NSWCA 47, Director of Public Prosecutions (NSW) v Tikomaimaleya [2015] NSWCA 83, Director of Public Prosecutions (NSW) v Tony Mawad [2015] NSWCCA 227, Director of Public Prosecutions (NSW) v Brooks [2015] NSWCCA 190 and Moukhallaletti v Director of Public Prosecutions (NSW) [2016] NSWCCA 314. It is unnecessary to revisit those statements of principle today. I am satisfied that the length of time the applicant has spent in custody to this point, the fact that he would have served around 85-90% of the non-parole period by the time the re-trial is held, and his almost complete compliance with conditional bail from January 2022 until October 2023 establishes that the applicant has shown cause why his detention is not justified. Having reached that conclusion, it is necessary to consider whether the release of the applicant to bail would create one of the “unacceptable risks” of the kinds referred to in ss 17 and 19 of the Bail Act. That question, which is separate from the show cause requirement, involves consideration of the exhaustive list of factors referred to in s 18. However, in the circumstances, it is not necessary to go through these comprehensively. According to the sentencing judgment, the applicant was 25 years old at the time of sentence and had only one previous conviction and that was for a drink driving offence (high range PCA). He has strong family support and well-established ties to the community. He has not previously been convicted of any sexual offence or other offence of violence. His near perfect performance on bail from about one month after his arrest to the time of his trial strongly supports the proposition that his release will not give rise to any unacceptable risk. Against that, the offences alleged against him are very serious and he faces a reasonably strong prosecution case. Further, as counsel for the respondent submitted and as mentioned earlier, there was some evidence at the trial (from Mr Paulley) that the applicant and Mr Paulley had spoken to one another during the remand period which was in breach of their respective bail undertakings. I accept the respondent’s submission that there are “bail concerns” under s 17(2), namely that (a) he may fail

to appear at his trial and (b) that he may commit further offences. I am prepared to accept there is also a bail concern under s 17(2)(d) that he will interfere with witnesses or with the evidence. That concern really arises from the conversations he is said to have had (on Mr Paulley's evidence) with Mr Paulley in advance of the trial. However, that is a very minor concern in circumstances where it is to be expected that the complainant's evidence will be placed before the jury in the form of recordings of her evidence at the first trial and where the two accused men gave evidence at that trial and are, in essence, locked into the versions of events that they provided to the jury at that trial. The proposed bail conditions are quite stringent and I am satisfied that those conditions ameliorate the bail concerns that exist in this case. Accordingly, and for the purpose of s 19, there are no "unacceptable risks" associated with the release of the applicant to conditional bail. Accordingly, I propose that the release application be granted and the applicant should have bail on the following conditions: To be of good behaviour. To appear at the Gosford District Court on Thursday 10 September 2026 and on such dates and at such places thereafter as directed. To live at [REDACTED]. To report to Wyong Police Station three times a week, namely on Monday, Wednesday and Friday between the hours of 06:00AM and 08:00PM. Not to enter the suburb of Terrigal NSW or the Erina Fair Shopping Centre. Not to enter any international airport or other point of departure from Australia. The applicant is to comply with a curfew: not to be absent from [REDACTED] between the hours of 10:00PM and 05:00AM unless: in the company of Erin CHAPMAN or Jacinta BOWYER; OR in the case of a medical emergency. Not to contact Jayden PAULLEY by any means unless that contact is through a lawyer. Not to approach or contact, by any means, any person he knows to be a prosecution witness (other than a serving police officer) unless that contact is through a lawyer. Not to drink alcohol. Not to take any illegal or prescription drugs (other than a drug prescribed to the applicant by a doctor). That 2 acceptable people, namely Jacinta BOWYER and Aria CHAPMAN enter into an agreement, to forfeit the sum of \$10,000 each if the accused fails to comply with the bail undertaking. On the application of the Prosecutor and pursuant to s 30 of the Bail Act, there will be two enforcement conditions: The applicant is to present himself at the front door of the address where the applicant is required to live at the direction of any police officer to confirm compliance with the curfew and drug and alcohol abstention conditions. Such a direction may only be given by a police officer who believes on reasonable grounds that it is necessary to do so, having regard to the rights of other occupants of the premises to peace and privacy, and may only be given two times in any seven-day period. The applicant is to undertake any non-invasive testing at the direction of any police officer to confirm compliance with the drug and alcohol abstention conditions. Such a direction may only be given by a police officer who believes on reasonable grounds that the applicant may have consumed drugs or alcohol in breach of his bail undertaking. Such a direction may only be given three times in any seven-day period. WARD P: I agree with the orders that Hamill J has proposed for the reasons his Honour has just given. FAGAN J: I also agree. WARD P: The orders of the Court will therefore be those as proposed by Hamill J.

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