

AUSTRALIA / JUDGMENT

R v Hooker (No 3) – Detention application

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Supreme Court

New South Wales

Medium Neutral Citation:

R v Hooker (No 3) – Detention application [2026] NSWSC 324

Hearing dates:

26 March 2026

Date of orders:

26 March 2026

Decision date:

26 March 2026

Jurisdiction:

Common Law - Criminal

Before:

Dhanji J

Decision:

Detention application is refused.

Catchwords:

DETENTION APPLICATION – Bail Act 2013 s 22B – limitation regarding bail during period following conviction and before sentencing – where offender found guilty of manslaughter following a jury trial – realistic inevitability of a full-time custodial sentence beyond time already served – short period in custody following arrest – where offender relies on stringent bail conditions as a form of quasi custody – where presiding judge was the trial judge and will be the sentencing judge – preference not to express view on inevitability of full-time custodial sentence – whether special and exceptional circumstances exist

Legislation Cited:

Bail Act 2013 (NSW), ss 22B, 50

Cases Cited:

Director of Public Prosecutions (NSW) v Van Gestel (2022) 109 NSWLR 136; [2022] NSWCCA 171

R v Blacklidge (Court of Criminal Appeal (NSW), 12 December 1995, unrep)

R v White [2024] NSWSC 1527

Category:

Principal judgment

Parties:

Rex (Crown)

Samantha Hooker (Offender)

Representation:

Counsel:

E Blizzard (Crown)

T Quilter SC (Offender)

Solicitors:

Solicitor for Public Prosecutions (NSW) (Crown)

Willcox Lawyers (Offender)

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EX TEMPORE JUDGMENT (revised)

HIS HONOUR: The Crown has made a detention application pursuant to s 50(1) of the Bail Act 2013 (NSW) (“the Act”) by which it seeks bail previously granted to Ms Hooker be revoked pending her sentencing for the offence of manslaughter. Given that Ms Hooker is to be sentenced for that offence, I will refer to her as either “Ms Hooker” or “the offender”. There is no issue that reasonable notice has been provided to Ms Hooker in accordance with s 50(5) of the Act.

The detention application arises in circumstances where on 19 March 2026, following her trial for murder, the offender was found guilty of the offence of manslaughter relating to the death of Peter Hooker. Sentence proceedings in relation to the offence are listed before me on 29 April 2026, I being the judge that presided over the trial.

The offender, while pleading not guilty to murder before the jury, did plead guilty to the alternative offence of manslaughter. That plea was not accepted by the Crown, resulting in the ensuing trial. The trial related to the events of 8 August 2023. On that day the offender drove her work vehicle directly at the deceased, striking him and, additionally, colliding with the corner of a residential dwelling proximate to where the deceased had been standing immediately before being hit with the car.

The deceased sustained serious injuries. The offender was that day charged with offences including an offence of causing grievous bodily harm with intent to murder. The deceased was taken to hospital and received emergency care. He was operated on and subsequently discharged. As a result of complications arising from his injuries, he died on 31 August 2023. As a result, the offender was charged with murder.

At her trial the offender sought a verdict of not guilty of murder, but accepted her guilt for manslaughter. The bases upon which she contended she should be found guilty of the lesser offence of manslaughter were that the Crown had not excluded her having acted in response to extreme provocation, or, that she had established that she was affected by a mental health impairment which substantially impaired her capacity to control her actions, to the extent that the appropriate verdict was manslaughter rather than murder, or both.

Clearly by their verdict the jury must have found at least one of the two partial defences applied. The evidence at trial relied on to found the partial defence of extreme provocation was that offender's act was provoked by the deceased having committed the offence of intimidation against her. The offence of intimidation was said to be a continuing offence over a period of time involving various separate acts including assault, sexual assault and harassment.

The substantial impairment relied upon was post-traumatic stress disorder or alternatively, an adjustment disorder involving depression and anxiety. Dr Ellis was called on behalf of the offender and Professor Greenberg was called on behalf of the Crown in relation to this issue. Dr Ellis favoured a diagnosis of post-traumatic stress disorder and was of the opinion that that condition did substantially impair the offender's capacity to control herself at the relevant time. Professor Greenberg did not dispute that the offender had a mental health impairment. He preferred a diagnosis of an adjustment disorder. He did not accept that that condition substantially impaired the offender's capacity to control herself or judge whether her actions were right or wrong, or to understand events. No doubt at sentence there will be argument as to which of the partial defences applied and the extent to which the offender was affected by the impairment which she suffered.

Given that the offender is to be sentenced for the offence of manslaughter, s 22B of the Act is relevant. It provides:

22B Limitation regarding bail during period following conviction and before sentencing for certain offences

- (1) During the period following conviction and before sentencing for an offence for which the accused person will be sentenced to imprisonment to be served by full-time detention, a court—
 - (a) on a release application made by the accused person—must not grant bail or dispense with bail, unless it is established that special or exceptional circumstances exist that justify the decision, or
 - (b) on a detention application made in relation to the accused person—must refuse bail, unless it is established that special or exceptional circumstances exist that justify a decision to grant bail or dispense with bail.
- (2) If the offence is a show cause offence, the requirement that the accused person establish that special or exceptional circumstances exist that justify a decision to grant bail or dispense with bail applies instead of the requirement that the accused person show cause why the accused person's detention is not justified.
- (3) Subject to subsection (1), Division 2 applies to a bail decision made by a court under this section.
- (4) This section applies despite anything to the contrary in this Act.
- (5) In this section—

conviction also includes a plea of guilty.

Note—

Conviction is defined in section 4(1) to include a finding of guilt.

It follows from the section that if the offender “will be sentenced to imprisonment to be served by full-time detention”, I must refuse bail “unless it is established that special or exceptional circumstances exist that justify a decision to grant bail”.

Clearly enough there are two, or at least potentially two, issues. Firstly, will the offender be sentenced to imprisonment to be served by full-time detention and if so, is it established on this application that special or exceptional circumstances exist.

In the event that s 22B does not result in a refusal of bail, the unacceptable risk test will apply. It is accepted by the Crown on this application that the offender does not present an unacceptable risk. The application consequently hinges exclusively on s 22B of the Act.

Turning to the first issue, some guidance is provided by the decision of the Court of Criminal Appeal in *Director of Public Prosecutions (NSW) v Van Gestel* (2022) 109 NSWLR 136; [2022] NSWCCA 171. The Court said at [43]-[44]:

“43 ... Some assistance as to the intended meaning of “will” is provided by its context, relevantly: the court as the bail authority is not the sentencing court, the court will not necessarily be apprised of all of the evidence at trial, the court will not have all of the materials that are to be relied upon by the parties on sentence, and the task of the court required by s 22B is not to conduct a pseudo or abridged sentencing hearing.

44 When regard is had to these contextual considerations, the use of the word “will” in the condition indicating future likelihood suggests what is realistically inevitable as distinct from what may happen or is likely to happen. That does not mean that “will” involves a state of absolute certainty. That cannot be correct since the task of the court as a bail authority is to make a forward-looking assessment of the future disposition of the sentence with respect to the convicted person based on materials which are unlikely to be complete.”

The prosecution submits that it is realistically inevitable that a sentence of full-time imprisonment will be imposed. Relevant to what might occur by way of punishment is what has occurred to date. As I have indicated, the offender was charged on 8 August 2023. She was bail refused on that date. She remained in custody until 11 December 2023, on which date the bail was granted subject to strict conditions. The period in detention was a total of 4 months and 4 days. The bail that was subsequently granted included a home detention condition. Exceptions to the requirement that the offender remain at the residence to which she was bailed allowed her to leave the premises when in the company of either Lisa Stone, who I understand to be the offender’s sister, or Madison Stone, who I understand to be the offender’s eldest daughter, but only for the limited purposes of reporting to police, attending legal conferences, attending Court or to obtain medical treatment or attend to pre-arranged medical appointments.

In other words, the offender was allowed out of the home only for those very limited purposes and then only whilst in the company of one of the two persons to whom I have referred. Additional conditions included a condition that the offender not communicate or contact any prosecution witness. A specific condition was included in relation to the offender’s son, [JS], who was a prosecution witness, explicitly prohibiting contact with him.

The bail conditions remained essentially the same, subject to changes in address and an expansion of the persons who could accompany the offender away from the home for one of the specified purposes. Given the limited purpose for which the offender could be away from the home, those variations did not, as a practical matter, relax the stringency of the bail. That is subject to one matter which is the variation made on 4 March 2026, on which date the condition prohibiting the offender from contacting [JS] was deleted, he having completed his evidence in the trial.

The offender relies on the period of time she has spent in custody together with the period of time she has been subject to those stringent conditions, submitting that the latter is a form of quasi custody in support of her argument that a full-time sentence of imprisonment beyond what she may get credit for is not inevitable.

Additionally, impacting on this application is the fact that manslaughter is a protean offence in that it can be committed in a wide range of circumstances leading the Court of Criminal Appeal to acknowledge that the range of degrees of culpability is so wide that it is not possible to point to any established tariff which can be applied to such cases; see *R v Blackledge* (Court of Criminal Appeal (NSW), 12 December 1995, unrep).

Inevitably the offender will rely on the absence of any relevant criminal record and anticipates a finding that she has excellent prospects of rehabilitation and is unlikely to reoffend.

The Crown accepts for the purposes of the detention application that these matters are all available to the applicant. Additionally, it is acknowledged that the evidence supporting both partial defences will have an impact. The Crown, however, points to the obvious seriousness of the offence. Clearly it is one that involves the death of another human being and in that regard amounts to an offence of great seriousness. Further, with respect to the offender's culpability in relation to that death, the Crown points to the voluntary act of the offender done with the intention to inflict at least grievous bodily harm. The Crown submits that even if one, for the purposes of this application, were to give the offender the benefit of favourable findings with respect to the various matters in issue, there is simply no avoiding the seriousness of an offence which involved a deliberate act with an intention to do really serious harm and which resulted in death.

The Crown pointed to statistics for sentences for manslaughter. Whilst such statistics are generally a blunt tool and perhaps even more so in the context of an offence such as manslaughter, it is, in my view, relevant to note that despite the wide range of circumstances in which the offence can be committed, across a reasonably substantial total of 171 cases, some 98.2 per cent of offenders received full-time sentences. Non-parole periods for those sentences ranged between 6 months and 16 years. Again, however, it might be noted that only 1.8 per cent received a non-parole period of less than 2 years. There is clearly force in the submissions made on behalf of the Crown.

On the other hand, Senior Counsel for the offender submitted that full-time custody beyond what has been served is not inevitable and anticipates developing that argument on the sentence hearing before me in April.

The resolution of the issue is, of course, hampered by the fact that this is not a sentence hearing, it is a bail hearing. The parties have appropriately approached it on that basis. There is, in this case, additionally a somewhat unusual feature in that I am the judge that heard the trial and will determine the sentence. It is plain on what has been said today that there will be a live issue between the parties as to whether the offender should receive a sentence which will require her to go back into custody. In these circumstances there is clearly a concern that any determination

I make today may give the appearance of pre-judgment of that live issue.

That concern was raised with the parties in the course of the hearing. Neither suggested that I should not hear the application. Indeed, it would be undesirable for the matter to proceed before a different judge, given that I am familiar with the facts, including the medical evidence relied on at trial in relation to the offender's mental health impairment. There is clearly, in those circumstances, a similar but differently based undesirability in another judge hearing the matter. The same concern was raised by Harrison CJ at CL in similar circumstances in *R v White* [2024] NSWSC 1527 at [14].

My own preference is not to express a view on the inevitability of a full-time custodial sentence to be imposed if it can be avoided. That may be the case if I am persuaded that the circumstances are "special or exceptional", as submitted on behalf of the offender. In the event that the circumstances are not special or exceptional, it seems to me that I must put aside such concerns as I hold and express my view as to the inevitability or otherwise of full-time imprisonment, noting that any such view would clearly not be binding on me at sentence, or indeed even influential.

"Special or exceptional" circumstances, despite the use of the disjunctive "or", is a compendious expression. Circumstances which are exceptional would ordinarily encompass and surpass those which are special. The presence of the word "exceptional" in the expression, however, has the result that the word "special" cannot be read on its own. That is, the circumstances must be "special or exceptional".

There are a number of factors which, alone and in combination, are relevant to the question of special or exceptional circumstances. Whether they ultimately meet that test is a question for evaluative judgment. Whether the existence of a live question between the parties as to the inevitability of full-time imprisonment being one which it is desirable to avoid is relevant to special or exceptional circumstances is a moot point. It was not argued and I will for present purposes put it to one side.

The first factor of relevance is that the sentencing hearing is set for 29 April 2026, which is just over one month away. I anticipate the determination of sentence will follow relatively soon after that date. The significance of that is that this is not a case where the offender will spend a substantial time enjoying her liberty prior to the determination of sentence. That is to say that even if the offender is to be sentenced to full-time imprisonment, she will not be, if she remains on bail, avoiding that punishment for any substantial period.

Further, in the case of the offender, the concept of "enjoying liberty" is perhaps not apt. If the application is refused, it is not submitted that she would be on other than the strict conditions which have been in place to date. Further, quite apart from the conditions, I would accept that this is a case where the proceedings have had an impact on the offender beyond what is ordinarily the case.

Relied on by the offender on the application is an affidavit of the solicitor, Mr Michael Large. Without going into detail, Mr Large set out various difficulties encountered in acting for and preparing for trial and during trial. Essentially the stress suffered by the offender significantly impacted her ability to emotionally regulate at various times.

I would accept, as pointed out by the Crown, that the evidence relates to times at which the offender was engaged in activities associated with the trial. Certainly, in terms of the occasions on which the offender collapsed and required medical attention, these appeared to be limited to the time immediately following her arraignment in this Court and two occasions in the course of the trial, including one where she was taken to hospital and a second where she declined the offer to be taken to hospital by the ambulance officers who attended.

While accepting that the evidence in that regard does not tell me precisely the extent to which the offender is coping or not coping whilst not directly dealing with the proceedings, I would accept, based on the evidence, that the offender is someone who, on balance, has been and will be more greatly affected by the impact of the proceedings on her emotional state than is ordinarily the case. In coming to that conclusion, I acknowledge that the criminal proceedings, and particularly criminal proceedings in relation to an offence as serious as this, will inevitably result in significant stress.

Significant to this finding is the contrast between the offender's presentation at trial compared with her presentation on 26 June 2023 when she was recorded by police following them having been called to her home in response to an assault by the deceased upon her. At that earlier time she presented as rational, organised and, despite the circumstances of the offence committed against her and the police being in her home, she presented as someone able to manage a difficult event, noting she only became emotional for a brief period, that response being entirely understandable in the circumstances.

Her presentation subsequent to the offence has been very different such that the respective psychiatrists had difficulty in completing their interviews with her, Professor Greenberg requiring three separate sessions in order to do so. Mr Large attested to the various techniques that have been employed to endeavour to maintain the offender's capacity to engage, such as the use of support persons and items such as stress balls and finger spinners.

That said, it must also be acknowledged, as submitted by the Crown, that the need for further engagement with psychiatrists is likely to be limited, given Dr Ellis's involvement to date. Further, such involvement, and indeed the involvement of the lawyers in conference with the offender, is unlikely to be focused on the events of 8 August 2023, that being a significant trigger for the offender's emotional dysregulation. That does, in my view, temper the significance of the concerns raised by the offender.

It is further relevant to observe that if bail is refused, the applicant will be in custody on remand. In those circumstances it is my understanding that she will either not be classified by Corrective Services or if classified, may not be at a gaol appropriate to her classification. In that regard, noting the offender's lack of prior history, it may be at least probable that any classification she does ultimately receive will be for a medium or lower security institution.

The Crown pointed to extracts from Justice Health records which indicated that the offender appeared to manage well in custody prior to her release on bail. Whilst the risk intervention team were involved in her care, I accept that the effect of the entries is supportive of the Crown's submission. That said, it is difficult to draw any conclusion as to how she would fare on remand in 2026, more than two years after her release to bail, particularly having regard to what I have seen as to the impact of the proceedings on her.

None of the various factors I have referred to are in and of themselves so out of the ordinary such as to be described as "special or exceptional". However, ultimately, when the various subjective considerations are considered in a context where the period for which the offender will be at liberty pending sentence is a very limited one, I am of the view that the combined circumstances tip the scale to the point where they can be properly regarded as special or exceptional. In those circumstances s 22B of the Act does not require bail to be refused.

As I have said, with respect to the unacceptable risk test, it is accepted that the offender does not present an unacceptable risk of failing to appear, committing a serious offence and endangering the community or interfering with witnesses or evidence. That being the case, the detention application is refused.

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