

AUSTRALIA / JUDGMENT

# R v Molnar

**[2026] NSWCCA 148****COURT**

Court of Criminal Appeal

**DECIDED**

23 September 2026

**BEFORE**

Mitchelmore JA; Dhanji J; Emmett J

**CASE / FILE NUMBER**

2025/00076768

Source: caselaw.nsw.gov.au · Research copy typeset by Esheria. Not court-issued or certified.

## Source record

**Court of Criminal Appeal**  
**Supreme Court**  
**New South Wales**

**Medium Neutral Citation:** R v Molnar [2026] NSWCCA 148**Hearing dates:** 16 September 2026**Date of orders:** 23 September 2026**Decision date:** 23 September 2026**Before:** Mitchelmore JA; Dhanji J; Emmett J

**Decision:** (1) Appeal allowed.  
(2) Quash the sentence imposed on 14 April 2026.  
(3) Pursuant to s 12(2) of the Criminal Appeal Act 1912 (NSW), remit the matter to the District Court of New South Wales for sentence.  
(4) Stand the proceedings into the General List at Gosford District Court on Thursday 1 October 2026 at 9.30am.

**Catchwords:** SENTENCING — Crown appeal — intensive correction order — federal offence — whether intensive correction order available sentencing option — where federal offence had a “corresponding case” under State law — where corresponding State offence was subject to a disentitling provision — error conceded — concession accepted  
SENTENCING — Crown appeal — inadequacy of sentence — manifest inadequacy — where material error resulted in imposition of a sentence not available at law  
SENTENCING — Crown appeal — power to remit matter for resentencing — appropriateness of remittal — matter remitted to sentencing court

|                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legislation Cited:       | Combatting Child Sexual Exploitation Legislation Amendment Act 2019 (Cth), Sch 3<br>Crimes Act 1900 (NSW), ss 91H, 91FA, 91FB<br>Crimes Act 1914 (Cth), ss 16BA, 17A, 20(1), 20AB<br>Crimes (Sentencing Procedure) Act 1999 (NSW), Pt 5, s 67<br>Crimes (Sentencing Procedure) Amendment Act 2022 (NSW), Sch 1<br>Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017 (NSW), Sch 1<br>Criminal Appeal Act 1912 (NSW), ss 5D, 6(3), 12(2)<br>Criminal Code (Cth), ss 474.22, 474.22A<br>Judiciary Act 1903 (Cth), s 78B                                                                                                                                                                                                                                                                                           |
| Cases Cited:             | CMB v Attorney-General for the State of New South Wales (2015) 256 CLR 346; [2015] HCA 9<br>Director of Public Prosecutions (NSW) v Burton [2020] NSWCCA 54<br>Farrugia v The King [2026] HCA 28<br>House v The King (1936) 55 CLR 499; [1936] HCA 40<br>Lambert v Weichelt (1954) 28 ALJ 282<br>Manojlovic v R; R v Manojlovic [2020] NSWCCA 315<br>O’Neil-Shaw v R [2010] NSWCCA 42<br>R v Delzotto [2022] NSWCCA 117; 298 A Crim R 483<br>R v Hernando [2002] NSWCCA 489; 136 A Crim R 451<br>R v Jacobs Group (Australia) Pty Ltd [2023] NSWCCA 280<br>R v Janceski [2005] NSWCCA 288; 44 MVR 328<br>R v Reynolds [2004] NSWCCA 51<br>Ravbar v Commonwealth [2025] HCA 25; 99 ALJR 1000<br>Vamadevan v R (2024) 116 NSWLR 195; [2024] NSWCCA 223<br>Wurridjal v The Commonwealth of Australia (2009) 237 CLR 309; [2009] HCA 2 |
| Texts Cited:             | Nil.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Category:                | Principal judgment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Parties:                 | Rex (appellant)<br>Dean Christopher Molnar (respondent)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Representation:          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Counsel:                 | K McCann / W Bruffey (appellant)<br>K Stares SC (respondent)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Solicitors:              | Director of Public Prosecutions (Cth) (appellant)<br>Ryan & Ryan Lawyers (respondent)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| File Number(s):          | 2025/00076768                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Publication restriction: | Nil.<br>Decision under appeal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Court or tribunal:       | District Court                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Jurisdiction:            | Criminal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Citation:                | Nil.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Date of Decision:        | 14 April 2026                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Before:                  | Bright DCJ                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

---

File Number(s): 2025/00076768

---

## JUDGMENT

THE COURT: This is a Crown appeal against the sentence imposed on the respondent, Dean Christopher Molnar, following his plea of guilty to one offence of possessing child abuse material obtained using a carriage service, contrary to s 474.22A(1) of the Criminal Code (Cth). On 14 April 2026, Bright DCJ sentenced the respondent to a term of imprisonment of 18 months, to be served by way of Intensive Correction Order (ICO). A further offence of accessing child abuse material using a carriage service, contrary to s 474.22(1) of the Criminal Code, was taken into account for the purposes of sentence pursuant to s 16BA of the Crimes Act 1914 (Cth).

The Crown advanced two grounds of appeal:

*“1. The sentencing judge erred in imposing an intensive correction order for the offence in circumstances where such a disposition was not an available sentencing option.*

2. The sentence imposed was manifestly inadequate.”

In the written submissions filed on his behalf, the respondent accepted that the sentencing judge erred in imposing an ICO. That concession was properly made, and the sentence must be quashed.

## The sentence imposed below

An Agreed Statement of Facts was tendered on sentence which set out in detail the facts on which the respondent was sentenced. In summary, the respondent lived with his parents in Toukley, New South Wales. In late February 2025, police executed a search warrant at his parents’ home. In the course of executing the warrant, police located three devices (two computers and a data storage device) which contained child abuse material in the form of (collectively) over 3,000 images, 100 videos and 120 written stories.

The material did not depict real children. It comprised illustrations, written stories, animations and Artificial Intelligence (AI) generated images which appeared to depict real children. The content depicted children, ranging in age from infancy to prepubescence, who were involved in penetrative and other degrading sexual activity with adults, other children and animals. Police also accessed an internet browser history which revealed that the respondent had accessed child abuse material.

The respondent said to police who were executing the search warrant that he came across the “artwork” while looking for pornography. He acknowledged that the material included “pretty young” teenagers but said that they were AI generated images, “made to look real”. He also said that he felt “shitty” whilst downloading and viewing the materials.

The respondent was arrested and charged on 26 February 2025. On 30 September 2025, he entered a plea of guilty to the offence in the Local Court at Wyong and was committed for sentence to the District Court at Gosford. The sentencing proceedings took place on 10 April 2026. It was not in dispute before the sentencing judge that the offence warranted a sentence of imprisonment. What was in dispute was the manner in which that sentence should be served. The respondent submitted that the sentence should be served by way of an ICO while the Crown contended that an ICO was not an available sentencing option for the offence.

In sentencing the respondent, the sentencing judge observed that the Agreed Statement of Facts disclosed serious objective criminality. Her Honour accepted that the material did not involve the use of real children but considered that it otherwise showed or described “depraved, graphic acts of child sexual assault”, and accepted that such material still contributed to a culture and industry which profits from the idea of sexual exploitation and objectification of children. Taking these matters into account, as well as the volume of material and the absence of evidence that the respondent was part of a collaborative network, her Honour assessed the objective seriousness of the offence as “below the middle of the range”.

Her Honour noted that general and specific deterrence were significant considerations, as was the need for adequate punishment of the respondent for his conduct. Her Honour acknowledged that the “gravamen of this offending is that it promotes abhorrent views about children and their role as victims in sexual assault offences and normalises such behaviour”.

The respondent did not give evidence on sentence. Letters were tendered on his behalf from his parents, his brother and his brother’s partner. A report of Lee Knight, Clinical Nurse Consultant, dated 19 June 2025, was also tendered.

The sentencing judge noted that, as reported by Mr Knight, the respondent had always lived with and been cared for by his parents. He reported having a “pretty good” relationship with his father before being charged, a “slightly worse” relationship with his mother, and a “generally okay” relationship with his brother although they had not spoken in recent years. He had never been a particularly social person and he had become increasingly introverted over time, having experienced difficulty forming friendships which was exacerbated in his teenage years by his gaming addiction as well as incidents of minor bullying. The respondent’s mental state deteriorated throughout high school and he did not achieve his higher school certificate. He had never had a serious adult relationship.

After leaving school, the respondent commenced a TAFE course which he did not complete. At the age of 20 years old, he was employed at Dymocks bookshop as a casual sales assistant, and worked there for 4 to 5 years before he became burned out and resigned. He had undertaken little, if any, paid employment since that time, and he started a number of online courses without completing any of them. He was fully reliant on his parents’ financial support.

The respondent reported having variously experienced low mood, anxiety, feeling overwhelmed, poor sleep, isolation, low appetite, neglect of dietary needs and chronic suicidal ideation. He had never engaged in mental health treatment. His general practitioner had prescribed a low dose

anti-depressant which he did not find helpful. He had been admitted to the Wyong Hospital Mental Health Unit as a voluntary patient on one occasion, following an altercation with his parents. After discharge, he was briefly followed up by Community Mental Health Services but found the support unhelpful.

The respondent reported a history of limited methamphetamine use, cannabis use and tobacco smoking. At the time of Mr Knight's report, he had ceased smoking and was abstaining from alcohol and cannabis.

The respondent considered himself to be addicted to pornography, reporting that he had started viewing anime pornography at around 18 years old when he began to find normative pornographic material "boring". He explained that anime pornography depicted females who were "a bit on the young side". He stated that he downloaded the material from mainstream websites, Google searches and Japanese pornographic websites, which generally contained the "more extreme" anime pornographic material. He admitted to spending time viewing discussion boards pertaining to pornography but denied engaging in online chat. He stated that he hoarded the material but did not necessarily view it.

The respondent conceded that he found the "fantasy" of child abuse material arousing but denied paedophilic sexual interests (although he endorsed arousal towards pubescent children). The respondent also admitted finding the "fantasy" of forced intercourse arousing but sought to clarify that he did not mean that he was interested in viewing "real" images or engaging in sexual assault himself. Despite the content of the offending material, the respondent denied being aroused by acts of bestiality. In respect of the AI generated images, the respondent stated that they were "meant as an artwork". While he accepted thinking that he "should not be looking" at material depicting younger girls, he claimed that he thought it was "a bit taboo but okay" because they were drawings and not real. Mr Knight reported that the respondent likened the AI generated materials to horror movies in that "not everyone" would like them because "everyone likes different things".

Mr Knight diagnosed the respondent with: (i) persistent depressive disorder, (ii) adjustment disorder, (iii) paedophilic disorder (non-exclusive type, attracted to females), (iv) specified paraphilic disorder, and (v) hebephilia (sexual attraction to pubescent children). He assessed the respondent as presenting an average risk of sexual recidivism, whilst also acknowledging that AI generated child abuse material was a new phenomenon and that the risk assessment literature was concerned with offenders who access actual images of children. Mr Knight considered that the respondent may benefit from sexual offence specific psychological treatment but noted that the respondent had not yet made a decision as to whether he wished to engage in such treatment.

The sentencing judge found that any view of the respondent's prospects of rehabilitation "must necessarily be guarded, given his limited insight in relation to the moral culpability with respect to the offending and limited motivation for engagement in rehabilitation". For the same reasons, her Honour was unable to find that he was unlikely to reoffend.

Her Honour accepted the diagnoses made by Mr Knight for the purpose of the sentencing proceedings and was satisfied that the respondent had suffered longstanding mental health issues and led a very isolated life. Her Honour considered that he would need “significant mental health treatment from health professionals in order to improve his prognosis going forward”, and that this would also be relevant to his risk of reoffending.

Her Honour was satisfied, pursuant to s 17A of the Crimes Act (Cth), that a sentence of imprisonment was the only appropriate sentence. The sentencing judge concluded that the appropriate starting term, having regard to the relevant factors, was two years’ imprisonment, with a 25% discount for the plea of guilty leaving a total term of 18 months’ imprisonment.

As to the manner in which the sentence was to be served, her Honour considered it was appropriate to impose an ICO, stating that “[t]he most important consideration ... is that the community will be much better protected if the offender is mandated by conditions of an [ICO] to attend mental health treatment”. The conditions of the ICO included a condition requiring the respondent to participate in treatment, abstain from alcohol and drugs, attend his general practitioner to obtain a mental health care plan, and undertake any counselling recommended pursuant to that plan.

### Ground 1 of the appeal: an ICO was not an available sentencing option

Section 20AB(1) of the Crimes Act (Cth) relevantly provides that a court of a participating State may pass a sentence to be served in respect of a federal offender if the court is empowered under the law of the State to pass such a sentence in respect of a State offender in corresponding cases: s 20AB(1)(b). The section applies to sentences imposed by way of an ICO: s 20AB(1AA)(ix). In *Vamadevan v R* (2024) 116 NSWLR 195; [2024] NSWCCA 223, the Court stated at [37]:

*“A court is ‘empowered’ to impose an intensive correction order on a NSW offender in corresponding cases when the specific provisions (including disentitling provisions) which limit the availability of an intensive correction order as a mode of disposition have been satisfied.”*

In New South Wales, the relevant State legislation is the Crimes (Sentencing Procedure) Act 1999 (NSW) (Sentencing Procedure Act), Pt 5 of which contains several “disentitling provisions” which operate to limit the circumstances in which an ICO may be imposed. Relevantly, s 67 provides:

Intensive correction order not available for certain offences

- (1) An intensive correction order must not be made in respect of a sentence of imprisonment for any of the following offences—

...

- (b) a prescribed sexual offence,

...

- (g) an offence that includes the commission of, or an intention to commit, an offence referred to in paragraphs (a)–(f),

...

- (2) For the purposes of this section—

...

prescribed sexual offence means—

...

- (b) an offence under section ... 91H of the Crimes Act 1900, or

...

- (e) an offence against section ... 474.22(1) ... of the Commonwealth Criminal Code, being an offence the victim of which was a person under the age of 16 years, or

...

The sentencing judge was imposing a sentence for an offence under s 474.22A(1) of the Criminal Code, which provides:

Possessing or controlling child abuse material obtained or accessed using a carriage service

- (1) A person commits an offence if:
- (a) the person has possession or control of the material; and
  - (b) the material is in the form of data held in a computer or contained in a data storage device; and
  - (c) the person used a carriage service to obtain or access the material; and
  - (d) the material is child abuse material.

Penalty: Imprisonment for 15 years.

As the sentencing judge noted, an offence against s 474.22A(1) does not appear in the list of Commonwealth offences in s 67(2)(e) of the Sentencing Procedure Act. Her Honour considered that “[o]ne would have expected” that the offence provision would have been included in that list if the New South Wales legislature had intended it to be subject to the disentitling provision in s 67(1)(b).

As the Crown pointed out in its written submissions on the appeal, the reason for the omission of s 474.22A from s 67(2)(e) was likely one of timing. Section 474.22A was inserted into Div 474 of the Criminal Code in 2019, whereas s 67 of the Sentencing Procedure Act was amended to its current form in 2017 (save for the inclusion of s 67(2)(h) in 2022). As to the former, see *Combating Child Sexual Exploitation Legislation Amendment Act 2019 (Cth)*, Sch 3 item 1; and as to the latter, see *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017 (NSW)*, Sch 1 item 29,

and the Crimes (Sentencing Procedure) Amendment Act 2022 (NSW), Sch 1 item 3.

In any event, as the Crown further submitted, the non-inclusion of s 474.22A in s 67(2)(e) did not preclude the operation of the disentitling provision in s 67(1)(g) of the Sentencing Procedure Act. The terms of that provision make clear that it was intended to capture offending conduct including but not limited to the conduct prescribed in s 67(1)(a)-(f). Pursuant to s 67(1)(g), where an offender is charged with a federal offence that “includes the commission of, or an intention to commit” any of the offences identified in s 67(1)(a)-(f), the sentencing court cannot impose an ICO. Whether a federal offence meets that description requires consideration of whether the commission of the federal offence necessarily includes either the commission of the elements of one of the offences identified in the other paragraphs of s 67(1), or an intention to do so.

Section 91H of the Crimes Act 1900 (NSW) is expressly identified in (b) of the definition of “prescribed sexual offence” in s 67(2) of the Sentencing Procedure Act and therefore attracts the operation of the disentitling provision in s 67(1)(b). Section 91H is titled “Production, dissemination or possession of child abuse material”, with “child abuse material” defined in s 91FB(1) to mean:

... material that depicts or describes, in a way that reasonable persons would regard as being, in all the circumstances, offensive—

- (a) a person who is, appears to be or is implied to be, a child as a victim of torture, cruelty or physical abuse, or
- (b) a person who is, appears to be or is implied to be, a child engaged in or apparently engaged in a sexual pose or sexual activity (whether or not in the presence of other persons), or
- (c) a person who is, appears to be or is implied to be, a child in the presence of another person who is engaged or apparently engaged in a sexual pose or sexual activity, or
- (d) the private parts of a person who is, appears to be or is implied to be, a child.

As at February 2025, when the respondent committed the offence, “child” was defined in s 91FA to mean a person under the age of 16 years. Section 91H relevantly provides:

91H Production, dissemination or possession of child abuse material

- (1) In this section—

...

possess child abuse material includes, in relation to material in the form of data, being in possession or control of data (within the meaning of section 308F(2)).

...

- (2) A person who produces, disseminates or possesses child abuse material is guilty of an offence.

Maximum penalty—imprisonment for 10 years.

Section 474.22A(1) of the Criminal Code is set out above at [24]. The respondent's offence contrary to that provision involved possessing material that depicted infant to prepubescent children on various devices which he had obtained by use of a carriage service. Having regard to the meaning of "possess" in s 91H(1) of the Crimes Act (NSW), the respondent's offending conduct also contravened s 91H(2). The disentitling provision in s 67(1)(g) of the Sentencing Procedure Act was thus satisfied and operated to preclude the availability of an ICO in respect of the respondent's offence contrary to s 474.22A(1) of the Criminal Code.

The Crown acknowledged that the argument as articulated above, which relied specifically on s 67(1)(g) of the Sentencing Procedure Act, was not advanced before the sentencing judge. However, the Crown did submit to her Honour that an ICO was not an available sentencing option in respect of s 474.22A(1) because it was not an available sentencing option in respect of a "corresponding case" within the meaning of s 20AB(1) of the Crimes Act (Cth). This argument was put on the basis that s 474.22A(1) of the Criminal Code and s 91H of the Crimes Act (NSW) shared the same elements, and that the commission of an offence contrary to s 474.22A(1) was committing the "same offence" as s 91H albeit with the additional element of using a carriage service. In circumstances where there was no power to make an ICO in respect of an offence under s 91H of the Crimes Act (NSW), as a corresponding case, the Crown submitted the sentencing judge could not impose an ICO for an offence contrary to s 474.22A(1) of the Criminal Code.

The respondent accepted the correctness of this submission, conceding that the principal offence for which he was sentenced contains elements that make up the s 91H(2) offence; and that the "corresponding case" requirement in s 20AB(1)(b) of the Crimes Act (Cth) was made out with respect to that State offence. The respondent's concession was correct. It follows that an ICO was not an available sentencing option for the s 474.22A(1) offence to which the respondent pleaded guilty. The sentencing judge erred in law in reaching the contrary conclusion.

The Court notes that the notice of appeal was accompanied by a notice pursuant to s 78B of the Judiciary Act 1903 (Cth), asserting that the proceedings raised a matter involving the Constitution. The matter said to be raised was the validity of s 67 of the Sentencing Procedure Act to the extent that it purports to apply directly to Commonwealth offences, with the Crown contending that the provision is, to that extent, beyond the legislative competence of the New South Wales Parliament. The path of reasoning to the conclusion on ground 1 did not require consideration of the issue, let alone its disposition. Consistently with authority to the effect that constitutional issues should only be addressed if it is necessary to do so (see eg *Ravbar v Commonwealth* [2025] HCA 25; 99 ALJR 1000 at [100] and *Wurridjal v The Commonwealth of Australia* (2009) 237 CLR 309; [2009] HCA 2 at [355], along with the cases cited in those paragraphs, going back to *Lambert v Weichelt* (1954) 28 ALJ 282 at 283), the Court has not addressed the issue raised in the Crown's s 78B notice.

## The residual discretion and relief

The Crown has established error on the basis of ground 1 of a nature within the scope of *House v The King* (1936) 55 CLR 499; [1936] HCA 40 at 504-505. Whether establishing error alone, in the absence of separately establishing manifest inadequacy, is a sufficient basis to allow a Crown appeal is, at least in the general case, contentious: see *Director of Public Prosecutions (NSW) v Burton* [2020] NSWCCA 54 (“Burton”) at [33] (Basten JA, Rothman J and Cavanagh J agreeing); cf *R v Reynolds* [2004] NSWCCA 51 per Simpson J at [26]; *R v Janceski* [2005] NSWCCA 288; 44 MVR 328 at [25]; *Manojlovic v R*; *R v Manojlovic* [2020] NSWCCA 315 at [225]-[246]. It is unnecessary to consider this issue in any detail. In the unusual circumstances of this case, where the respondent concedes the sentence cannot stand, it is appropriate to accept that the error established by ground 1 is a sufficient basis to allow the appeal.

In *Burton* at [33], Basten JA stated that the potential inadequacy of the sentence was “of course, a factor to be addressed both in resentencing and considering whether to resentence”. As to the latter, it is necessary for the Crown to “negate any reason why the residual discretion of the Court of Criminal Appeal not to interfere should be exercised”: *CMB v Attorney-General for the State of New South Wales* (2015) 256 CLR 346; [2015] HCA 9 at [34], quoting Heydon JA in *R v Hernando* [2002] NSWCCA 489; 136 A Crim R 451 at 458. However, the error of the sentencing judge in the present case resulted in the imposition of a sentence that was not available as a matter of law. In *R v Delzotto* [2022] NSWCCA 117; 298 A Crim R 483 at [5], Beech-Jones CJ at CL observed that a case in which the sentencing judge had failed to impose a mandatory minimum sentence may be “one of the rare cases where this Court would intervene without a finding of manifest inadequacy”. The present case, in which the sentence that has been imposed was not available at law, is in the same category. The respondent accepted as much, submitting that in circumstances where the imposition of an ICO was erroneous, the Court was required to resentence.

As to resentence, the Crown submitted that the Court would sentence the respondent to a term of imprisonment, for a period that was longer than the term of imprisonment the sentencing judge had ordered be served by way of ICO. The Crown submitted that the requirement of “exceptional circumstances” in s 20(1)(b)(iii) of the Crimes Act (Cth), which must be established as a precondition to immediate release upon giving security of the kind referred to in s 20(1)(a), was not satisfied in the present case.

The respondent, on the other hand, submitted that the exceptional circumstances requirement in s 20(1)(b)(iii) was satisfied. In support of that proposition, he relied upon two affidavits. The first affidavit was affirmed by him on 11 September 2026. The second affidavit, being an affidavit of the respondent’s solicitor, Robert Thomas Galton, was affirmed on the same date and annexed a number of documents. One of the annexed documents was titled “Initial Psychiatry Assessment (Telehealth)”, dated 30 June 2026, in which Dr Nikhil Jain made a provisional diagnosis of Bipolar Affective Disorder, Type II, noting a differential diagnosis of mixed anxiety and depressive disorder with Cluster B personality traits.

Mr Galton also annexed to his affidavit a “Psychological Assessment Report” dated 2 September 2026, prepared by Kaine Griffith, who had seen the respondent in 11 online psychology treatment sessions as at the date of the report. Mr Griffith expressed the opinion that based on the respondent’s self-reported history of mood states, there was tentative support for Dr Jain’s provisional diagnosis of Bipolar II Disorder, for which the respondent’s positive response to mood stabilising medication may represent supportive evidence. However, a further comprehensive assessment should “carefully consider the differential diagnoses of Attention-Deficit/Hyperactivity Disorder (ADHD) and Major Depressive Episode (MDE), or a presentation of co-morbid ADHD and Bipolar II disorder”. Mr Griffith otherwise noted that the respondent consistently showed effort and engagement in the sessions, and he was pleased with his treatment progress.

Mr Galton also annexed an email to him from the respondent’s supervising officer with Community Corrections, Amanda Rekunow, dated 10 September 2026. Ms Rekunow stated that in the course of the supervision interviews with the respondent, he had developed a high level of insight and accountability for his behaviour. Ms Rekunow also noted that the respondent had consistently complied with all supervision requirements, demonstrated a receptive attitude and “a strong willingness to engage in therapeutic interventions to address his offending and unresolved mental health issues”. Although a risk assessment conducted by a Corrective Services NSW Psychologist determined that the respondent required only a low level of supervision, it was agreed, following consultation with the psychologist, that he would benefit from a medium level of supervision for a period to monitor his mental health and engagement with external services. The respondent confirmed that he was willing to engage in supervision, mental health treatment, and any other therapeutic interventions “for as long as considered necessary”.

At the hearing of the appeal, the Court raised with the parties that an alternative to resentencing the respondent was to remit the matter to the sentencing judge for sentence, pursuant to s 12(2) of the Criminal Appeal Act 1912 (NSW). The doubts expressed about the availability of the power in s 12(2) in sentence appeals brought by offenders (see *Farrugia v The King* [2026] HCA 28 at [8], [62]-[64], [110]-[113], [187]-[191]) do not arise in relation to Crown appeals given the difference in language between ss 6(3) and 5D of the Criminal Appeal Act. Section 5D(1) relevantly confers on the Court the power to “in its discretion vary the sentence and impose such sentence as to the said court may seem proper”.

In *R v Jacobs Group (Australia) Pty Ltd* [2023] NSWCCA 280, Bell CJ (Walton J and Davies J agreeing) rejected the Crown’s submission that in order to remit a matter for resentencing, “there must be either some positive circumstance which would impede the ability of the Court of Criminal Appeal to conduct the re-sentencing exercise, or positive factors which render a trial court better suited to that task, such as the absence of critical findings of fact”: at [12]. His Honour stated that “there is no constraint on the ability of the Court of Criminal Appeal to remit a matter for resentencing by a trial court”: at [15]. His Honour considered that the text of the Criminal Appeal Act did not support characterising the Court’s power to resentence in s 5D as an obligation, nor did it support a construction of the power in that section as having primacy over

the power to remit pursuant to s 12(2). Construing s 5D as having primacy “would tend to ‘deny an applicant the right to effective appeal against sentence where the sentencing process has miscarried’”: at [15], quoting *O’Neil-Shaw v R* [2010] NSWCCA 42 at [30].

His Honour further stated:

*“[16] Section 12 has been described as conferring wide powers on the Court of Criminal Appeal: Betts v The Queen (2016) 258 CLR 420; [2016] HCA 25 at [15].*

- [17] Section 12(2) confers a broad, general discretion to remit a matter to a trial court and in doing so, to give directions subject to which a determination is to be made. The decision whether to remit is ‘very much case-dependent’ (*AW v The King* [2023] NSWCCA 92] at [66] per Mitchelmore JA) and the circumstances in which the power will be exercised ‘are varied and cannot be predicted in advance’: *Campbell v R* [2018] NSWCCA 87 at [72] per Hamill J.
- [18] In deciding whether to remit, this Court may have reference to the requirements of justice in the particular case as well as ordinary principles of case management. Adamson J (as her Honour then was) in *Watson v R* [2020] NSWCCA 215 (*Watson*) at [24] in deciding to remit a matter to the District Court for resentencing considered factors such as the fact that the Applicant was at liberty, the likelihood that there would be little delay, the extensive knowledge of the matter held by the District Court judge and the fact that resentencing in the Court of Criminal Appeal would substantially curtail the parties’ rights of appeal. Similarly, in *BQ v R* [2023] NSWCCA 34, the Court held that remittal for resentencing was the most ‘sensible and practical course’ and also gave weight to the fact that doing so would ‘preserve the usual appeal rights of both parties’: at [287]-[288].”

Without accepting that the matter should be remitted, the Crown did accept that remittal was available and may be appropriate in the present case given the nature of the error. The respondent submitted that remittal would be appropriate, particularly in light of the evidence that was now available, including as to his insight into his offending, his contrition, and his commitment to engagement with mental health treatment.

The present case is appropriate to remit for resentence pursuant to s 12(2) of the Criminal Appeal Act. In circumstances where the nature of the error found in the present case limited the availability of the residual discretion, both parties should have the opportunity of a sentence hearing and outcome in respect of which their appeal rights are preserved. A full hearing on resentence would also enable further and fuller exploration of the evolving nature of the respondent’s mental health diagnosis, his treatment and other progress. No submission was made that there would be any significant delay if the matter were remitted, noting that the respondent has been in the community whilst serving the unlawful ICO and has been fully compliant with the conditions of that order.

The matter should be remitted to the District Court at Gosford with a view to it being listed before Bright DCJ if considered practicable.

## Conclusion

The Court makes the following orders:

Appeal allowed.

Quash the sentence imposed on 14 April 2026.

Pursuant to s 12(2) of the Criminal Appeal Act 1912 (NSW), remit the matter to the District Court of New South Wales for sentence.

Stand the proceedings into the General List at Gosford District Court on Thursday 1 October 2026 at 9.30am.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated:

23 September 2026

---

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      <https://www.caselaw.nsw.gov.au/decision/1a0c0f2bedda88a4a3e79e7b>

**CASE PAGE**              <https://chat.esheria.ai/case-law/australia/r-v-molnar-2026>

Prepared on 27 October 2026 · Esheria