

AUSTRALIA / JUDGMENT

Solo v R

[2026] NSWCCA 130

COURT

Court of Criminal Appeal

DECIDED

02 September 2026

BEFORE

N Adams CJ at CL at [1];
Fagan J at [2];
Richardson J at [3]

CASE / FILE NUMBER

2024/226019

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Source record

Court of Criminal Appeal
Supreme Court
New South Wales

Medium Neutral Citation: Solo v R [2026] NSWCCA 130

Hearing dates: 20 July 2026

Date of orders: 02 September 2026

Decision date: 02 September 2026

Before: N Adams CJ at CL at [1];
Fagan J at [2];
Richardson J at [3]

Decision: (1) Grant leave to appeal.
(2) Dismiss the appeal.

Catchwords: CRIME — appeals — appeal against sentence — parity principle — parity between sentences of applicant and co-offender — where applicant and co-offenders pleaded guilty and sentenced on basis of participation in joint criminal enterprise — where Form 1 matter taken into account on sentence of co-offender — significant differences in subjective cases — whether justifiable sense of grievance

Legislation Cited: Child Protection (Offenders Registration) Act 2000 (NSW)
Crimes (Sentencing Procedure) Act 1999 (NSW), ss 21A(2), 21A(3), 22
Crimes Act 1900 (NSW), ss 35(1), 35(4)
Criminal Appeal Act 1912 (NSW), s 5(1)(c)

Cases Cited:	Bugmy v The Queen (2013) 249 CLR 571; [2013] HCA 37 Chamon v R [2020] NSWCCA 112 DS v R [2014] NSWCCA 267 Huckstadt v R [2016] NSWCCA 22 Hung v R [2023] NSWCCA 172 Mohr v R (2024) 390 FLR 293; [2024] NSWCCA 197 Ooi v R [2023] NSWCCA 97 Postiglione v The Queen (1997) 189 CLR 295; [1997] HCA 26 R v JW (2010) 77 NSWLR 7; [2010] NSWCCA 49 R v Wright [2009] NSWCCA 3 Tuivaga v R [2015] NSWCCA 145 Vujinovic v R [2024] NSWCCA 10 YA v R [2026] NSWCCA 38
Category:	Principal judgment
Parties:	Frederick Solo (Applicant) Rex (Respondent)
Representation:	
Counsel:	D Petrushnko (Applicant) M Knowles (Respondent)
Solicitors:	Traffic Lawyer Sydney Pty Ltd (Applicant) C Hyland, Solicitor of Public Prosecutions NSW (Respondent)
File Number(s):	2024/226019
Publication restriction:	Nil Decision under appeal
Court or tribunal:	New South Wales District Court
Jurisdiction:	Criminal
Date of Decision:	13 November 2025
Before:	Beckett DCJ
File Number(s):	2024/226019 HEADNOTE [This headnote is not to be read as part of the judgment] The applicant sought leave to appeal under s 5(1)(c) of the Criminal Appeal Act 1912 (NSW) against the sentence imposed on him in the District Court for one count of recklessly cause grievous bodily harm in company contrary to s 35(1) of the Crimes Act 1900 (NSW). The applicant pleaded guilty in the District Court and was sentenced on the basis of his participation in a joint criminal enterprise with two co-offenders, Alexen Lyzwa and Maurice Trindall (Trindall). After a discount of 15% for his guilty plea during the plea resolution callover, the sentence imposed on the applicant was 3 years 2 months’ imprisonment with a non-parole period of 1 year 10 months. The single ground of appeal was that the applicant suffered a justifiable sense of grievance when comparing the sentence imposed upon him with the sentence imposed upon Trindall, who also pleaded guilty and received a lesser sentence of 2 years 4 months’ imprisonment with a non-parole period of 1 year 2 months. The Court (Richardson J, N Adams CJ at CL and Fagan J agreeing) held, granting leave

to appeal but dismissing the appeal:

In determining the parity ground on appeal, a simple comparison of the 10-month difference in head sentence is not the correct approach; the role of the Court is to analyse the differences in criminality and subjective circumstances to determine whether the proportion between the sentences leaves the applicant with a justifiable sense of grievance: [69]-[70] (Richardson J, N Adams CJ at CL at [1] and Fagan J at [2] agreeing).

Mohr v R (2024) 390 FLR 293; [2024] NSWCCA 197; Postiglione v The Queen (1997) 189 CLR 295; [1997] HCA 26 applied.

A party to a joint criminal enterprise will be sentenced for the full range of the criminal acts done by any of the parties to the joint enterprise in carrying it out. Thus, the difference between the degree of criminality between the applicant and Trindall was not as significant as the applicant submitted. Further, the existence of a Form 1 matter taken into account on Trindall's sentencing does not inevitably lead to a conclusion of marked disparity between the sentences of Trindall and the applicant: [74]-[76] (Richardson J, N Adams CJ at CL at [1] and Fagan J at [2] agreeing).

R v JW (2010) 77 NSWLR 7; [2010] NSWCCA 49; R v Wright [2009] NSWCCA applied. Criminal history, breaches of conditional liberty and parole, unsatisfactory responses to supervision, "sparse" evidence of remorse, risk of reoffending, and prospects of rehabilitation were all subjective matters the sentencing judge took into account, correctly. In light of those matters, the applicant had a considerably less favourable subjective case than Trindall and the sentencing judge was entitled to proceed on that basis: [79]-[85], [91] (Richardson J, N Adams CJ at CL at [1] and Fagan J at [2] agreeing).

The sentencing judge was in a position to consider the interrelationship between the objective and subjective features of the applicant and Trindall in an "overarching way" and her Honour did so in carefully considering the question of parity. The discrepancy between the sentences of the applicant and Trindall is reasonably explained by the degree of difference between the applicant and Trindall and the disparity is neither marked nor unjustified: [90], [92] (Richardson J, N Adams CJ at CL at [1] and Fagan J at [2] agreeing).

YA v R [2026] NSWCCA 38; Ooi v R [2023] NSWCCA 97; Vujinovic v R [2024] NSWCCA 10; DS v R [2014] NSWCCA 267; Hung v R [2023] NSWCCA 172; Mohr v R (2024) 390 FLR 293; [2024] NSWCCA 197 applied.

JUDGMENT

N ADAMS CJ at CL: I agree with Richardson J.

FAGAN J: I agree with Richardson J.

RICHARDSON J: The applicant seeks leave to appeal under s 5(1)(c) of the Criminal Appeal Act 1912 (NSW) against the sentence imposed on him in the District Court by her Honour Judge Beckett on 13 November 2025.

The applicant was sentenced after his plea of guilty to one count of recklessly cause grievous bodily harm in company contrary to s 35(1) of the Crimes Act 1900 (NSW).

The applicant's co-offenders were Alexen Lyzwa (Lyzwa) and Maurice Trindall (Trindall). Lyzwa pleaded guilty to the same offence, as did Trindall. However, in respect of Trindall, there was a Form 1 filed pursuant to s 32 of the Crimes (Sentencing Procedure) Act 1999 (NSW) attached to the offence, involving a charge of reckless wounding pursuant to s 35(4) of the Crimes Act.

The maximum penalty for an offence under s 35(1) of the Crimes Act is 14 years imprisonment with a standard non-parole period of five years.

Sentence proceedings relating to the applicant and his two co-offenders took place on 7 November 2025 before Beckett DCJ.

The applicant was sentenced for the offence on the basis of his participation in a joint criminal enterprise with his two co-offenders.

There is a single ground of appeal; namely, that the applicant suffers a justifiable sense of grievance when comparing the sentence imposed upon him with the sentence imposed upon his co-offender, Trindall.

For the reasons set out below, the applicant has not established that ground. In short, the sentencing judge carefully considered the question of parity. In my view, the discrepancy between sentences is reasonably explained by the degree of difference in the subjective cases as between the applicant and Trindall and, as such, the disparity is neither marked nor unjustified.

Circumstances of the offending

The Joint Statement of Agreed Facts (Agreed Facts) tendered at the sentencing hearing described the offending conduct. That is set out in her Honour's reasons for sentence at pp 2-10. A summary of that offending is as follows.

At about 7pm on 25 April 2024, the victim, Christopher Barker (the victim), attended Bidwill Hotel for Anzac Day celebrations with his cousin, Marcus Barker and another person. The three offenders, Trindall, Lyzwa and the applicant also attended the hotel that evening.

Later in the evening, Marcus Barker was standing outside the hotel with his friend, when the three offenders left the hotel. As the three offenders went towards an Uber vehicle, there was some form of verbal argument, primarily between Marcus Barker and Lyzwa. At that time, both Lyzwa and the applicant were standing next to the Uber whilst Trindall was already in the rear of the car.

Shortly thereafter, the victim exited the hotel. He walked towards Marcus Barker and Lyzwa who were still engaged in the verbal argument.

Lyzwa then moved away and got into the front passenger seat of the Uber with the door left open. Marcus Barker then put his arm inside the car and grabbed Lyzwa by his crossbody bag and attempted to pull him out. A security guard intervened, grabbing Marcus Barker and guiding him away from the Uber. At this point, Trindall and Lyzwa both got out of the car and stood near the applicant who remained standing between Lyzwa and Marcus Barker.

The victim then put his arm around Marcus Barker and guided him away from the altercation. The security guard and another employee of Bidwill Hotel stood between the two groups and told the three offenders to get back into the car and leave. Each of the offenders then re-entered the Uber and it left the hotel.

Marcus Barker, the victim and their friend left the hotel on foot. Shortly afterwards, Marcus Barker was crossing the road where the Uber was driving. He waved at the Uber to stop. Lyzwa directed the Uber driver to stop.

The three offenders then got out of the Uber and walked towards the victim and Marcus Barker. Trindall immediately punched Marcus Barker. The victim moved forward with his arms raised towards Trindall. The applicant then ran towards the victim who again lunged towards and punched Trindall.

The victim was then pushed backwards and the applicant shoved him to the ground. The three offenders then continued fighting with Marcus Barker and moved to the other side of the road. The applicant did not further engage with the victim (Agreed Facts at [18]).

The victim stood up from the ground but immediately stumbled and fell backwards onto the nearby kerb. He then stood up and walked towards the group who were on the other side of the road fighting Marcus Barker. The victim was pushed over again, causing him to fall onto the kerb.

Each of the males started fighting and punching each other on the road (Agreed Facts at [20]). (I interpolate in this respect that the sentencing judge sentenced the applicant on the basis that he was involved in the “general fighting” at this point. That does not appear to be inconsistent with the agreed fact set out at [19] above that the applicant did “not further engage with the victim” after shoving him to the ground. In any event, there was no challenge to her Honour’s reasoning in this respect.)

The victim was then kicked by the males when he was lying on the road, and his head was stomped on at one stage. The offender Lyzwa was one of those males. The applicant pulled one of the co-offenders away from the fight.

A witness approached the victim as he lay on the ground and held his head. He was bleeding, his face was swollen, blood was pouring from his ear and he was making “weird noises”.

Another witness, Donna Stanley, approached the victim and saw that he was unconscious and began to yell for an ambulance. She was on her knees at that point next to the victim. Ms Stanley’s partner then came over and pushed Lyzwa away from the victim. Ms Stanley attempted to stop the fight. She threw a glass bottle at Trindall. Trindall dodged the bottle and it landed near him.

He then picked up the bottle and threw it from about five metres away, striking Ms Stanley on her face, near her right eye area. (This is the matter on the Form 1 relating to Trindall). Two females then pulled Ms Stanley away.

At that point, Trindall left in a car. Police and then ambulance services arrived at the scene.

Ms Stanley was taken to Mount Druitt Emergency Department. She had sustained multiple small lacerations to the side of her forehead near her right eyebrow and eyelid.

The victim appeared to be unconscious and was taken to Westmead Hospital. On arrival, he was found to have a reduced Glasgow Coma Scale and the following injuries recorded: occipital scalp laceration as well as an abrasion on his back around the cervical spine; bilateral sub-frontal haemorrhagic cortical contusion with subarachnoid blood; thin subdural haematoma layering over the frontotemporal convexity with a second subdural haematoma over the right anterior fossa extending over the temporal lobe; fracture to the squamous portion of the left temporal bone; fracture through the left tegmen mastoideum; and a fracture through the roof of the right orbit. He was later found to have conductive hearing loss in his left ear due to the abrasion of the floor of the external ear canal. He spent nine days in hospital.

Comparison of the objective seriousness

The sentencing judge observed as follows in relation to the physical acts of Trindall during the offending:

“As to Trindall, additional to the observations I have just referred to, he was the first of the co-offenders to throw a punch at Marcus Barker which led to the victim Barker raising his arms as he came towards him. Trindall was punched by the victim following his punch to Marcus Barker. Trindall is identified as being involved in continuing the fight with Marcus Barker which involved the victim Barker.

As to the facts concerning the matter on the Form offence concerning Ms Stanley, she was involved in trying to assist the victim Barker who by that point was unconscious on the ground. She had also been involved in attempting to stop the fight between the victim, Trindall and Lyzwa. Ms Stanley, from the position of giving assistance, was the one to throw the bottle at Trindall. He had dodged the bottle, picked it up and then thrown it five metres, which is what struck her to the face near the right eye.

Trindall also cooperated with police to the extent that he attended Mount Druitt Police Station voluntarily.”

Her Honour observed as follows in relation to the physical acts of the applicant during the offending:

“As to Solo, additional to the observations made above, Solo ran towards the victim Barker after Marcus Barker had been punched by Trindall and victim Barker was moving towards Trindall. Solo shoved the victim Barker after he had punched Trindall. Solo was included amongst those involved in the general fighting, although he stated at one point that it was the last involvement that he had before the victim was on the ground. Solo was responsible for pulling one of the co-offenders away from the fight after the victim Barker had been kicked to his body and to his head.

As to all three, it is not known who ‘stomped’ on the victim. The offenders are all to be sentenced as part of a joint criminal enterprise with their role being ascertained from the combination of factors that I have just identified.”

Her Honour concluded that:

“As between the offenders, the more active role was, I find, played by Trindall and Lyzwa with [the applicant] as the least actively involved. I consider that the offending falls at about the middle of the range for offences of this type, however, in respect of [the applicant], I find that his reduced role lowers the objective criminality as concerns him to just below the middle of the range”.

There is no appeal in respect of the finding that the applicant’s objective criminality was “just below the middle of the range” (as compared to Trindall and Lyzwa falling “at about the middle of the range”).

In respect of the matter on the Form 1 relating to Trindall, her Honour found that there was a degree of provocation by Ms Stanley throwing the bottle at him first, although her actions were found to have been carried out in a defensive and not offensive manner. Her Honour found that the throwing of the bottle by him could not necessarily be guaranteed to strike in the exact position it did and, after noting the element of recklessness inherent in the offence, found that the offending was below mid-range.

Subjective circumstances

In relation to the applicant

The sentencing judge found, in summary, as follows in relation to the applicant.

Her Honour took into account “that the offender is 26 years of age and was 25 at the time of the offending”.

Her Honour found as follows in relation to aggravating factors under s 21A(2) of the Crimes (Sentencing Procedure) Act 1999 (NSW):

The applicant’s criminal history included convictions for a robbery in 2017 and a sexual assault “at some point close to then”, however he had no like offences on his record. It was a record that did not entitle him to leniency. Her Honour compared it to Lyzwa, in respect of whom she concluded an underlying propensity for violent crimes was more apparent. As with the other two offenders, little weight was given to misconduct occurring in custody.

The applicant was on conditional liberty at the time of the offence, both on parole and under a community correction order. His breach of parole report indicated an unsatisfactory response to supervision, with multiple failures and non-compliance, including as to the reoffending comprised by the subject offence. Further, the subject offence took place three weeks after he had been released to parole.

I observe as follows in relation to her Honour's reference to the applicant's criminal history including a sexual assault that occurred "at some point close to" the robbery that had occurred in 2017. The underlying records show that the robbery offence occurred on 3 May 2017 and the sexual assault offence occurred on 20-21 May 2016 (when he was 17 years and 3 months old). At the hearing in this Court, the applicant wished to bring to the Court's attention that the timing of the sexual assault was not in fact "close to" the timing of the robbery, because it had occurred one year earlier when he was not an adult. At the time of his arrest for the sexual assault offence on 31 July 2019, he was an adult and, at sentencing, he was dealt with for that offending as an adult. I set these matters out given the applicant's personal intervention at the hearing to bring them to the Court's attention. However, there was no allegation that the sentencing judge's discretion erred by reference to the fact that she described the sexual assault offence as having occurred "close to" the 2017 robbery, nor in my view would there be a basis for such a contention, given her Honour's reasons read as a whole.

Separately, I observe that the applicant was also convicted on 14 April 2023 for aggravated break and enter dwelling in company for which he was on parole until 9 May 2024. This matter was not referred to by the sentencing judge. However, I observe that it involves an additional instance of criminal offending and an additional basis upon which his liberty was conditional on 25 April 2024 when the reckless grievous bodily harm offence was committed.

As to Crimes (Sentencing Procedure) Act, s 21A(3) mitigating factors, the sentencing judge found as follows in relation to the applicant.

First, as with the other two offenders, a total discount of 15% was applied (being 10% for his plea of guilty and an additional 5% pursuant to s 22A Crimes (Sentencing Procedure) Act for entering the plea during the plea resolution callover).

Second, her Honour noted the report of a psychologist tendered by the applicant which included opinions that he demonstrated reflective insight and had expressed regret as to the victim's injuries. The psychologist considered his remorse to be genuine and indicated her view that his developing insight was favourable and that he was willing to engage in therapy which reduced his risk of reoffending. However, her Honour observed that it appeared that the psychologist did not have access to the breach of parole report which set out the extent of his failures to engage with treatment and supervision during the period of his last parole.

Her Honour then went on to hold that:

“[d]espite the comments of the psychologist, I am unable to make the finding that the offender is unlikely to [re]offend, nor that his capacity for rehabilitation is good, given his record, his breach of conditional liberty and the sentencing assessment report risk rating.”

Third, her Honour accepted that the applicant had “positives” in his favour:

“Firstly, he was the least actively involved in the incident of the three offenders which, to a degree, supports the observation that violence is not typical for this offender. I also accept that he has a positive relationship and is focused on the responsibility of fatherhood, with some expressions of insight indicated to the psychologist.”

Fourth, her Honour concluded that, given the fact that the subject offence took place when the applicant was subject to various forms of conditional liberty, she could not find that his prospects of rehabilitation overall are “good”.

Fifth, her Honour found that the evidence of remorse was “sparse” but noted she had taken into account the fact that he had some insight into the offending.

Sixth, her Honour found that the Bugmy factors were engaged (referring to *Bugmy v The Queen* (2013) 249 CLR 571; [2013] HCA 37), calling for a commensurate reduction of moral culpability and the role to be played by general deterrence. This was based on the absence of his father, his exposure to civil war, his experience as a refugee, his exposure to domestic violence in the home and to child sexual assault.

There is no challenge to any of the above findings in relation to the applicant’s subjective circumstances.

In relation to Trindall

The sentencing judge found as follows in relation to Trindall and aggravating factors under s 21A(2) of the Crimes (Sentencing Procedure) Act. Trindall had a limited criminal history, with no history of convictions in relation to matters of violence as an adult. His record was limited to dishonesty, a break and enter, driving offences, and a single possess prohibited drug conviction. He had never been sentenced to a term of imprisonment. Her Honour concluded that his record, “is not one that disentitles him to some leniency”.

As to mitigating factors under s 21A(3) of the Crimes (Sentencing Procedure) Act, her Honour found as follows in relation to Trindall.

First, as with the other two offenders, a total discount of 15% was applied.

Second, her Honour accepted that Trindall was sorry for his conduct, both as to the injuries inflicted upon another Indigenous male and to the hardship he had inflicted on his own family.

Third, her Honour found that Trindall had reasonable prospects of rehabilitation, given his lack of any history of criminal conduct of a like nature and his motivation for his immediate family and his professional ambitions.

Fourth, her Honour found that Trindall's capacity for rehabilitation is "good", assuming he participates in programs he had indicated he would. However, her Honour was unable to say that he was not likely to reoffend, unless he addresses issues with alcohol and cocaine and overcomes his difficulty talking about his problems.

Fifth, her Honour placed some emphasis on the youth of Trindall, observing:

"Additionally, in relation to [Trindall], I take into account that, of all the three offenders, he is the youngest at 23. When sentencing a young person, generally the younger the offender the lesser role that general deterrence has to play and the greater role for rehabilitation in the application of principles in the sentence exercise, noting that particularly men of younger years are accepted to have still a developing maturity and to act impulsively at times. Of course, the diminished role of general deterrence and the increased role of rehabilitation are tempered the further one moves away from childhood and through adulthood."

Sixth, her Honour found that the Bugmy factors were engaged, calling for a commensurate reduction of moral culpability and a reduced role for the principles of general deterrence on sentence.

Sentencing judge's consideration of parity

In relation to the question of parity, the sentencing judge commenced the analysis by stating as follows:

"Parity must be determined by having regard to the circumstances of the co-offenders and their respective degrees of culpability for their offending. In this case, the parity exercise is complicated by not only the different roles in the joint criminal enterprise, but the difference in their subjective cases and the differences between their sentencing structures."

In terms of the matters informing the parity exercise, her Honour referred to the following.

As to the roles played within the joint criminal enterprise, both Trindall and Lyzwa fell at around the same level of objective seriousness. The applicant was the least involved in the joint criminal enterprise.

Both Lyzwa and the applicant were on conditional liberty.

Lyzwa had a significant record of violence.

Lyzwa and Trindall were able to satisfy her Honour as to remorse whereas, in respect of the applicant, her Honour was not so satisfied.

Trindall was able to establish good prospects of rehabilitation, remorse and has the benefit of being more youthful.

All offenders attracted the principles set out in Bugmy.

All offenders were entitled to the same discount for their plea.

In relation to the Form 1 offence for Trindall, her Honour took into account the fact that the offending in the subject offence and in matter on the Form 1 occurred at the same time and had a similar motivation, being effectively part of the same melee, although it involved a separate victim. Her Honour took into consideration the similarity, differences and degree of connection between the offending, both as to time and type and observed that the penalty for the subject offence must be increased by an extent to reflect these differences and additional criminality.

The sentences imposed by her Honour were as follows:

Offender

Offence

Maximum Penalty

Sentence (after a 15% discount for each offender)

Applicant

Reckless wounding in company

s 35(1) Crimes Act 1900

Victim: Christopher Barker

14 years

SNPP 5 years

3 years 2 months

NPP 1 year 10 months

Trindall

Reckless wounding in company

(s 35(1) Crimes Act 1900)

Victim: Christopher Barker

With an offence of Reckless Wounding

(s 35(4) Crimes Act 1900) taken into account on a Form 1 (Maximum Penalty 7 years imprisonment, SNPP 3 years)

Victim: Donna Stanley

14 years

SNPP 5 years

2 years 4 months

NPP 1 year 2 months

Lyzwa

Reckless wounding in company

(s 35(1) Crimes Act 1900)

Victim: Christopher Barker

14 years

SNPP 5 years

3 years 6 months

NPP 2 years

The commencement date set for Lyzwa's sentence was the date of his arrest, being 22 May 2024.

As to Trindall, the commencement date set for his sentence was 2 October 2024. That reflected the 249 days he had spent in custody between 3 June 2024 and 6 February 2025 and the fact that he had been back in custody since 8 June 2025.

As to the applicant, the commencement date set for his sentence was 10 August 2025. That issue involved some complexity, which is discussed at [62]-[67] below.

Backdating of the applicant's sentence

In setting the commencement date for the applicant's sentence as 10 August 2025, her Honour considered the following matters.

The applicant was arrested for the subject offence on 19 June 2024 and remained in custody until 4 December 2024. During this period, he served a period of 3 months for breach of a community corrections order (CCO) (being between 19 June 2024 to 18 September 2024). During this time, his parole was also revoked for the offence he had been on parole for at the time of the subject offence, namely damage by fire. The applicant served out the balance of the sentence for which he had been on parole (being between 19 June 2024 and 28 November 2024) concurrently with the 3 months imposed for breach of the CCO. As a result, when the applicant was granted bail in respect of the subject offence on 4 December 2024, he had only spent 7 days in custody by reason of being bail refused for the subject offence.

The applicant then returned to custody on 18 August 2025 in respect of breaches of bail, for which he received 2 months imprisonment (from 18 August 2025 to 17 October 2025). The applicant also served a period of 2 months imprisonment during that same time for a further offence in a dishonesty matter (i.e. also from 18 August 2025 to 17 October 2025).

The Crown submitted that the applicant should only receive a backdating of 7 days to reflect the period served solely in respect of the time he was bail refused for the subject offence, which would equate to a commencement date of 10 October 2025. Her Honour rejected that approach, reasoning as follows.

First, her Honour took into account the fact that one of the significant reasons for the breach of parole was the commission of the subject offence, and so allowed “an additional two months’ credit, noting he served a three-month sentence during the period of the revocation of the parole”. Second, her Honour took into account the fact that she had “aggravated the [applicant’s] sentence on the basis of his having been on conditional liberty...”.

Her Honour then concluded that, in all of the circumstances, the applicant’s sentence ought to commence earlier, on 10 August 2025. That amounted to a backdating of 3 months and 3 days from the date that her Honour passed sentence.

Consideration

I gratefully adopt the distillation of sentencing principles pertaining to parity as set out in the recent decision of *YA v R* [2026] NSWCCA 38 (N Adams CJ at CL, Rigg and Coleman JJ agreeing):

*“[175] The sentencing principles pertaining to what has become known as the ‘parity principle’ are well established. They have been considered by the High Court in *Lowe v R* (1984) 154 CLR 606; [1984] HCA 46, *Postiglione v R* (1997) 189 CLR 295; [1997] HCA 26, and *Green v R*; *Quinn v R* (2011) 244 CLR 462; [2011] HCA 49. In *Postiglione v The Queen*, Dawson and Gaudron JJ observed the following at 301:*

“The parity principle upon which the argument in this Court was mainly based is an aspect of equal justice. Equal justice requires that like should be treated alike but that, if there are relevant differences, due allowance should be made for them. In the case of co-offenders, different sentences may reflect different degrees of culpability or their different circumstances. If so, the notion of equal justice is not violated.” (Footnotes omitted.)

[176] As Gibbs CJ earlier observed in *Lowe v R* at 610, ‘the reason why the court interferes in such a case is that it considers that the disparity is such as to give rise to a justifiable sense of grievance, or in other words to give the appearance that justice has not been done.’ To warrant appellate intervention, the disparity complained of must be ‘marked’ (*Lowe v R* at 610; *Green v R* (2011) 244 CLR 462; [2011] HCA 49 at [31] (French CJ, Crennan and Kiefel JJ)), ‘unjustified’ (*Green v R* at [32]) or ‘manifest’ (*Lowe v R* at 613). The application of the parity principle does not involve a judgment about the ‘feelings’ of the person complaining of disparity with regard to a justified sense of grievance. The test is an objective one: *Green v R* at [31].

[177] As a corollary of the principle that ‘like offenders should be treated in a like manner’, different sentences can be imposed upon like offenders ‘to reflect different degrees of culpability and/or different circumstances’: *Green v R* at [28]. Relevant types of differences were identified in *Green v R* at [31] as including ‘age, background, criminal history, general character and the part each has played in the relevant criminal conduct or enterprise.’”

In contending that the sentencing judge erred on the basis of parity, the applicant’s case faces a considerable obstacle, given the sentencing judge was “fully aware of the sentences imposed upon the co-offenders and provide[d] reasons for departing from those sentences”: *Ooi v R* [2023] NSWCCA 97 at [26] (Beech-Jones CJ at CL, N Adams and Yehia JJ agreeing) citing *Chamon v R* [2020] NSWCCA 112 at [35]-[37] (R A Hulme J, Wilson J agreeing). As the sentencing judge of all three co-offenders, her Honour was in a position to consider the interrelationship between the objective and subjective features of the applicant and Trindall “in an overarching way”: *YA v R* at [178] quoting *Huckstadt v R* [2016] NSWCCA 22 at [90] (Button J, Johnson and Fagan JJ agreeing) and citing *Tuivaga v R* [2015] NSWCCA 145 at [55]-[56] (Hoeben CJ at CL, R A Hulme and Wilson JJ agreeing).

Nonetheless, the role of this Court is to analyse the differences in criminality and subjective circumstances to determine whether the proportion between the sentences leaves the applicant with a justifiable sense of grievance: *YA v R* at [178] quoting *Mohr v R* (2024) 390 FLR 293; [2024] NSWCCA 197 at [24] (Bell CJ, Davies and Wright JJ agreeing). For the reasons set out below, after analysing those differences, I am not persuaded that they give rise to a justifiable sense of grievance.

The applicant properly accepts that a difference in sentence can be justified upon the basis of differences as between co-offenders such as age, background, criminal history, general character and the part each has played in the relevant criminal conduct or enterprise.

In terms of the differences in the objective features of the offending as between the applicant and Trindall, the applicant submits as follows.

First, he submits that a point of differentiation is that Trindall played the more active role in the offending whereas he was the least actively involved. While that is so, her Honour concluded that the applicant’s reduced role only lowered his objective criminality to “just below the middle of the range”. The applicant does not challenge this finding. Trindall’s objective criminality was found to fall “at about the middle of the range”.

It is to be observed in this respect that the subject offence involved a joint criminal enterprise. A party to such an enterprise will be sentenced for the full range of the criminal acts done by any of the parties to the joint enterprise in carrying it out: *R v JW* (2010) 77 NSWLR 7; [2010] NSWCCA 49 at [162] (Spigelman CJ, Allsop P agreeing) citing *R v Wright* [2009] NSWCCA 3 at [28] (James J, McClellan CJ at CL and Adams J agreeing). Thus, it is not the case, as the applicant submitted in this Court, that his criminality “stopped” when he shoved the victim to the ground (see [19] above).

It follows in my view that, in terms of the objective features of the offending in relation to the subject offence, upon a proper analysis the differences are not as significant as the applicant submits.

Second, the applicant points to another difference, being that Trindall had the Form 1 offence taken into account on sentence which did not form part of the applicant's case. As set out at [57] above, her Honour took into account the fact that the offending in the subject offence and in matter on the Form 1 (which she assessed to be below mid-range) occurred at the same time and had a similar motivation, being effectively part of the same melee, but involved different conduct and a different victim. Her Honour expressly took the Form 1 matter into account as a matter that increased the penalty to be imposed on Trindall. In this respect, I accept the Crown's submission that the existence of the Form 1 matter does not inevitably lead to a conclusion of marked disparity between the sentences of Trindall and the applicant.

Third, the applicant submits that the disparity in sentences is not adequately explained by the differences in the subjective features of the offending as between the applicant and Trindall.

I now address the sentencing judge's findings in relation to those differences.

First, Trindall had a limited criminal record and was entitled to leniency. The applicant was not entitled to leniency based on his criminal record. Further, in this respect, the applicant had been previously convicted of robbery and sexual assault, whereas Trindall had no relevant convictions for violence.

Second, the applicant was on conditional liberty at the time of the subject offence. Specifically, at the time of the subject offence, the applicant was:

on parole for damage property by fire – which was the subject of the breach of parole report (recording that the applicant had been released on parole on 4 April 2024 and then breached his parole three weeks later by committing the subject offence);

the subject of a CCO for possessed prohibited drug – which CCO had commenced on 21 June 2023 for a period of 12 months (with the applicant breaching it ten months into that period);

the subject of a CCO for larceny – which CCO had commenced on 15 November 2023 for a period of 18 months (with the applicant breaching it five months into that period).

In this respect, her Honour expressly observed that she had “aggravated the offender's sentence on the basis of his having been on conditional liberty which, in my view, is a significant matter”. There is no challenge to her Honour's finding that the fact that the applicant was on conditional liberty at the time was a “significant” aggravating matter in the sentencing exercise.

Third, her Honour relied on the fact that the applicant's breach of parole report indicated an unsatisfactory response to supervision, with multiple failures to engage with interventions and supervision and non-compliance with parole conditions, including as to the reoffending comprised by the subject offence. I observe that the breach of parole report was particularly adverse and included references to failure to comply with obligations under the Child Protection

(Offenders Registration) Act 2000 (NSW); multiple failures to report to community corrections officers; failure to comply with directions in relation to supplying verified documentation and a mental health treatment plan; failure to notify community corrections officers of a change of address (and failing to reside at an approved address) and failure to engage in agreed interventions directed to mitigating risk.

Fourth, in terms of prospects of rehabilitation, her Honour found that the applicant's prospects could not be described as "good", whereas Trindall's capacity for rehabilitation was found to be "good", assuming that he participates in programs as he had indicated he would. Trindall was also found to have the benefit of relative youth.

Fifth, in terms of the question of remorse, her Honour concluded that the evidence of the applicant's remorse was "sparse", whereas she accepted that Trindall was sorry for his conduct, both as to the injuries inflicted upon another Indigenous male and to the hardship he had inflicted on his own family. Again, there is no challenge to her Honour's finding that the applicant had failed to establish remorse.

Thus, I do not accept the applicant's characterisation that he had a "less favourable subjective case in some respects". Rather, the applicant had a considerably less favourable subjective case and her Honour proceeded on that basis.

Separately, the applicant points to the sentence imposed on Lywza and submits that the material differences between Lywza and the applicant "should have resulted in the term of the sentence imposed on the applicant being closer to that imposed on Trindall". I accept the Crown's submission that the relevant question is whether the sentencing discretion miscarried, not whether a sentence is too close to that of a co-offender (such as Lywza) in respect of whom the applicant does not complain of disparity. In any event, the relativity between the sentences of the three co-offenders is explicable by a range of objective and subjective matters, all of which the sentencing judge expressly took into account.

Ultimately, the applicant points to the "end result" that there was a 10-month difference between his head sentence as compared to Trindall's, and submits that that is "sufficiently marked" as to warrant intervention by the Court. However, a simple comparison of the 10-month difference in head sentence is not the correct approach; rather, a comparison of all relevant factors, may support a difference in terms of the sentences imposed: *Mohr v R* at [21] citing *Postiglione v The Queen* (1997) 189 CLR 295; [1997] HCA 26 at 302 (Dawson and Gaudron JJ).

The difference in non-parole periods as between the applicant and Trindall was eight months. The sentencing judge allowed backdating on an existing sentence being served by the applicant and specifically did so by reference to the fact that she had aggravated his sentence on the basis of the applicant having been on conditional liberty at the time. Counsel for the applicant accepted at the hearing, correctly, that it was open to her Honour to have not allowed any backdating. Plainly enough, the backdating by her Honour had the effect of allowing the applicant to serve the sentence for the subject offence concurrently with sentences of imprisonment to which he was subject in any event.

As such, the difference in the sentence for the subject offence was ameliorated by the manner in which the sentencing judge structured the sentence. When the backdating of three months is taken into account, the difference in non-parole periods as between the applicant and Trindall is about five months.

The sentencing judge carefully considered the question of parity. There were a number of differences between the objective and subjective features of the cases of Trindall and the applicant that her Honour expressly took into account in exercising her sentencing discretion.

I have concluded that the differences in the objective features of the offending are not as significant as the applicant submits. Further, as set out above, the applicant had a considerably less favourable subjective case. In short, that subjective case featured persistent breaches of conditional liberty, including the fact that the subject offending occurred within weeks of a release to parole, and an ongoing unsatisfactory response to supervision. It was open to her Honour to take those matters into account as indicating a heightened need for specific deterrence in respect of the applicant; being far greater than for Trindall.

In my view, the discrepancy between sentences is reasonably explained by the degree of difference between the applicant and Trindall: *Vujinovic v R* [2024] NSWCCA 10 at [50] (Weinstein J, Davies and Button JJ agreeing) quoting *DS v R* [2014] NSWCCA 267 at [39] (Bathurst CJ, Fullerton and Davies JJ agreeing). Thus, in my view the disparity is neither marked nor unjustified: *Hung v R* [2023] NSWCCA 172 at [32] (Leeming JA, Rothman and McNaughton JJ agreeing); *Mohr v R*.

Conclusion

For those reasons, I would:

Grant leave to appeal.

Dismiss the appeal.

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Decision last updated:

02 September 2026

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Prepared on 27 October 2026 · Esheria