



Vulnerable Indigenous man locked up by police in 'string of errors' during coronavirus pandemic

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Dwayne Kennedy was fined \$1,652 for sleeping on a park bench despite having homelessness issues. (ABC News: Gemma Hall)

WARNING: Aboriginal and Torres Strait Islander readers are advised that the following article contains names, images and descriptions of people who have died.

Lawyers for a vulnerable Aboriginal man who was jailed for weeks in a court bungle and slapped with a fine for sleeping on a park bench during the coronavirus state of emergency say the case reeks of "unfairness and injustice".

"I was very angry and outraged that this happened to my client," criminal lawyer Tessa Theocharous said.

"Police came upon him and they actually issued him with a fine for being outside his house, despite him having homelessness issues."

"It seems the police were acting with maximum prejudice against him."

Yorta Yorta and Mutti Mutti man Dwayne Kennedy is facing numerous charges of shop theft, allegedly for stealing perfume, vitamins and alcohol from various chemists and bottle shops around Melbourne.

Under coronavirus state of emergency restrictions and court practices to implement social distancing, Mr Kennedy was not required to show up for a court hearing on April 2 at the Melbourne Magistrates' Court.

However, when he did not show up for his hearing, prosecutors asked for a warrant for his arrest and the court granted it.

Police documents accessed by the ABC showed that the next day, police found Mr Kennedy "asleep on a bench" in Collingwood, where he allegedly told them he was "about to go home and he lived around the corner".

Police arrested Mr Kennedy on a warrant and, the documents showed, also fined him with a \$1,652 infringement "for unlawfully being outside his place of residence during the COVID-19 outbreak".

Key points:

- Dwayne Kennedy was told he did not need to appear in court on April 2 but a warrant was issued for his arrest
- He was held in custody for two weeks and was twice denied bail before he was released following an emergency hearing in the Supreme Court
- His lawyer says the stressful ordeal came after Mr Kennedy's own sister died in custody in January

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"His lack of regard for remembering court dates, as well as flouting the current Health laws surrounding COVID-19, are deeply concerning to police," the documents said.



Dwayne Kennedy was granted an immediate release from jail after an emergency hearing in the Supreme Court. (Facebook)

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'Mystified' judge releases Kennedy immediately

Mr Kennedy spent the next two weeks in a Melbourne prison on remand and was twice denied bail, before his lawyers sought an emergency hearing in the Supreme Court calling for his immediate release on Friday.

During the hearing, police prosecutor James Kibel admitted that the warrant for Mr Kennedy's arrest on April 2 should never have been sought from the courts.

"I don't appear in the Magistrates' Court, but in the circumstances I do concede the warrant was issued in contrary to the practice direction," Mr Kibel said.



Dwayne Kennedy was freed after an emergency hearing in the Supreme Court. (ABC News: Patrick Rocca)

In granting Mr Kennedy's immediate release on bail, Supreme Court Justice Stephen Kaye described the case as "a string of errors".

"I'm rather mystified that it has come to this. It's most unfortunate," Justice Kaye said.

"I'll refrain from being critical because it's a very difficult time for all of us involved in the legal process.

"Errors are being made because of the pressure lawyers and practitioners are under at the moment."

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It is unclear if Mr Kennedy will still be charged with a COVID-19 infringement, as indicated in the police documents.

Victoria Police would not confirm the infringement.

However, a spokesperson said that since early April, Victoria Police had put in place a new policy "to proactively review every infringement that has been issued to determine whether it was appropriately issued or whether a warning would have been more appropriate".

"We are still reviewing all of the fines issued to date, however, those that were not properly issued or do not pass the common sense approach will be withdrawn," the spokesperson said.

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Family 'reeling' from sister's death in custody

Ms Theocharous said the case was especially troubling due to Mr Kennedy's status as a vulnerable Aboriginal man with an acquired brain injury.

The court heard that Mr Kennedy had been put on remand, just three months after his sister, [Veronica Nelson, died in custody in Victoria's maximum security women's prison](#).

Ms Nelson died on January 2, also while on remand on shop theft charges.

"My client's sister unnecessarily passed away in custody. He was then unfairly imprisoned for two weeks before the Supreme Court granted him bail," Ms Theocharous said.

"The family is still reeling from the shock and grief about having a loved one unnecessarily pass away while in custody.

"The stress and anxiety around having another family member go into custody when they've had another family member just die in custody can't be over explained. It's caused a great deal of harm and upset."



Mr Kennedy's sister Veronica Nelson died in custody on January 2. (Supplied)

The court bungle comes just weeks after the [Victorian coroner handed down its findings into the death in custody of Yorta Yorta woman Tanya Day](#).

"It's very disappointing to see that the system doesn't learn from these terrible tragedies that can be avoided," Ms Theocharous said.

"We need to start doing much better for our First Nations people than we currently are in the justice system.

"There is absolutely a pattern."

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The vice president of Liberty Victoria, Julia Kretzenbacher, said Mr Kennedy's case highlighted the potential for problems with the justice system during the COVID-19 outbreak.

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"[Mr Kennedy's] case concerned me because our systems should be careful and look after people like him who are vulnerable, especially in the current circumstances," Ms Kretzenbacher said.

"It's concerning that at present Victoria Police isn't releasing any data about where most of the fines are issued and the backgrounds of the people who are having the fines issued."

The Victorian Attorney-General has been contacted for comment.

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