

02/12/2022, 07:39

Aboriginal man locked up in COVID-19 court bungle

THE AGE

National Victoria Courts

This was published 2 years ago

Aboriginal man locked up in COVID-19 court bungle



Tammy Mills

April 21, 2020 – 12.00am

An Aboriginal man whose sister died in custody three months ago was locked up for not turning up to court despite being told he didn't need to attend because of the coronavirus pandemic.

When Dwayne Kennedy's lawyers went to the Supreme Court on Friday to free him, judge Stephen Kaye described the Magistrates Court bungle as a "miscommunication" that had led to the vulnerable man's arrest.

"The applicant [Mr Kennedy] belongs to a particularly vulnerable section of community, who are over-represented in the criminal justice system, and who also have poorer outcomes than non-Aboriginal persons," Justice Kaye said.

"In that connection, while he is in custody, the applicant may be at greater risk of serious infection from the COVID-19 virus than otherwise."

Mr Kennedy had been bailed on 13 charges, mostly relating to theft and drug offences, to appear before the Melbourne Magistrates Court on April 2.

Court staff told his lawyers he wasn't required to attend court after multiple hearings were suspended due to the COVID-19 crisis, according to the Supreme Court.

But the lower court issued a warrant for Mr Kennedy's arrest on April 2 when he didn't turn up to the hearing and he was taken into custody the next day. Two applications for bail soon after were opposed (one was refused, the other was adjourned) so his solicitors from Kurnai Legal went to the Supreme Court in a bid to free him.

[Justice Kaye bailed Mr Kennedy on Friday](#) in an application that was unopposed by prosecutors, who "accepted that there has been some miscommunication", Justice Kaye said.



Justice Stephen Kaye bailed Dwayne Kennedy on Friday, saying his arrest had resulted from a "miscommunication". SUPPLIED

Justice Kaye said conditions on remand had become "quite onerous" as a result of the pandemic.

"The applicant has been held in confinement as a form of quarantine since his remand," Justice Kaye said.

02/12/2022, 07:39

Aboriginal man locked up in COVID-19 court bungle

Remand was more stressful for Mr Kennedy, Justice Kaye said, because his sister had died in custody in January. A coroner is investigating the cause and circumstances of her death.

Justice Kaye said the fact Mr Kennedy, the son of a Yorta Yorta and Dja Dja Wurrung woman and Mutti Mutti man, is Aboriginal made him more vulnerable as well. He also had an acquired brain injury and symptoms of severe cognitive and mental health issues.

Though Mr Kennedy was on a community corrections order when he was charged with the new offences, Justice Kaye said the new allegations were not evidence that Mr Kennedy posed a risk of harm to the community.

There was also a substantial risk he would spend more time on remand awaiting the results of his case than the jail time he could be sentenced to if he was found guilty.

Mr Kennedy was bailed to live with his mother in Mooroopna in northern Victoria.

Aboriginal deaths in custody have again come under the spotlight after coronial findings were handed down this month into the high-profile case of Yorta Yorta woman Tanya Day.

Ms Day died after hitting her head in a police cell in Castlemaine in 2017. She had fallen asleep on a train before she was arrested for public drunkenness, an antiquated crime the Victorian government has committed to abolishing.

Sign up to our Coronavirus Update newsletter

Get our Coronavirus Update newsletter for the day's crucial developments at a glance, the numbers you need to know and what our readers are saying. Sign up to *The Sydney Morning Herald*'s newsletter [here](#) and *The Age*'s [here](#).



Tammy Mills is the legal affairs reporter for The Age. Connect via [Twitter](#), [Facebook](#) or [email](#).