



Victorian Aboriginal Legal Service

MEDIA RELEASE
17 SEPTEMBER 2018
FOR IMMEDIATE RELEASE

Supreme Court protects Aboriginal man's access to Koori Court

The Victorian Supreme Court has held that a Magistrate in Echuca acted unlawfully by refusing a young Aboriginal man's request to be sentenced before the Koori Court sitting at Shepparton.

In April 2017 the applicant, Zayden Cemino, a 19 year old Yorta Yorta man from Echuca had pleaded guilty to various offences but asked to be transferred to the Shepparton Koori Court for sentencing. Zayden's solicitor at the time, Michael McKenna of the Victorian Aboriginal Legal Service ('VALS'), told the Magistrate that Zayden wanted to go before his elders in the Koori Court, where he would have felt more comfortable discussing the recent passing of his mother, a Yorta Yorta woman. This transfer request to Koori Court was refused by the Magistrate, in part because the offences were committed in Echuca not Shepparton.

VALS made an application to the Supreme Court to challenge the Magistrate's decision on administrative law and human rights grounds, assisted by Emrys Nekvapil and Tim Farhall acting pro bono.

On appeal, Justice Ginnane of the Supreme Court found that the Magistrate had overlooked aspects of the legislation that clearly permitted the transfer of certain matters to other locations in order for Aboriginal persons in the criminal justice system to access the Koori Court. Justice Ginnane also found that the Magistrate was required to consider Zayden's unique right to enjoy his Aboriginal culture and identity, as well as his right to equality, in making the decision.

His Honour ordered that the Magistrates' decision be set aside, and that Zayden be allowed to have a different Magistrate consider a new transfer request.

Zayden said "I wanted to go to Koori Court because it's more comfortable for me, I don't feel like I'm talking about personal things with a complete stranger".

Meena Singh, Director, Legal and Client Services at VALS said the decision promotes access to the Koori Court, which is an important factor in reducing Aboriginal over-incarceration in Victoria. The decision comes just weeks after The Victorian Government's recent announcement of a further \$12.3 million in

funding for the expansion of Koori Courts across Victoria under phase four of the Aboriginal Justice Agreement further demonstrates the therapeutic potential of Koori Courts, Ms Singh said.

Quotes attributable to Meena Singh:

- “Koori Courts provide a more meaningful and culturally appropriate sentencing experience than mainstream courts, and today’s Supreme Court decision promotes access, especially for people in regional areas without a local Koori Court”.
- “VALS’ criminal lawyers appear with clients in Koori Courts all around the state, and witness first hand how much more engaged their clients are when speaking with local elders and respected persons. For many, having Aboriginal elders speak to them about the offending can be an incredibly powerful and sometimes life-changing experience.”
- “These elders often know a person’s entire family, and can provide a crucial cultural link and perspective that really draws a person in and forces them to reflect. By contrast, many Aboriginal people in mainstream Magistrates’ courts sit with their heads bowed throughout an entire hearing because they feel completely excluded”.
- “At a time when Aboriginal incarceration in Victoria and Australia is increasing, not decreasing, we need to focus on meaningful justice outcomes that engage Koori people and divert them from the system”.
- “VALS is committed to working with government on the expansion of the existing Koori Court framework to ensure it is as effective as possible in reducing Aboriginal over-incarceration”.

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