

CITATION: *Police v Sultan* [2026] NTLC 6

PARTIES: *Police*

v

*Joseph Samuel Sultan*

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NO(s): 22511792

DELIVERED ON: 15 April 2026

DELIVERED AT: Alice Springs

HEARING DATE(s): 5 March 2026

DECISION OF: Judge Bortoli

**CATCHWORDS:**

CRIMINAL LAW – Withdrawal of charges on information – Whether it is an abuse of process to withdraw charges once adjournment application refused

*Domestic and Family Violence Act 2007* (NT) ss 120(1), 121(4)

*Criminal Code Act 1983* (NT) s 241(1)

*Local Court (Criminal Procedure Act) 1928* ss 69

*Justices Act 1979* (NT), as enacted s 133

*Brazel v Magistrates Court of Victoria* [2018] VSC 48

*Director of Public Prosecutions (SA) v B* (1998) 194 CLR 566

*Evans v DPP* [2000] NSWSC 1005

*R v SE & Ors* [2022] NSWDC 712

*R v Sultan* (SCC 22511805)

*Wills v Trenerry* [1999] NTSC 2

**REPRESENTATION:**

*Counsel:*

Informant: Ms Al Majed Mr McNally then  
Ms Chalmers

Defendant: Ms Al Majed

*Solicitors:*

Informant: Ward Keller; then Office of  
the Director of Public  
Prosecutions

Defendant: North Australian Aboriginal  
Justice Agency

Decision category classification:	B
Decision ID number:	[2026] NTLC 6
Number of paragraphs:	35

IN THE LOCAL COURT AT  
ALICE SPRINGS IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 22511792

BETWEEN:

**BLM**

Informant

AND:

**Joseph Samuel Sultan**

Defendant

REASONS FOR DECISION

(Delivered 15 April 2026)

JUDGE BORTOLI

1. The defendant has been charged with two counts on information for offences allegedly committed on 25 January 2025, namely:

Count 1 – contravene a domestic violence order ('DVO')<sup>1</sup> with the circumstance of aggravation that he has previously been found guilty of that same offence;<sup>2</sup> and

Count 2 – intentionally or recklessly cause damage to property<sup>3</sup> belonging to another, being the complainant and protected person named in the DVO.

2. The matter was first mentioned before the Alice Springs Local Court on 30 January 2025. There were numerous adjournments of the matter for 'plea or mention' with the Defendant remanded in custody. On 13 June 2025, the matter was listed for directions hearing on 14 August 2025 as well as a hearing on 5 March 2026. At the directions hearing of 14 August 2025, a directions hearing form was filed and the hearing date was confirmed. The directions hearing form stated that all charges were contested, the existence of the served DVO was not in dispute and that all other elements of the offences, including identity and conduct, were in dispute.

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<sup>1</sup> *Domestic and Family Violence Act 2007* s 120(1).

<sup>2</sup> *Domestic and Family Violence Act 2007* s 121(4). This increases the maximum penalty for the offence to 3 years imprisonment.

<sup>3</sup> *Criminal Code* s 241(1).

3. For reasons that are not clear from the Court file, the matter was listed on 3 December 2025. It was adjourned for case management inquiry on 13 January 2026. The matter was adjourned for further case management inquiry on 28 January 2026. On that date, the hearing of 5 March 2026 was confirmed.

#### **Proceeding of 5 March 2026**

4. As is common practice in the Local Court, numerous matters were listed for hearing on 5 March 2026. I was the assigned Judge to preside over the hearing list. This matter was stood down throughout the morning before the prosecution made an application to adjourn the proceedings. This occurred prior to the defendant being arraigned.
5. The prosecution advised that the complainant told the Officer in Charge that she was unwell and had to look after children. Initially, I was advised that the complainant said that she would attend after dropping her children off. By the time of the adjournment application, she had become uncontactable. The prosecution indicated that defence had recently raised the issue of 'double jeopardy'. I was informed that the Defendant was sentenced by the Supreme Court for various offences which *may* have been the same offences the subject of the charges before the Local Court on this file.
6. The prosecution did not seek a new hearing date. Rather, they sought a one month adjournment for a case management inquiry to enable the Office in Charge to speak to the complainant further to ascertain whether the matters the subject of the charges in the Local Court had already been dealt with by the Supreme Court or whether they were separate matters. Depending on the outcome of those discussions, the charges would either be withdrawn or a new hearing date would be sought.
7. Counsel for the defendant opposed the adjournment application. I was informed that the defendant was sentenced by the Supreme Court and would be eligible for parole on or about 28 July 2026.<sup>4</sup> Counsel noted that there was a real risk of the prosecution seeking a hearing date again in a month's time. I noted that a new hearing date would likely not be available until at least October 2026. This raised the real risk of prejudice to the defendant, namely that he would be remanded in custody on this file and not eligible to apply for parole.
8. Counsel for the defendant agreed that the prosecution had only recently been put on notice of the double jeopardy issue. However, it was submitted this should have been obvious to the prosecution.
9. Through further questioning of counsel for the prosecution, it was conceded that there had not been any further attempts to speak to the complainant prior to the hearing date despite her 'evidence in chief' statement being somewhat uncertain.

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<sup>4</sup> I have since been provided with the sentencing remarks of Brownhill J in R v Sultan (SCC 22511805) which confirms that the defendant was sentenced to a total of 3 years' imprisonment from 28 January 2025 with a non-parole period of 1 year and 6 months also backdated to the same date.

10. I refused the prosecution's adjournment application, primarily for the following reasons:
- (1) The risk of prejudice to the Defendant, namely that it may see him ineligible to apply for parole whilst remanded in custody on this file awaiting a hearing date. There was no guarantee that further evidence would be obtained during any adjournment period. The complainant may have been unwilling to speak further to Police. Given the various reasons given for her non-attendance at Court, I found that she may be reluctant to speak to Police or attend Court when summonsed. From experience, this is not uncommon for alleged victims of domestic violence.
  - (2) The prosecution had not followed up with the complainant sooner despite the matter being before Court for over a year.
11. Following my ruling, the prosecution sought leave to withdraw the charges.
12. Counsel for the defendant objected to the withdrawal of the charges. Oral submissions were made. Given the complexity of the issues raised, I indicated I would require further time to consider the matter. A timetable was set for the filing and service of written submissions. Ultimately, I raised several other questions for the consideration of the parties and there was a change of counsel for the prosecution. The timetable for filing and service of submissions was varied and the matter listed for 15 April 2026 for decision on whether I would grant leave to the prosecution to withdraw the charges.
13. As part of the written submissions which were filed, the prosecution relied on numerous annexures which did not form part of the materials presented to me at the time of the adjournment application. I declined to allow those matters to form part of my consideration as to whether to grant leave to withdraw, save for the sentencing remarks of the Supreme Court and the transcript of proceedings before me on 5 March 2026.
14. On 15 April 2026, I confirmed that I would grant leave to the prosecution to withdraw the two charges. I gave brief oral reasons and confirmed with the parties that a written decision was being finalised and would be forwarded via email in due course.

#### **Leave is required to withdraw charges**

15. Section 69 of the *Local Court (Criminal Procedure Act) 1928* states that the Court, at any time before a matter has been finally determined, may permit a complaint to be withdrawn upon such terms (if any) as it thinks fit. This provides an express discretion to the Court to permit charges to be withdrawn when laid on complaint. Section 69 presumably applies to charges laid on information which are heard and determined summarily. Even if it does not, the Court has an implied discretionary power to grant leave to withdraw charges which are being heard summarily.<sup>5</sup> In fact, leave of the Court is **required** for the withdrawal of charges.<sup>6</sup>

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<sup>5</sup> *Evans v DPP* [2000] NSWSC 1005.

<sup>6</sup> *Ibid.*

## Is the prosecution's application an 'abuse of process'?

16. Counsel for the defendant submits that an application to withdraw charges following a failed adjournment application is ordinarily an abuse of the Court's process. Counsel conceded that there are some situations where the Court's processes are used *bona fide*, including where a witness is unwell and medical evidence is provided to support their unavailability.
17. Counsel for the defendant relies on a series of cases where Supreme Courts in other jurisdictions have refused to accept the filing of a *nolle prosequi* following the refusal of a prosecution adjournment application.<sup>7</sup>
18. Putting aside that these matters were being heard summarily, the defendant's submissions cannot be sustained following the High Court's decision of *Director of Public Prosecutions (SA) v B*.<sup>8</sup> The High Court considered various questions of law which had been reserved following a trial judge's decision to refuse to accept the filing of a *nolle prosequi* following a refused adjournment application.
19. The majority judgement reiterated that decisions to institute or continue criminal proceedings were in the province of the executive whereas decisions to ensure a fair trial and prevent an abuse of the Court's process were in the province of the Courts.<sup>9</sup> Ultimately, the majority held as follows (emphasis added):<sup>10</sup>

The accused's trial **not having begun** and the decision being a **decision about whether to continue a prosecution**, the **question whether to do so was a matter which fell within the province of the executive**. It was not a question which arose at the trial of an accused. And the trial not having begun, **no question could arise whether the entry of a nolle prosequi constituted an abuse of process**. Other considerations may have arisen (we do not say they would) if the question had been one relating to the continuation of a trial that had already begun or had been whether prosecution of a fresh information amounted to some abuse of process. But those questions did not arise here.

20. Thus, the majority judgement made it clear that the filing of a *nolle prosequi* prior to the commencement of a trial is **not** an abuse of process. The majority reserved the question of whether the filing of a *nolle prosequi* may constitute an abuse of process if a trial has already begun or whether a prosecution of a fresh information may be an abuse of process.
21. In this case, the defendant's 'trial' (or hearing) had not begun at the time of the prosecution's application. He had not yet been arraigned. It was not an abuse of process to seek to withdraw the charges. The defendant's contentions are entirely misconceived.
22. I note that Buscombe DCJ of the District Court of New South Wales has analysed the relevant case law and subsequent High Court authority and concluded that the Court cannot refuse to

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<sup>7</sup> See, eg, *R v Lorkin* (1995) 82 A Crim R 196.

<sup>8</sup> (1998) 194 CLR 566.

<sup>9</sup> *Ibid* at [21].

<sup>10</sup> *Ibid* at [22].

accept the filing of a *nolle prosequi* even after a trial has commenced.<sup>11</sup> It is, of course, unnecessary to address that issue in this case.

### **When must leave to withdraw be refused?**

23. In *Brazel v Magistrates' Court of Victoria*,<sup>12</sup> Riordan J undertook a comprehensive review of the case law in relation to the withdrawal of charges in the Magistrates' Court in Victoria. His Honour concluded that the Magistrates Court may only refuse to accept a withdrawal of charges in exceptional circumstances.<sup>13</sup> I consider that this accords with the principles endorsed by the High Court as set out above, namely that the decision as to whether to continue with charges lies solely within the province of the executive. Leave to withdraw charges should only be refused in exceptional, extraordinary or rare circumstances.<sup>14</sup>
24. In *R v Lorkin*, one of the cases relied on by the defendant, the Court of Criminal Appeal of Western Australia considered a Crown appeal against a directed acquittal. The Crown had made an unsuccessful attempt to adjourn a trial shortly before its commencement due to the unavailability of two witnesses. Attempts to serve subpoenas had only been made within the preceding week. On the day of the trial, a *nolle prosequi* was filed. The Court refused to accept its filing, a jury was empanelled and no evidence was led. The trial Judge directed an acquittal. Importantly, the trial Judge indicated that the refusal of the adjournment application was intended to bring finality in the proceedings and the acceptance of the *nolle prosequi* would undermine the fundamental intent of the decision to refuse an adjournment given it would permit a fresh indictment to be laid in the future.<sup>15</sup>
25. Malcolm CJ (Kennedy J generally agreeing) found that the circumstances were 'sufficiently exceptional' to justify the trial Judge refusing to accept the *nolle prosequi*.<sup>16</sup> The only purpose of accepting the *nolle prosequi* would be to preserve the discretion of the Director of Public Prosecutions to present a fresh indictment which would necessarily be inconsistent with the refusal of the adjournment in that case. This was said to defeat the ends of justice sought to be achieved by the refusal of the adjournment application and constituted an abuse of process.<sup>17</sup>
26. The propositions expressed in *Lorkin* must be considered with caution given the High Court expressly rejected the proposition that the filing of a *nolle prosequi* in those circumstances would amount to an abuse of process. Nevertheless, a compelling feature of that case was that the trial Judge intended to bring finality to the proceedings by refusing the adjournment application.

### **Should leave be refused in this case?**

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<sup>11</sup> *R v SE & Ors* [2022] NSWDC 712 at [70].

<sup>12</sup> [2018] VSC 48.

<sup>13</sup> *Ibid* at [58].

<sup>14</sup> *Wills v Trenergy* [1999] NTSC 2 at [26].

<sup>15</sup> (1995) 82 A Crim R 196 at 216

<sup>16</sup> *Ibid* at 217.

<sup>17</sup> *Ibid*.

27. In my view, there is nothing exceptional about this case to warrant the refusal of leave to withdraw the charges. The hearing could not proceed on the scheduled date due to the non-attendance of the complainant. It is common for alleged victims of domestic violence to not attend Court in answer to a witness summons for a variety of reasons. This can include fear, family pressure, illness, the need to look after children or not wishing to see their domestic partner in trouble. While the prosecution ought to have followed up with the complainant sooner, this is not a sufficiently exceptional circumstances such that I would refuse leave to withdraw the charges. After all, witnesses are often proofed at Court and it was intended this would be done prior to the commencement of the hearing.
28. I did not intend the refusal of the adjournment application to bring finality to the matter. There is a strong public interest in the prosecution of domestic violence offences. The complainant may wish to pursue the matter in the future. The Police may wish to undertake further enquiries and lay the charges again depending on the outcome of those enquiries. The decision whether to lay or continue with charges is a matter for the executive. Granting leave to withdraw the charges will enable a decision to be made in due course as to whether the charges will be re-laid. If charges are re-laid, the defendant may bring an application for a stay on the grounds of an abuse of process.
29. The circumstances in this case are typical of domestic violence hearings before the Local Court. Given the volume of matters before the Court, the delays in obtaining hearing dates and strict bail laws, applications for adjournments due to non-attendance of witnesses are regularly refused as the defendant may otherwise suffer prejudice. It will only be in exceptional circumstances that leave to withdraw such charges will be refused following a failed adjournment application, even where the complainant is not in attendance at Court or refuses to participate in proceedings. There is a strong public interest in maintaining the right of the prosecution to lay charges again in the future should the complainant wish to pursue the charges, or further evidence comes to light.
30. In this case, the immediate prejudice to the defendant is removed by the withdrawal of the charges. He will be eligible to apply for parole in line with the sentence imposed by the Supreme Court. While there is some risk he may be charged with the same offences again in the future, that cannot of itself amount to exceptional circumstances warranting the Court refusing to grant leave to withdraw the charges. If it could, then leave to withdraw charges could never be granted unless the charges could not be re-laid for some reason (e.g. as a limitation period had expired).

**Is there any 'benefit' to the defendant if leave were refused?**

31. There is some question as to whether there was any utility in the defendant's argument in any event. The issue arose in the Northern Territory in the matter of *Wills v Trenerry*. In that case, Thomas J ruled on an application made by the applicant for a permanent stay of proceedings. The applicant was charged with aggravated assault and bailed to appear before the Court of Summary Jurisdiction in Darwin on 26 February 1997 for hearing. On the day of the hearing, an application was made by the prosecution to adjourn the hearing. This was refused by the presiding Magistrate. The presiding Magistrate then refused leave to withdraw the charge.

The prosecutor advised that the prosecution would offer no evidence and the information was dismissed.

32. On 5 March 1997, a further information was laid against the applicant charging the same offence of aggravated assault. On 14 July 1997, the applicant argued before the Court of Summary Jurisdiction that this information be struck out on the ground that the applicant was autrefois acquit. On 15 July 1997, the presiding Magistrate ruled that the applicant was not autrefois acquit because the issue was not joined on the original information laid by Police. The earlier order to dismiss the information was not 'on the merits' and, therefore, section 133 of the *Justices Act* (now the *Local Court (Criminal Procedure) Act*) had no application.
33. Thomas J refused the application for a permanent stay. In relation to the issue of relevance to this proceeding, Thomas J held as follows:<sup>18</sup>

The information laid by Sergeant Trenerry does not constitute an "autre fois acquit" at common law nor under the provisions of s 18 of the Criminal Code. The dismissal of the original "Hayward" information was not "on the merits" after issue was joined between the parties (*Ward v Hodgkins* [1957] VR 715 at 719; *Potter & Potter v Liddy* (1984) 14 A Crim R 204 at 208.

34. While these remarks are *obiter*, I would be required to follow them unless I consider them to be plainly wrong. However, it is unnecessary to consider this issue further. I have not based my decision on whether there was any utility in the defence application. I have decided the case on the *presumption* that there may be some benefit to the defendant in refusing leave to withdraw the charges and the law expressed above.

### **Order**

1. For these reasons, leave is granted to the prosecution to withdraw the two charges on information.
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<sup>18</sup> [1999] NTSC 2 at [24].