

Petitioner Supplementary Submissions

Title: Application of Joel Davis [2025] NSWSC
Case number: 2025/00454092

Refer to the court book dated 7th December 2025 filed on 12th December 2025.

This is in support of a duty application for a writ of habeas corpus and/or subsequent discharge and release.

1. The accused Joel Davis is currently in prison for an alleged offence s 474.17 of the Criminal Code.
2. He hasn't been convicted.
3. There was no intention for the result of the communication to be menacing, harassing or offensive.
4. The intention was to be politically provocative while the actual, objective and material result is evidently inciting discourse on freedom of speech.
5. Participation in public discourse is an acceptable and encouraged activity at tertiary institutions (see s 6(2)(d) of *University of Technology Sydney Act 1989* (NSW)).

Habeas corpus

The legal principles of a writ of habeas corpus¹ are long-standing, consistent and still agreed today: *Gargan v Director of Public Prosecutions and anor* [2004] NSWSC 10 at [11]; *Bauskis v Adams* [2007] NSWCA 293 at [19]; *Potier v General Manager & Governor, M.R.R.C* [2007] NSWSC 1031 at [7]ff; *Potier v The General Manager MSPC, Area 2 Long Bay Correctional Centre* [2012] NSWSC 233 affirmed at [19]-[23]; *Tyron Yates v The Commissioner of Corrective Services, NSW* [2014] NSWSC 653 at [45], [48]-[50]; *Belan v Commissioner of Corrective Services and Anor* [2020] NSWSC 1503 affirmed at [94]-[96]; *Dacich v Picton Local Court & Anor* [2020] NSWSC 1714 at [11]-[18]; *Dacich v Commissioner of Corrective Services* [2020] NSWCA 359 at [14]; *Clark v State of New South Wales*; *Clark v Commissioner of Corrective Services NSW* [2024] NSWSC 1328 at [42]-[46]; *In the matter of Clare Perry* [2025] NSWSC 757 affirmed *Dacich* at [18]; *Fantakis v Governor of Macquarie Correctional Centre* [2025] NSWSC 996 affirmed *Dacich* again at [11].²

Habeas corpus vs Bail release application

Bail Act 2013 (NSW) s 7 defines bail as the authority to be at liberty for an alleged or proven offence.

Habeas corpus is for *unlawful imprisonment* and not *unjustified lawful imprisonment*: see *Potier* (2007) at [13],[14].

Bail applications are for reasonably arguable alleged offences that carry no **unacceptable risk** of inmate release.³

Unlawful imprisonment

AD v State of NSW [2023] NSWCA 115 depends on whether arrest was lawful at [106]-[125].

Unlawful arrest

Pham v State of New South Wales [2019] NSWDC 73 at [101]: "The requirement ... represents the protection of the individual right to freedom: ... whether it is satisfied is to be assessed on an objective basis at the time of the incident bearing in mind that it occurs at the preliminary stage of investigation ... judged against what is known or is reasonably capable of being known at the relevant time: *Ruddock v Taylor* (2005) 222 CLR 612 at [40]."

State of New South Wales v Dennis [2025] NSWCA 118 at [60] has upheld: "The arresting officer's [perspective] must not be manifestly unreasonable, arbitrary, capricious, irrational, or not bona fide."

SU v Commonwealth of Australia [2014] NSWSC 241 at [39]-[51].

¹ ss 71, 71A of *Supreme Court Act 1970* (NSW)

² Caselaw is sourced from the same jurisdiction as the present application.

³ s 20 of *Bail Act 2013* (NSW)

Key notes

1. Extrinsic material: "rhetorical rape"⁴.
2. The complainant's response was "concern"⁵.
3. The accused's public statements immediately after the communication.
4. Objective express word of "rhetorically".

Urgency

It is not well defined in the Duty List practice notes.

Habeas corpus applications are generally heard on an urgent basis: see *Tyron Yates v The Commissioner of Corrective Services, NSW* [2014] NSWSC 653 at [50], [59]; *Williams v Nielssen and Ors* [2019] NSWSC 1133; *Belan v Commissioner of Corrective Services and Anor* [2020] NSWSC 1503 at [72]; *Dacich v Picton Local Court & Anor* [2020] NSWSC 1714 at [1]-[3]; *Dacich v Governor of Dillwynia Correctional Centre* [2021] NSWSC 1333; and *In the matter of Clare Perry* [2025] NSWSC 757.

Elements in doubt

Criminal Code Act 1995 (Cth) requires proving every physical and fault element of an offence⁶.

The accused was purportedly charged with using a carriage service to menace, harass or cause offence.

person	uses carriage service	reasonable persons	all the circumstances	menacing, harassing or offensive
✓	✓		✓	

Any previous offences, convictions or bail releases are irrelevant because he is not guilty of the offence.

Racial discrimination

The persons running the AFP and CDPP are taking the communication **out of context** to continue an antagonistic political agenda of Davis' affiliation "White Australia".

This is unlawful pursuant to sections 9, 10 and 18C of *Racial Discrimination Act 1975* (Cth) because everyone is to be equal before the law.

Suggestions

1. Join the Commonwealth Director of Public Prosecutions as defendant.
2. Produce the police brief, prosecutor bundle and warrant as required by s 71A(4) of *Supreme Court Act 1970* (NSW).
3. Joel Davis AVL appearance.
4. Discharge and release the accused from custody.

Anton Tutoveanu (Petitioner)
27 December 2025

⁴ B D. & P B. (2010) *Rhetorical Rape: The Verbal Violations of the Punditocracy* Waldport Press.

⁵ Allegra Spenda's public statements to the media and affidavit.

⁶ Beyond reasonable doubt.