

SUPREME COURT OF QUEENSLAND

CITATION: *Donaci v Director of Public Prosecutions (Qld)* [2026] QCA 185

PARTIES: **ROBERT FRANK DONACI**
(appellant)
v
DIRECTOR OF PUBLIC PROSECUTIONS (QLD)
(respondent)

FILE NO/S: Appeal No 1275 of 2026
SC No 3458 of 2025

DIVISION: Court of Appeal

PROCEEDING: Appeal from Bail Application

ORIGINATING COURT: Supreme Court at Brisbane – Unreported, 27 February 2026 (Freeburn J)

DELIVERED ON: 25 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 1 June 2026

JUDGES: Brown JA, Gotterson AJA, Cooper J

ORDERS: **1. The application to adduce fresh evidence is refused.**
2. The appeal is dismissed.

CATCHWORDS: CRIMINAL LAW – PROCEDURE – BAIL – REVOCATION, VARIATION, REVIEW AND APPEAL – where the appellant was granted bail on 24 September 2025 for numerous drug offences – where it was alleged that the offending was committed whilst the appellant was on parole – where the appellant was released and subject to conditions of both his bail order and parole order – where the appellant applied to vary his bail conditions to remove a curfew, permit him to possess a second mobile phone for employment purposes, remove a prohibition against accessing the internet and remove the requirement that he wear an electronic monitoring device – where the primary judge varied the conditions of the appellant’s bail to the extent of removing the prohibition against the appellant accessing the internet – where the primary judge otherwise dismissed the application – whether the primary judge erred in finding that the appellant had not demonstrated that the bail condition was more onerous than is necessary in the circumstances of the case under the *Bail Act 1980* (Qld) – whether the primary judge failed to consider relevant evidence in assessing the appellant’s application – whether the primary judge erred by failing to characterise the requirement that the appellant wear an

electronic monitoring device was punitive – whether the primary judge erred by failing to consider the effect that s 13, s 17, s 25, s 26, s 32 and s 34 of the *Human Rights Act 2019* (Qld) had on the decision whether to vary the appellant’s bail conditions

APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – ADMISSION OF FRESH EVIDENCE – IN GENERAL – where the appellant seeks leave to adduce further evidence in the form of three affidavits – where the respondents oppose the adducing of this evidence under r 766(1)(c) of the *Uniform Civil Procedure Rules 1999* (Qld) – where the appellant argues that the affidavits support a finding that the appellant’s bail conditions are more onerous than necessary in the circumstances of the case – whether the affidavits contained further evidence not discoverable before the hearing before the primary judge – whether the evidence deposed to within the affidavits would probably have an important influence on the result of the case – whether the evidence deposed to within the affidavits is credible

Bail Act 1980 (Qld), s 11(2), s 11(5)

Human Rights Act 2019 (Qld), s 13, s 17(b), s 25, s 26, s 32(1), s 34

Uniform Civil Procedure Rules 1999 (Qld), r 766

EGH19 v Commonwealth (2026) 100 ALJR 400; (2026) 428 ALR 467; [2026] HCA 7, cited

GLJ v Trustees of the Roman Catholic Church for the Diocese of Lismore (2023) 280 CLR 442; [2023] HCA 32, cited

House v The King (1936) 55 CLR 499; [1936] HCA 40, applied

Jonathan v Mangera (2016) 75 MVR 143; [\[2016\] QCA 86](#), applied

Karamaroudis v Director of Public Prosecutions (Qld) [\[2023\] QCA 42](#), applied

Moore (a pseudonym) v The King (2024) 282 CLR 460; [2024] HCA 30, cited

Pickering v McArthur [\[2010\] QCA 341](#), applied

Sica v Director of Public Prosecutions (Qld) [2011] 2 Qd R 254; [\[2010\] QCA 18](#), cited

The King v HCZ [2026] HCA 24, cited

YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs (2024) 99 ALJR 1; (2024) 419 ALR 457; [2024] HCA 40, cited

COUNSEL: The appellant appeared on his own behalf
C M Cook, with J H Guy, for the respondent

SOLICITORS: The appellant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

- [1] **BROWN JA:** I agree with Cooper J that the appeal should be dismissed for the reasons outlined by his Honour.
- [2] **GOTTERSON AJA:** I agree with the orders proposed by Cooper J and with his Honour's reasons for them.
- [3] **COOPER J:** On 24 September 2025, the appellant was granted bail for numerous drug related offences, the most serious being trafficking in dangerous drugs. He is alleged to have committed the offences while he was subject to a parole order. Consequently, his parole was suspended. He was eventually released about six weeks after bail was granted, at which time he was subject to the conditions of both his bail order and his parole order.
- [4] The appellant's bail order included the following conditions: a requirement that he reside at a specified address; a curfew between 8.00 pm and 6.00 am; a requirement that he report to a nominated police station three days per week; prohibitions against him consuming alcohol, possessing or consuming dangerous drugs, and possessing weapons; a requirement that he take part in any rehabilitation programs to which he is referred by Alcohol and Other Drug Services; a prohibition against him applying for a passport or leaving either Queensland or Australia; a prohibition against him possessing more than one mobile phone; a prohibition against him accessing the internet; and, a requirement that he wear an electronic monitoring device.
- [5] The appellant subsequently applied to vary his bail conditions to remove the curfew, permit him to possess a second mobile phone for the purposes of employment, remove the prohibition against him accessing the internet, and remove the requirement for him to wear an electronic monitoring device.
- [6] On 27 February 2026, the primary judge varied the conditions of the appellant's bail to the extent of removing the prohibition against him accessing the internet. The primary judge otherwise dismissed the application.
- [7] The appellant raises five grounds of appeal against the primary judge's refusal to make the further variations. For the reasons which follow, the appeal should be dismissed.

The hearing on 25 February 2026

- [8] The variation application came before the primary judge on the afternoon of 25 February 2026. The appellant commenced the hearing by informing the primary judge that an offer of employment had been withdrawn after a legal officer from the respondent's office had made inquiries of his prospective employer. He explained that he was applying to vary his bail conditions so he could obtain alternative employment. He referred to the financial impact which his inability to work was having on him and his family. He asserted that he could not obtain employment as a sales representative while he was required to wear the electronic monitoring device. He submitted that the monitoring he was subject to under his parole order would sufficiently ameliorate the risks which the bail conditions sought to address.
- [9] At that stage, the respondent informed the primary judge that the matter had been listed for review only, rather than for the hearing of the variation application. The respondent advised that the proposed variation to remove the prohibition on the

appellant accessing the internet was not opposed to the extent such access was for the appellant to seek employment and that it be undertaken through the one mobile phone permitted by the bail conditions. The respondent referred to the substantial amount of material read on the initial bail application and estimated that the hearing of the variation application would take up to 45 minutes.

[10] After further submissions from both parties as to the circumstances in which the appellant said his earlier offer of employment was withdrawn, the primary judge stated that he had another matter to deal with later that afternoon, but he was anxious that the process for hearing the appellant's variation application should not inconvenience the parties any more than necessary.

[11] The primary judge then asked whether the respondent's submissions were contained in written submissions. The respondent confirmed that unless the primary judge had questions, the respondent was content to rely on the written submissions.

[12] There was then the following exchange between the primary judge and the appellant:

“HIS HONOUR: All right. And, Mr Donaci, have you filed written submissions?

APPLICANT: Multiples, your Honour. My affidavit is listed throughout.

HIS HONOUR: All right. So we probably overrate oral advocacy, I think, but what I'm proposing is that I read this material and give you a decision on Friday. But what I want to do, too, is to make sure that both sides have said all they want to say – either in writing or orally. So, Mr Donaci, is there anything else that's not in your writing that you want to say in support of your application?

APPLICANT: No, your Honour. I've made – I will say, I've put a lot of time into my affidavit in this application, so --”

[13] Before the hearing was adjourned, the appellant made a further submission to the primary judge that monitoring of his location under his parole order, using an application on his phone which employed facial recognition software to identify his GPS location, would be just as effective as the electronic monitoring device required by his bail conditions.

[14] In response to the primary judge asking the appellant why he needed two phones, the appellant stated that every company that might employ him as a sales representative would give him a phone for work.

The appellant's written materials on the variation application

[15] The appellant relied on his affidavit, filed on 12 February 2026, in support of the variation application. In that affidavit, the appellant deposed that he was applying to vary his bail conditions so that he could seek employment. He referred to his previous offer of employment and the withdrawal of that offer after a legal officer from the

respondent's office spoke with the prospective employer. He stated that this had caused great financial hardship to himself and his family.

- [16] The appellant deposed that he had worked as a sales representative for more than 10 years and he had submitted multiple applications seeking employment in that field.
- [17] The appellant then set out the matters he advanced as reasons the primary judge should grant the variations as follows:

“24. My bail facts

- a) My bail was granted on merit only in a stand-alone fashion (appendix e)
- b) Other factors such as employment and parole were not factored in at the time

25. Ameliorating risk if gps ankle monitor is removed

- a) i am currently on a prole [sic, parole] order till January 2029 this offers a deeper level of regular contact that ameliorates risk
- b) if internet connection is allowed I could upgrade my phone to allow the qps app via parole that allows gps location monitoring and facial recognition 24 hours a day and 7 days a week
- c) your honour could add a new condition requiring me to have my phone on my person 24 hours a day and 7 days a week

...

28. Human rights submissions

- a) Human rights act 2019 s 17 (b)
A person must not be punished in a cruel inhuman or degrading way
- b) Human rights act 2019 s 25 (b)
Not to have a person's reputation unlawfully attacked
- c) Human rights act 2019 s(1) [sic, s 32(1)]
A person charged with a crime has the right to [sic, be] presumed innocent until proven guilty in a court of law
- d) Universal declaration of human rights (article 23)
Everyone has the right to work to free choice of employment to just and favourable conditions of work to protection against employment
- e) International covenant on social and economic rights (article 6)
Right of everyone to opportunity to gain there [sic, their] living by work that they freely choose

31. Reason for each conditions removal

32. Second phone if employed

- a) A second phone will be required for any position I take as a sales rep
- b) I can supply the imie number to police if a phone is issued
- c) I would only have a second phone once employed

33. Curfew removal

- a) Overnight travel is normal for all sales reps
- b) It is normally at short notice
- c) Early starts and late nights are common as a sales rep
- d) Flexible work hours
- e) dpp admits that none of the alleged offending was at night
- f) A curfew offers no ameliorating risk reduction
- g) It impedes my ability to work effectively

...

34. Internet

- a) Internet is required for many reasons in day to day life:
job applications, parole, music, centerlink, my gov, medicare, online banking, gps navigation, legal correspondence, email, court filings, doctors [sic, appointments], contacting friends and relatives, Job searches
- b) in employment emails, searching business addresses, finding new customer, navigation, booking meetings, data entry, customer entrys [sic, entries], booking meetings

35. Gps monitor

- a) As a sales rep I am the face of the company
- b) Any company I work for will have shorts as a part of the uniform as pictured in my previous bail variation application (appendix a)
- c) Queensland is notoriously hot with more than 50% of the year being over 30 degrees
- d) No employer will hire me if they become aware that I am on curfew with an ankle bracelet
- e) Any salary position as a sales rep will expect me to be able to work long days and travel at notice and will not accept an ankle monitor in a high paying position
- f) It would only be a matter of time till a customer of [sic, or] employer notices the ankle monitor and I am fired

- g) There is a social stigma with ankle monitors that it's a sexual based crime paedophile etc
- h) I have not taken my kids to the pools or parks since my release"

The primary judge's reasons

- [18] On 27 February 2026, the primary judge gave ex tempore reasons for his decision.
- [19] After identifying the existing bail conditions and the variations proposed by the appellant the primary judge referred to the purposes for which the bail conditions were imposed: to ensure that the appellant appears in court as required, and that while released on bail he does not commit an offence, does not endanger the safety or welfare of the community, and does not interfere with witnesses: see s 11(2) of the *Bail Act 1980* (Qld).
- [20] The primary judge then identified the relevant question for determination, namely whether the bail conditions were still necessary to secure the purposes prescribed by s 11(2) of the *Bail Act*, or whether those conditions had become more onerous than was necessary having regard to the nature of the alleged offences, the appellant's circumstances and the public interest: see s 11(5) of the *Bail Act*.
- [21] The primary judge referred to matters which had been emphasised when the appellant was granted bail: the seriousness of the charges and the existence of a strong Crown case. His Honour also observed that the conditions had been imposed despite the appellant's submission at the hearing of his initial bail application that those conditions were extreme. Against those matters, the primary judge recorded the respondent's acknowledgement that the appellant had fully complied with the bail conditions since his release from custody.
- [22] The primary judge then addressed each of the proposed variations in turn.
- [23] As to the removal of the curfew condition, the primary judge recited the appellant's reasons for seeking the variation – in accordance with paragraph 33 of the appellant's affidavit – but did not accept that those matters supported a finding that the condition had become more onerous than necessary. The primary judge observed that, at the time the variation application was heard, the appellant had not yet secured any employment, let alone employment that would require him to be away from his residence after 8.00 pm. His Honour found that the curfew condition continued to serve a useful purpose in ensuring that the police could monitor the appellant's compliance with the residential condition. However, the primary judge acknowledged that if the appellant was to obtain employment that required him to work at night, there would be a basis to vary the condition.
- [24] As to the use of a second phone, the primary judge rejected the appellant's submission that any employer would give him a phone as a basis to find that the mobile phone condition had become too onerous, noting that the appellant could always refuse such an offer. His Honour observed that many people in the community operate with only one phone, and that the existing condition enables the police to monitor the appellant's activities, which was important given the trafficking charge.
- [25] As to internet access, the primary judge accepted the appellant's submission that internet access is part and parcel of modern-day life, including job applications.

Taking account of the appellant's record in complying with the bail conditions to that time, the primary judge was satisfied that the prohibition on internet access was no longer necessary to secure the purposes prescribed by the *Bail Act*, provided that the authorities could monitor his internet use.

- [26] As to the removal of the electronic monitoring device, the primary judge expressed doubt about the appellant's evidence that, if employed as a sales representative, he would be required to wear shorts. The primary judge accepted that the requirement that the appellant wear the ankle monitor subjected him to an interference and an inconvenience but, having regard to the serious nature of the alleged offences, his Honour was not satisfied that was a sufficient basis to establish that the condition is more onerous than necessary.

Standard of appellate review

- [27] As was said in *Karamaroudis v Director of Public Prosecutions (Qld)*,¹ the decision to grant or refuse an application to vary bail conditions is a discretionary one which concerns the appropriateness of those bail conditions pending the trial of the substantive charge. The issues involved in that decision required the primary judge to form his own subjective view or value judgment as to whether the conditions the appellant sought to have varied were too onerous in the circumstances which existed when the variation application was heard. That is a value judgment in respect of which there is room for reasonable differences of opinion, with no particular opinion being uniquely right. The decision raised a question which lends itself to differences of opinion which, within a given range, are legitimate and reasonable answers to the question. The legal criterion to be applied in reaching that decision tolerates a range of outcomes.²
- [28] In those circumstances, the standard of appellate review involves judicial restraint which restricts intervention on appeal to the five grounds identified in *House v The King*,³ where the primary judge: (a) acted upon a wrong principle; (ii) allowed extraneous or irrelevant matters to affect the decision; (iii) mistook the facts; (iv) failed to take into account some relevant consideration; or (v) made a decision that was unreasonable or plainly unjust.⁴

Ground 1

- [29] By this ground the appellant contended that the primary judge erred in failing to apply what the appellant described as the “least restrictive” test for the imposition of conditions under s 11 of the *Bail Act*.
- [30] The appellant submitted that the primary judge erred in law by maintaining the curfew condition and the electronic monitoring device condition. The basis for the submission was the appellant’s argument that, in circumstances where the primary judge found that the appellant had complied fully with his bail conditions, the continued “double loading” of physical monitoring – a reference to the appellant

¹ [2023] QCA 42, [65]-[66].

² *Moore (a pseudonym) v The King* (2024) 282 CLR 460, 467 [14]; *GLJ v Trustees of the Roman Catholic Church for the Diocese of Lismore* (2023) 280 CLR 442, 455-465 [16].

³ (1936) 55 CLR 499, 504-505; see also *Sica v Director of Public Prosecutions (Qld)* [2011] 2 Qd R 254, 263-264 [12]-[16].

⁴ *The King v HCZ* [2026] HCA 24, [30].

being subject to monitoring by Queensland Corrective Services (**QCS**) through the QCS Connect App in addition to the bail condition requiring him to wear an electronic monitoring device – is more onerous than necessary to secure his compliance with the matters set out in s 11(2) of the *Bail Act*.

- [31] It is clear from the primary judge’s reasons that his Honour acted on the correct legal principle; that is, whether the bail conditions which the appellant sought to vary were more onerous than necessary having regard to the nature of the alleged offences, the appellant’s circumstances and the public interest. The appellant’s articulation of his argument under this ground makes it clear that his true complaint concerns the correctness of the conclusion the primary judge reached when applying that legal criterion. As the standard of appellate review of the primary judge’s decision involves judicial restraint, that is not a basis upon which this court would intervene on appeal.
- [32] In any event, the appellant’s submissions about what he described as the “double loading” of physical monitoring under his parole conditions and his bail conditions proceed from a fundamental misconception about the two forms of supervision. That misconception is apparent from the order the appellant seeks on this appeal that all forms of monitoring be consolidated and managed exclusively by QCS. As the respondent correctly submitted, the monitoring of a person subject to parole conditions and the monitoring of a person subject to bail conditions is undertaken pursuant to different statutory regimes for which different government entities are responsible. QCS is only responsible for monitoring and enforcing parole conditions. It has no responsibility for monitoring or enforcing bail conditions. That responsibility lies with the Queensland Police Service (**QPS**). Consequently, although the reasons of the primary judge did not address the appellant’s reference in paragraph 25 of his affidavit about physical monitoring under his parole conditions, that did not constitute a failure by his Honour to take into account a relevant consideration.
- [33] The appellant has not demonstrated that the primary judge’s decision to maintain the curfew condition and the electronic monitoring device condition was unreasonable or plainly unjust.
- [34] Nothing raised by the appellant under this ground establishes that the primary judge’s decision was affected by error that would warrant intervention on appeal. Ground 1 fails.

Ground 2

- [35] By this ground the appellant contended the primary judge did not properly consider relevant human rights arising under s 13, s 25 and s 26 of the *Human Rights Act 2019* (Qld).
- [36] This contention must be considered in the context of the submissions which the appellant made to the primary judge addressing the impact which the bail conditions had on his human rights. The extent of those submissions was what the appellant said in paragraph 28 of the affidavit filed on 12 February 2026. The appellant’s argument on appeal that he was denied the opportunity to make further submissions to the primary judge in an oral hearing cannot be accepted having regard to the exchange between the appellant and the primary judge at the hearing on 25 February 2026, in which the appellant confirmed to the primary judge that there was nothing else that

he wanted to say in support of the variation application beyond what was in his written material.

- [37] The appellant’s affidavit made no reference to s 13 of the *Human Rights Act* (which deals with reasonable and justifiable limits on a human right) or to s 26 of the *Human Rights Act* (which provides that families are entitled to be protected by society and the State). On appeal, the appellant raised arguments about the effect of those provisions which he had not raised before the primary judge. The primary judge did not err by not considering submissions which the appellant did not advance below.
- [38] As to s 25 of the *Human Rights Act*, the appellant did no more in his affidavit than refer to s 25(b) and summarise the language of the provision: that a person has the right not to have his or her reputation unlawfully attacked. The appellant did not articulate how that provision could operate in the context of his application to vary his bail conditions. Although the appellant referred in his affidavit to the legal officer from the respondent’s office speaking to his prospective employer, he did not make any submission to the primary judge (as he did on appeal) that this conduct constituted an unlawful attack on his reputation. If he had made such a submission, it could not have been accepted. As the primary judge correctly observed during the hearing on 25 February 2026, the respondent was entitled to make inquiries to verify matters which the appellant sought to advance in support of an application to vary his bail conditions, including assertions of an offer of employment. Even on appeal, the appellant has not established that s 25 of the *Human Rights Act* had any bearing upon the decision whether to vary his bail conditions.
- [39] In these circumstances, the primary judge did not err by not addressing any of the provisions of the *Human Rights Act* raised by this ground. Ground 2 fails.

Ground 3

- [40] By this ground the appellant contended that the primary judge erred in his characterisation of the requirement that the appellant be fitted with an electronic monitoring device. The appellant submitted that the primary judge erred in law when he found that the electronic monitoring device imposed an “inconvenience” and an “interference” upon the appellant.
- [41] In support of that submission, the appellant relied on decisions of the High Court which have considered the constitutional validity of the conferral of power on a Commonwealth Minister to impose a condition which required the wearing of an electronic monitoring device; those decisions described such a condition as “punitive”.⁵ However, the appellant did not rely on those cases in his submissions to the primary judge; he did not make any submission to the primary judge that the requirement that he wear an electronic monitoring device was punitive. It follows that the primary judge did not err by not addressing such a submission.
- [42] The primary judge’s reasons addressed the submissions which the appellant made in his affidavit concerning the impact of the electronic monitoring device. Having considered those submissions, the primary judge concluded that, having regard to the seriousness of the alleged offending while the appellant was on parole, the monitoring condition was not more onerous than necessary. That conclusion was open to the

⁵ *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 40, [56]-[62]; *EGH19 v Commonwealth* [2026] HCA 7, [40], [114]-[115], [207], [332].

primary judge on the materials before him. As already observed in addressing ground 1, the appellant has not demonstrated that the primary judge's decision to maintain the electronic monitoring device condition was unreasonable or plainly unjust.

- [43] The submissions advanced by the appellant under this ground do not establish that the primary judge's decision was affected by error that would warrant intervention on appeal. Ground 3 fails.

Ground 4

- [44] By this ground the appellant contended that the primary judge erred by failing to address the effect which the "double loading" of conditions – resulting from the combined effect of his bail conditions and his parole conditions – had upon his rights under s 17, s 32 and s 34 of the *Human Rights Act*.
- [45] The rights which the appellant relies upon under this ground are:
- (a) a person must not be treated or punished in a cruel, inhuman or degrading way (s 17(b) of the *Human Rights Act*);
 - (b) a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law (s 32(1) of the *Human Rights Act*);
 - (c) a person must not be tried or punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with law (s 34 of the *Human Rights Act*).
- [46] On appeal, the appellant submitted that because of the combined effect of his bail conditions and his parole conditions he was subjected to "administrative double jeopardy" where a single act would trigger dual punishment in the form of revocation of his parole and breach of bail. He submitted this violated the rights identified above.
- [47] As with ground 2, the appellant made no reference to the concept of double jeopardy or to s 34 of the *Human Rights Act* in the submissions he made to the primary judge. Further, although the appellant referred briefly in his affidavit filed on 12 February 2026 to the right under s 17(b) of the *Human Rights Act* not to be punished in a cruel, inhuman or degrading way, and the right under s 32(1) of the *Human Rights Act* to be presumed innocent until proved guilty, he did not articulate how the combined effect of his bail conditions and his parole conditions engaged those rights in a way which would affect the determination of his variation application.
- [48] In any event, the appellant has not demonstrated on this appeal that his bail conditions and his parole conditions, in combination, offend the provisions of the *Human Rights Act*.
- [49] Even if it is accepted that the requirement to wear an electronic monitoring device is punitive, the appellant's submissions provide no explanation as to why this should be characterised as him being punished in a cruel, inhuman or degrading way contrary to s 17(b) of the *Human Rights Act*. I cannot see any basis upon which the condition could properly be said to have that effect.
- [50] As to the presumption of innocence, the appellant submitted that the electronic monitoring device acts as a "badge of guilt" in professional circles, effectively pre-

judging his guilt before trial. This submission misconceives the right conferred by s 32(1) of the *Human Rights Act*. That is a right for the appellant to be presumed innocent when he is tried for the alleged offences for which he was granted bail. The appellant has not demonstrated that any of the bail conditions he sought to vary, including the electronic monitoring device condition, deprives him of that right.

- [51] The appellant's submissions concerning double jeopardy are also misconceived. Conduct which could expose the appellant to revocation of parole and to proceedings for breach of bail would not render him liable to trial and punishment more than once for an offence in relation to which he has already been finally convicted. Revocation of the appellant's parole would result in him being punished for the offence in relation to which he was convicted, sentenced and subsequently released on parole. If the appellant was to breach his bail he would commit a separate offence. Even if those two outcomes followed from the same conduct, that would not entail the appellant being tried or punished more than once for the same offence.
- [52] In these circumstances, the primary judge did not err by not addressing any of the provisions of the *Human Rights Act* raised by this ground. Ground 4 fails.

Ground 5

- [53] This ground is expressed in the amended notice of appeal in the following terms:

“Material Change in Circumstances and Inadequate Reasons
 Since the original decision, [the appellant] has provided evidence of public targeted hostility due to the visible monitor and a family crisis involving his step-son. The learned Judge failed to provide adequate reasons for rejecting [the appellant's] specific proposals for risk amelioration via digital monitoring in light of these factors and the prior loss of employment.”
- [54] The reference to the appellant providing evidence since the original decision concerns three affidavits for which the appellant sought leave to rely upon on the appeal.
- [55] In the first affidavit, dated 12 March 2026, the appellant deposes to having been unable to report to police as required by his bail conditions on 11 March 2026, after he received notice that his stepson, who is diagnosed with autism spectrum disorder (**ASD**), was suspended from the PCYC due to behavioural issues.
- [56] In the second affidavit, dated 22 March 2026, the appellant deposes that on 12 March 2026 he was verbally accosted and physically threatened by two men at the gym where he was exercising. He attributes the men's conduct to the presence of the electronic monitoring device fitted to his ankle.
- [57] In the third affidavit, which is undated, the appellant exhibits a copy of a psychological report for his stepson. That psychological report is dated 16 January 2024.
- [58] The court received these affidavits at the hearing of the appeal but reserved for further consideration the question whether their contents were admissible under r 766 of the *Uniform Civil Procedure Rules 1999* (Qld).

- [59] Fresh evidence can be admitted on appeal if: (i) it could not have been obtained with reasonable diligence for the original hearing; (ii) it is such that, if given, it would probably have an important influence on the result of the case; and (iii) it is apparently credible.⁶
- [60] I am not persuaded that the further evidence meets these requirements.
- [61] As to the first affidavit, the appellant gives further evidence in overly broad terms about the impact of his care obligations on his ability to comply with the reporting condition. He deposes that, due to the suspension from attending the PCYC and the specialised care required for a child with ASD, his stepson required his constant supervision, and he believed it would breach his obligations as carer to leave his stepson unsupervised to physically report to police. The affidavit does not address the length of time during which the appellant could have reported to police on the day in question (from 6.00 am to 8.00 pm). Nor does it say anything about the availability of his partner, to whom it appears the notification of suspension from the PCYC was first sent, to supervise the child during the permitted reporting period.
- [62] In any event, in circumstances where the appellant argued the variation application before the primary judge on the basis that the proposed variations were required for him to secure employment, I am unable to accept that the appellant's broad assertions that he was unable to report to police on a single occasion due to the need to supervise his stepson would have had an important influence on the result of the variation application.
- [63] As to the second affidavit, the appellant asserts that the incident at the gym has made him fearful for his safety in public spaces. Further, in circumstances where he deposes that the men who accosted him accused him of being a sex offender by reason of him wearing the electronic monitoring device, the appellant expresses concern that the visibility of the device invites vigilante hostility that endangers not only himself but also the child in his care. He expresses the belief that the electronic monitoring device has become a badge of criminality which triggers public hostility towards him and violates his human rights.
- [64] I have concerns about the credibility of this further evidence where there was no suggestion before the primary judge that the appellant had been subject to any public displays of hostility or aggression following his release from custody, yet the event at the gym is said to have occurred within approximately two weeks of the primary judge's refusal to remove the electronic monitoring device condition. Even if these concerns are put to one side and the further evidence is accepted at face value, it is difficult to see that the appellant's description of this single event could support a conclusion that the requirement for him to wear the electronic monitoring device had become a badge of criminality which exposes him to ongoing public hostility and threatens his safety in public spaces. I am not persuaded that the further evidence of the single event described in the second affidavit would have had an important influence on the result of the variation application.
- [65] The third affidavit does not meet the first requirement for adducing further evidence. As the psychological report had been provided in January 2024, the appellant has not demonstrated that this further evidence could not have been obtained with reasonable diligence for the hearing of the variation application.

⁶ *Pickering v McArthur* [2010] QCA 341, [22]; *Jonathan v Mangera* (2016) 75 MVR 143, 146 [12].

- [66] For these reasons, the application for leave to adduce the further evidence should be dismissed.
- [67] Even if leave was granted, the further evidence – which was not before the primary judge – would not establish error under this ground. The appeal ground is misconceived to the extent that, on its face, it asserts error on the part of the primary judge in failing, in the reasons, to address matters which had not occurred at the time his Honour decided the variation application.
- [68] Contrary to the appellant's submissions, the primary judge's reasons addressed each of the proposed variations by explaining the purpose of the condition and why his Honour considered that it was not more onerous than necessary in the circumstances of the case. The reasons adequately addressed the submissions which the appellant advanced before the primary judge in favour of each of the proposed variations and explained the reasons why the primary judge had not accepted those submissions. In these circumstances, ground 5 fails.

Conclusion

- [69] The appellant has not demonstrated that the primary judge's decision was affected by error that would warrant intervention on appeal.
- [70] I would make the following orders:
1. The application to adduce fresh evidence is refused.
 2. The appeal is dismissed.