

Lawyer wants changes after controversial case



Zarak Bolga outside court. Picture: Sarah Matthews

'Failures in justice system'

SARAH MATTHEWS

A CASE where an Indigenous man spent 100 days in jail before his lawyers say they realised police wrongly charged him is "the tip of the iceberg" of systematic problems in the Territory's justice system, according to a prominent NT criminal lawyer.

President of the Criminal Law Association NT, Marty Aust, said the case of Zarak Bolga – who was found not guilty of aggravated assault after a hearing on Monday – is an example of failures in the system.

He said the failures were partially due to a lack of funding and resources in the courts.

"The Local Courts of the Northern Territory are busy and resources are always stretched to breaking point. Far too often we see defendants released on the day of a hearing because matters are unable to proceed as a result of investigative or procedural failures," Mr Aust said.

Mr Bolga was found not guilty after his lawyer, Patrick McNally, obtained CCTV footage under subpoena that showed the alleged victim being assaulted by two women.

The prosecution continued to pursue the charge, changing the details of their charge at the last minute.

Their case failed after the alleged victim, who was called to give evidence, told the court she was attacked by two women rather than Mr Bolga.

Mr Aust said changes should be made to bail laws in the Territory to prevent more people wrongly spending extended periods of time in custody.

"Cases such as this and another man erroneously charged with the rape of a child in Tennant Creek may be but the tip of the iceberg," he said.

"Arrest and imprisonment should be last resorts."

Assistant Commissioner of NT Police, Michael White, said police were "reviewing the circumstances that led to the failed prosecution".

Cases such as this most recent matter and also such as the man erroneously charged with the rape of a child in Tennant Creek are serious examples of broader issues. Unfortunately they may be but the tip of the iceberg. Innocent people are spending far too much time locked up in the Northern Territories prisons.

There are rules and procedures that govern the duties and responsibilities of the various participants in our criminal justice system. When there is a failing by a party to diligently comply with their duties and responsibilities, the system fails and vulnerable participants, whether witnesses, complainants or defendants are unfairly impacted.

We can't afford to have our system fail. Everyone involved must learn from this case and other instances when there are failings.

The Local Courts of the Northern Territory are busy and resources are always stretched to breaking point. Police, prosecutors and defence lawyers are under resourced and overworked, however fundamental duties cannot be allowed to be overlooked or excused, particularly when it appears there is no prospect of funding increases to the sector; and in fact there has been a significant reduction in the funding allocated to the Courts in the most recent budget.

The time for change is now.

Far too often we see defendants released on the day of a hearing because matters are unable to proceed as a result of investigative or procedural failures. Given the tough bail laws in our jurisdiction, the shameful over representation of Aboriginal and Torres Strait Islander people in custody and the number of people awaiting trial or hearings on remand, we need to consider whether immediate changes are required to the presumptions in our Bail Act. Alternatively an urgent review of the process of arresting and charging persons absent significantly probative evidential material as opposed to a bare statement of complaint should be considered.

Arrest and imprisonment should be last resorts. The sooner we have wholesale improvements in the summary jurisdiction the healthier our criminal justice system will be. It is a timely reminder of the work that those developing the Aboriginal Justice Agreement have highlighted regarding institutional and systemic racism and the need for real measures and reforms to counter and change the current situation in the Northern Territory. We need to do better for all involved in the criminal justice system.

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