



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 13 Feb 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: B44/2025
File Title: The King v. HCZ
Registry: Brisbane
Document filed: Form 27A - Appellant's submissions
Filing party: Appellant
Date filed: 13 Feb 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN:

THE KING
Appellant

and

HCZ
Respondent

APPELLANT'S SUBMISSIONS

PART I: CERTIFICATION

1. These submissions are in a form suitable for publication on the Internet.

PART II: ISSUES PRESENTED BY THE APPEAL

2. Under s 227(1) of the *Youth Justice Act 1992* (Qld), a child sentenced to a period of detention must be released after serving 70% of the period. Section 227(2) confers a power on a court sentencing a child to order that child to be released from detention after serving less than 70% if the court considers there are 'special circumstances'. In this case, the primary judge found there were no special circumstances. By majority, the Queensland Court of Appeal found that the sentencing judge 'ought' to have found that there were special circumstances. The issues presented by this appeal are thus:
 - (a) on a sentencing appeal, does the 'correctness standard' apply to the review of a state of mind formed by the sentencing judge as to the existence or non-existence of 'special circumstances' within the meaning of s 227(2) of the *Youth Justice Act*?
 - (b) was it reasonably open to the sentencing judge to have considered that there were no 'special circumstances' that warranted a reduction in the period spent in detention in this case?
3. The answers to those questions are, respectively, 'no' and 'yes'.

PART III: SECTION 78B NOTICE

4. No notice is required under s 78B of the *Judiciary Act 1903* (Cth).

PART IV: CITATIONS

5. The judgment of the Queensland Court of Appeal is unreported. Its medium neutral citation is *R v HCZ* [2025] QCA 147. The judgment of the primary judge is unreported. Its medium neutral citation is *R v HST* [2024] QSCSR 65.

PART V: FACTS

6. On 26 December 2022, when the respondent was aged 17 years and eight months, he and another 17-year-old boy entered the home of the deceased's family late at night. The respondent was armed with a knife.
7. The family was asleep, and the respondent's entry woke the deceased and her husband. The deceased's husband opened the bedroom door and found the respondent in front of him. The other boy was in the living room and walked towards him. The deceased and her husband pushed the two boys towards the front door of their home. Outside that door, the deceased's husband struggled with the co-accused, and the deceased struggled with the respondent. The respondent struck out at them with the knife but did not connect with either. During the struggle, a neighbour's closed-circuit television picked up that the respondent or his co-accused said, 'I'll kill you.'
8. All four moved to the front lawn. The deceased and her husband struggled with the respondent who stabbed the deceased in the chest and her husband in the back.
9. The respondent then forced the deceased's husband to the ground and kicked him several times to the face. The deceased fell forward and collapsed. The respondent and the co-accused fled the scene.
10. Emergency services found the deceased unconscious and not breathing. By that stage, her two teenage daughters were standing over their mother's body sobbing. Cardiopulmonary resuscitation commenced and soon after open heart surgery was performed at the scene as the deceased lay on the grass. She died later that morning in hospital.

11. When police found the respondent, he lied to explain the blood on his clothing and damage to his t-shirt. He said he had been asleep since earlier in the evening. He persisted with this lie and he laughed when arrested.
12. Evidence found at the deceased's family home and at the respondent's residence—including the handle of the knife used to stab the deceased and her husband, and DNA evidence—combined to make an 'overwhelmingly strong Crown case' against the respondent.¹
13. On 11 March 2024, the respondent pleaded guilty to four charges that resulted from his actions on the relevant night. Those charges were:
 - (a) burglary by breaking, in the night, while armed and in company (count 1);
 - (b) murder (count 2);
 - (c) malicious act with intent (count 3); and
 - (d) assault occasioning bodily harm while in company (count 4).

Sentencing by the primary judge

14. Under s 176(3) of the *Youth Justice Act*, a child may be detained for no longer than 10 years, unless the offence for which they are to be sentenced is an offence for which a person sentenced as an adult would be liable to life imprisonment, and the court considers the offence to be a 'particularly heinous offence, having regard to all the circumstances'. The sentencing judge determined that the offence of murder committed by the respondent was 'particularly heinous'. His Honour sentenced the respondent to 14 years' detention. For the other offences, he imposed lesser concurrent terms of detention.
15. Section 227 of the *Youth Justice Act* required the respondent to be released after serving 70% in detention unless the court considered there were 'special circumstances'. Without a finding of special circumstances, the respondent was required to serve nine years and 10 months in actual detention and four years and two months on supervised release.
16. In considering whether there were special circumstances, the sentencing judge acknowledged that there had been an early plea of guilty, that the respondent had

¹ *R v HCZ* [2025] QCA 147, [26] (**Reasons**) (Core Appeal Book (**CAB**), 43).

a deprived upbringing, that he had expressed remorse and that there were positive signs of rehabilitation. But, in his Honour's view, these factors needed to be assessed in light of all the circumstances. Those circumstances included that the offence had been committed against a background of repeated offending, that the plea of guilty had been made in the face of an overwhelmingly strong case, and that the respondent was at the upper end of the age where he would be treated as a child. Ultimately, the sentencing judge did not consider that there were special circumstances that warranted a reduction in the time that the respondent would have to spend in detention.

Appeal to the Court of Appeal

17. The respondent sought and obtained leave to appeal against his sentence. His first ground of appeal was that the murder was not 'particularly heinous', and his second was that the judge failed to give any or adequate weight to the respondent's pleas of guilty and personal circumstances. Both these grounds were unanimously rejected.²
18. By his third ground of appeal, the respondent relied upon the principles stated in *House v The King*³ to submit that the sentencing discretion had miscarried. It was submitted that there was an implicit error in the sentence because the sentence was manifestly excessive. Justice Boddice (with whom Freeburn J agreed) found that the sentence of 14 years was not manifestly excessive. On the contrary, a 'consideration of the relevant sentencing principles, in the context of the seriousness of the applicant's offending conduct and the applicant's mitigating circumstances, amply support[ed] a conclusion that the sentence of 14 years' detention for murder fell within a sound exercise of the sentencing discretion'.⁴
19. However, Boddice JA held that leaving the respondent to serve 70% of the sentence (in accordance with the default rule in s 227(1) of the *Youth Justice Act*) 'did render the sentence for murder manifestly excessive'.⁵ Despite the third ground of appeal asserting an 'implicit error', Boddice JA's conclusion on this

² Reasons, [15], [48], [52] (CAB 40, 48-9).

³ *House v The King* (1936) 55 CLR 499, 505 (Dixon, Evatt and McTiernan JJ).

⁴ Reasons, [57] (CAB 49).

⁵ Reasons, [58] (CAB 50).

point rested on an identifiable error. His Honour reasoned that the respondent's early plea, his genuine remorse and prospects of rehabilitation meant that 'a finding that there were special circumstances...ought to have been made'.⁶

20. Accordingly, Boddice JA and Freeburn J altered the sentence so that the respondent would be released after having been detained for 60%, rather than 70%, of his sentence.
21. Justice Bond dissented. Applying the standard of appellate review described in *House v The King*,⁷ his Honour was 'unable to conclude that the outcome imposed by the sentencing judge was so unjust or plainly unreasonable' that the Court of Appeal should infer an error of principle.⁸

PART VI: ARGUMENT

Ground 1(a): The appropriate standard of review

22. The majority treated the sentencing judge's finding that there were no 'special circumstances' as an error attracting the correctness standard on appellate review rather than the standard that applies to review of a 'discretionary judicial decision'.⁹ This is apparent from the language of paragraph [61]:

... a finding that there were special circumstances ... ought to have been made.

23. It is also apparent from paragraph [62], where Boddice JA said:

[T]he failure of the sentencing judge to find there were special circumstances, was an error requiring the sentencing discretion to be re-exercised.
24. The correctness standard of appellate review requires that 'the appellate court determines for itself the correct outcome while making due allowance for such "advantages" as may have been enjoyed by the judge who conducted the trial or hearing'.¹⁰ In contrast, the discretionary standard requires 'judicial restraint affording latitude to a trial judge' with appellate intervention limited to the

⁶ Reasons, [60], [61] (CAB 50).

⁷ Reasons, [7]-[10] (CAB 39-40).

⁸ Reasons, [9] (CAB 40).

⁹ See *GLJ v The Trustees of the Roman Catholic Church of Lismore* (2023) 280 CLR 442, 455 [16] (Kiefel CJ, Gageler and Jagot JJ).

¹⁰ *Steven Moore (a pseudonym) v The King* (2024) 98 ALJR 1119, 1124 [14] (Gageler CJ, Edelman, Steward, Gleeson and Beech-Jones JJ).

grounds set out in *House v The King*, which grounds ‘contemplate the appellate court accepting that intervention is not warranted even though the members of the appellate court may have decided the matter differently to the judge at first instance’.¹¹

25. In *Steven Moore (a pseudonym) v The King*,¹² this Court said that the determination of whether the appellate standard of review is a correctness standard or a standard in which latitude is afforded to a primary decision-maker ‘turns on whether the legal criterion to be applied “demands a unique outcome, in which case the correctness standard applies, or tolerates a range of outcomes, in which case the *House v The King* standard applies”’. In other words, the correctness standard will apply to ‘questions to which there is but one legally permissible answer, even if that answer involves a value judgment’.¹³ Hence, the correctness standard can apply even if the issue is one requiring evaluation upon which reasonable minds might differ.¹⁴
26. The standard of appellate review must depend upon what was intended by Parliament.¹⁵ The ‘breadth (including the subjectivity) of any evaluative power afforded to the primary decision-maker’ is an important factor in determining that intention.¹⁶
27. The criterion set by s 227(2) does not ‘demand a unique outcome’.¹⁷ On the contrary, s 227(2) provides that the court ‘may order’ that the child be released after serving 50% or more, but less than 70%, of the sentence ‘if it considers that there are special circumstances’. In other words, the statute confers a power to

¹¹ *Moore* (2024) 98 ALJR 1119, 1124 [14] (Gageler CJ, Edelman, Steward, Gleeson and Beech-Jones JJ).

¹² (2024) 98 ALJR 1119, 1124 [15] quoting *Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541, 563 [49].

¹³ *GLJ* (2023) 280 CLR 442, 455-6 [16] (Kiefel CJ, Gageler and Jagot JJ), 483 [95] (Steward J), 502 [161] (Gleeson J).

¹⁴ *SZVFW* (2018) 264 CLR 541, 563 [49] (Gageler J), 591 [150] (Edelman J); *R v Dennis Bauer (a pseudonym)* (2018) 266 CLR 56, 88-89 [61]; *Moore* (2024) 98 ALJR 1119, 1124 [15] (Gageler CJ, Edelman, Steward, Gleeson and Beech-Jones JJ).

¹⁵ *SZVFW* (2018) 264 CLR 541, 592 [151] (Edelman J); *GLJ* (2023) 280 CLR 442, 482 [91] (Steward J); *FT (a pseudonym) v The King* [2024] VSCA 90, [53] (Beach, McLeish and Niall JJA).

¹⁶ *Helensburgh Coal Pty Ltd v Bartley* (2025) 99 ALJR 1185, 1201 [80] (Edelman J). See also *SZVFW* (2018) 264 CLR 541, 592 [152] (Edelman J).

¹⁷ *Moore* (2024) 98 ALJR 1119, 1124 [15].

depart from the default statutory rule that a child must be released after serving 70% of the sentence in detention, if the sentencing judge forms a particular opinion.

28. An opinion that ‘special circumstances’ exist is to be drawn from a range of circumstances, some specific to the offender and some specific to the offence, and a myriad of other facts proven or accepted on sentence that, in the judgment of the sentencing judge, constitute a reason why the child ought to be released from detention after serving less than 70% of the sentence. There is no ‘fixed rule’ which, when applied to the facts, dictates the outcome.¹⁸ Instead, formation of the opinion calls for ‘value judgments in respect of which there is room for reasonable differences of opinion, no particular opinion being uniquely right’.¹⁹ Moreover, under s 227(2), formation of the opinion does not dictate the course to be taken: it merely makes available to the judge a range of options.²⁰
29. That being the case, *House v The King* applies to an appeal that concerns a decision under s 227(2) of the *Youth Justice Act*.²¹ So much has been recognised by earlier authority in the Court of Appeal.²²

¹⁸ *Norbis v Norbis* (1986) 161 CLR 513, 518 (Mason and Deane JJ).

¹⁹ *Norbis v Norbis* (1986) 161 CLR 513, 518 (Mason and Deane JJ). See also *Coal & Allied Operations Pty Limited v Australian Industrial Relations Commission* (2000) 203 CLR 194, in which a precondition to the existence of the discretionary power was the formation of a state of satisfaction. The state of satisfaction was held to involve a ‘degree of subjectivity’ and ‘some latitude of choice as to the decision to be made’: at 204-5 [19]-[20] (Gleeson CJ, Gaudon and Hayne JJ). It was therefore ‘discretionary’ in the relevant sense.

²⁰ In contrast, see *KMD v CEO (Department of Health NT)* (2025) 99 ALJR 474, 480 [21]-[22] (Gordon, Steward, Gleeson and Beech-Jones JJ), 484 [45] (Jagot J) and *GLJ* (2023) 280 CLR 442, 460 [24]-[26] (Kiefel CJ, Gageler and Jagot JJ).

²¹ That result mirrors the analysis that would apply in the ‘closely analogous’ context of judicial review of administrative action: see *Minister for Immigration v Li* (2013) 249 CLR 332, 376-7 [110] (Gageler J), 366 [75] (Hayne, Kiefel and Bell JJ). Where a jurisdictional precondition on the existence of a power is subjective and involves a question to which there are ‘a variety of diverse yet equally valid opinions’, the court does not substitute ‘its opinion for the person or authority in question. What the court does do is inquire whether the opinion required by the relevant legislative provision has really been formed’: *R v Connell; Ex parte Hetton Bellbird Collieries Ltd* (1944) 69 CLR 407, 432 (Latham CJ), cited in *Minister for Immigration v Eshetu* (1999) 197 CLR 611, 652 [133] (Gummow J). See also, the Hon Justice R Derrington, ‘Migrating towards a principled approach to reviewing jurisdictional facts’ (2020) 27 *Australian Journal of Administrative Law* 70, 76.

²² In *R v KAL* [2013] QCA 317, Mullins and Henry JJ treated the question of whether there were special circumstances as one that involved the exercise of discretion: at [36]. So too did McMurdo P. While

30. That conclusion is reinforced by another ‘important factor’²³: the exercise of power conferred by s 227(2) forms part of the sentencing discretion.²⁴ As explained in *Lacey v The Queen*, it has long been considered that appeals against sentence cannot be allowed merely ‘because individual members of the Court might have inflicted a different sentence’.²⁵
31. Further, one of the purposes of conferring a jurisdiction to hear appeals against sentence is to ensure consistency in the application of relevant legal principles.²⁶ The availability of appeals against sentence ensures the administration of criminal justice works as a system, not merely as a ‘multiplicity of unconnected single instances’.²⁷ The application of the correctness standard would undermine that purpose. As this Court observed in *Lacey*, if an appellate court’s intervention is not conditioned on a requirement to find an error beyond disagreement with the sentencing judge—and, in substance, that is all that the correctness standard would here require—the appellate court’s decisions will do no more than plant ‘a wilderness of single instances with more instances of its own choosing’.²⁸
32. The language employed by Boddice JA at paragraphs [61] and [62] of the judgment (and which are set out above at paragraphs [22] and [23]) was the familiar language employed when applying the correctness standard.²⁹ The reasoning employed in paragraph [61] of the judgment is that employed when considering errors in drawing inferences of fact and not the reasoning applicable

dissenting in the result, her Honour recognised that the discretion conferred upon a judge by s 227(2) to consider whether there were special circumstances is ‘wide’: at [32].

²³ *Helensburgh Coal* (2025) 99 ALJR 1185, 1201 [80] (Edelman J). See also *SZVFW* (2018) 264 CLR 541, [152] (Edelman J).

²⁴ As Bond JA recognised: see Reasons, [7] (CAB 39). The relevant right of appeal is conferred by *Criminal Code*, s 668D(1)(c) and *Youth Justice Act*, s 116(a).

²⁵ (2011) 242 CLR 573, 579-81 [11]-[14] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ), citing *R v Sidlow* (1908) 1 Cr App R 28, 29.

²⁶ *Wong v The Queen* (2007) 207 CLR 584, 591 [8] (Gleeson CJ) (referring to s 5 of the *Criminal Appeal Act 1912* (NSW), which closely resembles s 668D of the *Criminal Code*); *Hili v The Queen* (2010) 242 CLR 520, 535 [48] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

²⁷ *Hili* (2010) 242 CLR 520, 535 [47] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ), citing with approval *Wong* (2007) 207 CLR 584, 591 [6] (Gleeson CJ).

²⁸ *Lacey v The Queen* (2011) 242 CLR 573, 595-6 [54]-[56] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ)

²⁹ *Warren v Coombes* (1979) 142 CLR 531, 551 (Gibbs ACJ, Jacobs and Murphy JJ).

to finding errors in the exercise of discretion.³⁰ Justice Boddice found that the sentencing judge ‘ought’ to have drawn a particular conclusion. Unless that was the only conclusion which was open then such a finding is equivalent to saying that the approach of primary judge was not ‘correct’. Such an approach is only applicable to the correctness standard rather than the relevant standard here (the discretionary standard).

33. In reasoning in this way, the majority acted contrary to principle.

Ground 1(b): The appropriate finding as to the state of satisfaction

34. Even if (contrary to the submissions above) the majority of the Court of Appeal did not purport to apply the correctness standard, its intervention was still a violation of principle. The standard in *House v The King* limits the circumstances in which an appellate court can intervene to correct errors in the exercise of sentencing discretion. It does not permit interference with a sentence because an appellate court would prefer a different conclusion.³¹
35. Here, s 227(2) is drafted in broad terms; it is intended to leave the decision about the existence of ‘special circumstances’ to the sentencing judge. The majority, moreover, had rejected a challenge to the sentencing judge’s conclusion—reached after having regard to all the circumstances—that the offence was ‘particularly heinous’;³² it had rejected a challenge made on the basis that the sentencing judge gave no weight to the early plea of guilty; and it had held that the 14 year sentence imposed by the sentencing judge demonstrated no error. In addition, the majority had accepted that the sentencing judge had referred to factors such as the early guilty plea and the respondent’s deprived upbringing while finding that there were no special circumstances. Despite all this, the majority claimed that a finding that there were special circumstances ‘ought to have been made’.³³ With respect, that disagreement with the sentencing judge’s

³⁰ It is true that Boddice JA stated the correct principles at [53] (with reference to *Hili* (2010) 242 CLR 520 at footnote 13), at the outset of his consideration of ground 3. However, for the reasons given above, the language used in his Honour’s consideration of the ground is the language of *Warren v Coombes*.

³¹ *Moore* (2024) 98 ALJR 1119, 1124 [14] (Gageler CJ, Edelman, Steward, Gleeson and Beech-Jones JJ), referring to *Lovell v Lovell* (1950) 81 CLR 513, 519 (Latham CJ).

³² See s 176(3) of the *Youth Justice Act* and Reasons, [45] (CAB 47).

³³ Reasons, [61] (CAB 50).

conclusion fell well short of establishing that there was an error that warranted setting aside his Honour's decision. Indeed, given the matters mentioned above, it was plainly open to the sentencing judge to do what he did.

36. The same point can be reached another way. Section 227(1) provides that, unless an order is made under s 227(2), a child sentenced to a period of detention must be released from detention after serving 70% of the period. Section 227(2) then provides the sentencing court with a discretion to deviate from the statutory default of 70% if the court is satisfied that special circumstances exist for doing so.
37. Justice Boddice reasoned that, although the sentence of 14 years' detention for murder fell firmly 'within a sound exercise of the sentencing discretion',³⁴ the requirement that the respondent serve 70% of that sentence in detention 'did render the sentence for murder manifestly excessive'.³⁵ His Honour's finding that there were 'special circumstances' appeared to hinge upon this conclusion.
38. Yet, as this Court's decisions show, any consideration of whether a sentence is 'manifestly excessive' must be informed by the statute pursuant to which the sentence is imposed.³⁶ It is therefore difficult to see how the operation of a statutory rule that a child be released from detention after serving a certain percentage of their sentence can operate to render manifestly excessive an otherwise reasonable sentence imposed under the same statute.
39. In substance, Boddice JA treated the operation of the rule in s 227(1) as a 'special circumstance' requiring departure from that rule. To do so was inconsistent with the statutory scheme.

PART VII: ORDERS SOUGHT

40. The appeal be allowed.

³⁴ Reasons, [57] (CAB 49).

³⁵ Reasons, [58] (CAB 50).

³⁶ See, by way of analogy, *Hurt v The King* (2024) 281 CLR 286, 305 [39], explaining that a mandatory minimum informs the assessment of the sentence or the making of an order that is of a severity appropriate in all the circumstances of the offence, even where the sentencing court is, in certain circumstances, given a discretion to impose a sentence less than the minimum.

41. Set aside orders 2 and 3 made by the Court of Appeal on 15 August 2025 and in their place order that the appeal to the Court of Appeal be dismissed.

PART VIII: TIME ESTIMATE

42. It is estimated that up to 1.5 hours will be required for the appellant’s oral argument (including reply).

Dated: 13 February 2026



.....
Gim del Villar KC SG

Murray Gleeson Chambers

07 3175 4650

solicitor.general@justice.qld.gov.au

.....
April Freeman KC

More Chambers

07 3221 0882

aprilfreeman@morechambers.com

.....
Felicity Nagorcka

Higgins Chambers

07 3221 2182

fnagorcka@qldbar.asn.au

.....
Jade-Ann Reeves

Murray Gleeson Chambers

07 3175 4600

jreeves@qldbar.asn.au

ANNEXURE TO APPELLANT'S SUBMISSIONS

No.	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
1.	<i>Youth Justice Act 1992 (Qld)</i>	Current from 3 May 2024 to 2 June 2024	176	Applicable at time of sentence	13 May 2024: date of sentence
			227	Applicable at time of sentence	13 May 2024: date of sentence
			116	Applicable at time of appeal	22 May 2024: date of application for leave to appeal
2.	<i>Criminal Code (Qld)</i>	Current from 29 April 2024 to 24 June 2024	668D	Applicable at time of appeal	22 May 2024: date of application for leave to appeal
3.	<i>Criminal Appeal Act 1912 (NSW)</i>	Current from 25 September 2000 to 21 December 2001	5	In force at time <i>Wong v The Queen</i> (2001) 207 CLR 584 decided	