

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Larry* [2017] QSC 197

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
THOMAS JOEL LARRY
(respondent)

FILE NO/S: BS No 396 of 2011

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 28 August 2017

DELIVERED AT: Brisbane

HEARING DATE: 28 August 2017

JUDGE: Burns J

ORDERS: **The court orders that:**

- 1. Pursuant to r 375 of the *Uniform Civil Procedure Rules 1999 (Qld)*, the name of the respondent be amended by deleting the middle name ‘Andrew’ and inserting in lieu thereof ‘Joel’.**
- 2. Being satisfied to the requisite standard that the respondent, Thomas Joel Larry, has contravened the supervision order made on 20 May 2011 and amended on 10 December 2012, orders that, pursuant to s 22(2) of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*, the respondent be released from custody and continue to be subject to the supervision order made on 20 May 2011 and amended on 10 December 2012.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where a supervision order was made with respect to the respondent under Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – where it was alleged that

the respondent had contravened a requirement of the supervision order – where a warrant was issued for the arrest of the respondent pursuant to the Act and the respondent was detained in custody – where the applicant sought orders with respect to the respondent under s 22 of the Act – where the contravention was admitted by the respondent – whether the adequate protection of the community could, despite the contravention of the order, be ensured by the existing supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 22, s 22(7)

COUNSEL: J Tate for the applicant
C Boothman for the respondent

SOLICITORS: G R Cooper Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

HIS HONOUR: This application is brought by the Attorney-General for the State of Queensland against Thomas Joel Larry, pursuant to Division 5 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*. The Attorney-General alleges that Mr Larry contravened a condition of his supervision order made under Division 3 of the Act.

By s 22 of the Act, if the court is satisfied on the balance of probabilities that the alleged contravention occurred, the prisoner bears the onus of satisfying the court, again on the balance of probabilities, that the adequate protection of the community can, despite the contravention, be ensured by the existing supervision order, or as amended under s 22(7). Otherwise, the court is required to rescind the supervision order and make a continuing detention order.

The supervision order, in its original incarnation, was made on 19 May 2011 by Boddice J. It contained 37 separate conditions. The order was amended by Applegarth J on 10 December 2012. The order, when originally made, was for a term of 10 years.

One of the conditions of the order, condition 24, provided that the prisoner must:

...abstain from illicit drugs for the duration of this order.

On 12 January 2017, Mr Larry reported to the Townsville Probation and Parole District Office and was, amongst other things, directed to submit to a urinalysis and breath test. The

test returned a positive result for marijuana. Subsequent testing confirmed that result. Furthermore, Mr Larry has, through his counsel, admitted the alleged contravention. I am therefore satisfied on the balance of probabilities that Mr Larry contravened condition 24 of his supervision order.

Given that finding, the question is whether the court can be satisfied, the onus being on Mr Larry, on the balance of probabilities that the adequate protection of the community can, despite the contravention, be ensured by the existing order. In that regard, I am assisted by evidence from two psychiatrists, Dr Beech and Dr Harden, who have prepared reports. Each was engaged to assess Mr Larry's risk of sexual recidivism, for the purpose of these proceedings. Dr Beech reported on 1 May 2017. Amongst other things, he said:

The use of cannabis indicated a lapse but in my opinion not a rejection of supervision. It probably indicated poor thinking, opportunity, and some stress but not emotional collapse or affective instability. Minor curfew breaches aside he has been compliant. The cannabis use was detected quickly (the material indicates a targeted test) and so all in all I do not think that there was a significant increase in risk. It is likely now that the risk has returned to where it was in late 2016, when he was released. I believe that the supervision order acts to substantially lower the risk.

Dr Harden reported on 10 August 2017. He was of a similar opinion to Dr Beech. He expressed the opinion that the contravention did not alter Mr Larry's "risk profile".

Taken together, the opinions of Dr Harden and Dr Beech are to the effect that Mr Larry's current unmodified risk of future sexually violent reoffending remains in the high range, but that the existing supervision order reduces that risk significantly. For example, in Dr Harden's view, with the supervision order in place, the risk is in the moderate category.

That said, it is to be observed that this is the fifth contravention proceeding taken against Mr Larry, with respect to this order. On 14 February 2012, he was dealt with by Mullins J for breach of a direction to cease contact with a particular woman. On 12 December 2012, he was dealt with by Applegarth J for ingestion of synthetic cannabis. On 7 September 2015, he was dealt with by Flanagan J, again, for ingestion of cannabis. And on 10 October 2016, he was dealt with by me for breach of a direction not to use a mobile phone owned by any other person and with respect to what were described as curfew breaches. It will be noted that two of these prior contraventions did not involve the use of illicit drugs and also, that the last

contravention involving the use of illicit drugs (for which he was dealt with by Flanagan J) occurred in December 2014.

Mr Larry has otherwise had substantial periods of time in the community under supervision and been compliant. The present contravention was, I accept, an isolated event. It appears to have been detected quickly and was not associated with any inappropriate sexual conduct or other breaches of the order. Furthermore, Mr Larry has, since being in custody, completed the Sexual Offenders Maintenance Program. He commenced this program on 6 June 2017 and completed it about two months later. He received a very positive exit report, noting his genuine participation and willingness to rehabilitate himself.

In addition, appropriate planning has been made for Mr Larry's release back into the community. Initially, he will be accommodated in the Precinct but, as Ms Cowie explained in her affidavit filed on 23 August 2017, appropriate independent accommodation will then be sought. So, too, will psychological treatment be provided and anti-libidinal medication considered. Appropriate cultural supports will also be in place as well as assistance within the community to deal with his substance abuse issues.

It appears that an external support agency known as Selectability will be in a position to assist Mr Larry to apply to the Public Trustee for financial management. That will include assistance in the preparation of an application for funding under the National Disability Insurance Scheme. If such funding is received, that will go a long way to providing further support for Mr Larry in the community.

Lastly, Mr Larry will be the beneficiary of pre-release support from Selectability and, on his release from custody, he will receive up to 10 hours a week with a mental health lifestyle support worker to access and engage in the community for a period of six months from the date of his release.

I am satisfied that Mr Larry has discharged the onus cast on him under the Act. Specifically, I am satisfied on the balance of probabilities that the adequate protection of the community can, despite this contravention, be ensured by the existing supervision order.

Order as per draft, initialled by me, and placed with the papers.