

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Armstrong* [2018] QSC 50

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
STUART WILLIAM ARMSTRONG
(respondent)

FILE NO: BS10494 of 2010

DIVISION: Trial Division

PROCEEDING: Application for contravention of supervision order

DELIVERED ON: 12 March 2018 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 12 March 2018

JUDGE: Mullins J

ORDER: **As per the draft order initialled by Mullins J and placed with the file.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where respondent released from custody under a supervision order – where respondent contravened requirements of supervision order – where application pursuant to s 22 *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – whether a supervision order rather than a continuing detention order can ensure adequate protection of the community

Attorney-General (Qld) v Armstrong [2016] QSC 298, related
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 22

COUNSEL: A Meisenhelter for the applicant
E Mac Giolla Ri for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
Fisher Dore Lawyers for the respondent

HER HONOUR: Mr Armstrong is the subject of a supervision order made by me under the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act) on 12 December 2017 for a period of five years. On 31 May 2017, the Attorney-General, as applicant, applied for an order rescinding the supervision order and making a continuing detention order against Mr Armstrong, on the basis that he contravened requirements 5, 13 and 15 of the supervision order. Those breaches are admitted. Requirement 15 related to failing to comply with a curfew or monitoring direction; requirement 13 related to noncompliance with the regulations or rules in place at Mr Armstrong's accommodation; and requirement 15 prohibited the commission of an indictable offence during the period of the order.

Under section 22 subsection (2) of the Act, Mr Armstrong must satisfy the Court, on the balance of probabilities, that the adequate protection of the community can be ensured by the existing order, with or without amendments under subsection (7) of section 22.

The history of orders made against Mr Armstrong under the Act is set out in Attorney-General (Qld) v Armstrong [2016] QSC 298, and the other cases relating to Mr Armstrong referred to in the 2016 decision. The current supervision order is, in fact, the second supervision order that has applied to Mr Armstrong.

Psychiatrists Drs Moyle and Grant did assessments for the purpose of the 2016 decision. The summary of their opinions set out in the 2016 decision largely reflects the views expressed in their evidence today.

On 13 December 2016, Mr Armstrong signed a precinct rules form in relation to his residence at the Wacol precinct. On 28 March 2017, he was issued with, and signed, a curfew direction that he was approved to leave his residence between 6 am and 6 pm.

On 23 May 2017, Mr Armstrong incurred a curfew violation when he was not back at his residence at 6.01 pm. He eventually arrived home at 7.18 pm. He was groggy and incoherent, and advised staff he had been in a car accident. He was taken to hospital for treatment, where he behaved in an unusual way. According to his case manager, he remained elevated and aggressive in his behaviour, and was making paranoid statements.

On 28 May 2017, Mr Armstrong assaulted another offender at the Wacol precinct by hitting him on the head. Mr Armstrong also threw a one-kilogram dumbbell at the victim's car, causing two dents and glass to shatter. Mr Armstrong also threw a pumpkin at the car, causing damage to the rear tail-light. That resulted in his arrest and return to custody. The order detaining him in custody was made by this Court on 31 May 2017.

Mr Armstrong subsequently pleaded guilty in the Richlands Magistrates Court to assault occasioning bodily harm and two counts of wilful damage arising from these events of 28 May 2017. It can therefore be seen that the contraventions which are

admitted arise from this course of conduct that began with his breach of curfew on 23 May 2017 and ended with his arrest on 28 May 2017. He was sentenced to six months' imprisonment in the Magistrates Court for the assault, and concurrent terms of one month each for wilful damage. That occurred on 8 August 2017.

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For the purpose of the application today, it is relevant that Mr Armstrong's behaviour from the time of his return to custody on 28 May 2017 has been described as "bizarre". He was in and out of the detention unit, and, as he acknowledges in the affidavit that he filed for the purpose of this application, he "acted out". He felt he had made progress whilst under the supervision order in relation to staying away from alcohol and illicit substances, and his return to custody frustrated him, and he took out that frustration by unacceptable and extremely asocial behaviour. That extended to refusing to be interviewed by Dr Moyle on 26 September 2017 for the purpose of this application, and terminating his attendance on Dr Moyle after only 15 minutes.

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Dr Moyle still did an assessment of Mr Armstrong, on the basis of the material provided by the Crown solicitor and the short opportunity he had to observe Mr Armstrong. Dr Moyle described that Mr Armstrong presented as a disillusioned man, and that he was not over his latest affront and his return to custody. Dr Moyle stated, at paragraph 157 of this report:

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In conclusion, therefore, I consider Mr Armstrong to be historically at high risk of reoffending sexually, especially if subject to personal affronts or disagreements or vulnerabilities, and more so if he is disinhibited by substance use. I think this would be lessened if he has regular contact where he can talk over his anger and his distress with his treating psychologist, Dr Boyce, and psychiatrist, Dr Arthur.

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Dr Grant interviewed Mr Armstrong on 21 September 2017 for some two and one-half hours. Dr Grant revisited the difference in opinion between him and Dr Moyle, as Dr Grant observed that at the time he interviewed him, Mr Armstrong was not normal, and had difficulty in giving a coherent account about what had happened. Dr Grant noted that Mr Armstrong's presentation differed from the previous presentations when he had been interviewed by Dr Grant.

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Dr Grant confirmed his diagnosis that Mr Armstrong suffers from a personality disorder with prominent antisocial and possible narcissistic traits, and that he also has some significant psychopathic traits. Dr Grant's diagnosis is also that Mr Armstrong suffers from bipolar affective disorder, with a recent and current mild hypomanic phase being evident. Dr Grant noted that Mr Armstrong has a history of previous episodes of mood instability, including depression and at least one significant episode of hypomania.

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At the time of the interview, Dr Grant considered that Mr Armstrong was presenting with a relatively subtle but definite mild elevation of his mood, affecting his thought processes and ability to give a coherent history. Dr Grant was unclear when this

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development of mild hypomania began, but on review of the Corrective Services material thought it may be that in fact he was becoming irritable and slightly elevated in the days prior to his car accident, and that the condition might have worsened following the car accident, and that it may well have been a driving factor in the aggressive behaviour that he exhibited at the precinct. Dr Grant therefore considered that Mr Armstrong's bipolar affective disorder may well have been a significant factor in his previous sexual and violent offending.

Dr Grant noted that Mr Armstrong may have been significantly concussed following his car accident, and that it appeared he may have had a mild head injury, as he had significant memory problems following the accident. One explanation, then, for his unusual and aggressive behaviour was the combination of the concussion and mild hypomania.

Dr Grant also noted that Mr Armstrong has a significant history of substance abuse, particularly involving alcohol, marijuana, amphetamines and opiates, but that there was little evidence that he had been abusing any substances during his recent period in the community under the supervision order, as all tests he underwent were negative.

Dr Grant therefore considered that it is likely that his recent behaviour was contributed to by an act of bipolar affective disorder. Dr Grant suggested that Mr Armstrong's bipolar affective disorder be more thoroughly assessed and managed and recommended that Mr Armstrong be placed on mood stabilising medication and any current antidepressant medication be ceased. In Dr Grant's view, if there is a degree of instability in Mr Armstrong's behaviour, that would make him difficult to manage under a supervision order. He recommended that Mr Armstrong commence on a mood stabilising medication and that he be released on the supervision order when he was stable. Subsequent to these interviews, it appears from Mr Armstrong's own affidavit and the Corrective Services material, that from late October 2017, Mr Armstrong commenced settling down in prison, apart from two recorded incidents.

One on 14 November 2017 occurred when Mr Armstrong got into a fight with another prisoner that had to be broken up by staff. Mr Armstrong was breached for that, but it was described in the internal decision dealing with the breach, as at the lower end of the scale. On 9 January 2018, Mr Armstrong was amongst a group of prisoners from his unit, who failed to follow a direction to wait on the walkway while the gym was being prepared by staff. This failure to follow a direction was at the lower end of seriousness and was not subject to any breach action, other than all the prisoners involved missed out on the gym session that day.

Dr Moyle prepared subsequent assessments on the basis of material provided by the Crown solicitor. The latest of these was provided in February 2018. In that report, Dr Moyle suggested that the risk of further sexual offending remained at least moderately high, but it would lower to an acceptable risk with six months of Mr Armstrong modifying his behaviour and learning to cope with affronts and the normal vicissitudes of life in non-aggressive ways.

When Dr Moyle gave oral evidence today, he expressed the same opinion, but conceded there were signs that Mr Armstrong was maturing, but thought it desirable that there be a further period of six months stability before being released under the supervision order. Dr Moyle did concede that the supervision order would be
5 successful in reducing Mr Armstrong's sexual reoffending to an acceptable level and, in light of what occurred in May 2017, Mr Armstrong should be referred to his treating psychologist or psychiatrist when he showed signs of vulnerability and frustration, as he did in the period leading up to the assault of the other resident in the Wacol precinct on 28 May 2017. Dr Moyle acknowledged that it has been a positive
10 sign that Mr Armstrong has given away alcohol.

Dr Grant's report of 29 September 2017, was referred to the prison mental health service, but even though it was referred on 19 October 2017, it was not until 21st February 2018 that Mr Armstrong was assessed by a prison mental health service
15 psychiatrist. On that assessment, the psychiatrist, Dr Scott, did not find any evidence to support a diagnosis of bipolar affective disorder and did not find reason to alter the prescribed medication. Dr Scott specifically did not consider that Mr Armstrong required initiation of a mood stabiliser or cessation of the antidepressant. Dr Grant's idea that Mr Armstrong be treated with a mood stabiliser whilst in prison, and that
20 the effectiveness of that medication be assessed before he would be released on the supervision order, is therefore unable to be implemented, as no treating doctor is willing to take up Dr Grant's suggestion.

In light of that, Dr Grant considers that as Mr Armstrong has now recovered from his
25 hypomanic episode, and the supervision order will reduce his risk of sexual reoffending to an acceptable level. Dr Grant emphasised that ongoing psychiatric treatment and psychological treatment was essential for Mr Armstrong. Although Dr Grant did not state this, it follows from the evidence that he gave today and the contents of his reports of 29 September 2017 and 13 February 2018, that Mr
30 Armstrong's treating psychiatrist should be given a transcript of Dr Grant's evidence, as well as copies of those reports.

Although Dr Moyle expressed a view for a longer period of stability in prison before Mr Armstrong is released under the supervision order, the material shows that at
35 least in the last couple of months, Mr Armstrong has settled down and that is borne out by the positive statements that he makes in the affidavit, that he swore for the purpose of the proceeding. I was persuaded by Dr Grant's evidence that in light of his opinion that the hypomanic episode has subsided and that the supervision order should be effective in detecting signs of any future episode suffered by Mr
40 Armstrong whilst he supervision order is on foot, that the supervision order will provide the necessary protection for the community to reduce the risk of further violent sexual reoffending by Mr Armstrong to an acceptable level.

Dr Moyle's opinion in the end was not largely different to Dr Grant, as far as the
45 suitability of the supervision order, it was just the timing as to when Mr Armstrong should be released. I am therefore satisfied that Mr Armstrong has discharged the onus he bears on this application. I am satisfied to the requisite standard that Mr

Armstrong has contravened requirements of the supervision order made on 12
December 2016. But the psychiatric evidence and the other evidence that has been
adduced, satisfies me that it is appropriate to order that Mr Armstrong be released
from custody, subject to the requirements of the supervision order made by me on 12
5 December 2016. That is why I have made the order in terms of the draft, initialled
by me and placed with the file.

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