

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Kemp* [2018] QSC 211

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
MICHAEL SHANE KEMP
(respondent)

FILE NO: BS9502 of 2017

DIVISION: Trial Division

PROCEEDING: Application for contravention of supervision order

DELIVERED ON: 10 September 2018 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 10 September 2018

JUDGE: Mullins J

ORDER: **Order in terms of the draft initialled by Mullins J placed with the file**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – GENERALLY – where respondent released from custody under a supervision order – where respondent contravened requirements of supervision order in relation to consumption of alcohol and illicit drugs – where application made 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

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

Attorney-General for the State of Queensland v Kemp [2018] QSC 26, related

COUNSEL: A L Bain for the applicant
T G Zwoerner for the respondent

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

HER HONOUR: Mr Kemp is a 48 year old Indigenous man. He was released on his full-time discharge date of 27 February 2018 under a supervision order made by Justice Boddice that is to be for a period of eight years: Attorney-General for the State of Queensland v Kemp [2018] QSC 26 (“the reasons”). Mr Kemp admits to contravening the supervision order in the manner that is alleged by the applicant Attorney-General for the purpose of this application pursuant to section 22 of the Dangerous Prisoner (Sexual Offenders) Act 2003 (“the Act”).

10 On 24 May 2018, Mr Kemp attended at the Probation and Parole Office for urine analysis and breath testing in accordance with requirement 24 of the supervision order. The test was positive for cannabis, amphetamine and methylamphetamine. Mr Kemp admitted that he had bought \$100 of speed and used it two days previously. He also shared a joint of cannabis with the supplier to him of the speed.
15 His explanation for the drug use was that he was experiencing stress after his mobile phones were seized by an officer at the Child Protection Offender Register.

Mr Kemp accepts that he bears the onus pursuant to section 22, subsection (2) of the Act of satisfying the Court on the balance of probabilities that adequate protection of the community can, despite the contravention, be ensured by the existing supervision order.

There are two sets of sexual offences in Mr Kemp’s criminal history committed in 1987 and 2002 respectively. Mr Kemp was not convicted of the two rapes committed in 2002 against the same victim until 2008. The details of the criminal offending are otherwise set out in paragraphs 6 and 7 of the reasons.

For the purpose of bringing Mr Kemp under the Act that resulted in the making of the supervision order, Mr Kemp was assessed by psychiatrists Dr McVie, Dr Beech and Dr Grant. The opinions of these psychiatrists are summarised at paragraphs 18 to 24 of the reasons. The psychiatrists were all of the opinion that Mr Kemp has an antisocial personality disorder and that alcohol and illicit substance misuse was directly related to his sexual offending, but that the risk of sexual reoffending could be reduced by a supervision order.

35 Dr McVie did a further assessment of Mr Kemp on the papers in the light of the contravention of the supervision order. Her report is dated 15 August 2018. Dr McVie confirms that Mr Kemp meets the diagnosis of antisocial personality disorder, but notes he does have significant underlying psychopathic traits, but does not have a mental illness. Dr McVie also notes that Mr Kemp does not have a paraphilic disorder and does not present with any history of, or that there is otherwise evidence to suggest, paedophilia. Dr McVie is of the opinion that Mr Kemp’s contravention, which was detected quickly, indicated his low frustration tolerance, impaired cognitive problem-solving skills and his impulsivity, which are factors that have already been identified as treatment targets for him. Dr McVie also opined that it may be that Mr Kemp’s perceived injustice at having his mobile devices removed led to his impulsive act that resulted in the breach.

At the time that Dr McVie did this further assessment, information regarding the outcome of the forensic investigation of the material on the mobile devices had not been provided. That did not prevent Dr McVie from expressing the opinion that her risk assessment continues to indicate that Mr Kemp presents a moderate risk of reoffending with respect to sexual violence, but she recommends he be returned to the community under the supervision order to commence the treatment program that will address the targets that have been identified for treatment.

At this stage, I am informed by counsel for the applicant that examination of the mobile phones has still not been completed but that preliminary examination is inconclusive. The indication is that there is unlikely to be able to be obtained from the devices material that led to the concern in the first place for the seizing of the devices. In short, there is unlikely to be any further action that can be taken as a result of the seizing of the mobile telephones.

Counsel on behalf of the applicant helpfully acknowledges that the evidence before the Court for the purpose of the contravention application supports the finding that the adequate protection of the community can be ensured by Mr Kemp's release from custody on a supervision order. That also accords with my conclusion based on the psychiatric and other evidence. Mr Kemp has therefore discharged the onus he bears to show the existing supervision order, despite his contravention, provides adequate protection to the community.

I therefore make an order in terms of the draft initialled by me and placed with the file which permits Mr Kemp to be released from custody to be subject to the supervision order that was made by Justice Boddice.
