

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Nallajar* [2019] QSC 14

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
EDWARD GEORGE NALLAJAR
(respondent)

FILE NO: BS6021 of 2016

DIVISION: Trial Division

PROCEEDING: Application for contravention of supervision order

DELIVERED ON: 5 February 2019 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 5 February 2019

JUDGE: Mullins J

ORDER: **Order in terms of the draft 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 – GENERALLY – where respondent contravened supervision order by tampering with the monitoring device – where application made pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – whether adequate protection of the community could be ensured by release under the existing supervision order – where respondent released under existing supervision order

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

Attorney-General (Qld) v Nallajar [2016] QSC 317, related

COUNSEL: A Meisenhelter 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 Nallajar was released from prison after serving in full the sentences imposed in the District Court on 11 July 2012. He was released under a supervision order made by Justice Burns on 16 December 2016, pursuant to the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act): Attorney-General (Qld) v Nallajar [2016] QSC 317 (the reasons). This contravention application relates to a breach of requirement (7) of the supervision order that Mr Nallajar must comply with a curfew direction or monitoring direction. Mr Nallajar admits the contravention that was detected on 18 August 2018.

10 On that date, the central monitoring system received a strap tamper alert regarding Mr Nallajar’s electronic monitoring device. He was spoken to over the telephone and he admitted to attempting to remove it and described it as a “social experiment”. He was directed to remain at his residence, which he did. When Corrective Services officer arrived, Mr Nallajar was at home, part of the device was still on his ankle, and
15 some was on the coffee table. Mr Nallajar told the officers that he attempted to remove the device, because he wanted to be returned to custody, as living in the community was too stressful.

Mr Nallajar’s treating psychologist advised Corrective Services that if Mr Nallajar’s goal was return to prison, that substantially elevated the risk of sexual re-offending. Mr Nallajar was charged with an offence in relation to damaging the monitoring device, which has not yet been resolved, and has been held in custody for the outstanding charges. He was also returned to custody and has been held on an interim detention order. Mr Nallajar bears the onus of satisfying the Court, on the
20 balance of probabilities, that the adequate protection of the community can be ensured by the existing supervision order, with or without amendments, under section 22(7) of the Act.
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Mr Nallajar is an Indigenous male who is almost 44 years old. The details of his sexual offending, which resulted in the making of the supervision order, are set out in paragraphs 9 to 14 of the reasons. For the purpose of this contravention proceeding, Mr Nallajar was assessed by two psychiatrists, Dr Sundin and Dr Harden, on 4 October 2018 and 8 November 2018 respectively. They had also assessed him for the purpose of the hearing that resulted in the making of the supervision order in
30 2016.
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Dr Sundin maintains her diagnosis that Mr Nallajar meets the criteria for paedophilic disorder, anti-social personality disorder and substance abuse disorder. On the basis of the history in the Corrective Services case notes for Mr Nallajar in the months leading up to the breach, Dr Sundin expresses concern that Mr Nallajar was developing a schizoaffective disorder, secondary to cerebrovascular incidents suffered by Mr Nallajar in late 2017 and early 2018. The case notes emphasise paranoid ideation on Mr Nallajar’s part, particularly in relation to his treating psychologist and some Corrective Services staff. Dr Sundin notes, however, that
40 despite the deterioration in his mental health in the period prior to the contravention, Mr Nallajar had remained abstinent from cannabis and alcohol, which were risk factors associated with his relapse into sexual offending.
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After taking into account her historical assessment of Mr Nallajar and her subsequent assessment and what the case notes revealed, Dr Sundin expresses the opinion that Mr Nallajar continues to represent an unacceptable, unmodified risk to the community for future sexual recidivism, but recommends that he be re-released into the community under a supervision order with modifications to his management that reflect a response to the issues that were noted in the case notes immediately preceding the breach.

Dr Harden considers there has been no material change in any of the risk instruments that he applied to Mr Nallajar in 2015. Dr Harden makes a similar diagnosis to Dr Sundin. Dr Harden remains of the view that Mr Nallajar's ongoing, unmodified risk of sexual re-offence in the community is in the high range, but that if he were to be placed on a supervision order in the community, the risk of sexual recidivism would be reduced to moderate. At the time of the contravention, Dr Harden considered there may have been an acute increase in risk of recidivism associated with the emotional collapse that related to the tampering with the monitoring device. But in Dr Harden's opinion, that appears to have resolved. Dr Harden therefore also supports the re-release of Mr Nallajar on the supervision order.

The Attorney-General, in the written submissions filed on her behalf, accepts that the evidence of Dr Sundin and Dr Harden is to the effect that the adequate protection of the community could be met by releasing Mr Nallajar back on the supervision order. Positively, the Attorney notes the respondent has not returned to drugs or other disinhibiting intoxicants or any inappropriate sexual or sexually violent behaviour, and that Mr Nallajar did not attempt to abscond after tampering with the monitoring system. The Attorney-General's concession, in the light of the psychiatric evidence, is appropriate.

I am still required under the Act, however, to be persuaded by the material despite the concession of the Attorney-General. After my perusal of the relevant material and the psychiatrists' further assessments, I am satisfied that the terms of the existing supervision order are appropriate for ensuring the adequate protection of the community. I therefore make an order in terms of the draft, initialled by me and placed with the file, that requires Mr Nallajar to be released from custody before 9 am on 12 February 2019 and continue to be subject to the supervision order made by Justice Burns on 16 December 2016.

The slight delay in the release from custody is due to two reasons. First, the current situation in Townsville due to the flooding, and second, the issue of Mr Nallajar's being held on remand for the offences with which he was charged with as a result of tampering with the monitoring device need to be resolved.