

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Ruhland*
[2020] QSC 33

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
HENDRICUS JOSEF RUHLAND
(respondent)

FILE NO: BS No 10673 of 2009

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: Orders made on 28 February 2020, reasons delivered on 6 March 2020

DELIVERED AT: Brisbane

HEARING DATE: 28 February 2020

JUDGE: Davis J

ORDER: **It is declared that, pursuant to s 24(2) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*:**

- 1. The period of the respondent's supervision order made on 9 March 2010 and amended on 23 December 2010 and 7 March 2016 has been extended from 8 March 2020 to 10 May 2020.**
- 2. The supervision order expires on 10 May 2020.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent is subject to a supervision order – where, during the currency of the supervision order, the respondent was held in custody for a period – where the applicant seeks an order extending the duration of the supervision order by a period equivalent to that during which the respondent was in custody – where ss 23 and 24 of the DPSOA do not vest power upon the court to extend the term of the supervision order – where ss 23 and 24 identify circumstances in which the duration of the supervision order is extended by force of the statute – whether the effect of the operation of ss 23

and 24 of the DPSOA upon the supervision order ought be the subject of declaration

Civil Proceedings Act 2011, s 10

Dangerous Prisoners (Sexual Offenders) Act 2003, s 5, s 13, s 16, s 16A, s 16B, s 16C, s 20, s 21, s 22, s 23, s 24, s 43AA

Edwards v Santos Limited (2011) 242 CLR 421, cited

Forster v Jododex Australia Pty Ltd (1972) 127 CLR 421, cited

COUNSEL: JP Tate for the applicant
MC Gray (by leave) for the respondent

SOLICITORS: GR Cooper, Crown Solicitor for the applicant
AW Bale & Son for the respondent

- [1] The respondent is subject to a supervision order which was made under s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (DPSOA). During the currency of the supervision order, the respondent was held in custody for a period. The applicant seeks an order extending the duration of the supervision order by a period equivalent to that during which the respondent was in custody.

History of the matter

- [2] An application was made pursuant to s 5 of the DPSOA for orders under Division 3 of Part 2. That application came before Fryberg J who on 9 March 2010:
- (a) found that the respondent was a serious danger to the community in the absence of a Division 3 order;¹
 - (b) ordered the respondent's release upon a supervision order;² and
 - (c) fixed the period of the supervision order at 10 years commencing on 9 March 2010 ending on 8 March 2020.
- [3] Proceedings were taken against the respondent under Division 5 of Part 2 of DPSOA consequent upon an alleged breach of the supervision order. The applicant's application for orders under s 22 came before Martin J who on 23 December 2010:
- (a) found the contravention proved;
 - (b) amended the supervision order to include two further requirements (the details of which are for present purposes unimportant); and
 - (c) released the respondent back into the community subject to the supervision order.³

¹ Section 13(1).

² Section 13(5)(b) and s 16.

³ Section 22(7).

- [4] The respondent was charged with contravening the supervision order⁴ and spent 63 days in custody.
- [5] On 7 March 2016, Flanagan J further amended the supervision order. The terms of that amendment are not relevant to the present application.

Relevant provisions

- [6] Sections 23 and 24 of DPSOA provide as follows:

“23 Application of division

This division applies if, after being released from custody under a supervision order or interim supervision order, a released prisoner is sentenced to a term or period of imprisonment for any offence, other than an offence of a sexual nature.

24 Period in custody not counted

- (1) The released prisoner’s supervision order or interim supervision order is suspended for any period the released prisoner is detained in custody on remand or serving the term of imprisonment.
- (2) The period for which the released prisoner’s supervision order or interim supervision order has effect as stated in the order is extended by any period the released prisoner is detained in custody.”

Orders sought on the application

- [7] The applicant sought orders as follows:

“Pursuant to s 24(2) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*:

1. The period of the respondent’s supervision order made on 9 March 2010 (CFI. No 27) and as amended on 23 December 2010 (CFI. No 48) and on 7 March 2016 (CFI. No 68) be extended from 8 March 2020 to 10 May 2020.
2. The said supervision order be varied so that the order expires on 10 May 2020.” (emphasis added)

Orders actually made

- [8] On the hearing of the application I made the following orders and indicated that these reasons would be published later:

“It is declared that pursuant to s 24(2) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*:

⁴ Section 43AA.

1. The period of the respondent's supervision order made on 9 March 2010 (CFI. No 27) and amended on 23 December 2010 (CFI. No 48) and on 7 March 2016 (CFI. No 68) has been extended from 8 March 2020 to 10 May 2020.
2. The supervision order expires on 10 May 2020.”

Reasons for orders being made in the terms they were made

- [9] By the proposed orders, the court would vary the supervision order extending its term so that it expires on 10 May 2020. In other words, the terms of the supervision order would be extended by force of the exercise of judicial power.
- [10] Sections 23 and 24 do not vest power upon the court to extend the term of the supervision order by the period the prisoner was detained in custody. Sections 23 and 24 identify circumstances in which the duration of the supervision order is extended by force of the statute.
- [11] On a proper construction of s 23 and s 24, if:
- (a) a prisoner is subject to a supervision order; and
 - (b) the prisoner is sentenced to a term of imprisonment,⁵ then;
 - (c) by force of the statute the supervision order is suspended while the prisoner is in custody; and
 - (d) upon release of the prisoner the duration of the supervision order is extended by the period during which the prisoner was in custody.
- [12] Here, by force of s 23 and s 24, the respondent's supervision order is extended by 63 days and now expires on 10 May 2020.
- [13] While the court does not have power to extend the supervision order under s 23 and s 24 of DPSOA, the court may in an appropriate case give declaratory relief.⁶ The jurisdiction to make a declaration as to parties' rights and obligations is discretionary.⁷ The discretion ought to be exercised against making a declaration where there is no utility in making the order or where the question being litigated is hypothetical.⁸
- [14] A supervision order vests significant powers upon corrective services officers. Subdivision 2 of Division 3B of Part 2 “Directions to released prisoners” is, relevantly, in these terms:

“16A Curfew and monitoring directions

- (1) The purpose of this section is to enable the movements of a released prisoner to be restricted and to enable the location of the released prisoner to be monitored.

⁵ For any offence, other than an offence of a sexual nature.

⁶ *Civil Proceedings Act 2011*, s 10.

⁷ *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421.

⁸ See generally *Edwards v Santos Limited* (2011) 242 CLR 421.

- (2) A corrective services officer may give 1 or both of the following directions to the released prisoner—
- (a) a direction to remain at a stated place for stated periods (*curfew direction*);
- Example—*
- a direction to remain at the released prisoner's place of residence from 2.30pm to 7.00pm on school days, if the prisoner is not required to be at a place of employment during these hours
- (b) a direction to do 1 or both of the following (*monitoring direction*)—
- (i) wear a stated device;
- (ii) permit the installation of any device or equipment at the place where the released prisoner resides.
- (3) A corrective services officer may give any reasonable directions to a released prisoner that are necessary for the proper administration of a curfew direction or monitoring direction.
- (4) A direction under this section must not be directly inconsistent with a requirement of the relevant order for the released prisoner.

16B Other directions

- (1) A corrective services officer may give a released prisoner a reasonable direction about—
- (a) the prisoner's accommodation; or
- Example—*
- a direction that the released prisoner may only reside at a place of residence approved by a corrective services officer
- (b) the released prisoner's rehabilitation or care or treatment; or
- Example—*
- a direction that the released prisoner participate in stated treatment programs
- (c) drug or alcohol use by the released prisoner.
- (2) A direction under subsection (1) may relate to a matter even though the relevant order imposes a requirement about the matter, either generally or specifically.
- (3) However, the direction must not be directly inconsistent with a requirement of the order.

16C Criteria for giving directions

- (1) A corrective services officer may give a direction under this subdivision or a direction mentioned in section 16(1)(db) only if the officer reasonably believes the direction is necessary—
 - (a) to ensure the adequate protection of the community; or
 - (b) for the prisoner’s rehabilitation or care or treatment.
- (2) In this section—

reasonably believes means believes on grounds that are reasonable in all the circumstances of the case.”

- [15] A supervision order imposes obligations upon the released prisoner:
- (a) to comply with the terms of the supervision order;⁹
 - (b) to comply with lawful directions given by a corrective services officer.¹⁰
- [16] The supervision order restricts the movement of a released prisoner¹¹ and obliges the released prisoner to divulge information to a corrective services officer.¹²
- [17] Consequences flow from a breach of the order. By s 20, a warrant may be issued for the arrest of the released prisoner “if a police officer or corrective services officer reasonably suspects a released prisoner is likely to contravene, is contravening, or has contravened a requirement of the released prisoner’s supervision order ...”. Upon arrest under such a warrant, the prisoner will be detained in custody unless he can show exceptional circumstances justifying his release.¹³ If the breach is found proven, then the released prisoner may become subject to a continuing detention order.¹⁴
- [18] By section 43AA, a contravention of a supervision order is a criminal offence attracting a maximum period of imprisonment of two years.¹⁵ If the contravention consists of removing or tampering with an electronic monitoring device, then there is a mandatory minimum penalty of one year imprisonment and a maximum of five.¹⁶
- [19] Given the powers vested in corrective services officers to control and manage the respondent under the supervision order, and given the consequences for the respondent of a breach of the supervision order, it is in my view in the interests of both parties that the effect of the operation of s 23 and s 24 of DPSOA upon the supervision order be the subject of declaration.

⁹ Section 16(2).

¹⁰ Section 16(1)(da), (daa), (db).

¹¹ Section 16(1)(e).

¹² Section 16(1)(c).

¹³ Section 21(4).

¹⁴ Section 22(2).

¹⁵ Section 43AA(1).

¹⁶ Section 43AA(2).

[20] For those reasons, I made the orders which are set out at paragraph [8].