

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Eveleigh* [2002] QCA 246

PARTIES: **R**  
**v**  
**EVELEIGH, Allan John**  
(applicant)

FILE NO/S: CA No 356 of 2001  
DC No 3207 of 2001

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: Judgment delivered 21 June 2002  
Further order delivered 19 July 2002

DELIVERED AT: Brisbane

HEARING DATE: 8 April 2002

JUDGES: McMurdo P, Fryberg J and Mullins J

ORDER: **Declaration that a post prison community-based release order in respect of the applicant, other than an exceptional circumstances parole order, may start once the applicant has served 80 percent of the term of imprisonment of 8 years imposed in the District Court on 30 November 2001.**

CATCHWORDS: JURISDICTION, PRACTICE AND PROCEDURE – Judgment and punishment – Sentence – Non-parole period or minimum term – Queensland – Power to make a declaration as to when a post-prison community based release order may start  
*Corrective Services Act 2000 (Qld), s 135(2)*  
*R v Irving* [2001] QCA 472, considered

COUNSEL: J R Hunter for the applicant  
D L Meredith for the respondent

SOLICITORS: Legal Aid Queensland for the applicant  
Director of Public Prosecutions (Queensland) for the respondent

- [1] **McMURDO P:** In the absence of any arguments to the contrary from the respondent, I agree with the order proposed by Fryberg J which is consistent with the majority reasons for judgment.
- [2] **FRYBERG J:** In this matter, the Court gave judgment on 21 June 2002 in the following terms:
- “1. Subject to paragraph (2), application for leave to appeal against sentence dismissed
  2. Leave granted for both parties to make further submissions in writing within seven days regarding whether a declaration as to the operation of s 135(2) of the *Corrective Services Act 2000* should be made.”

Within the time allowed, the Court received a submission on behalf of the applicant, but none on behalf of the Crown.

- [3] The applicant adopted the interpretation given to s 135(2) of the *Corrective Services Act 2000* by Mullins J and me. He submitted:
- “To avoid any confusion on the part of the Corrective Services Commission, this Honourable Court should therefore make a declaration to that effect, the terms of the declaration being:
- ‘that the applicant be eligible for post-prison community release after serving six years four months and 24 days (less four days pre-sentence custody) of the total period of imprisonment to which he was sentenced on 30 November 2001.’”*
- [4] No authority was cited to support the proposition that the Court has power in the present circumstances to make such a declaration, nor the proposition that a possibility of confusion on the part of the Corrective Services Commission is a sufficient reason for making it. That is deplorable. So is the absence of any submission on behalf of the Crown. The proper operation of the adversarial system requires that the parties make submissions drafted after proper research and identifying the relevant authorities.
- [5] In *R v Irving*<sup>1</sup> the Court made a declaration “that section 161C of the *Penalties and Sentences Act 1992* (Qld) has no relevant application to any sentence or sentences of imprisonment that the applicant is now serving or liable to serve”. Although the source of the power to make the declaration was not examined in that case, I am emboldened to assume the power exists. The submissions made during the hearing of Eveleigh’s application and the calculation made by the Department of Corrective Services after obtaining advice from Crown Law demonstrate that there is uncertainty about when a post-prison community based release order in respect of the applicant may start. The existence of doubt as to the application of the law provided the occasion for the declaration in *Irving*. In the absence of a contradictory submission from the Crown, I would make a declaration in the present case. On the assumption that, had there been any material change in circumstances since the hearing of the appeal we would have been informed, there is no need to backdate it.

- [6] The declaration should be:

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<sup>1</sup> [2001] QCA 472.

“Declare that on the proper interpretation of s 135 of the *Corrective Services Act 2000* and in the circumstances presently existing, a post-prison community based release order in respect of the applicant, other than an exceptional circumstances parole order, may start once the applicant has served 80% of the term of imprisonment of eight years imposed in the District Court on 30 November 2001.”

- [7] **MULLINS J:** For the reasons given by Fryberg J, a declaration should be made in the terms proposed by Fryberg J.