

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

FRYBERG J

No 5479 of 2003

RE AN APPLICATION FOR BAIL BY VINCENZO GUISEPPE OLIVERI

BRISBANE

..DATE 14/07/2003

ORDER

[2003] QSC 224

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: The applicant for bail seeks to be granted bail for a subsequent time. He was first arrested on the 31st of October, 2000 and granted bail for a stalking offence. He was then arrested on the 12th of December, 2001 and granted bail for two offences of obstructing police and failing to supply a specimen of breath. He was arrested on the 11th of August, 2002 and granted bail for a further stalking offence.

He was arrested on the 14th of October, 2002 and granted bail for two offences of demanding benefits with threats. He was next arrested on the 15th of November, 2002 and this time was remanded in custody on one count of demanding a benefit with threats and five counts of the use of a carriage service to harass, an offence related to the use of a telephone.

Subsequently he was granted bail in this Court on the 28th of November in respect of those offences. Notwithstanding that grant of bail he was again arrested on the 10th of February, 2003 and remanded in custody for two stalking offences and yet another offence of demanding a benefit with threats. He has been in custody since then. He has therefore served a total of approximately six months in respect of some or all of these offences.

He has been committed for trial in relation to the indictable offences but that indictment has not yet been presented. The evidence before me is that it is unlikely that the trial of the matter will occur this year. He has previously applied for bail. That occurred as I said before on the 28th of

November last year, when he was granted bail. When he was again arrested this year he sought bail; that was refused and the earlier grant of bail by this Court was revoked.

He is therefore not only in a position where the onus is upon him to show cause why his continued detention is not justified, but also in a position where he is not entitled to bail unless he can demonstrate a material change in circumstances. To demonstrate the latter he points to the fact that one charge has been withdrawn since last he appeared in this Court, and more importantly to the fact that by the time he gets a trial he will have been in prison for in excess of a year.

It is unlikely that even if sentenced after a plea of not guilty he would have to serve any longer. He may well be sentenced to less actual imprisonment than he will have served by the date of a District Court trial. That effluxion of time is in my view a material change of circumstances which requires me to review the whole matter.

The evidence against the applicant is considerable. He sought on this application, being unrepresented, to adduce a lot of evidence on the merits and almost at times seemed to be trying to run the trial on the bail application. The relevance of the evidence is to assess whether the Crown has a strong case or not. I did not find the competing issues raised by the applicant of much assistance.

It is a situation where it is difficult to assess the strength of the Crown case. It is a case where much will depend upon the impression which the jury has of a number of witnesses, possibly even including the applicant. What does seem uncontested from what he has said, is that the subsequent alleged offences are not the product of anyone's imaginings but are the result of conduct of some sort by the applicant.

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He has a considerable level of animosity toward the police service. He alleges that the police have not properly investigated complaints made by him. Indeed that is part of some of his charges. The history of the matter is one of great concern. Section 16 of the Bail Act provides in subsection one, "That a Court shall refuse to grant bail if the Court is satisfied that there is an unacceptable risk that the defendant if released on bail would while released on bail commit an offence".

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That is a matter which has given me great concern. I have reached the conclusion that there is a substantial risk that if released on bail the applicant will commit an offence. If he does, an offence of the type which has already allegedly been committed is likely. However, the Act does not say that I should refuse bail if I think there is a substantial risk that an applicant will commit an offence.

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It requires that there be an unacceptable risk of such an offence.

In weighing what is or is not acceptable a wide range of potential circumstances must be taken into account. Included among them is the matter to which I have referred, namely the likelihood that by the time the applicant has a trial he will already have served a period of imprisonment greater than that to which he would be likely to be sentenced if convicted.

To my mind the balancing exercise required between that factor and the other can only be resolved in favour of a finding that the risk is not unacceptable, at least when one is confident of the existence of both risks as is the case here.

It is, in my view, a deplorable situation. The spirit of the Bail Act is designed to ensure that persons who pose a substantial risk of committing an offence while facing a charge, should not be able to have the opportunity of committing that offence. It is highly undesirable that the delays in court lists should become the determining factor.

In the present case that is what has happened. The situation is not one where I would attribute blame to any person. The evidence before me does not suggest that the delay is the responsibility of anyone in particular. It is simply that despite the fact that an indictment can be presented on the 22nd of August, no doubt a delay due to the lack of resources in the Office of the Director of Public Prosecutions, a trial this year will not be possible, having regard to the work and priorities of the District Court.

If the community wishes to ensure that persons are not released on bail when they pose a substantial risk of re-offending, then the community should ensure that a reasonably prompt trial can be had. It cannot be said, in my view, that in circumstances such as the present, the risk is unacceptable. One must weigh the facts, including the likelihood of the imprisonment being too long.

The same factor supplies the reason why, in my view, the requirement of subsection 16(3) that bail be refused unless the defendant shows cause why his detention is not justified, is satisfied. It is not justifiable to keep a person in prison for more than the appropriate length of time for which he could be sentenced under the Penalties and Sentences Act, except, perhaps, in cases where special statutory provisions may exist. The present is not such a case.

For these reasons, I am satisfied that the applicant has shown cause provided that conditions are imposed to ensure that the risk of re-offending is minimised. It is not suggested by the Crown that there is any significant risk of his failing to appear or of his endangering the safety or welfare of any person and his record does not suggest that he would breach any condition regarding interfering with witnesses or would obstruct the course of justice. It is not suggested that he needs to be in custody for his own protection.

A draft order has been prepared. The conditions include a condition that he have no contact with any police officer or

employee of the Queensland Police Service, except in the following circumstances:

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- (a) in the case of emergency;
- (b) in the presence of his solicitor;
- (c) whilst reporting on bail;
- (d) if invited to do so by a police officer.

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That seems to me a very appropriate condition.

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The other conditions are the usual conditions in respect of a bail application and a surety of \$2,000 is required for his answering his bail.

In these circumstances I will make an order in accordance with the draft which I initial and place with the papers.

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