

# SUPREME COURT OF QUEENSLAND

CITATION: *Swan v Department of Corrective Services* [2003] QSC 305

PARTIES: **STEPHEN SWAN**  
(applicant)  
v  
**CHIEF EXECUTIVE, DEPARTMENT OF  
CORRECTIVE SERVICES**  
(respondent)

FILE NO/S: S865 of 2003

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING  
COURT: Supreme Court at Brisbane

DELIVERED ON: 16 September 2003

DELIVERED AT: Brisbane

HEARING DATE: 12 September 2003

JUDGE: Mackenzie J

ORDER: **The application is refused with costs to be assessed**

CATCHWORDS: CRIMINAL LAW – PROBATION, PAROLE, RELEASE  
ON LICENCE AND REMISSIONS – QUEENSLAND –  
where applicant sentenced to 7 years imprisonment – where  
applicant re-offended whilst released on parole – where  
applicant convicted and sentenced to cumulative sentence  
with no recommendation for parole – where conviction  
resulted in forfeiture of remissions eligibility under  
*Corrective Services Regulation 1989* – where period whilst  
on parole not counted as time served – where respondent  
declined to grant applicant remissions on his sentence –  
where applicant sought statutory order of review – whether  
applicant entitled to remission on sentence

*Corrective Services Act 1988 (Qld)*, s 187, s 190, s 207B  
*Corrective Services Regulations 1989 (Qld)*, s 28

COUNSEL: G D Wooler (*sol*) for the applicant  
A J MacSparran for the respondent

SOLICITORS: Lake Lawyers for the applicant  
Crown Solicitor for the respondent

[1] **MACKENZIE J:** The applicant has brought an application for a statutory order of review. He seeks to review the conduct of the respondent in declining to grant the

applicant remissions on his sentence. Entitlement to remissions is the focus of the applicant's application designed to establish that his release date has already passed, but another issue concerning the expiry date of one sentence was argued.

- [2] On 8 September 1993 the applicant was sentenced effectively to 7 years imprisonment for carrying on the business of trafficking in dangerous drugs and other offences. He was ordered to be considered for parole after serving 3 years of that term. He was released on parole on 21 October 1996. Then on 21 April 1999 he was found in possession of a variety of dangerous drugs. As was observed in the Court of Appeal subsequently, he was "...rather surprisingly...released on bail", and then committed another offence of possession of drugs on 20 August 1999.
- [3] On 20 July 2000 he was convicted of offences relating to all three of those instances of possession. He was effectively sentenced to 5 years imprisonment, with eligibility to be considered for parole after 2 years of that term. On appeal, the head sentence was reduced to 3 years, with no specific parole recommendation being made.
- [4] His parole was automatically cancelled on 20 July 2000 by operation of s 187 of the *Corrective Services Act 1988* (Qld). The conviction also led to the automatic forfeiture of remission eligibility pursuant to s 28 of the *Corrective Services Regulations 1989* (Qld) for the period between the commencement of his sentence and the date he was released on parole. According to s 190 of the *Corrective Services Act 1988*, the period spent on release on parole, that is to say from 21 October 1996 to the date he recommenced serving the term of imprisonment, did not count as time served. Section 207B of the *Corrective Services Act 1988* (in force from 24 November 2000) extinguished eligibility for remission on the balance of the 7 year term and the cumulative 3 year term. No entitlement to remission has been demonstrated.
- [5] It should be noted that on appeal the Court of Appeal specifically referred to the likelihood that in fixing a 5 year cumulative sentence there had been insufficient appreciation at the time of sentencing of the fact that the applicant must serve the unexpired portion of the sentence with no consideration for the time spent on parole. This was a material factor in reducing the sentence to 3 years cumulative upon the sentence currently being served.
- [6] The argument addressed to me on the applicant's behalf was effectively that the initial 7 year term expired no later than 7 years after the date of its imposition. It terminated no later than 8 September 2000 irrespective of intervening events, despite s 190 of the *Corrective Services Act 1988* declaring that the period spent out of custody on parole was not time served pursuant to the original term of imprisonment. Notwithstanding its terms, s 190 did not say that time could be "added" to the sentence.
- [7] That proposition is plainly untenable. I am satisfied that the law has been correctly applied by the respondent in the circumstances of the case and that there is no basis for a statutory order for review. The application is refused with costs to be assessed.