SUPREME COURT OF QUEENSLAND

CITATION:	*Reischl v West Moreton Regional Community Corrections Board* [2004] QSC 108
PARTIES:	**ROBERT REISCHL** (applicant) **v** **WEST MORETON REGIONAL COMMUNITY CORRECTIONS BOARD** (respondent)
FILE NO:	SC No 10869 of 2003
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	30 April 2004
DELIVERED AT:	Brisbane
HEARING DATE:	1 and 14 April 2004
JUDGE:	Mackenzie J
ORDER:	**1. The application be dismissed.** **2. There be no order as to costs.**
CATCHWORDS:	PROCECURE – MISCELLANEOUS PROCEDURAL MATTERS – APPROPRIATE FORM OF RELIEF - DISCRETION OF COURT – FUTILITY OF DECLARATION – where no practical purpose or consequence to the order sought – where power to dismiss application – whether general principle to be determined – whether application should be dismissed PROCEDURE – COSTS – GENERAL RULE - COSTS FOLLOW THE EVENT – COSTS OF THE WHOLE ACTION – GENERALLY – where application rendered unnecessary – where application dismissed — whether costs should be awarded *Corrective Services Act* (Qld) 2000, s 139 *Judicial Review Act* (Qld) 1991, s 48
COUNSEL:	Applicant on his own behalf S A McLeod for the respondent

SOLICITORS: Applicant on his own behalf
Crown Law for the respondent

[1] **MACKENZIE J:** This application for judicial review was argued before me on 1 April 2004. The relief sought was that the respondent's decision to decline the applicant's release notwithstanding a recommended release on parole be set aside and that the respondent be ordered to make a decision taking into account all of the applicant's factual circumstances and according to law. The application relied on a recommendation that he be released on post-prison community based release on 12 August 2003 made by a District Court judge and the assertion that nothing had ensued since sentencing that falsified the recommendation.

[2] At the time of the hearing it was disclosed that there was a further application for post-prison community based release under consideration. On 14 April 2004, the legal representatives of the respondent asked that the matter be re-listed as a matter of urgency. A polycom link to the prison farm where the applicant was confined was organised and the hearing proceeded that afternoon. At the hearing the respondent's solicitors advised that the applicant had been successful in the renewed application for release and that his release was imminent. It was submitted that in the circumstances the application should be dismissed under s 48 of the *Judicial Review Act* 1991. Since the submission was made without notice to the applicant, he was given a period of time, which he complied with, to make a submission in writing whether the power to dismiss the application under s 48 should be exercised or not, having regard to the fact that, on one view of it, the orders sought would be of no practical utility since they sought reconsideration of his unsuccessful application for release when that had been achieved in the subsequent application.

[3] In his written submissions the applicant acknowledged that, due to his release, the primary purpose of the application had become of no practical consequence. However, he maintained a sense of grievance over the delay in completing the procedural steps which had been necessary to bring the matter to a hearing. He acknowledged that intervention by the court had procured a hearing for him at an earlier time than might otherwise have occurred. He submitted that there were two points of general application which should lead to the conclusion that the matter should not be dismissed under s 48.

[4] The first was that the refusal which was the subject of the present application was based on an incorrect view of s 139 of the *Corrective Services Act* 2000. That provision states that a Community Corrections Board is not bound by the recommendation of the court that sentences the prisoner if the Board receives information about the prisoner that was not before the court at the time of sentence and, after considering the information, considers the prisoner is not suitable for release at the time recommended by the court.

[5] In the reasons for refusing the application the Board had particularised what it said were factors about which it was concerned and which might outweigh matters standing to his credit. The essence of the concern was that the appellant had, while serving a sentence for a fraud offence, committed further frauds consisting of two

counts of obtaining money from persons on the basis that it would be applied to assisting prisoners in connection with their sentences, which was not applied for those purposes. The matter went to trial but the appellant was convicted on each count.

[6] The Board said that, while in prison for a serious fraud offence, he committed other frauds and maintained his innocence in the face of clear evidence pointing to his guilt. The Board was very concerned by his repetitive dishonest behaviour and recommended that he re-complete a cognitive skills program before reapplying. The lack of remorse and the apparently distorted thought patterns on his part during the police interviews were also referred to. It was said that re-completing the program would allow him to address his offending behaviour and reduce his risk of re-offending if released to the community.

[7] The notion that he should re-complete the cognitive skills programme was the subject of the second matter concerning which the appellant was aggrieved. This was because the particular course which he was required to re-complete was not available at Palen Creek Correctional Centre where he then was or at Numinbah where he subsequently went. He submitted that a ruling as to the consequences of unavailability of a course, especially since he would have to be transferred to a more restrictive environment to do the course, might provide a guideline for determination of future cases if the situation arose again. With regard to s 139, it was submitted that while the language of the statute did not limit what might fit the description of "information" the power to take it into account "must nevertheless be definitive and must have substance".

[8] The question to be addressed is whether there is any utility in the application being pursued to judgment. Section 48 of the *Judicial Review Act* gives power to dismiss an application or a claim for relief if the court considers that it would be inappropriate for the proceedings in relation to the application or claim to be continued or inappropriate to grant the application or claim. If the orders sought have no practical purpose or consequences, the preconditions for exercising the power are in my view satisfied.

[9] The court must try to exercise the power to dismiss at the earliest possible time. However, it may be exercised at any time in the proceeding (s 48(2)(b)). It is apparent that this is the earliest opportunity upon which exercise of the power could be exercised, since the change in circumstances enlivening the issue of whether the proceedings ought to proceed further has only just come into being. The court can make the order of its own motion or on application by a party (s 48(3)).

[10] I am not persuaded that the factual matrix of this particular case would result in the formulation of a principle of general application in either of the instances relied on by the appellant. The particular facts of this case, which are somewhat more complex than many, would be decisive to the outcome. It is undoubtedly correct that analysis of individual decisions may shed light on how another particular case ought to be decided but a decision in an individual case which becomes one of a series of individual examples which may eventually demonstrate a pattern is not the

same as one which establishes a principle of general application. The applicant's case has essentially become academic. A decision would have no practical consequences for him. In the circumstances, I am satisfied that it is an appropriate case in which to exercise the discretion given by s 48 on the basis that it is inappropriate for the proceedings in relation to the application to be continued. Accordingly the application should be dismissed under s 48.

[11] With regard to costs, the respondent does not seek costs. The appellant says that he has paid for incidental costs such as phone calls and faxes for professional legal advice, printing, photocopying, fax and mail costs as well as escort costs on the day of the hearing from his own resources. He concedes that those costs are not substantial but says that he has nevertheless been forced to pay such sums to seek relief on the matters claimed to be inappropriate administrative decisions. Where proceedings have become unnecessary, there is a broad discretion as to costs. In the circumstances of the case, it is my view that the appropriate order is that there be no order as to costs.

[12] It is ordered that:

1. the application be dismissed; and
2. there be no order as to costs.