[2004] QSC 206

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BYRNE J

No BS951 of 2004

DAVID JOHN BAULCH	Applicant
and	
QUEENSLAND COMMUNITY CORRECTIONS BOARD	Respondent

BRISBANE

..DATE 07/07/2004

ORDER

HIS HONOUR: This is an application for the judicial review of a decision of the respondent Board on 25th June not to grant post-prison community based release to the applicant. The Board, in rejecting his application for such release, had regard to the reports of two psychiatrists and a psychologist to conclude that young girls were at risk of sexual molestation by the applicant where he to be released into the community.

Only one ground of challenge to the Board's decision was advanced: that the Board was not entitled in law to have regard to the three opinions because they were created after the applicant's parole eligibility date as recommended by the Court of Appeal in allowing his application for leave to appeal against sentence.

The applicant's contention is that for the Board to have had regard to such material was to act contrary to the requirements of section 139 of the Corrective Services Act 2000. That section provides that:

> "When deciding whether to grant a post-prison community based release order, a Corrections Board is not bound by the recommendation of the Court that sentenced the prisoner if the Board -
>
> (a) receives information about the prisoner that was not before the Court at the time of sentencing; and
> (b) after considering the information, considers that the prisoner is not suitable for release at the time recommended by the Court."

Plainly, in terms, section 139 does not proscribe the use of material which comes into existence after the expiration of a

Court-recommended parole eligibility date. And it does not appear by necessary implication that the Legislature intended such a restriction. No other provision of the Act was said to point to such an intention. Nor was any extrinsic material drawn to my attention in an attempt to sustain such a restrictive interpretation of the operation of the provision. That is scarcely surprising; for it is improbable that the Legislature would have sought to constrain the information upon which a Corrections Board might rely in dealing with an application for post-prison community based release in the way suggested.

In short, I adhere to the view expressed in Davis v. Queensland Community Corrections Board No 2439 of 2004, 24th June 2004, to the effect that section 139 does not prohibit the Board's reliance on information, such as a medical report, created after a Court-recommended parole eligibility date has passed.

The only ground advanced in support of the application having failed, the application is dismissed.

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HIS HONOUR: I consider that the costs ought to follow the event. There will be a further order that the respondent recover from the applicant its costs of and incidental to the application to be assessed.
