[2006] QSC 186

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BYRNE J

No BS10997 of 2005

BRENDEN JAMES ABBOTT	Applicant
and	
GREG HOWDEN, GENERAL MANAGER, WOODFORD CORRECTIONAL CENTRE	Respondent

BRISBANE

..DATE 08/03/2006

ORDER

HIS HONOUR: This is an application by a prisoner for an order to require the provision of a statement of reasons in respect of a decision by the respondent to deny him access to and the use of his personal computer.

It is not suggested that any provision of the Public Trustee Act by which the Public Trustee may have acquired rights of management of the prisoner's property is germane.

In these circumstances, under the general law, the prisoner is, prima facie, entitled to possession of the property he owns, there being no suggestion that anyone else has acquired a material interest in it.

The decisive question for present purposes is whether the decision to refuse him access is a decision "made under an enactment" within the meaning of that expression in section 4A of the Judicial Review Act 1991, it being conceded, correctly, that the decision was of an administrative character.

In McGrane v The General Manager Wolston Correctional Centre 10154 of 2005, 24th January 2006, Muir J held that a decision to deny an inmate access to his personal computer was not a decision "made under an enactment", essentially because statutory and regulatory provisions to which his Honour referred provided, in effect, that access to a prisoner's property is a "privilege", not a right. This was held decisive against the view that the decision was "made under an enactment".

I ought to follow the decision of Muir J unless persuaded that it is clearly wrong.

I confess to reservations about the notion that the mere characterisation of prisoner access to property (such as his own computer) as a privilege thereby precludes a conclusion that a decision to deny access to it does not "affect legal rights or obligations", within the meaning of that concept as it is explained in Griffith University v Tang (2005) 221 CLR 99, 130 [89] where Gummow, Callinan and Heydon JJ said:

> "The determination of whether a decision is "made ... under an enactment" involves two criteria...secondly, the decision must itself confer, alter or otherwise affect legal rights or obligations, and in that sense the decision must derive from the enactment."

If, however, a view other than that of Muir J is eventually to prevail, it must be by a decision other than that of a single judge of this Court, because on the arguments developed before me, I am not persuaded that the decision of Muir J is clearly wrong.

So this application must be dismissed.

...

HIS HONOUR: The order will be: application dismissed.
