

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General v Toms* [2007] QSC 290

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
TREVOR LEWIS TOMS
(respondent)

FILE NO: BS 4470 of 2006

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 12 October 2007

DELIVERED AT: Brisbane

HEARING DATE: 11 October 2007

JUDGE: Chesterman J

ORDER: **The respondent be released from prison subject to the conditions set out at paragraph 28 of this judgement until 8 November 2011 or until further order**

CATCHWORDS: CRIMINAL LAW - OFFENCES AGAINST THE PERSON – SEXUAL OFFENCES

CRIMINAL LAW – JURISDICTION PRACTICE AND PROCEEDURE – JUDGEMENT AND PUNISHMENT - OTHER MATTERS – where the respondent had been released subject to a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* – where the respondent breached that order by the consumption of alcohol and drugs and a breach of his curfew – where the respondent did not pose a significant risk of sexual re-offending – where the respondent did not pose any risk to children – where the department’s arrangements for the respondent’s accommodation appeared to be unsatisfactory – whether the respondent’s supervision order should be amended

COUNSEL: Mr B Mumford for the applicant
Mr D Kent for the respondent

SOLICITORS: Crown Law for the applicant
Legal Aid Queensland for the Respondent

- [1] On 20 October 2006 the court ordered that the respondent be released from prison subject to a supervision order made pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003*. He was released on 8 November 2006, having served 21 years of an effective term of imprisonment of 22 years imposed for three offences of rape and house breaking. The respondent was 21 years of age at the time.
- [2] The circumstances of the offences and evidence of improvement in the respondent's attitudes and behaviour were set out in my reasons for judgment, [2006] QSC 298. In short the respondent had undertaken appropriate programs of rehabilitation and improvement and demonstrated many years of good behaviour in prison. The examining psychiatrists recommended his release subject to supervision and that course was supported by the Attorney-General.
- [3] Dr Lawrence thought, after an extensive examination of the respondent, that the risk he would commit further sexual offences if released was low to moderate. Dr Grant thought there was a moderate risk of violence and sexual re-offending, and a moderate to high risk of less serious non-sexual re-offending. The respondent was released subject to numerous conditions designed to lessen the risk the re-offending.
- [4] It is, I think, appropriate to repeat a paragraph from my earlier reasons because of subsequent events. The reasons included para 23:

‘It should perhaps be pointed out that both psychiatrists regard as quite unnecessary that any condition of the respondent's release should prevent his coming into contact with children. He is not a paedophile and there is not the slightest evidence that he has ever or will ever constitute a danger to children. On the contrary there is evidence that he has exhibited paternalistic and protective attitudes towards children when his relationships with women brought him into contact with their offspring.’

- [5] The twelfth condition imposed as part of the supervision order was that the respondent ‘respond truthfully to inquiries by the supervising corrective services officer about his whereabouts and movements generally.’ Conditions 14 and 15 were respectively that he abstain from the consumption of alcohol and illicit drugs.
- [6] On each of 30 December 2006, 7 January 2007, 13 February 2007, 18 February 2007 and 6 March 2007 the respondent returned positive breath tests for alcohol. Two of the readings, the first and the last, were very low. The highest was .097 per cent on 7 January 2007.
- [7] These contraventions of the supervision order were dealt with by Justice Atkinson on 24 April 2007. On 2 May 2007 her Honour amended the order made in October 2006 and added substantially to it to increase the level of supervision to which the respondent was to be subject and extend the circumstances in which his conduct might be assessed and observed by Corrective Services officers. In particular orders were made that for the 12 months from 24 April 2007 he not visit premises licensed to sell alcohol without the prior written permission of a Corrective Services officer and he was to participate in alcohol and drug counselling or substance abuse programs. As well he was to submit to electronic monitoring. A curfew was imposed. He was not to leave his residence between the hours of

10.00 pm and 6.00 am without the prior written approval of a Corrective Services officer.

- [8] On 5 July 2007 the respondent submitted a sample of urine for analysis. The sample revealed the presence of cannabis.
- [9] At about 10.25 pm on 11 July 2007 the electronic monitoring device indicated that the respondent had left his home in breach of the curfew. Corrective Services officers went to his address and saw him returning home in a motor vehicle. The respondent admitted 'going for a drive'. The officer noticed a strong smell of alcohol on his breath. The next day he was interviewed by his supervising officer. He told her that he had left home at about 8.00 pm, bought some alcohol and returned to his house to drink it. When informed that the electronic monitoring records would reveal his movements he corrected his account and said that he had left home at 9.30 pm and travelled to his former address at Kangaroo Point where he drank alcohol with some friends and returned home at about 10.30 pm. A breath analysis that day showed his blood alcohol concentration to be .044 per cent.
- [10] On 12 July 2007 a warrant was issued for the respondent's arrest and he was brought before the court on 13 July 2007 when he was returned to prison. He remains there.
- [11] Also on 13 July 2007 the applicant applied for orders that the supervision order made on 20 October 2006 be amended in such manner as the court thought appropriate or, alternatively, that the supervision order be rescinded and the respondent be detained in custody for an indefinite term for care, control or treatment.
- [12] The Attorney-General does not seek the second order. The respondent has been examined by two psychiatrists, Professor James and Dr Beech, neither of whom support his continued, indefinite, incarceration. Both agree that the respondent should be released subject to revised conditions of supervision.
- [13] It is clearly inappropriate to keep the respondent in jail when the Attorney-General properly does not seek that order and the evidence does not support it.
- [14] On his initial release from prison the respondent had intended to live somewhere on the Gold Coast with a family he had met in prison. They were members of the Prison Christian Fellowship who had extended the hand of friendship to the respondent who had no other visitors. He spent about 12 days with this family but was directed by a Corrective Services officer to leave because the home was near a school and a local newspaper had shown some interest in his presence. The respondent was upset by the relocation. His reaction is understandable. He constitutes no danger to children but, one might hazard the guess, the apprehension of irrational media reporting persuaded the Corrective Services officer to remove him from the only source of human encouragement he had.
- [15] He went to a small unit in Kangaroo Point which was not uncongenial but his neighbours, while 'good blokes', were heavy drinkers. After some time at Kangaroo Point he was moved to accommodation at Wacol near the prison which was far less suitable. One of his neighbours was a notorious criminal and paedophile with whom the respondent was thrown in contact. The location is isolated and offers no opportunity for positive social interaction or employment.

The respondent told Dr James that his location at Wacol made his anticipated rehabilitation into society more difficult and he found the consumption of alcohol alleviated his sense of isolation and rejection. His excursion to Kangaroo Point was to meet and socialise with his former neighbours. He had 'a few too many drinks' and the curfew 'slipped his mind'.

[16] Dr Nurcombe who interviewed the respondent for the purposes of the application heard by Atkinson J thought that his contraventions of the supervision order 'should be seen in the context of his grossly unsatisfactory placement in a hostel peopled by heavy drinkers, ex-prisoners, and psychiatric patients in an area frequented by prostitutes.' His recommendations were that the respondent should have accommodation without those particular impediments to societal integration, and continuing drug and alcohol monitoring with regular screening.

[17] Dr James concluded from his examination that the respondent should be diagnosed as having an anti-social personality disorder but was not psychopathic.

[18] Dr James reported:

'There do appear to remain some residua ... of Mr Toms' previous anti-social personality disorder in the form of ... some degree of rebelliousness and disregard for authority, as well as some degree of entitlement. This remaining sense of entitlement now appears to be channelled into a wish for a normal life as he sees it after having served the 22 years imprisonment to which he was originally sentenced and should be seen as only a vestigial remnant of the more pervasive sense of entitlement which appears to have existed 22 years ago and which ... contributed to his offending.'

[19] Dr James went on:

'... Some degree of frustration in response to the imposition of restrictions is in my opinion understandable, bearing in mind the fact that Mr Toms who is now ... 43 has been in prison ... continuously since the age of 21. ... It is not surprising that he had experienced a wish to enter, as fully as possible, normal and mainstream social life, which as noted often entails some consumption of alcohol. Furthermore, the conditions in which he has had to live since his discharge from prison in October 2006 have been far from ideal and again it is not surprising that he may wish to seek some alleviation of the relative monotony and boredom. ... The efficiency of the corrective services in detecting transgressions of the supervision order have been demonstrated in relation to his alcohol consumption in December 2006, January 2007 and his subsequent reappearance in court in April 2007. ... Having been returned to jail since 12 July 2007 has served to underline yet again for Mr Toms the seriousness of the supervision order.'

[20] Dr James considered specifically whether the respondent's disregard of the supervision order with respect to the consumption of alcohol might indicate an increased risk of sexual offending. He thought that there was no such risk. He noted:

‘(The respondent’s) description of his attitude to his former sexual offences, and his changed attitude towards women, appeared ... not only genuine, but established over time, and well assimilated. He appears to have been able to form a relationship of a romantic and sexual kind without any evidence of untoward sexual conduct, and he also appears to have formed respectful relationships with women from the Prisoners’ Christian Fellowship. ... There is significant difference between ... deciding to have a drink of alcohol and on the other hand of committing a major sexual offence.’

- [21] Dr James thought that the continued abstinence from alcohol and other intoxicants would be ‘a further safety factor guarding against any likelihood of repetition of sexual offending’. I accept this as true. The conditions that have been imposed and will now be imposed will ensure that abstinence as far as is humanly possible. The effectiveness with which breach of the conditions can be detected has already been demonstrated.
- [22] Dr James also noted the importance to the respondent’s integration into mainstream society of ‘reasonably sited accommodation, meaningful employment and a supportive social network.’
- [23] The only accommodation presently available is that which the Department of Corrective Services made available earlier, at Wacol. The criminal whom I mentioned earlier is no longer there and will not be a neighbour. Nevertheless the accommodation is not ideal and better accommodation, which meets Dr James’ description, should be found as a matter of urgency.
- [24] Dr Beech reached the same conclusion as Dr James. He supports his release subject to suitable supervision. Dr Beech reported:

‘There is evidence that over his long incarceration he has matured and what was likely to have been a very callous and impulsive personality has mellowed with time and a number of exposures to more socialising experiences. He is able to consistently recount these as including an earlier sexual offender program, the experiences with female wardens, and accounts from rape victims. Significantly he has developed the capacity for relatedness and attachment as well as empathy and he appears genuinely been able to have formed friendships as well as the relationship with Michelle.’

- [25] He concluded:

‘I believe he is ... a moderate risk of violent re-offending. His background and offences and continued ... low level breaches point to this. Factors mitigating against this are his age, his recent history of no violence, and evidence of a development of emotional sensitivity. Factors that would protect him would be his placement in suitable accommodation and association with a pro-social supportive stable friends together with meaningful work and recreation. ... I do not think that his recent breach has placed him in any higher risk category than he was in April 2006. The breach does seem to have been offset by his return to detention and its

consequences. ... He does seem to have adjusted to an understanding of the seriousness of the conditions of the order.'

- [26] To summarise, the risk that the applicant will commit sexual offences is no greater now than it was a year ago when he was released pursuant to a supervision order. His breaches of some of the conditions are no indication of a propensity or likelihood of committing further offences. The breaches have not involved any contravention of the criminal law. They amount to consuming alcohol on about six occasions in the course of the year; leaving his home in breach of curfew to visit friends and being less than completely frank about that occasion when questioned by his supervising officer. The respondent served 21 years in jail during which he demonstrated a commitment to rehabilitation and demonstrated industriousness and many years of good behaviour. He was initially sent to live with decent, God-fearing people who offered him support and employment. He was taken abruptly from that environment and put in one quite unsuitable for a man endeavouring to become part of mainstream society after having spent his entire adult life in jail. He has never offended against children and poses no threat to them. There is no reason why he should not live near a school.
- [27] It is clearly in the public interest, as well as the respondent's own interests, that he be allowed and encouraged to become part of ordinary society. Apart from the moral dimension it is obviously of public benefit that a former criminal becomes a law abiding, gainfully employed citizen. The respondent's best chance of achieving that result quickly is for his return to the company of his friends at the Gold Coast. His presence there should give rise to no alarm if it is made clear that the respondent poses no threat to children, and probably no-one else, if left alone to make a new life.
- [28] Accordingly I order that the respondent be released from prison subject to the following conditions, until 8 November 2011 or further order:
- (i) be under the supervision of a Corrective Services officer ('the supervising officer') for the duration of this order;
 - (ii) report to an authorised Corrective Services officer at the Queensland Corrective Services Probation and Parole office closest to his place of residence between 9am and 4pm on the day of release from custody;
 - (iii) reside at a place within the State of Queensland as approved by a Corrective Services officer by way of suitability assessment;
 - (iv) report to and receive visits from the supervising Corrective Services officer at such frequency as determined necessary by the supervising Corrective Services officer;
 - (v) notify and obtain the approval of the supervising Corrective Services officer for every change of the Respondent's name at least two business days before he change occurs;

- (vi) notify the supervising Corrective Services officer of the nature of his employment; the hours of work each day, the name of his employer and the address of the premises where he is employed;
- (vii) notify the Corrective Services officer of every change of the respondent's place of residence at least two business days before the change occurs;
- (viii) not leave or stay out of the State of Queensland without the written permission of the supervising Corrective Services officer;
- (ix) not commit an offence of a sexual nature during the period of this order;
- (x) comply with every reasonable direction of an authorised corrective services officer;
- (xi) respond truthfully to enquiries by the supervising Corrective Services officer about his whereabouts and movements generally;
- (xii) notify the supervising Corrective Services officer of the make, model, colour and registration number of any motor vehicle owned by, or regularly used by him;
- (xiii) abstain from the consumption of alcohol for the duration of this order;
- (xiv) abstain from the use of illicit drugs for the duration of this order;
- (xv) take prescribed drugs as directed by a medical practitioner;
- (xvi) submit to any form of alcohol and drug testing including both random urinalysis and breath testing as directed by the supervising Corrective Services officer the expense of which is to be met by Queensland Corrective Services;
- (xvii) attend upon and submit to assessment and/or treatment by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by the supervising Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist, the expense of which is to be met by Queensland Corrective Services;
- (xviii) permit any treating psychiatrist or mental health practitioner to disclose details of medical treatment and opinions relating to his level of risk of reoffending and compliance with this

order to Queensland Corrective Services if such request is made in writing for the purpose of updating or amending the supervision order and/or ensuring compliance with this order;

- (xix) attend any program, course, psychologist, counsellor or other mental health practitioner, in a group or individual capacity, as directed by the supervising Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate, the expense of which is to be met by Queensland Corrective Services;
- (xx) agree to undergo medical testing or treatment (including the testing of testosterone levels by an endocrinologist) by decision of the treating psychiatrist and the supervising Corrective Services officer, and permit the release of the results and details of the testing to Queensland Corrective Services, if such request is made in writing for the purpose of updating or amending the supervision order, the expense of which is to be met by Queensland Corrective Services;
- (xxi) seek permission and obtain approval from the supervising Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
- (xxii) not reside at a place by way of short term accommodation including overnight stays without the permission of the supervising Corrective Services officer;
- (xxiii) not commit an indictable offence during the period of this order;
- (xxiv) submit to and discuss with the supervising Corrective Services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise determined;
- (xxv) not to have or attempt to have any direct or indirect contact with a victim of his sexual offences including their spouses, their children, or other immediate family members;
- (xxvi) not visit premises licenced to supply or serve alcohol, without the prior written permission of the supervising Corrective Services officer;
- (xxvii) participate in alcohol and drug counselling or substance abuse programs as directed by the supervising Corrective Services officer; and
- (xxviii) comply with a curfew or monitoring direction.