SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

DE JERSEY CJ

No 846 of 2006

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND	Applicant
and	
STEVEN SHANE BICKLE	Respondent

BRISBANE

..DATE 04/07/2008

ORDER

THE CHIEF JUSTICE: On the 2nd of June 2006 Justice Moynihan found that the respondent would be a serious danger to the community in the absence of an order under division 3 of the Dangerous Prisoners (Sexual Offenders) Act 2003.

His Honour released the respondent under a 20 year supervision order. Clause (U) of the order provides that the respondent must abstain from illicit drugs for the duration of the order.

The psychiatric evidence before his Honour came from Dr Grant and Professor Nurcombe. In Dr Nurcombe's report of the 27th of March 2006 he said that "a reversion to alcohol or substance abuse would increase the likelihood of reoffending". In Dr Grant's report of 20th March 2006 he said as follows:

"Whilst drug and alcohol abuse may not have played a prominent part in Mr Bickle's previous offending behaviour, I believe it would have a tendency to reduce his controls and make offending behaviour more likely if he was to resume abusing substances. Therapy would therefore be needed to monitor his drug and alcohol intake."

The evidence before me establishes that on the 24th of June 2008 the respondent gave a urine sample to his parole officer. It subsequently tested positive to the presence of cannabinoids.

The respondent's explanation for that, as originally put before me, comprised assertions set out in the outline of argument

presented by his counsel. When I drew attention to the inadequacy of that Mr Allen, who appeared for the respondent, called his client to give sworn evidence.

In his evidence before me the respondent said that at the end of last year one of his children gave him a cannabis cigarette. He secreted that cigarette in a bush in his yard outside his place of residence. One or two days before the urine testing, while the respondent was in the course of reading his recently deceased father's memoirs, he recovered the cannabis and smoked some of it. He said he had one or two puffs, then stopped because he did not like the sensation. He did not say that he stopped because he recognised that he was thereby breaching one of the conditions of his supervision order.

The respondent thereby breached a condition which the psychiatrists supported, presumably, because they considered it necessary to minimise the risk of the respondent's reoffending.

It is significant that the respondent accepted the cannabis in the first place, that he retained it for six months, inferentially contemplated his smoking it at some stage, and that he did smoke it outside the house with no-one else observing. Also the respondent did not alert his parole officer to the fact that he had breached the order and thereby concealed from his parole officer the resultant risk.

Now, it might be regarded as naive to think that a respondent in that position would make a frank confession to his parole officer as to what he had done. On the other hand, these supervision orders are premised on close adherence to their terms. There is a relationship presumably between a respondent in this position and his parole officer based on mutual trust, and giving rise to the expectation that if problems develop they will be brought to light and properly addressed.

The respondent in his evidence acknowledged the foolishness of what he did and is plainly remorseful, especially, I surmise, because of the application which has now been made by the Attorney-General.

The respondent was arrested under a warrant issued under section 20 of the Act. I am satisfied under section 22(1) on the balance of probabilities that the respondent has contravened a requirement of the supervision order, that is, he breached condition (U).

Under section 22(2), unless the respondent satisfies the Court on the balance of probabilities that the adequate protection of the community can, despite the contravention, be ensured by the existing order as amended under subsection (7), the Court must do either of two things: it must either rescind the supervision order and make a continuing detention order, or if the existing order is an interim supervision order, rescind it and make an order that the released prisoner be detained in custody for the stated period. In this case, of course, we

are dealing with a supervision order as such.

Subsection (3) then provides that for the purpose of deciding whether to make a continuing detention order the Court may, under paragraph (b), "make any order necessary to enable evidence of the kind mentioned in section 13(4) to be brought before it, including an order in the nature of a risk assessment order".

The Attorney-General seeks to assemble evidence bearing upon a risk assessment order and the appointment to that end of Professor Nurcombe and Dr Scott Harden.

Professor Nurcombe can see the respondent on the 21st of July 2008, Dr Harden can see him on the 1st of August 2008. Accordingly there should not be much delay involved in securing the necessary psychiatric assessments.

I would think that Dr Harden would be building on the work already done by both Professor Nurcombe and Dr Grant. The reason why Dr Grant cannot be called in aid is that he has taken on a position within Queensland Health.

My intention would be that the matter be relisted for the final hearing as soon as possible after the psychiatric evidence is available and the respondent has had an appropriate opportunity to deal with it, but well before October, which was mentioned here earlier as apparently the first hearing date at this stage which could be allocated.

Matters like this need to be given expedition within the Court lists and I am sure that if the parties are ready to proceed from, say, mid August, that dates can very soon thereafter be set aside for the hearing, and as necessary special approaches should be made to the listing manager for that purpose. If difficulties are encountered, the matter should be referred back to the Senior Judge Administrator.

The matter obviously cannot proceed finally until those reports are available, until they have been considered, until the respondent has had an opportunity to answer them.

The matter comes before me now, therefore, on an interim basis under section 21 of the Act. Subsection (2) again provides for two alternatives. I must either, under paragraph (a), "order that the released prisoner be detained in custody until the final decision of the Court under section 22" or, under paragraph (b), "release the prisoner under subsection (4)".

The Attorney-General seeks an order for detention pending the final determination of this application.

The respondent seeks a continuation of the supervision order subject to the additional requirements mandated in such a situation by section 16(1)(da) and (db) which relate to curfew and monitoring and compliance with directions.

Subsection (4) of section 21 provides as follows:

"The Court may order the release of the released prisoner only

if the prisoner satisfies the Court on the balance of probabilities that his or her detention in custody pending the final decision is not justified because exceptional circumstances exist."

Mr Allen, who appears for the respondent, relied in summary on these exceptional circumstances or the aggregation of them: (1) the circumstance that the respondent is the sole, and as it is put, indispensable carer of his partner who suffers from diabetes and autonomic neuropathy. She has suffered from Type 1 diabetes since she was 9 years of age; and (2) the prospect that the final hearing will lead to a continuation of the supervision order.

As to the first matter, the partner's affidavit deals with her substantial reliance on the respondent, especially in dealing with unpredictable hypoglycaemic attacks.

As to (2), Mr Allen emphasised the lengthy periods for which the respondent has abstained from alcohol and drugs, covering his 13 year period of incarceration and the two years since his release in 2006, throughout which he has been subjected to regular and rigorous testing. Mr Allen referred to previous cases of Foy and Francis in this context.

It may be considered an exceptional situation that the respondent is of such substantial assistance to his afflicted partner in circumstances where she is so reliant upon him. She is under regular specialist medical care and I expect that

if the respondent is incarcerated other arrangements will necessarily be made for her substantial care. It may be noted that throughout most of her life she has had to rely on others for such care.

But whether arguably exceptional circumstances warrant a respondent's release should be considered in the context of what led to the supervision order and the order itself. The condition requiring abstinence from drugs has always been clear and unequivocal. It has had a rational psychiatric basis, relevant to the risk of reoffending. The respondent understood that, yet he accepted and retained the cannabis for about six months, inferentially in anticipation of using it, and he did use it. He did not refrain because of an acknowledgement of the risk identified by the psychiatrists of which he was aware, but because he did not like the sensation. It was a clear and significant breach of an important prohibition in the supervision order.

The question then is whether the respondent in that context has established circumstances sufficiently exceptional to avoid the consequence which would otherwise follow; that is, detention in the interim until the final determination of the application.

In my view, he has not. In other words, in this interim period, which should amount to weeks, not months, his parner’s reliance upon him, and any prospect of the ultimate continuation of the supervision order, should not prevail over the need for community protection upon which the supervision

order with its detailed regime was and is based.

In a sense, these orders represent compacts between such prisoners and the community. Where a significant breach is plainly established, as here, and where the nature of that breach suggests a lack of appreciation in the respondent of the justification for and importance of the condition, the risk of reoffending while at large in the interim needs to be considered very carefully.

While the discomfort to the respodent's parnter is regrettable, her condition is not, in my view, in the end sufficiently exceptional to warrant not ordering interim detention.

There will, therefore, be orders as follows:

(1) pursuant to section 22(3)(b) of the Dangerous Prisoners (Sexual Offenders) Act 2003 that the respondent undergo examinations by two psychiatrists, namely Dr Scott Harden and Professor Barry Nurcombe, who are to prepare independent reports in accordance with section 11 of the Act;

(2) pursuant to section 21(2)(a) of the Act that the respondent be detained in custody until the final decision of the Court under section 22 or until further order of this Court; and

(3) that the matter be listed for further directions on the

15th of August 2008.

I don't want it to go off into the never never. Can someone check for me that that's a week date? It's a Friday. Would that be suitable to both of you? It seemed to me that that gave a bit of a lead, but not too much of a lead, beyond the dates of the examinations.

Can you stress, please, to the psychiatrists that it would be greatly appreciated if they could produce their reports very shortly after the examinations?

MS EVANS: Yes, I will do that, your Honour.

THE CHIEF JUSTICE: Thank you.

MR EVANS: Your Honour, could I just make one perhaps more comment than submission? It would seem it would be unfortunate if the publication of the partner's name caused her considerable embarrassment given the personal details as to her health situation in this context-----

THE CHIEF JUSTICE: Yes.

MR ALLEN: -----where it really wouldn't advance anything news worthy. I'm not suggesting your Honour can make any order in that respect.

THE CHIEF JUSTICE: No, well, I will intimate to any media representatives that my strong preference would be that the

respondent's partner not be named.

Can I have your agreement in that regard, please? Thank you.

MR ALLEN: Thank you, your Honour.
