

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ATKINSON J

No 4470 of 2006

ATTORNEY-GENERAL FOR THE STATE OF  
QUEENSLAND

Applicant

and

TREVOR LEWIS TOMS

Respondent

BRISBANE

..DATE 27/05/2009

ORDER

HER HONOUR: This was the date set for the hearing of an application filed by the Attorney-General on 7 January this year for a number of orders, in particular that a continuing detention order be imposed upon the respondent Trevor Lewis Toms because of his contravention of the requirements of a supervision order made upon him by Justice Martin on 13 June 2008.

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Mr Toms first appeared as a respondent under the Dangerous Prisoner's (Sexual Offenders) Act ("the Act") in an application brought against him which was heard by Justice Chesterman in October 2006. Justice Chesterman was satisfied that there was an unacceptable risk that Mr Toms would commit a serious sexual offence if he was released without a supervision order and made a supervision order designed to control the risk of Mr Toms' re-offending.

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The supervision order was onerous, but it needed to be because Mr Toms' previous offending was serious, was violent, and occurred opportunistically when he was disinhibited through the use of alcohol. The circumstances of his offending were set out in the judgment by Justice Chesterman and I need not repeat them, except to say that he has had an extensive criminal history and most serious amongst it were three offences of rape committed on three separate occasions against three different women, at least two of whom he threatened with a knife.

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He had what was referred to by Dr Lawrence as a severely

socially disadvantaged and dysfunctional family and experienced this disadvantage throughout his childhood and adolescence, and it appears that his mother who was left to rear him and his siblings alone had little control over his behaviour and he had very bad examples set to him by an older brother who engaged in sexual offending from quite a young age.

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Unfortunately, the circumstances of Mr Toms' early life and his family circumstances almost inevitably have led him to be a person who engaged in this offending and makes it particularly difficult for him to consciously control his circumstances to ensure that he does not re-offend.

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One of the conditions which he faced from Justice Chesterman's order was not to use alcohol. He was released from custody on that order, as I have said, in October 2006. Unfortunately, although he otherwise appears to have done quite well under the order he was unable to comply with the condition not to use alcohol and persistently breached it. By the time he appeared before me on the 24th of April 2004, he had returned positive breath alcohol readings on the 30th of December 2006, the 7th of January 2007, the 13th of February 2007, the 18th of February 2007 and the 6th of March 2007.

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Rather than return him to custody, since he had not re-offended, I imposed two further conditions, first that he not go to licensed premises where, of course, he would be tempted to drink and, secondly, that he obtain counselling for

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his alcohol problem. Unfortunately, he continued to breach his order. On the 5th of July 2007 he tested positive for the use of cannabis. On the 11th of July 2007 he returned a positive alcohol reading and was in breach, although not seriously, of his curfew.

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As a result he was returned to prison on the 12th of July 2007. He was in prison from then until the 12th of October 2007 where Justice Chesterman again released him on a supervised release order. In spite of his previous experience he continued to breach the conditions of the order. On the 14th of December 2007 he returned a positive breath alcohol reading. On the 2nd and 14th of February 2008 he committed minor breaches of curfew, and on the 27th of February 2008 he attended a licensed premises. As a result he was once again returned to prison and remained there from the 28th of February 2008 till the 13th of June 2008.

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He was brought before Justice Martin of this Court who again imposed a supervised release order upon him. The Queensland corrective services in a further attempt to assist Mr Toms retained a clinical forensic psychologist to work with Mr Toms to assist him to comply with his supervised release order. Unfortunately, that was not completely successful and on the 26th of October 2008 he, at 7 o'clock in the morning, tested positive to a breath alcohol reading showing that he must have drunk considerable quantities of alcohol the evening before, and on the 27th of December, again he tested positive to alcohol on his breath. He was returned to custody on the 6th

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of January 2009 where he remains.

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Mr Toms has a number of factors in his favour. During his releases after serving his full-time term of imprisonment he has not committed another offence. He has matured and the psychiatric reports done on him speak of positive things in his favour. However, he is a man who has committed serious violent sexual offences opportunistically while disinhibited by the use of alcohol. Dr Beech said of him in a report written on the 8th of May 2009:

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"In my opinion his alcohol use and his breaches of the order represent an increase in his risk of offending, but that overall his risk of offending in a sexual manner remains in the low moderated range. The difficulty is how this risk should be managed in a man who continues to breach his order. "

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Dr Harden another psychiatrist said:

"If he were to re-offend based on his past behaviour it will most likely be opportunistic against an adult female, involve the use of a weapon or threats. It might be associated with a disinhibiting agent such as alcohol or marijuana. In this context it is clear why the supervising authorities became particularly concerned when he was intoxicated with alcohol in the alleged context of potential sexual behaviour with a prostitute. In my opinion this risk of his sexual reoffending would be increased if he were to be released from custody without a stringent supervision order being continued."

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The difficulty faced by the Court is that it is abundantly clear that Mr Toms is not in a position to comply with a supervision order, whether stringent or otherwise. Compliance with the order requires his will and capacity to comply with it and, unfortunately, he has not demonstrated the will or

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capacity to comply with the terms of the order.

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The requirement as to abstinence from alcohol could not at this stage be taken from the order since that would increase in an unacceptable way of risk of his re-offending. In those circumstances the question is, as Dr Beech correctly said, what to do. There are courses in prisons for assisting people to deal with persistent problems with addiction and substance abuse and certainly he has a substance abuse problem with alcohol. He has, as his counsel said, attended Alcoholics Anonymous once recently since his release and, perhaps, that will again assist him when he is finally released from custody, but at the moment he needs more than some program he can do voluntarily to assist him with his alcohol problem.

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He has agreed, I've been told through his counsel, that he will enrol in the "Getting Smart" course when it is offered this year at the correctional centre where he is presently an inmate. That will give him the opportunity in a controlled environment to deal with what has been a continuing problem for him and come to terms with the fact that when the time comes for his release he must not use alcohol.

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It obviously has been a difficult matter for him to come to terms with. In the circumstances I reached a preliminary view that the most appropriate way to deal with Mr Toms was to leave him in custody as he is at the moment to give him the opportunity to do that course and rather than make a continuing detention order to adjourn this application to

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enable him to do that course and put himself in a better or worse position, depending on how he deals with it, when he next appears in Court.

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Both counsel took the view that that approach was appropriate and so I, therefore - noting that the reason for the adjournment is for him to obtain the treatment and assistance which he needs - adjourn the matter for hearing on the 11th of November 2009 which is the next available date for the hearing of a matter under this Act.

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