

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Sagiba*
[2009] QSC 439

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
FRANK SAGIBA
(respondent)

FILE NO: BS 10429 of 2009

DIVISION Trial

PROCEEDING: Applications

DELIVERED ON: 16 December 2009

DELIVERED AT: Brisbane

HEARING DATE: 16 December 2009

JUDGE: Fryberg J

ORDERS: **Order that pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* the respondent be released subject to the terms of the supervision order.**

CATCHWORDS: Criminal law – Sentence – Sentencing orders – Orders and declarations relating to serious or violent offenders or dangerous sexual offenders – Dangerous sexual offenders – Generally – Continued supervision after release from prison

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 13(4)

COUNSEL: M Maloney for the applicant
B H Mumford for the respondent

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

HIS HONOUR: In this application the Attorney-General seeks an order pursuant to the Dangerous Prisoners (Sexual Offenders) Act 2003 for the supervision of the respondent Frank Cyril Sagiba upon his release, which is due to occur on the 13th of January 2010.

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Such an order can be made if the Court is satisfied that the prisoner is a serious danger to the community in the absence of a supervision order or a continuing detention order. The prisoner is a serious danger to the community if there is an unacceptable risk that he will commit a serious sexual offence if released from custody without a supervision order being made, as far as is relevant in the present case.

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The evidence before the Court on that issue is all one way. Two of the psychiatrists who have examined Mr Sagiba report that he presents a moderate risk of re-offending, a third psychiatrist, Dr Harden, that he presents a high risk of re-offending if released in the absence of any order.

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Mr Sagiba himself accepts that the conclusion that he would be a serious danger to the community is correct and does not contest the appropriateness of making a supervision order. Section 13(4) of the Act sets out a number of considerations which are relevant in making an assessment of the matter.

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They have been helpfully listed by Mr Mumford in his outline of argument, which I will have marked "A" for identification and I will have the outline on behalf of the Attorney marked "B" for identification.

HIS HONOUR: I see no need to go through all of those matters, they demonstrate the conclusion by reference to the matters in the Act.

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The psychiatrists have a surprising level of unanimity in their viewpoint and that strengthens the evidence in this case.

I am particularly impressed by the way that Mr Sagiba has reacted very positively during his time in prison and has clearly learned and matured in many positive ways. I think that is greatly to his credit and he deserves to be congratulated for the advances which he has made during this time.

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Some conditions have been proposed in the psychiatric evidence, others are matters of commonsense, and they have been incorporated into a supervision order, a draft of which has been provided to me. I have discussed that draft with the parties and, with some small amendments, I am satisfied that the provisions of that draft are such that it would be appropriate to make an order in that form.

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An important aspect of the supervision order will be abstention from alcohol or drugs. It is fairly clear that Mr Sagiba's history was dominated by excessive use of alcohol and drugs and that these substances led him to behave in a way which he now recognises as not acceptable and which he

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would not want to be left to his own devices.

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Sometimes it is thought that conditions in supervision orders regarding abstinence from substances like these are mere formalities. I would like to emphasise in this case, these conditions are not mere formalities, they are at the very heart of the supervision order and it is most important that Mr Sagiba is very strict with himself and ensures that there is complete compliance with the abstinence provisions. Any deviation is liable to produce serious adverse effects, both in terms of the risk of offending and in terms of what is likely to happen with regard to Mr Sagiba's future. It would be a great pity if there were breaches of the order which resulted in his return to prison. Nobody wants to see that.

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In the circumstances of this case I am satisfied that the order as drafted is consonant with the psychiatric reports, Exhibits 1 and 2, and the report of Dr Sundin, exhibited to her affidavit.

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I will make an order in accordance with the draft, initialled by me and placed with the papers.

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