

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General v Friend [No. 1]* [2011] QSC 225

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

FILE NO: BS 886 of 2006

DIVISION: Trial

PROCEEDING: Applications

DELIVERED ON: 24 June 2011

DELIVERED AT: Brisbane

HEARING DATE: 22 and 24 June 2011

JUDGE: Fryberg J

ORDERS: Application for the adjournment is refused.

CATCHWORDS: Criminal Law – Sentence – Sentencing Orders – Orders and Declarations Relating to Serious or Violent Dangerous Sexual Offenders – Dangerous Sexual Offender – Generally – warrant for breach of a supervision order under *Dangerous Prisoners (Sexual Offenders) Act 2003*, s 20 – application for adjournment – respondent satisfied s 22(2) that on the balance of probabilities adequate community protection under supervision order – delay for psychiatric reports was a relevant consideration  
  
*Dangerous Prisoners (Sexual Offenders) Act 2003* ss 20, 22

COUNSEL: A Scott for the applicant  
J Godbolt for the respondent

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

HIS HONOUR: I have before me a prisoner who has been brought before the Court pursuant to a warrant issued under section 20 of the Dangerous Prisoners Sexual Offenders Act 2003. That Act requires in the circumstance that has occurred, that is his being brought before the Court on a warrant complaining of breach of a supervision order, that the Court must either order that the prisoner be detained in custody until the final decision of the Court under section 22 or release the prisoner. The release may be ordered only if the prisoner satisfies the Court on the balance of probabilities that his detention in custody is not justified because of exceptional circumstances. No application under that provision has been made.

Section 22 makes provision for what is to happen if the Court is satisfied on the balance of probabilities that the prisoner is likely to contravene or has contravened a requirement of a supervision order. It is uncontested, as I understand the evidence, that the present prisoner has contravened a supervision order. That means that under subsection 22(2) the prisoner must satisfy the Court on the balance of probabilities that adequate protection of the community can, despite the contraventions, be ensured by the existing order as amended under subsection 7 if necessary. That question must be resolved in the present proceeding subject, of course, to any proper adjournments.

In the present case Mr Scott, who has appeared on behalf of

both the Attorney-General, who has a right of appearance under section 22A of the Act, and of Mr Wilden, the Corrective Services officer who brought the prisoner before the Court, has applied for an adjournment. The purpose of the adjournment is said to be the obtaining of a further pair of psychiatric reports from those doctors who previously examined the prisoner, Professor James and Dr Harden. Both of those practitioners provided reports toward the end of last year and Professor James has provided a supplementary report in March this year albeit without having further seen the prisoner for the purposes of that report.

It is submitted that further reports are desirable because on the medical evidence as disclosed by the evidence orally given today by Dr Harden and Professor James, there is a possibility that the psychiatric condition of the prisoner may have changed. Professor James conceded explicitly that the events constituting the breach of the order were not indicative of any substantial likelihood of a change but he was concerned, particularly regarding the overall need to keep regular monitoring of the prisoner, and was reluctant to, himself, express a further view without a further examination.

Dr Harden, in his letter dated 24 June, conceded that the events constituting the breach which consist of a very limited contact with the parents of some young children, would not necessarily alter the level of risk. He expressed concern about the dynamic and acute risk level arising from the emotional state described in previous reports. That has

already been taken into account in orders previously made by the Court. The circumstances of the breaching are the only material change on the evidence before the Court which could provide a foundation for a need for a further examination by the doctors. Those circumstances are described in Mr Friend's affidavit and are not challenged by any of the witnesses or makers of statements whose evidence has been put before the Court on behalf of the Attorney-General. I note in particular that on the adjournment application there has been no application to cross-examine Mr Friend on behalf of the Attorney-General. I infer that nothing in the affidavit is challenged by the Attorney-General.

I am not satisfied that there is any demonstrated need for further psychiatric examinations having regard to the recency and number of reports already made by psychiatrists about this prisoner. It seems to me that the provision of further reports is unlikely to have any material effect on the evidence as it presently stands and is likely to be both expensive and productive of very substantial delay. That very substantial delay would, in fact, amount to six months.

It will be six months before this application can be heard if it has to be adjourned today. The reason for that is that despite the immensely increased work load which the Court has been given in respect of these applications no additional resources have been provided to the Court. The consequence is that unless other litigants are made to suffer delay, these matters

cannot be brought on speedily.

It seems to me that the consideration that this man would be retained in custody for six months when the likely outcome is that at the end of the period the position would be no different from what it is now, is a relevant consideration in assessing whether an adjournment should be granted. The cost, delay and other matters relating to an adjournment, in my view, also mean that the application for the adjournment should be refused.