SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General v Friend [No. 2]* [2011] QSC 226
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **ROY FRIEND** (respondent)
FILE NO:	BS 883 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:	1. The respondent be released from custody; and 2. The respondent be subject to the continuing supervision order.
CATCHWORDS:	Criminal Law – Sentence – Sentencing Orders – Orders and Declarations Relating to Serious or Violent Dangerous Sexual Offenders – Dangerous Sexual Offender – Generally – application under s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* – contravention of a supervision order – respondent satisfied s 22(2) that on the balance of probabilities adequate community protection is afforded by the supervision order *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.

I must now deal with him pursuant to section 22 of that Act. That is because on the uncontested evidence he has contravened a requirement of the supervision order which was made in respect of him. It is necessary to make some reference to the contravention.

The warrant, Exhibit 1, identifies the contraventions as being a failure to advise an authorised Corrective Services officer of any repeated contact with the parent of a child under the age of 16.

The circumstances of that breach are set out first in two statements taken by police officers from persons who have not been identified, and which I find would be troublesome for that reason but for the fact that there has been no objection to the fact that the names of the witnesses have been blanked out. They are the parents of three children, all under the age of 15.

They state in their statements that they met the prisoner in company with another man who was known to one of them, and who was also a person subject to a supervision order. They were not aware the prisoner was the subject of such an order and it appears they were not aware the other man was, either.

They were lied to by the other man as to the reason that he

was wearing an ankle bracelet. They were, it seems, aware that they were associating with persons who had been in prison. They state that on one occasion the other man, whose name is Ray, turned up and had his friend, the prisoner, with him. On that occasion the prisoner was talking about swapping tables and chairs for tables and chairs owned by the maker of the statement. It was, as the prisoner describes it, a business type of discussion. The prisoner had no contact with the children and the parent's reference to him on that first meeting is very brief.

The statement also shows that on a subsequent occasion he came to the house by himself. He spoke about some meat that was going to be given to another person and then said that he had come around to see the tables they had spoken about. Their children were at home but there was no contact with them. Whether any deal was done in relation to the tables and chairs is unclear but it seems from the statement of the other parent that the prisoner was told that the parents would have to talk to another person about the proposed swap. Some proposals were made for future dealings in regard to the chairs. There is nothing in the material to suggest that the conduct was, in any way, grooming and the two occasions to which I have referred were the only two occasions where there was contact.

The prisoner has deposed that he noticed on the occasion that he first met the parents, an old antique table which the woman said she wanted to get rid of. She said she wanted a glass topped table and chairs and the prisoner said perhaps he could arrange something. He had an interest in doing up antique

furniture and was interested in the table and had a table he thought she would be interested in.

On a subsequent occasion he went to the residence to find out if they were willing to swap as discussed, spoke to the parents outside the residence again and did not speak to the children or enter the residence. He subsequently left a chair which was part of a set of chairs for them to look at and a note containing his phone number. There was a subsequent telephone call that same day regarding the furniture and he was to bring it over. He was apprehended for breach of the order before that happened.

In effect, therefore, these were two contacts and they were as he describes. He has not been cross-examined and there was no suggestion that any of his affidavit is not the truth.

His psychiatric reports indicate that, in the absence of a supervision order, he is at high risk of re-offending. The reports also indicated that risk would be moderated were he the subject of strict supervision and conditions in a supervision order and that was the course that was taken toward the end of last year. The judgment of Mullins J on that occasion reflected a finding that the supervision order was the appropriate order to be made at that time.

Her Honour revisited the matter in May this year when, on the application of the prisoner, the order was varied by the deletion of one of the conditions. There is nothing in the evidence which indicates that there has been any change

in the prisoner's psychiatric status nor any change in the risk of his re-offending.

It is, however, of concern that he should have breached the order. He says in his affidavit that he did not report his contact with the two parents because it was a limited contact and not ongoing and was of a business-like nature. It was not a matter of friendship. He says he did not realise he was obliged to report contact of that nature. I find that a very suspicious proposition. Had he been cross-examined about it I would have watched his reactions with interest.

Be that as it may, it is a story that will work only once. He must realise that these orders are extensive, they have a lot of paragraphs, and every one of them is important. Every one of them must be complied with and complied with strictly. The breaches which have been committed are not trivial breaches, I accept the Attorney-General's submission in that regard.

They are not, in my judgment, sufficient to warrant the continued detention of the prisoner. In my judgment he has satisfied the onus which lies upon him under section 22(2). That is, he has demonstrated on the balance of probabilities that adequate protection of the community can, despite the

contravention of the order, be and should be served by the existing order. There is no need for any amendment under subsection (7).

For that reason, I am not prepared to make the sort of order contemplated by section 22(2). The consequence of that will be that the order remains in place. There is no need to amend it to comply with section 16 as those conditions are already in the order.

It must, however, be realised that because of the requirement to strictly adhere to these conditions, any further breach is likely to engender a different belief in any judge of this Court. It is most unlikely a further breach of any sort would be treated as other than evidence, when combined with the evidence of this breach, of a willingness to treat the order as something that is only optional. Such an attitude would be one in this prisoner which would mean inevitably that the Court could not be satisfied that he should not be detained, that is that the supervision order should not be rescinded. In other words, the outcome this time is unlikely to happen again if there is any further breach.

I order that the prisoner be released from custody but subject to the continuing supervision order.