

SUPREME COURT OF QUEENSLAND

CITATION: *Johnstone v R* [2011] QSC 229

PARTIES: **DAVID ANTHONY JOHNSTONE**
(applicant)
v
R
(respondent)

FILE NO: BS 6394 of 2011

DIVISION: Trial

PROCEEDING: Application

DELIVERED ON: 27 July 2011

DELIVERED AT: Brisbane

HEARING DATE: 27 July 2011

JUDGE: Fryberg J

ORDERS: Bail is granted subject to conditions of bail.

CATCHWORDS: Criminal Law – Procedure – Bail – Before Trial – Generally

COUNSEL: A W Bale (solicitor) for the applicant
K W Adams for the respondent

SOLICITORS: A W Bale & Son for the applicant
Director of Public Prosecutions (Qld) for the respondent

HIS HONOUR: This is an application for bail by a person who has been charged with a number of offences relating to drugs and the possession of firearms as the most serious.

The applicant Mr Johnstone was released from parole a couple of years ago after serving eight years of a 10-year sentence for armed robbery.

When police searched his premises recently at a time after the expiry of his parole period, he was found to be in the possession of drug materials and the weapon and a substantial quantity of cash.

He intends to plead guilty to the offences. It is not at all certain that he would receive a custodial sentence for them. He does appear, from his admissions to the police, to have fallen back into the use of amphetamines, something which in 1999 led to the offending which led to the robbery which led to the sentence that I have just described.

Because of his admission that he has been falling back into his offending habits together with the finding of the weapon, three balaclavas and other impedimenta of drugs the suspicious one must harbour is that he was preparing to carry out further robberies.

The risk of re-offending is therefore the principal

ground which leads the Crown to oppose bail. There is no reason to think that he would not appear and, indeed, his stated intention to plead guilty reinforces that. There is no reason to think that he would interfere with witnesses so the question is whether the risk of re-offending can adequately be dealt with by conditions.

In my judgment it can be dealt with by conditions. They should include stringent conditions regarding drug testing on a weekly basis at random times and if there is a specific reason for additional testing, that testing to be at his expense and he must provide the results to the office of the Director of Public Prosecutions promptly.

There should also be a curfew, daily reporting to police who can observe his condition and I would require undertakings from his parents with whom he proposes to reside to report any breach of the bail conditions to the Office of the Director of Public Prosecutions or to the police.

The need for the undertaking would, I suppose, mean that his parents would have to receive independent legal advice and before they could receive that and give the undertaking the conditions of the bail would have to be settled.

There is therefore the drafting element required to be carried out. With those conditions in place I am

satisfied that it is appropriate to grant bail.

I will stand the matter down to allow, first of all, the bail order with its conditions to be drafted and settled and then to enable the necessary undertakings to be obtained.

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HIS HONOUR: There will be an order in accordance with the draft initialled by me and placed with the papers.