

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Edwards*  
[2011] QSC 398

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF  
QUEENSLAND**  
(applicant)  
**v**  
**EDWARDS, Travice Allan**  
(respondent)

FILE NO: BS8456 of 2007

DIVISION: Trial Division

PROCEEDING: Application for contravention of supervision order

DELIVERED ON: 13 December 2011 (ex tempore reasons)

DELIVERED AT: Brisbane

HEARING DATE: 13 December 2011

JUDGES: Mullins J

ORDERS: **Order as per amended draft initialled by Mullins J and  
placed with the file**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND  
PROCEDURE – JUDGMENT AND PUNISHMENT –  
OTHER MATTERS – where the respondent released under a  
supervision order made under *Dangerous Prisoner (Sexual  
Offenders) Act 2003 (Qld)* – where respondent admitted to  
smoking cannabis sativa before his release from prison –  
where respondent’s urine test taken nine days after his release  
tested positive for cannabinoids – where respondent denied  
using cannabis sativa after his release on the supervision  
order – whether the applicant could discharge the onus of  
showing that the respondent had breached the supervision  
order by using cannabis sativa after his release from custody  
– whether the applicant could discharge the onus of showing  
that the respondent was likely to contravene the supervision  
order by use of cannabis sativa

*Dangerous Prisoner (Sexual Offenders) Act 2003, s 22*  
*Attorney-General for the State of Queensland v Edwards*  
[2008] QCA 156, cited

COUNSEL: J M Sharp, for the applicant  
S M Ryan, for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant  
Legal Aid Queensland for the respondent

HER HONOUR: The respondent was released under a supervision order made by the Court of Appeal on 20 June 2008.

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The history of his sexual offending and imprisonment that brought him under the regime of the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act) is set out in the reasons of the Court of Appeal: Attorney-General for the State of Queensland v Edwards [2008] QCA 156 at paragraphs [3] to [7]. That order was subsequently amended by A Lyons J on 22 September 2009 and Martin J on 17 May 2011 after proceedings for contraventions of the supervision order by the respondent.

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This proceeding commenced by application filed in the Court on 2 June 2011 is for an alleged contravention that was the subject of a warrant issued for the respondent's arrest on 1 June 2011, after the respondent had been released from custody on 17 May 2011 in accordance with the amended supervision order made by Martin J.

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At the respondent's induction for this release, he admitted to having used heroin and cannabis sativa as recently as 14 May 2011 whilst in custody.

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His sample of urine that was tested in accordance with the conditions of his supervision order under the Act was clear of any illicit substances on 19 May 2011.

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On 26 May 2011, the respondent was, again, directed to provide

a urine sample for analysis. He denied having used any  
illicit substances since his release from custody, but this  
sample showed a presumptive positive result for morphine and  
cannabis. As the respondent was taking opiate medication for  
pain relief, the positive result for morphine was not an  
issue, but Corrective Services acted on the positive result  
for cannabis which upon further testing indicated the presence  
of a very small quantity of cannabinoids.

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An interim detention order was made by me on 2 June 2011 on  
the basis that the respondent had failed to satisfy the Court  
that his detention in custody pending the final decision in  
relation to the alleged contravention was not justified on  
account of exceptional circumstances.

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During that hearing, the respondent did raise his use of  
cannabis in custody as a possible explanation for the positive  
test.

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At the same time as making that interim detention order, it  
was ordered that the respondent undergo further assessment by  
psychiatrists, Dr Harden and Dr Beech. The respondent denied  
that he had used cannabis sativa in the community to both  
those psychiatrists.

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The applicant sought a report from a forensic medical officer.  
Unfortunately, that report was not obtained until 8 December  
2011, because that report fairly disclosed that the  
respondent's claim that he had not used cannabis since his

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release from custody in May 2011 could be true and was not inconsistent with the results of the urine testing. As was explained in submissions, the negative drug screen on 19 May 2011 could well have been a false negative.

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The respondent gave oral evidence during the course of the proceeding today and confirmed the denials about his use of cannabis subsequent to his release on 17 May 2011.

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On the basis of the further forensic evidence obtained by the applicant, the applicant, in effect, conceded that he could not discharge the onus in relation to a contravention based on consumption of cannabis sativa by the respondent subsequent to his release from custody on 17 May 2011. In any case, I am satisfied on the basis of the evidence that has been put before the Court in relation to this contravention that the applicant cannot discharge the onus that he bears to prove that contravention.

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The applicant, however, sought not to rely today on that past alleged contravention, but obtained leave to amend the application to rely on a further ground for proceeding under section 22 of the Act. The further ground was that the respondent is likely to contravene the requirements of the supervision order.

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The particulars that were provided in support of this likely contravention are that when the respondent was interviewed by Dr Harden on 31 August 2011, it is alleged that the respondent

said that it is likely he will use cannabis again and that on the basis of what was reported to him, Dr Harden was of the opinion that it is likely that re-use will occur.

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I heard evidence today from Dr Harden about what he recalled was the actual content of the reporting to him by the respondent of his future intentions, as well as evidence from the respondent. It is necessary to put this evidence in context.

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The respondent has end stage liver disease. There is a report from Dr Pham, a visiting medical officer at the prison, which sets out the list of the respondent's medical problems and states that in the last six months the respondent has had four admissions to the Princess Alexandra Hospital and attended the Out-Patients Clinic on six occasions. The admissions were for complications related to chronic liver failure. The medical specialist at the hospital has classified the respondent as Class C in a scoring system that gives patients in that class a 45 per cent survival rate for one year and a 35 per cent survival rate for two years.

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The respondent is not suitable for a liver transplant.

The respondent has been informed of his shortened life expectancy and understands the implications of that for him.

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A Dr McDonald who saw the respondent in prison wrote a letter to the Queensland Parole Board on 24 August 2011 which

confirmed the opinion that he expressed to the respondent,  
that Dr McDonald recommended that the respondent be permitted  
to use cannabis sativa for pain relief because that substance  
was possibly able to give him some relief from the chronic  
abdominal pain from which he suffers which is not relieved by  
prescribed non-addictive medication.

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It seems that the respondent had that medical advice in the  
forefront of his mind when he was interviewed by Dr Harden  
and that may explain Dr Harden's interpretation, or  
misinterpretation, of what the respondent was conveying to  
him.

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In fact, when Dr Harden gave evidence today he frankly  
conceded that he found it difficult to follow the respondent's  
relating matters to him and he may have misinterpreted what  
the respondent intended to convey.

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The respondent's evidence today is to the effect that he was  
hopeful of gaining a medical prescription for the use of  
cannabis sativa and if he did obtain that, that was the  
circumstance in which he contemplated using cannabis sativa.

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The respondent knows that he only has a short time to live.  
He has a clear goal of wanting to be released from custody so  
that he can spend the short time that he has with the close  
relative who has been prepared to provide support for him in  
his illness. He does not want to jeopardise that possibility  
by having the supervision order suspended or revoked by being

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breached for use of cannabis sativa that is not authorised.

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It also became apparent from the evidence of both Dr Beech and Dr Harden that the respondent was not as alert and clear in his communications when he was interviewed by Dr Harden as he was by Dr Beech and that is explained medically by the effect of toxins in the respondent's system that can cause him to be less coherent when communicating.

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After having the opportunity to peruse the medical evidence and noting that it was on 24 August 2011 that Dr McDonald had given that advice to the respondent, I am satisfied that Dr Harden may have misinterpreted what the respondent informed him during the interview about his intended use of cannabis sativa, particularly as Dr Harden also acknowledged that he was told something by the respondent about a doctor saying he should have cannabis sativa.

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In the light of the evidence from the respondent, in addition to Dr Harden's qualification of what was included in his report, I am satisfied that the applicant has not discharged the onus he bears in proving a likely contravention of the supervision order by the unauthorised use by the respondent of cannabis sativa.

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Dr Pham's report is also useful because it confirms the difficulties that the respondent presents for the Corrective Services Department because of his need for constant care.

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Dr Pham states, "On almost a daily basis, Mr Edwards complains about his symptoms to the nursing and medical staff at the correctional centre. A Code Blue medical emergency in the correctional centre is called almost daily for Mr Edwards and most of the time Mr Edwards is found to have a seizure or passed out. Medical complaints can vary from vomiting blood, abdominal distension, fluid retention in the limbs, fevers to confusion."

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The close relative of the respondent is prepared to provide the daily care and monitoring that the respondent requires to ensure that he is helped when he has a seizure and to ensure he does not lapse into a coma when he has a toxin build-up.

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The close relative's place was approved as suitable accommodation for the respondent by Corrective Services on 16 May 2011. There are reasons why it was not approved as suitable for the purpose of the proceeding today, but some of those reasons have been addressed by the evidence given in this proceeding today.

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It is clear that the respondent understands that he will be breached for contravention of the supervision order if he accesses cannabis sativa for pain relief without a medical prescription. He understands that what he needs to do now is to seek the assistance of his medical practitioners to see if he can be prescribed cannabis sativa for the purpose of pain relief.

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It is to be noted that the psychiatrists both consider that

cannabis sativa has gone from being a relevant factor in relation to the risk of sexual offending by the respondent to a non-relevant factor because of the respondent's debilitated medical condition.

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I have therefore acceded to the oral application made on behalf of the respondent to amend the residential condition in the supervision order so that he can be released to reside at the address that was approved by way of suitability assessment on 16 May 2011. The making of that oral application for amendment was not opposed by the applicant, which was an appropriate course to take in the circumstances of the evidence that was placed before the court in this proceeding.

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I am satisfied that the amendments sought to the supervision order, both in relation to the residential address and to ensure that the respondent will not be in breach of the supervision order, if he uses cannabis sativa that is lawfully prescribed by a medical practitioner, are reasonable and sufficient to ensure the adequate protection of the community.

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I make an order in terms of the amended draft initialled by me and placed with the file.

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