

# SUPREME COURT OF QUEENSLAND

CITATION: *A-G (Qld) v DGK No.2* [2012] QSC 75

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

FILE NO: BS 3832 of 2010

DIVISION: Trial

PROCEEDING: Application

DELIVERED ON: 20 March 2012

DELIVERED AT: Brisbane

HEARING DATE: 20 March 2012

JUDGE: Fryberg J

ORDERS: **1. Declare that the Court is satisfied on the balance of probabilities that the adequate protection of the community can, despite the contraventions of the order of McMurdo J, made on 6 April, 2011, be ensured by that order.**  
**2. Direct that any published version of my reasons for judgment in this matter be anonymised using the same letters as were used in previous publications.**

CATCHWORDS: Criminal Law – Sentence – Sentencing orders – Orders and declarations relating to serious or violent offenders or dangerous sexual offenders – Dangerous sexual offender – Generally  
*Dangerous Prisoners (Sexual Offenders) Act 2003*

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

SOLICITORS: Director of Public Prosecutions for the applicant  
Legal Aid Queensland for the respondent

HIS HONOUR: The prisoner before the Court, DGK, was made the subject of a supervision order by Justice McMurdo on the 6th of April, 2011. He contravened that order in three respects,

namely, by the ingestion of cannabis on the 28th of July, by attending licensed premises on the previous day, and by failing to disclose those matters to his Corrective Services officer on the 28th of July and being untruthful about his movements on the 27th of July.

He admits those contraventions. He therefore bears the onus of satisfying the Court, on the balance of probabilities, that the adequate protection of the community can, despite them, be ensured by the supervision order, or an amended supervision order.

He has been examined by Dr Harden and Dr McVie. On the basis of their reports, I am satisfied that he has discharged the onus which lies upon him.

It is unfortunate that Mr DGK has been in detention since the matter came before this Court in August, 2011. Part of the delay of seven months is unavoidable. Time is needed for psychiatrists to be briefed to examine and to report, but in the present case, the psychiatrists achieved their tasks in two months. For the rest, whilst some time is no doubt needed to brief them, a month, which is the time in this case, seems excessive.

The reports were received before Christmas, 2011. The date for hearing available from the Court, which was obtained during October last year was today. That was the earliest available date.

Given that the reports clearly indicate no need to amend the existing order, let alone to make a continuing detention order, it is most unfortunate that the delays are such that a man has been kept in custody for approximately four months unnecessarily.

I emphasize that there has been nothing unlawful about his continuing detention. It is what the Act requires. Unfortunately, the Act was first passed at a time when the volume of applications under it was expected to be much smaller than has turned out to be the case in more recent times.

The Court has recently issued a Practice Direction to deal with these sorts of problems. It remains to be seen whether the Practice Direction will be adequate to overcome what has happened in this case. For myself, I doubt it. There is, in the end, no way of dealing with a flood of applications, usually urgent, when there are insufficient judicial resources available.

It is to be hoped that the Attorney will examine the position closely with a view to augmenting those resources. One would hope that the Attorney would be very conscious of the undesirability of having people unnecessarily detained in custody, as this man has been.

The final decision of the Court on this application is

"Declare that the Court is satisfied on the balance of probabilities that the adequate protection of the community can, despite the contraventions of the order of McMurdo J, made on 6 April, 2011, be ensured by that order."

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HIS HONOUR: I direct that any published version of my reasons for judgment in this matter be anonymised using the same letters as were used in previous publications.

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