

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Larry* [2012]
QSC 399

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

FILE NO: 396 of 2011

DIVISION: Trial Division

PROCEEDING: Application for contravention of supervision order

DELIVERED ON: 10 December 2012

DELIVERED AT: Brisbane

HEARING DATE: 10 December 2012

JUDGE: Applegarth J

ORDER: **The Court being satisfied to the requisite standard that the Respondent, Thomas Andrew Larry, has contravened requirements of the supervision order made by Boddice J on 19 May 2011 ORDERS THAT:**

- 1. The Respondent, Thomas Andrew Larry, continues to be subject to the supervision order made by Boddice J on 19 May 2011, with the following additional requirement (the full set of requirements that the Respondent will be subject to are set out in the schedule attached to this order):**
 - (a) the existing conditions (i) – (xxxvii) be renumbered (1) – (37);**
 - (b) New requirement (38):**
 - a. not own, possess or regularly use more than one mobile telephone, telephone number, and Subscriber Identity Module (SIM) card without prior written approval of an authorised Corrective Services officer;**
 - b. allow any telephone or mobile phone owned, possessed or regularly utilized by him to be randomly examined. If applicable, account details and or phone bills are to be provided upon request of an authorised Corrective Services officer.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – OTHER MATTERS – where the respondent breached curfew after ingesting cannabis – whether the respondent should be released on a supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003, s 22

COUNSEL: K Philipson for the applicant
H Fong for the respondent

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

- [1] This is an application under s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”). I am satisfied that the respondent contravened the supervision order made by Boddice J on 20 May 2011 by:
- returning to his approved accommodation on the night of 30 May 2012 after the required time of 10 pm, having returned home at around 12.30 am on 31 May 2012;
 - ingesting the substance Kronic (a synthetic form of THC), contrary to a reasonable direction that was issued to him on 15 February 2012;
 - ingesting the illicit drug cannabis.
- [2] Urine samples were taken on 25 and 31 May 2012. After testing positive for these substances, the respondent was arrested on 12 June 2012. On 14 June 2012 Douglas J ordered that he be detained in custody until the final decision under s 22 of the Act. The respondent also was required to undergo examinations by two psychiatrists, whose reports I have considered. As the applicant Attorney-General acknowledges, these reports support the continuation of the supervision order made by Boddice J on 19 May 2011. I have also had regard to the comprehensive and insightful report of Ms Sky, a psychologist, prepared in June 2012, which was based on 22 consultations with the respondent.
- [3] Under s 22(2) of the Act the respondent has the onus of satisfying the Court, on the balance of probabilities, that, despite the contravention, the adequate protection of the community be ensured by the existing order, as amended under subsection 22(7).
- [4] The applicant acknowledges that the material supports the conclusion that adequate protection of the community can be ensured by a supervision order. However, in the light of evidence in relation to the use of a number of different mobile phones, the applicant submits that the original order should be amended to include conditions restricting the respondent’s possession and use of more than one mobile phone. The amendment to the supervision order in those respects is not opposed by the respondent, and I propose to make an order in those terms.
- [5] The respondent’s background and the circumstances under which an application was made under the Act appear in the reasons of Boddice J delivered on 19 May 2011: *Attorney-General for the State of Queensland v Larry* [2011] QSC 120.

- [6] The respondent, a Torres Strait Islander, was born on 12 November 1976. The reports indicate that he:
- had a very disturbed and abusive childhood with an extraordinary early introduction to alcohol and marijuana abuse, and very early exposure to sexuality;
 - was born to an alcoholic mother and a largely absent father;
 - was the only child of the relationship between his mother and father, but his mother had a total of 11 children from multiple partners and played little part in his upbringing;
 - for the first 5 years of his life, was raised on Warraber Island by his paternal grandparents and those years were reasonably stable and secure. However, after the death of his grandparents, his life became very unstable and abusive;
 - was cared for by an aunt for at least some of the time and then passed around among various relatives;
 - had a step-father who was reported to have been violent to him;
 - began to drink alcohol from a very early age (at age 5);
 - regularly smoked marijuana from about the same age;
 - was introduced to sexuality at about 5 years of age as well, in that he witnessed older male relatives having sex with women;
 - was co-opted by them to go and persuade females to come to the house for sex;
 - was shown by an older female how to have sexual intercourse when he was just 6 or 7 years of age;
 - was reportedly paid for sexual favours by older male relatives or friends from the age of 7;
 - reported sexual abuse at the hands of his then school principal.

These experiences were traumatising. The respondent refused to go to school, so his education came to an effective halt. He left school largely illiterate. English is not his first language.

- [7] The reports indicate that the respondent left the Torres Strait in his mid-teens and went to Cape York when he fell in with an anti-social group of peers and was soon convicted of multiple offences. He ended up in youth detention in Townsville. Upon release he re-entered an anti-social group in Cairns and continued offending. His use of alcohol and marijuana escalated.
- [8] His offending culminated in events on 8 March 2002. He broke into a home with intent to steal property. The female occupant was woken up and he attempted to

rape her. On 18 June 2003 the respondent was sentenced to be imprisoned for eight years and declared to be a serious violent offender.

- [9] The respondent's immaturity, personality problems and lack of literacy and numeracy have combined to reduce his chances of gaining employment and establishing positive relationships. Unfortunately, the fact that he is subject to the Act has itself inhibited his chances of undertaking voluntary work in the community and enrolling in literacy courses which would enhance his chances of gaining employment. In the past he has struggled with supervision in the community. He has been less than candid with those who supervise him.
- [10] The respondent reports that on 30 May 2012 he went to the Princess Alexandra Hospital to work out where it was so that he could visit there when his mother was transferred to it. At around 5.00 or 6.00 pm he approached two indigenous people and they paid for his ride on the bus. He went with them to their home where he "sat and yarned" for some time. Later in the evening when he was in that house he picked up cigarette butts ("dumpers") and smoked them, as was his habit. These dumpers were in an ashtray. He said that he did not realise it was cannabis until he took a big drag on the cigarette and started to feel dizzy. At about this time he realised that it was getting late and he started to panic. He walked out of the house and started asking people for directions to the nearest train station. He became lost. He had run out of money on his phone and had to ask someone to borrow their phone. He telephoned Corrective Services officers just before 10 pm and advised that he would be late home as he was still at Buranda Station. He then made his way home, taking about an hour to walk from Ipswich Station to his approved residence.
- [11] The circumstances under which the respondent consumed Kronic are not explained. The respondent thought that it might have been on the night of 30 May 2012, but this cannot be correct. Either he cannot recall when he ingested Kronic or has not disclosed what he knows about his use of it. Given his history of giving false information to those who supervise him, one cannot be confident that the respondent is being completely open and honest about the circumstances under which he ingested cannabis on the evening of 30 May 2012. Fortunately, these two positive tests in late May 2012 are the only occasions upon which he has tested positive for drugs since his release, and he also has been abstemious from alcohol during the periods of his release into the community. If his ingestion of these drugs was deliberate, rather than inadvertent, then it is consistent with reported aspects of his personality, whereby he is prone not to consider the consequences of his actions.
- [12] Since his return to custody he has taken courses, including literacy and numeracy classes, and behaved himself. His admitted contraventions are not indicative of a significant alteration in the risk that he presents if released into the community subject to a supervision order. Continuing support, psychological intervention and assistance with education and employment will reduce the risk of future contraventions, but not eliminate them.
- [13] The respondent has the support of good people in the community. In the past he obtained the support of the Salvation Army. Upon his release he will have the support of social workers from the Aboriginal and Torres Strait Islander Legal Service. Immediately following his release he will be accommodated in the Wacol

Precinct. It is expected that he will continue to receive psychological treatment from Ms Sky or some other suitable person.

- [14] Ms Sky's June 2012 report identifies in a thorough and insightful way factors that the respondent has addressed, to some degree, to lower his risk of recidivism. Critical to these are avoiding the use of intoxicants, being able to budget, gaining skills for employment and being honest and co-operative with those who supervise him and those who assist him, like Ms Sky. He has to establish an adequate social network which will enhance his own sense of self and support his relapse prevention strategies.
- [15] I am satisfied that adequate protection of the community can, despite the contravention, be ensured by an amended supervision order, provided it is administered in a way that will facilitate the respondent's pursuing literacy and numeracy courses in the community, being able to undertake voluntary work and, hopefully, progressing to paid employment. I encourage those with responsibility for administering the supervision order to read the reports which I have had the advantage of considering, particularly the June 2012 report of Ms Sky which helpfully identifies what needs to be done to address the risk of recidivism and to enable the respondent to improve his skills and establish an adequate social network.