

SUPREME COURT OF QUEENSLAND

CITATION: *R v Paroz* [2012] QSC 427

PARTIES: **THE QUEEN**

v

LESLIE ROLAND PAROZ

FILE NO: 434 of 2012

DIVISION: Trial Division

PROCEEDING: Sentence

DELIVERED EX
TEMPORE ON: 30 November 2012

DELIVERED AT: Brisbane

HEARING DATE: 30 November 2012

JUDGE: Peter Lyons J

- ORDER:
- 1. The respondent is sentenced to serve the terms of imprisonment imposed on him by the orders made on the 19th of August 2010.**
 - 2. Pursuant to s 159A of the Penalties and Sentences Act 1992 (Qld) the period of five days between the 22nd of November 2012 and the 26th November 2012 is to be taken as time served under the sentences the subject of this order.**
 - 3. The parole release date is fixed as the 22nd of April 2013.**

CATCHWORDS: PROCEDURE – CONTEMPT, ATTACHMENT AND SEQUESTRATION – POWER OF COURT TO PUNISH FOR CONTEMPT – SUPREME COURT – GENERALLY – where interlocutory injunction was granted on 7 April 2010 restraining the respondent from carrying out certain farming activities on properties named in that order – where on 4 June 2010 the respondent was found to be in breach of the injunction – where on 19 August 2010 the respondent was sentenced for contempt to periods of five and nine months

HIS HONOUR: This matter has come before me as a result of a referral made by a District Court Judge under section 146 of the Penalties and Sentences Act 1992 (Qld) because the legislation under which this matter is to be determined may result in the making of an order which would require the respondent, Mr Leslie Roland Paroz, to serve time in prison. I invited him at the commencement of the hearing to say whether he wished to seek legal representation or advice. He chose, however, to proceed today.

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To understand the nature of these proceedings some history is required. The respondent was involved in litigation with his brothers and their wives arising out of farming partnerships they carried on for many years on farms, some at least of which had originally been acquired by the respondent's parents: see Paroz v. Paroz [2010] QSC 41. In the course of those proceedings injunctions were sought by the other parties against the respondent. On the 7th of April 2010, I granted an interlocutory injunction restraining the respondent from carrying out certain farming activities on properties named in that order.

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On the 11th of June 2010, I extended the interlocutory injunction so that it restrained those activities on additional properties and on the same date, I also ordered the respondent to remove certain livestock from those properties. On the 4th of June 2010, I found the respondent to be in breach of the first injunction. On the 3rd of August 2010, I

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made further findings that the respondent was in breach of the injunctions mentioned previously.

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The breaches were constituted by the carrying on of the prohibited farming activities on some 14 occasions, the activities extending over about 80 per cent of the area of the properties to which the injunctions related and by the continuing failure of the respondent to remove the cattle by the date nominated, namely the 30th of July 2010, a date which had been fixed after discussions involving the respondent. The number of cattle was uncertain, but it was more than 175.

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On the 19th of August 2010, I imposed sentences for contempt. Some involved fines and are not relevant. However, for contempts committed by carrying out farming activities on the 15th, 17th and 19th of June 2010, I ordered that the respondent be imprisoned for a period of five months. For his failure to remove the cattle, I ordered that he be sentenced to a term of imprisonment of nine months. The sentences were to be served concurrently and were suspended immediately for an operational period of two years. I should add that on the same day, I made an order by consent that two persons who had been appointed as receivers of one of the partnerships be authorised to act as the respondent's agent to sell the livestock which he had been ordered to remove from the properties.

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The present proceedings are a consequence of offences committed by the respondent on the 8th of March 2011. Those offences are one count of dangerous operation of a motor vehicle and five counts of causing wilful damage to property. It appears that on the 8th of March 2011, the defendant went to one of the properties in a utility and towing a horse float with a horse in the float. He went to cattle yards expecting to find cattle there. When there were none, he drove up to the house on the property.

He then drove his vehicle with full force into the rear of a Pajero wagon belonging to his brother, Ian. He then reversed and accelerated his vehicle into the back of a utility belonging to his brother, Lewis. He then accelerated his vehicle into the side of a vehicle owned by his nephew, Martin. He then drove his vehicle at speed towards his brother, Lewis, who jumped clear. When that happened, the defendant's vehicle struck the house causing damage to it.

He then accelerated his vehicle towards Ian's vehicle, striking it again. He then drove his vehicle towards Ian. Ian jumped out of the way to avoid it. He then drove his vehicle a second time into each of Lewis's and Martin's vehicles before accelerating and striking a 22,500 litre tank. He then left the property. He was pursued by police a short time later. Although they activated their warning lights and signalled for the defendant to pull over, he ignored them. Eventually the police were advised to discontinue their attempts to intercept the defendant.

Some observations might be made about the offences of the 8th of March 2011. First, there were six counts. Secondly, they were, on any view, serious offences, in particular those which involved driving a vehicle at some speed towards other members of the family. The third feature of them is their repeated nature, including the fact that some of the vehicles were driven into twice.

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I have mentioned that shortly before the offences the respondent had gone to the cattle yards expecting to observe cattle there. The respondent said that they were his cattle, and that some of them were the cattle in respect to which the order for removal had been made on the 11th of June 2010. He also said that other cattle which he had expected to find there were cattle which had been purchased to replace some of the cattle the subject of that order. It seems to me that that fact hardly puts the respondent's conduct in a better light. It demonstrates a determination to continue activities similar to those which the orders precluded him from carrying out.

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While therefore at least-----

DEFENDANT: Your Honour, if I may just elaborate that, your Honour?

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HIS HONOUR: Just sit down. While the orders may not technically have applied to the replacement cattle, it nevertheless says something about the attitude of the

respondent to matters which had been determined adverse to him.

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The terms of imprisonment which were imposed on the 19th of August 2010, may be regarded as having been imposed under the provisions of the Penalties and Sentences Act: see r 930(2) of the Uniform Civil Procedure Rules 1999. While that Act does not itself, in terms, confer a power to make an order under it where a person has been found guilty of contempt of Court, it recognises that such an order might be made: see s 160G(1) Example 2.

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Section 147(1)(b) provides that when the Court is dealing with a person who has committed an offence punishable by imprisonment during the operational period of a suspended term of imprisonment, the Court may order the offender to serve the whole of the suspended imprisonment. Section 147(2) provides that the Court must make that order unless it is of the opinion that it would be unjust to do so. Section 147(3) identifies matters to which regard must be had in considering whether it would be unjust to order the offender to serve the whole of the suspended imprisonment.

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It is convenient at this point to note the provisions of Division 3 of Part 9 of the Penalties and Sentences Act. They enable a Court to fix a parole release date in a case like the present one: see s 160B and the definition of the expression "impose" in an identified context, found in s 160.

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In R v. Norden [2009] 2 Qd R 455, 459, Holmes JA with whose reasons the other members of the Court agreed held that the decision to set a parole release date should be regarded as an aspect of the decision to be made under s 147(2), that is to say, as something to be taken into account in deciding whether it would be unjust to order the offender to serve the whole of the suspended imprisonment. The effect of that, it seems to me, is that in determining whether it is unjust to order the respondent to serve the whole of the suspended imprisonment, I am to bear in mind the prospect that a parole release date might be fixed in respect of that imprisonment.

I have had the assistance of submissions of submissions from Mr Robson of counsel on behalf of the Director of Public Prosecutions about the effect of relevant provisions of the legislation. He submitted that s 160B(3) had the effect in the present case that I am required to fix a date for the respondent to be released on parole if I make an order requiring him to serve the whole or any part of the suspended imprisonment, and that that date may be the last date of the period to be served.

It is clear that his submission is correct; so much is apparent from s 160G(1) Example 1 and s 160G(2). So much also appears from the decision in R v. Gray [2010] QCA 161, especially at [2] and [42]; see also [15]; and see R v. Anderson [2010] QCA 158 at [26].

In those circumstances, it seems to me that I would need to consider the prospect that I would make an order fixing a parole release date at an earlier date than the full term of the suspended imprisonment before I decide whether it would be unjust to make an order requiring the respondent to serve the whole of the suspended imprisonment. Some of the considerations relevant to the fixing of the parole date are also matters to which I must have regard in determining whether it would be unjust to order the respondent to serve the whole of the suspended imprisonment because of some overlap, at least at a factual level.

I shall therefore refer to the matters identified in s 147(3) at this point. The first question is whether the offences which have led to today's proceedings are trivial. That involves a consideration of the nature of those offences and the circumstances in which they were committed, and a number of other things. On that question as I have indicated, the offences were serious. If there was any event which might be regarded as providing some explanation of the respondent's conduct, that event is not one which, in my view, provides any reasonable or understandable basis at all for the way the respondent acted on the 8th of March 2011.

The next matter to be considered in determining whether the offences of the 8th of March 2011 are trivial is the proportion between the culpability of the respondent for those offences and the consequences of activating the whole of the suspended imprisonment. Again, the seriousness of the

offences of March 2011 does not support a conclusion that those offences are trivial if one considers there the proportion between the respondent's culpability for them and the consequences of activating the whole of the suspended imprisonment.

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The respondent is a single man, 60 years' of age. Prior to these matters he has no criminal history and he said, without contradiction, little by way of traffic offending. Those considerations are of some importance in the ultimate decision, but they do not seem to me to support the view that the offences committed in March 2011 are trivial.

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The next matter mentioned in section 147(3) is the prevalence of the original and subsequent offences. It seems to me that contempt generally is not particularly prevalent and the nature of the subsequent offences makes them somewhat unusual.

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The next matter listed in the statute is effort at rehabilitation. There is not much material before me about that question. I have a Court report which concludes that the respondent displayed a satisfactory response to supervision. It should be noted that the respondent failed to attend at Court on a number of occasions resulting in the issue of a Bench Warrant and his subsequent arrest. He has been in custody since the 22nd of November 2012. He explains his failure to appear on various occasions by reference to confusion about whether proceedings were to take place in Ipswich or in Brisbane. That there is no suggestion that

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remove it which may have had some financial consequences for the other parties to the action.

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However, I do consider the conduct of the respondent in breach of the orders made in 2010 to be serious, in particular because of its persistent nature and by reason of the fact that it continued notwithstanding, first, a warning by the solicitors for the other parties that proceedings would be brought, nor the finding made on the 4th of June 2010 that the respondent had by then breached the order made on the 7th of April of that year.

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I am also to consider whether any special circumstances have arisen since the original sentence was imposed that would make it unjust to impose the whole of the term of any suspended imprisonment. None has been identified in my view. The respondent referred to the fact that his conduct arose out of a fact that he had to support himself and his mother and, that apart from farming activities, he had no real means of doing so. That in my view is not of particular significance in deciding whether the whole of the suspended imprisonment should be served.

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I note the respondent stated that approximately \$1 million was distributed to him from the proceeds of sale of some of the partnership farms. I also note that he had more than 175 cattle in August of 2010 and seems to have maintained a cattle grazing operation notwithstanding the order previously mentioned, at least, until March 2011. He also referred to

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lack of notice of the removal of the cattle in March of 2011
as something explanatory of his conduct.

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On the account which he gave of those cattle in his statement,
that does not seem to be a matter of any substance,
particularly since an order had been made in June of the
previous year requiring him to remove those cattle from the
property and the removal of cattle in March of 2011 was, it
would seem on the material before me, carried out with the
authority of receivers to his appointment to sell those
cattle, he had himself consented.

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I return to the question whether a parole release date might
be fixed if an order is to be made for serving the whole of
the suspended imprisonment. I have previously mentioned the
respondent's age and good character and expressed the view
that they are of some importance. It seems to me that both
his original conduct which led to the findings of contempt and
the sentences, and his conduct in March of 2011 has some
explanation in his obsession with continuing farming
activities on the family farms consistent with what he had
done for virtually all of his life. It seems to me that that
provides some explanation, although it is far from being one
which significantly mitigates the seriousness of his conduct.

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It seems to me that in deciding whether the parole release
date should be earlier than the expiry of the suspended terms
of imprisonment, I should bear in mind that there is some
relationship between the offences committed in March of 2011

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and the contempt constituted by the failure to remove the cattle in 2010. It might be observed that that was the act of contempt which drew the longest sentence, probably because of the circumstances in which the order was made and the fact that it occurred after all of the other conduct constituted contempt. I've also previously mentioned the seriousness of the offences committed in March of 2011.

At this point I will mention one other matter referred to by the respondent. He submitted that he had no malice towards his brothers. His conduct on the 8th of March 2011 makes it difficult to accept that submission. Nevertheless, I am particularly influenced by the respondent's previous good character and do intend to fix a parole release date in advance of the time when the suspended imprisonment would be completed.

Having regard in particular to the matters referred to in section 147(3) of the Penalties and Sentences Act, and the other matters which I have discussed, it seems to me that it would not be unjust to order the respondent to serve the whole of the suspended imprisonment. However, I intend to fix a parole release date effectively five months after the commencement of the imprisonment.

Now, Mr Paroz, those are my reasons. I will formally make orders in a moment, but you wanted to say something? What did you want to say?

DEFENDANT: Oh, just you brought the two cattle episodes together. One was at Mutdapilly and the cows I repurchased were Burn Farm. That's all, your Honour.

HIS HONOUR: Sorry, were what?

DEFENDANT: Were on Burn Farm, Laidley.

HIS HONOUR: So that the cattle that were removed on the 6th of March or thereabouts were not repurchased cattle, they were cattle that were there from March of 2010?

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DEFENDANT: They were earlier cattle, yes, your Honour.

HIS HONOUR: Look, when I revise the transcript I might - in fact I might do it now.

Earlier in these reasons I referred to the cattle which had been on the property until shortly before the 8th of March 2011 as including cattle purchased to replace cattle which were ordered to be removed by the order of the 11th of June 2010. It seems that the replacement cattle were on other properties and the cattle which were removed early in March 2011 were all cattle to which the order of the 11th of June 2010 applied. It seems to me that that factual difference does not materially affect any of my conclusions.

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Now, Mr Robson, I'd be assisted by some submissions about the form of the order. I simply order that the respondent is required to serve the terms of imprisonment imposed on the 19th of August 2010, that the period in the certificate is deemed time served, and fix a parole release date which I think would be the 22nd of April-----

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MR ROBSON: Yes, your Honour.

HIS HONOUR: I've got to do the sums or make sure I'm right about that. 22nd of April 2013?

MR ROBSON: Yes. I was going to say the 24th of April, but I don't disagree with the 22nd. There's not any great significance in that. 1

HIS HONOUR: All right. I might also check on days of the week - days of the week. I'm just checking what day the 22nd or the 24th are.

MR ROBSON: 22nd is a Monday apparently. 10

HIS HONOUR: All right. Well I think I'll fix it at the 22nd.

MR ROBSON: Sure.

HIS HONOUR: And that's all I need to do?

MR ROBSON: Yes.

HIS HONOUR: I order that the respondent serve the terms of imprisonment imposed on him by the orders made on the 19th of August 2010. I declare pursuant to section 159A of the Penalties and Sentences Act that the period of five days between the 22nd of November 2012 and the 26th of November 2012 is to be taken as time served under the sentences, the subject of this order. I fix the respondent's parole release date as the 22nd of April 2013. 20 30

I just want to make sure I got the arithmetic right. I think it is correct, yes. 40

MR ROBSON: Yes. That's five months - or just short of five months from today.

HIS HONOUR: Just short of five months.

MR ROBSON: Without any order being made, it's concurrent with his present term so it's not necessary for your Honour to expressly order that, so.

HIS HONOUR: All right. Thanks. 50
