

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

McMURDO J

No 5346 of 2003

**RODNEY JOHN WELFORD, ATTORNEY-GENERAL
FOR THE STATE OF QUEENSLAND** **Applicant**

and

ROBERT JOHN FARDON **Respondent**

BRISBANE

3.27 PM, WEDNESDAY, 3 SEPTEMBER 2014

ORDER

HIS HONOUR: Mr Robert John Fardon has been brought before the Court pursuant to a warrant which issued purportedly pursuant to section 20 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld). Counsel for Mr Fardon made an application to challenge the warrant, arguing that the corrective services officer on whose complaint the warrant was issued could not have held a reasonable suspicion that Mr Fardon was likely to contravene his supervision order. The complainant, Ms Embrey, from the Queensland Corrective Services made her complaint upon the basis of what she was told by another QCS employee, Mr Wilson. Mr Wilson and Ms Embrey have sworn affidavits and Mr Wilson was cross-examined.

Mr Wilson says that he was informed by another resident at the Wacol precinct – that is to say another released prisoner who is subject to a supervision regime under this Act – that the other prisoner had a conversation with Mr Fardon earlier this week in which Mr Fardon said things to the effect that he, Mr Fardon, intended to leave the precinct, to rid himself of the electronic monitoring device and to go to live somewhere remotely from Wacol and perhaps even interstate. The information provided to Mr Wilson was also to the effect that Mr Fardon was looking to secure some transport to assist him in this enterprise. It is clear that if Mr Fardon were to go to live somewhere else – that is away from the Wacol precinct – without the prior permission of the relevant officer from Queensland Corrective Services, that would constitute a contravention of his supervision order.

The present question is whether the suspicion which Ms Embrey swears she held was a reasonable one. There was no challenge to her evidence that she did in fact hold that suspicion. The facts which would make a suspicion a reasonable one can in some cases fall short of the facts which would found a reasonable belief, let alone facts which would prove the matter which is suspected. This was in *George v Rockett* (1990) 170 CLR 104 and in particular in the judgment of the plurality at 115 where the Court, citing what was said by Lord Devlin in *Hussein v Chong Fook Kam* [1970] AC 943 said that:

The facts which can reasonably ground a suspicion may be quite insufficient reasonably to ground a belief, yet some factual basis for the suspicion must be shown.

Their Honours also cited what was said by Kitto J in *Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266, 303 that:

A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to a “slight opinion, but without sufficient evidence”.

As matters presently appear, there would be a real potential to challenge the reliability of the information which was provided to Mr Wilson. I emphasise that that is as matters presently appear. But the question for today is not whether it is established that Mr Fardon did say these things or more generally that Mr Fardon is

likely to breach his contravention order. Rather, today's question is whether the suspicion which was held by Ms Embrey was one which was reasonable.

5 In my conclusion, it was reasonable for her to suspect that fact. The information
which was provided was provided by someone who, on his account, had learnt of Mr
Fardon's intentions from Mr Fardon himself. Of course what that informant said to
Ms Wilson may be quite untrue and may have been said to procure some advantage
for that person within the regime that applies at this Wacol precinct. Nevertheless,
10 the fact that he said it does provide a reasonable basis for a suspicion and that is all
which is required to engage section 20 of this Act. I therefore decline to set aside the
warrant.
