SUPREME COURT OF QUEENSLAND

CITATION:	*O'Connor v CD* [2016] QSC 37
PARTIES:	**DANIEL MICHAEL O'CONNOR** (Applicant) **v** **CD** (Respondent)
FILE NO:	SC No 479 of 2015
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Cairns
DELIVERED EX-TEMPORE ON:	12 February 2016
DELIVERED AT:	Cairns
HEARING DATE:	12 February 2016
JUDGE:	Henry J
ORDER:	**1. The respondent be punished for his contempt by imprisonment for four months, cumulatively upon the sentence he is presently serving.** **2. The originating application, the amended originating application, the respective outlines of submissions and the certificate and affidavit filed by leave today, along with a transcript of my reasons entitled with the respondent's actual name, be placed in an envelope which is to be sealed and marked not to be opened without an order of the Supreme Court or any Court which may be sentencing the respondent.**
CATCHWORDS:	COURTS AND JUDGES – CONTEMPT – PARTICULAR CONTEMPTS – INTERFERENCE WITH COURSE OF JUSTICE AND ADMINISTRATION OF LAW – EXERCISE OF STATUTORY POWER TO OBTAIN INFORMATION – where a notice to attend a hearing was issued pursuant to s 82 of the *Crime and Corruption Act* 2001 (Qld) to the respondent in relation an organised crime investigation – where the respondent indicated he would not answer questions – where the respondent refused to take the oath – whether the respondent committed contempt

CRIMINAL LAW – FEDERAL AND STATE INVESTIGATIVE BODIES – QUEENSLAND – where the respondent failed to take an oath when required at a hearing – where failing to take an oath is offence under s 183 of the *Crime and Corruption Act* 2001 (Qld) – where failing to take an oath can be punished as a contempt under s 199 of the *Crime and Corruption Act* 2001 (Qld) – whether the respondent should be punished for contempt

COUNSEL: S Williams for the Applicant
M Dalton for the Respondent

SOLICITORS: Crime and Corruption Commission for the Applicant
Wettenhall Silva Solicitors for the Respondent

HIS HONOUR: A delegate of the chairman of the Crime and Corruption Commission, an acting senior executive officer, decided that an investigation commence. The criminal activity to be investigated was organised crime occurring since the 1st of January 2004 that involved a named offender and associates and an offence of trafficking, supplying, producing and/or otherwise dealing in dangerous drugs and sundry associated offences.

On the 1st of September 2015 the same acting senior executive officer authorised the holding of a hearing in relation to the investigation. The hearing was presided over by the applicant, Mr O'Connor. On 27 October 2015 an attendance notice was issued pursuant to section 82 of the Crime and Corruption Act 2001 upon the respondent requiring him to appear at the hearing. On the appointed date he appeared at the hearing.

After a generic explanation was given to him at the start of the proceeding about what was going to be unfolding he explained he had no questions about the topics discussed, but indicated:

> *I'm not going to be answering any questions… I am prepared to accept the contempt charges, too… I've thought long and hard about it… I'm not going to change my mind... so I don't see the point of me even taking the oath… I'm not trying to be rude or anything… I've made my mind up. Yeah. I don't want you to think I'm being rude about this, but… I won't be answering any questions.*

He went on to say, when asked to explain why he wanted to go down this path:

> *No. Because it's just me. It's my life and I've got to live in this town.*

He was in custody at the time. It is well enough known amongst those in custody in penal institutions that there exists a culture of retribution against persons who act as informants. It is also well enough known that even beyond the custodial confines there exists a concern amongst those who consider informing that a result of doing so may be retribution against them or their loved ones. It appears obvious it was considerations of this kind that motivated the lack of cooperation. That lack of cooperation persisted even after multiple explanations and double-checking as to his position occurred. This included the option of seeking legal advice. However, the respondent was plainly, as he put it, determined to "stick to my same decision."

These events all culminated ultimately in the presiding officer directing him to give sworn evidence and to take an oath. His declining to take an oath triggered the present proceeding against him for contempt.

As I have observed in similar proceedings to this in the past, subject to mitigating and aggravating features downwards and upwards, respectively, the range for an offence of this kind generally falls at about the six month mark. In the case before me, save for the criminal history of the respondent, I would think that the competing factors would probably result in a starting point of around six months.

The materials show that the respondent, save for his persistence in not taking the oath, has been cooperative with the proceedings against him. That is a factor in his favour.

Nonetheless, his position remains as I apprehend it, that he has no intention of purging his contempt, for example, by indicating today "I'm prepared to take the oath after all if you call me back." I make plain it seems to me that that detracts from his prospects of significantly mitigating the sort of standard starting point to which I have referred for sentence.

Another feature against him, of course, is that the matter under investigation, the trafficking, was serious. It is difficult, notwithstanding the attempt made to assist me on this topic in the affidavit material, to assess the true result of his absence of cooperation by taking the oath upon the investigation to which I have referred. The prime target of the investigation was, obviously on the materials at least, a person well known to the respondent, though against that they conducted their business, it is said, independent of each other. It is the fact that there was apparently a degree of cross-over in the players with whom they would deal that I infer gives rise to the expectation this respondent would have had helpful information to give had he taken the oath and told the truth. I am aided in reaching my impression about these matters from the affidavit material about the investigation, not by expressions involving adjectives such as "severely" but rather by the actual evidentiary content, such as it is, that has been included and about what kind of information this offender might have been reasonably expected to provide.

His criminal history shows that he has served a variety of sentences in jail over the years. It is, in my view, a bad criminal history. Admittedly, none of the sentences until relatively recent times were very long. I should have thought that having regard to his antecedents, then, I would have commenced from a starting point ordinarily somewhat above the six month mark, more in the range of seven to eight months.

There is a difficulty, though. He is presently still serving a term of imprisonment, imposed some years ago, because he breached his parole. It has, I am told, at least the rest of this year and a short period into next year to run. Were I to impose a concurrent sentence here today, whether it be seven or eight months as the case may be, it would have no punitive sting at all, because he would serve it at the same time as his current term of imprisonment. Consistent with the sound exercise of the sentence discretion this case plainly calls for a cumulative sentence. It follows, then, consistent with the totality principle and the principles of cumulative sentencing that I ought materially discount the penalty I would have otherwise imposed to avoid a penalty that is too crushing.

Allowing for those considerations the appropriate sentence then is four months' imprisonment, cumulative.

The respondent is punished for his contempt by imprisonment for four months cumulative upon the sentence he is presently serving. If at any stage prior to completing the service of his sentence he wishes to purge his contempt he may do so and come before this Court seeking a declaration that he has so purged the contempt. If that occurs I may order his discharge from such remainder of the term he is serving if satisfied he has purged the contempt.

I direct the originating application, the amended originating application, the respective outlines of submissions and the certificate and affidavit filed by leave today, along with a transcript of my reasons entitled with the respondent's actual name, be placed in an envelope which is to be sealed and marked "not to be opened without an order of the Supreme Court or any Court which may be sentencing the respondent".

(Publication of these reasons entitled as O'Connor v CD is authorised by Henry J)