IN THE COURT OF APPEAL [1999] QCA 082

SUPREME COURT OF QUEENSLAND

CA No 61 of 1999

Brisbane

[R v Wren]

THE QUEEN

v

TIGHE RAYMOND WREN

Appellant

McMurdo P

Thomas JA

Shepherdson J

Judgment delivered 26 March 1999.

Judgment of the Court.

APPEAL DISMISSED. ALTERNATIVE APPLICATION FOR BAIL REFUSED.

CATCHWORDS: **CRIMINAL LAW - bail - jurisdiction under ss8, 10, 19 *Bail Act* 1980 (Qld) considered - when trial commences bail within sole province of trial judge until end of trial or sentence.**

Counsel: Mr AH Swindells for the appellant.
Mr M Byrne QC for the respondent.

Solicitors: Reidy & Tonkin Solicitors for the appellant.
Director of Public Prosecutions (Queensland) for the respondent.

Hearing Date: 12 March 1999.

REASONS FOR JUDGMENT - THE COURT

Judgment delivered 26 March 1999

1 On 12 March 1999 this Court dismissed an appeal "against dismissal of application for bail", indicating that it would deliver its reasons in due course. Bail had been refused initially by Howell DCJ and then by White J. The appeal was identified by counsel for the appellant as an appeal against the order of White J, and alternatively as a renewal of an application for bail before this Court.

2 On 11 March 1999 the appellant pleaded guilty to two counts before Howell DCJ. The allocutus was administered, and the sentencing procedure commenced. Before it was completed however, his Honour expressed the view that a further report from Dr Whiteford (a psychiatrist) was desirable. In the event his Honour adjourned the matter for three weeks (to 1 April 1999) and remanded the appellant in custody. His Honour refused an application for bail.

3 The appellant then applied to White J under s19 of the *Bail Act* 1980 (Qld). Her Honour held that she had no jurisdiction to entertain the application and accordingly dismissed it. This was based upon her Honour's construction of s10 of

the *Bail Act*. We think that her Honour was correct in this conclusion. Whilst at first glance ss10(2) and 10(3) might seem limited to applications for bail in jury trials, upon analysis those subsections are of wider application and include a case such as the present where there has been a plea of guilty and an application is made for bail in the course of the sentencing procedure.

4 The definition of "trial" in s6 of the Act is as follows:

> ""trial" means a proceeding wherein a person is charged with an offence on indictment and includes a proceeding wherein a person is to be sentenced".

5 Section 10, as originally enacted in the *Bail Act* 1980 was in the following terms:

> "(1) The Supreme Court or a judge thereof may, subject to this Act, grant bail to a person held in custody on a charge of an offence or enlarge, vary or revoke bail granted to a person in or in connexion with a criminal proceeding whether or not he has appeared before the Supreme Court in or in connexion therewith.
>
> (2) Where the trial of a person has commenced in the Supreme Court or a District Court, the trial judge may in his discretion grant bail to that person notwithstanding that the person has been given in charge to the jury.

A decision as to bail made in accordance with this subsection by a trial judge

shall be final and, notwithstanding this Act, a defendant in respect of whom such decision has been made shall not have the right to make a further application for bail in relation to the custody in which he is then held."

6 The *Bail Act Amendment Act* 1982 replaced the first paragraph of the above s10(2) and subsequently the parliamentary draftsman has renumbered the final paragraph as s10(3). In the result s10 now reads:

"(1) The Supreme Court or a judge thereof may, subject to this Act, grant bail to a person held in custody on a charge of an offence or enlarge, vary or revoke bail granted to a person in or in connection with a criminal proceeding whether or not the person has appeared before the Supreme Court in or in connection therewith.

(2) Notwithstanding that a person has been given in charge to the jury in connection with the person's trial commenced in the Supreme Court or a District Court the trial judge may in the trial judge's discretion exercise the powers conferred on a court by section 8(1) to grant bail to that person or to enlarge, vary or revoke bail already granted to the person.

(3) A decision as to bail made in accordance with subsection (2) by a trial judge shall be final and, notwithstanding this Act, a defendant in respect of whom such decision has been made shall not have the right to make a further application for bail in relation to the custody in which the defendant is then held".

7 The last paragraph of s10 manifests the intention of entrusting to a trial judge

the question of bail until such time as an accused is discharged or sentenced. It precludes both appeals and further applications for bail. The 1982 amendment seems to have been concerned with facilitating the ways in which the relevant trial judge could grant bail. The particular benefit conferred by the 1982 amendment was the power to *enlarge* bail as well as to *grant* bail which required a fresh order to be made and taken out. The altered position of the words "notwithstanding that a person has been given in charge to the jury" is a little perplexing, but apart from the conferring of the additional power just mentioned, nothing more seems to have been intended than a rearrangement of the words previously contained in the section. The Second Reading speech with respect to the 1982 amending Act certainly discloses no intention to alter the regime that has been described above, except by conferring the power to enlarge bail as well as grant it. The Minister's comments with respect to s10 were as follows:

> "Some doubt has arisen as to whether the bail of an accused person can be enlarged by the Supreme or District Court after the accused surrenders into custody at the commencement of his trial.
>
> The existing provisions of section 10(2) provide the power for a court in that

circumstance to grant bail, and this Bill will clearly establish that the courts also have power to enlarge bail which has been effective for some time before trial. Thus, there will be no inconvenience to sureties or to court staff in preparing new bail documents where an accused has obviously honoured his bail in the past. The courts, of course, have power to revoke or vary bail should the circumstances demand".[1]

8 The wide powers of courts to entertain applications for bail conferred by ss 8 and 19 of the *Bail Act* must be read as subject to the limitation imposed by s10. The submission of Mr Swindells that as s19 is "later" than s10 it must override s10, is misconceived.

9 The above construction is consistent with *R v Hughes*[2] which recognises the right to renew bail applications to different courts, including to the Full Court between committal and trial. It also conforms with *Edwards*[3] in which McPherson J recognised that s10(2) of the *Bail Act* excludes such a right once the trial has commenced. Section 10(2) is a legislative recognition of the desirability of orderly

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1 Vol 288 QPD, 2 September 1983, p813.

2 [1983] 1 Qd R 92.

3 [1989] 1 QdR 139.

trials unimpeded by interlocutory appeals once proceedings commence before a trial judge.[4]

10 Accordingly the appeal should be dismissed, and the alternative application refused.

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4 *Goldsmith v R* (1993) 67 ALJR 513; cf s592A(4) of the *Criminal Code.*