

SUPREME COURT OF QUEENSLAND

CITATION: *P v DPP* [2003] QCA 359

PARTIES: **P**
(applicant/respondent)
v
Director of Public Prosecutions
(respondent/appellant)

FILE NO/S: Appeal No 7255 of 2003
SC No 477 of 2002

DIVISION: Court of Appeal

PROCEEDING: Appeal from Bail Application

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED EX TEMPORE ON: 21 August 2003

DELIVERED AT: Brisbane

HEARING DATE: 21 August 2003

JUDGES: McMurdo P, Muir and Holmes JJ
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Appeal refused**

CATCHWORDS: CRIMINAL LAW – JURISDICTION PRACTICE AND PROCEDURE – BAIL – REVOCATION, VARIATION, REVIEW AND APPEAL – where respondent granted bail on five counts of rape – where respondent allegedly committed another offence whilst on bail - where respondent has no criminal history - whether respondent poses an unacceptable risk of re-offending – whether grant of bail was an unreasonable exercise of discretion – whether bail should be revoked and the respondent remanded in custody

Bail Act 1980 (Qld), s 16.3

COUNSEL: L J Clare for the appellant
S G Durward SC for the respondent

SOLICITORS: Director of Public Prosecutions (Queensland) for the appellant
MacDonnells Solicitors for the respondent

THE PRESIDENT: The appellant, the Queensland Director of Public Prosecutions, appeals from a bail order made in favour of the respondent in the Supreme Court of Cairns on 8 August 2003 contending that the grant of bail was an unreasonable exercise of discretion and seeks orders that the respondent's bail be revoked and that he be remanded in custody because there is an unacceptable risk of the respondent committing further sexual offences.

On 2 October 2002, the respondent was granted Supreme Court bail on five counts of rape concerning five different complainants in Innisfail on five different occasions ranging from 11 August 2000 until 2 October 2002. These charges are to be heard together in Innisfail early next year. On 11 May 2003, whilst on bail on these charges, the respondent allegedly tried to rape a sixth young woman and was arrested and remanded in custody five days later, and charged with the offences of assault with intent to rape and deprivation of liberty.

Because the respondent has been charged with an indictable offence alleged to have been committed whilst he was at large whilst awaiting trial for another indictable offence, the respondent must show cause why his detention in custody was not justified before he can be granted bail: s 16.3 *Bail Act* 1980 (Qld).

On 14 July 2003, the learned primary Judge refused the respondent bail because the residential proposals were inappropriate and did not sufficiently diminish the risk of

reoffending even when combined with proposed bail conditions prohibiting the intake of alcohol and restraining the respondent's movements. His Honour thought these conditions could not be supervised adequately and were inappropriate. At that stage it was proposed that the respondent reside with his mother in the Brisbane area where the second lot of offences committed on bail allegedly occurred.

It is not contentious that to succeed in the second bail application made on the 5th August 2003, the respondent had to show additional facts amounting to changed circumstances to justify revisiting the earlier application.

The respondent has no criminal history, but has a significant driving history including two entries for driving under the influence of liquor with a blood alcohol level of under .15 per cent on 17 February and 23 May 2002. He is 18 years old and the alleged offences commenced when he was 16 years old. He suffers from a medical condition called hypo-hydrotic ectodermal dysplasia, which his Honour found would be difficult to manage in a gaol setting.

The allegations involving the first offences of rape concerned teenage girls known to the respondent, the offences occurring in a domestic or social situation in the Innisfail area. The offence allegedly committed on bail also involved a teenage girl who had visited his home, this time in the Brisbane area.

The learned primary Judge, after adjourning the matter to obtain further information and for the parties to consider the wording of appropriate conditions took account of the fact that the new domestic arrangements proposed for the respondent on bail were with apparently responsible relatives in Cooktown, far from the centres where the offences occurred. The police were able to inform his Honour that they had checked on the relatives and conceded that they were law abiding citizens.

The new factors for his Honour's consideration since the previous bail application were those relating to his accommodation, supervision and job prospects. The relatives were able to offer supervision and to provide him with a job in their plumbing business. His Honour was at first concerned about the circumstances of the offence committed whilst the respondent was on bail, which involved an 18 year old girl at 2.30 a.m. at his residence in a remote area outside Brisbane. The respondent's mother, with whom the respondent was then living, was involved in facilitating the contact and at the initial bail application it was proposed the respondent continue to live with his mother.

The learned primary Judge was satisfied that the additional facts were sufficient to justify, first, the renewal of the bail application and, second, that the risk of reoffending had been lowered sufficiently to persuade him it was no longer an unacceptable risk that the respondent would reoffend.

His Honour gave the new matters very careful consideration and determined in the end to grant bail on the subsequent charges committed on 16 May 2003 on the respondent's own undertaking with a surety of \$10,000 or two sureties of \$5000 together with the usual conditions and with the additional conditions that he have no contact directly or indirectly with any Crown witnesses; that he reside with his relatives in Cooktown unless he receives prior written consent of the DPP to reside elsewhere; that he report to the Officer in Charge of the Cooktown police station every Monday, Wednesday and Friday between 8 a.m. and 4 p.m. unless he receives the prior written consent of the DPP to report otherwise; that he not travel to any place outside Queensland or south of Cairns other than for the purpose of conferring with his legal representatives in Cairns or to attend Court unless he receives the prior written consent of the DPP to travel otherwise; that he not consume alcoholic beverages at places other than his residence; that he not enter licensed premises without the prior written consent of the DPP; that he not apply for the issue of another passport, his passport already having been surrendered in respect to his bail on the first matters.

The appellant emphasises the number and protracted period over which the offences occurred and that if convicted the respondent would face a lengthy term of imprisonment. The appellant also contends that the prosecution case is strong and unchallenged. In the end, the prosecution case will probably turn largely on word against word, although it appears there may be supporting evidence of at least one

complainant. No reliable assessment of this matter can be made at this stage.

This Court can only interfere if the primary judge erred in law or the exercise of discretion was manifestly unsound. The learned primary Judge's approach to this matter was, with respect, orthodox, unexceptional and cautious. He made no errors of law in his approach.

It is impossible for a Court to predict whether someone will offend or reoffend.

Some material placed before the learned primary Judge on the initial unsuccessful application suggested that the respondent, if granted bail on strict conditions, would not reoffend.

Although another Judge may have come to a different decision as to whether the granting of bail was appropriate here, there was certainly material before the learned primary Judge which allowed him to be satisfied the respondent did not present a significant risk of re-offending sufficient for bail to be granted under s 16(3) *Bail Act*.

The appellant has failed to persuade me that the learned primary Judge's exercise of discretion has miscarried.

MUIR J: I agree. The primary Judge exercised his discretion thoughtfully and he was entitled to derive a degree of comfort from the report dated 3 Jan, 2003 of Mr Walkly, psychologist.

HOLMES J: I agree with what both the President and Justice Muir have said.

PRESIDENT: The appeal is refused.

