

COURT OF APPEAL

[2005] QCA 124

McMURDO P
JERRARD JA
PHILIPPIDES J

CA No 436 of 2004

THE QUEEN

and

AW

Appellant

BRISBANE

..DATE 18/04/2005

ORDER

THE PRESIDENT: The Court has determined to make the following orders. The appeal is allowed. The conviction is set aside and a new trial is ordered.

Now, Mr Callaghan, as we understand it, unless we make an order for bail you'll have to make an application for bail separately. Is that so?

MR CALLAGHAN: I believe so, so I would ask you to make an order for bail.

THE PRESIDENT: And, Mr Copley, you don't have any objection to an order of granting him bail on the same terms as he had bail prior?

MR COPLEY: Immediately before the start of the trial?

THE PRESIDENT: Yes.

MR COPLEY: Yes, I have no objection if he gets bail on those terms.

JERRARD JA: Do we know what they were? I suspect not.

MR COPLEY: That was the question I was hoping you wouldn't ask. No, I don't know what they were.

JERRARD JA: Well, it might be a bit difficult for the people responsible for letting him go free at the moment to know what those terms were because, remember, it was an out of Brisbane trial, as I understand it. They mightn't necessarily have the record.

MR COPLEY: No, the record is at the Mackay Courthouse and the Townsville DPP.

JERRARD JA: Well, he appeared to have ties with that area, I must say, in that he had a dependent disadvantaged child of his own.

MR COPLEY: And he did not appear to have-----

JERRARD JA: Any pre-sentence custody.

MR CALLAGHAN: For what it's worth I have a copy of the Court brief going back to the date he was charged, the document which the police provide to the police prosecutor, and that indicates that there was no objection to bail and it's silent on the question of whether there were any conditions, so without knowing more I'd suggest that meant that bail was granted on his own undertaking, but I don't actually have a copy of the undertaking to confirm that.

MR COPLEY: His criminal history is at 252 of the record book and it's completely insignificant in the scheme of things and wouldn't have been an impediment to bail.

JERRARD JA: Well, would you have any objections if the order, for example, granted him bail in his own recognisance in the sum of - let's say just say bail in his own recognisance.

MR COPLEY: Yes.

JERRARD JA: A condition that he appear at any - at the I think Mackay Courthouse.

THE PRESIDENT: We've got a copy of his undertaking here so I think the order which was first made should be sufficient and that could be faxed to them.

MR COPLEY: May I ask does it have a no contact provision for him in regarding the complainant and perhaps his mother and father, the complainant's mother and father? The undertaking would normally have that included in it I think if that was imposed.

THE PRESIDENT: It doesn't seem to acknowledge that but you might be more familiar with-----

MR COPLEY: Might I just have a quick look.

THE PRESIDENT: -----these things but I wouldn't expect that it's a difficult thing to find out because it's always attached to the indictment you see, the bail undertaking, so-----

MR COPLEY: Yes. Well, could I ask the Court to - no, it didn't but in the circumstances where a person is released after having been in custody for a little while, there may be, one doesn't know, a temptation to perhaps say something or lord it over somebody else around town. Could I ask that if the Court does give him bail on his own undertaking there just be a condition imposed that he not have contact or attempt to have contact with the complainant or his elderly parents.

JERRARD JA: Could we leave out "elderly"?

MR COPLEY: You don't need to put that word in but I just wanted the Court to appreciate that they, from the record, seem to be people of advancing years and it would be upsetting, no doubt. Thank you.

THE PRESIDENT: So in addition to the orders already made the Court orders that the appellant be granted bail on his own undertaking conditioned that he have no contact or attempted

contact with the complainant or the complainant's parents.

The Court will publish its reasons later.

MR CALLAGHAN: Thank you.

MR COPLEY: And that his appearance - he be bailed to appear at the Mackay District Court when given notice by the Director of Public Prosecutions Office to do so through his solicitors. I think it's necessary to put that on.

THE PRESIDENT: What if I say on his own undertaking in the usual terms. Would that be sufficient?

MR COPLEY: I think so, yes. I think it is fairly much a standard term condition that he comply-----

THE PRESIDENT: The Court grants the appellant bail on his own undertaking in the usual terms conditioned that he shall appear before the District Court at Mackay in accordance with any notice he may receive given by or on behalf of the Director of Public Prosecutions or the Deputy Director of Public Prosecutions advising him of the time and place of his trial, and further conditioned that he have no contact or attempted contact with the complainant or the complainant's parents.
