

SUPREME COURT OF QUEENSLAND

CITATION: *R v KU & Ors; ex parte A-G (Qld)* [2008] QCA 99

PARTIES: **R**
v
KU
(respondent)
AAC
(respondent)
WY
(respondent)
PAG
(respondent)
KY
(respondent)
KZ
(respondent)
BBL
(respondent)
WZ
(respondent)
YC
(respondent)
EX PARTE ATTORNEY-GENERAL OF QUEENSLAND
(applicant/appellant)

FILE NO/S: CA No 343 of 2007
CA No 344 of 2007
CA No 345 of 2007
CA No 346 of 2007
CA No 347 of 2007
CA No 348 of 2007
CA No 349 of 2007
CA No 350 of 2007
CA No 351 of 2007
DC No 146 of 2007

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time

ORIGINATING COURT: District Court at Aurukun and Cairns

DELIVERED EX TEMPORE ON: 1 May 2008

DELIVERED AT: Brisbane

HEARING DATE: 1 May 2008

JUDGES: de Jersey CJ, McMurdo P and Keane JA
Judgment of the Court

ORDER: **Extend the time for the filing of any additional evidence, as per para three of the order of 13 February 2008, until 4:00 pm on 9 May 2008 and the application is otherwise refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY ATTORNEY-GENERAL OR OTHER CROWN LAW OFFICER – Where the respondents have not yet received from the Chief Executive the pre-sentence reports ordered in relation to the three adult respondent – Whether the hearing dates for the appeal, 13, 14 and 15 May 2008 be vacated, and new dates set

COUNSEL: W Sofronoff QC SG, with E S Wilson, for the appellant/respondent
A Kimmins for the respondents/applicants

SOLICITORS: Director of Public Prosecutions (Queensland) for the appellant/respondent
Aboriginal and Torres Strait Islander Legal Services for the respondents/applicants

- [1] **CHIEF JUSTICE:** The respondents seek orders that the hearing dates for the appeals, 13, 14 and 15 May 2008, be vacated, and new dates set. The basis of the application that there will likely be an insufficient interval between the respondents' legal representatives' receipt of pre-sentence reports for the three adult respondents and the commencement of the hearing on 13 May.
- [2] On 13 February 2008, the Court ordered the Chief Executive of the Department of Corrective Services to prepare pre-sentence reports for the six juvenile respondents, and provide them to the Court by 13 March 2008. The Court also requested the head of the Department of Youth Justice at Griffith University to prepare up to date psychological assessments for all respondents, and furnish

them to the Court by the same date, 13 March 2008. Then on 19 February 2008, the Court ordered the Chief Executive to prepare pre-sentence reports for the three adult respondents, to be provided by 13 March 2008.

- [3] With a letter of 19 March 2008, the Registrar forwarded to the parties copies of the reports which had been received by then. They were the pre-sentence reports prepared by the Chief Executive in relation to the six juvenile respondents. The respondents' solicitor swears that this letter dated 19 March 2008 was not received at her Cairns office until as late as 27 March 2008.
- [4] The Griffith University reports in relation to the juvenile respondents were provided with a letter from the Registrar dated 19 March 2008. That letter was in fact sent on 19 April 2008. The respondents' solicitors swears that she received that letter and the enclosed material on 23 April 2008.
- [5] In summary, by 13 May 2008, the first day of the hearing as presently set, the respondents' representatives will have had the Chief Executive's pre-sentence reports on the juvenile offenders for almost seven weeks, and the Griffith University reports on those respondents for three weeks. That will have allowed ample time for the consideration of those reports by the juvenile respondents' legal representatives and the preparation of any response. I point out that the Court granted the extension of time on 13 February 2008, and one might reasonably have expected comprehensive preparation for the substantive appeals to have commenced forthwith.

[6] Unfortunately, the Court has not yet received from the Chief Executive the pre-sentence reports ordered in relation to the three adult respondents, being reports containing psychological and psychiatric assessments of those respondents. In the letter of 19 April 2008 (dated March), the Registrar said:

‘Corrective Services advise that the reports for the three adults will not be available under after 9 May 2008.’

This situation is unfortunate bearing in mind that the order for the preparation of the reports was made on 19 February, envisaging their being provided by 13 March. In any event, the position now taken on behalf of the adult respondents is that assuming the provision of the reports on about 9 May, there would be insufficient time prior to the commencement of the hearing on 13 May for the consideration of the reports and the preparation of any responding material.

[7] In respect of the juvenile respondents, there will as previously mentioned have been ample time by the commencement of the hearing on 13 May for the filing of any responding material. The existing direction in relation to the filing of additional evidence should be varied to extend the cut-off date for the filing of that material to 4.00 pm on Friday, 9 May 2008. There is no reason why the appeal hearing set to commence on 13 May should not proceed, even if confined only to the position of the juvenile respondents.

[8] I turn to the position of the three adult respondents. The order of 13 February 2008 provided that the respondents file any additional evidence by 3 April. But it is, at this stage, entirely conjectural whether any of the adult respondents will in fact seek to rely on the pre-sentence reports which are to come, or if so, whether the respondents would wish to present evidence in response. In those

circumstances, the application for the vacating of the dates, insofar as it is brought on behalf of the adult respondents, is at least premature.

[9] The hearing and determination of these appeals is a matter of immense importance to the respondents, the Attorney-General and the public. The timetable set on 13 February envisaged the comparatively early hearing of the appeals. That reflected their particular significance. While it is unfortunate that the pre-sentence reports in relation to the adult respondents have not been forthcoming as ordered by the Court, that does not justify setting aside the hearing dates at this stage in relation to those respondents. And on any reasonable view, there is no warrant for vacating the dates in relation to the hearing of the appeals in relation to the juvenile respondents.

[10] The only further order which should be made is to extend the time for the filing of any additional evidence, as per para 3 of the order of 13 February 2008, to 4.00 pm on 9 May 2008.

[11] **McMURDO P:** I agree.

[12] **KEANE JA:** I agree.

[13] **CHIEF JUSTICE:** That is the order of the Court, and the application is otherwise refused.