

DISTRICT COURT OF QUEENSLAND

CITATION: *Gore v Commonwealth Director of Public Prosecutions*
[2020] QDC 144

PARTIES: **GORE, Craig Kirrin**
(applicant)

v

**COMMONWEALTH DIRECTOR OF PUBLIC
PROSECUTIONS**
(respondent)

FILE NO/S: 2413/18

DIVISION: Criminal

PROCEEDING: Application for variation of bail

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: Order made on 24 June 2020. Reasons given 26 June 2020.

DELIVERED AT: Brisbane

HEARING DATE: 24 June 2020

JUDGES: Smith DCJA

ORDER: **1. The application for bail variation is dismissed.**

CATCHWORDS: CRIMINAL LAW – BAIL – APPLICATION FOR VARIATION OF BAIL – whether order should be made – whether unacceptable risk of failing to appear – where the applicant is charged with fraud – whether he has significant overseas ties – where there is the risk of a significant custodial sentence if convicted – where there are triable issues concerning the charges – the impact of COVID-19

Bail Act 1980 (Qld) ss 8, 11 and 16

Criminal Code 1899 (Qld) s 408C

Gould v Vaggelas [1985] HCA 75; (1985) 157 CLR 215, cited

R v Jenkins [2002] VSCA 224; (2002) 6 VR 81, cited

R v Laverty [1970] 3 All ER 432, cited

COUNSEL: Mr M McCarthy for the applicant

Ms J Williams for the respondent

SOLICITORS: Fisher Dore Lawyers for the applicant

Commonwealth Director of Public Prosecutions for the
respondent

Introduction

- [1] This is an application by the applicant to vary his bail conditions to permit him to travel overseas while awaiting trial to visit his wife and children at the family home in Sweden and also to travel internationally for work whilst awaiting trial.
- [2] I dismissed the application on 24 June 2020. The following are my reasons.

Charges

- [3] The applicant is charged with 12 counts of fraud contrary to s 408C of the *Criminal Code*. The alleged offences occurred over the period 10 July 2013 to 13 May 2014.

Present bail conditions

- [4] The conditions of the applicant's bail presently include:
- (a) A residential condition at Surfers Paradise.
 - (b) A condition he must not travel internationally.
 - (c) His Australian passport must be surrendered.
 - (d) He must not approach within 100 metres of any international departure point.
 - (e) He must not apply for any further passport or residency or travel permit.

Applicant's material

- [5] The applicant has sworn an affidavit filed 22 June 2020. In the affidavit, he states that on 15 April 2017 he was granted bail on all charges. He was committed for trial to the District Court of Brisbane on 8 June 2018. The indictment was presented against him on 22 October 2018. In December 2018, he made an application to vary his bail to allow him to travel to Sweden to visit his family. This order was granted. In May 2020, he made an application to obtain a copy of his Swedish National residency card which also was granted. On 27 May 2020, he made an application to obtain a copy of his passport.

- [6] He seeks a variation of his bail undertaking to remove the conditions that prohibits him from travelling overseas. He says that he is not guilty of the charges and intends to proceed to trial. He has never previously failed to appear other than on one mention about which he forgot and appeared a few days later. He has no criminal history other than traffic offences. His trial was listed to commence for three weeks on 23 September 2019 but he applied to the court to adjourn the trial as he did not have sufficient funds for legal representation. A new trial date was given of 26 January 2020 but this was vacated on application by the Crown. A further trial date was given on 20 April 2020 but due to the COVID-19 pandemic that trial was delisted. Presently, he says that there is no trial date. There are pre-trial applications listed on 30 June 2020 and 1 July 2020 and has been advised that his lawyers do not require his attendance.
- [7] Mr Gore swears that he complied with the bail undertaking entered into on 21 December 2018 and has since returned from Sweden in February 2019 continuing his work as a consultant with Euro Funeral Pty Ltd. From October 2019, he has been a consultant to a property development company at the Gold Coast. He has been engaged as a consultant at its office at Burleigh Heads. He gives advice regarding structural matters, building designs and approvals. Also, for the last five years, he has been a consultant to Klasp LLC, a company located in California. This company has requested he travel to the United States to provide property development advice in relation to a major project in Texas. Annexure CKG7 is a letter from Mr Cohen, the President of the company which corroborates that. Mr Cohen and he are friends. This letter notes that Mr Cohen is working with the applicant on projects including a vodka project, a disposable battery project, a spring water project, and a property project in Texas.
- [8] Mr Cohen is prepared to offer a cash surety of \$250,000. The applicant also says he has not seen his wife and two children since February 2019. They reside in Sweden in a house owned by his wife. He has suffered from mental health issues for a number of years. One of the significant stressors is the separation from his family. In this regard, Doctor Anseline outlines his mental health issues and treatment (Annexure CKG8).
- [9] The applicant has arranged to travel to Sweden by air leaving 25 June 2020 and returning to Australia on 9 November 2020. There are no impediments to him travelling to Sweden.
- [10] There is also an affidavit of Lewis Cohen filed 23 June 2020. This affidavit discloses that Mr Cohen is the President of Klasp LLC, a Delaware registered entity. He has known the applicant for about 20 years. They have worked on a number of business ventures together. The applicant is providing consultancy services with respect to a development in Texas. He plays a vital role in this development. He is prepared to act as surety and provide a cash deposit in the sum of \$250,000.

Respondent's material

- [11] Gabriella Clare Smith has provided an affidavit filed by leave. The affidavit provides a chronology in the matter, a copy of the particulars prepared by the Crown, and a list of the witnesses for trial. The affidavit indicates that the CDPP has made enquiries with the Attorney-General's Department as to the effect of COVID-

19 on extradition requests. Such requests can be made but the time required for making the request will be on a case by case basis. There may be delays with respect to extradition at this time due to the logistical difficulties arising from COVID-19. The extradition of an individual to Australia could take months or years depending on the processes of the requested country. Various transcripts are attached.

Applicant's submissions

- [12] The applicant submits that it is relevant he returned to Australia from Sweden in accordance with the bail undertaking on 1 March 2019. It is submitted the applicant is able to offer a surety also in the amount of \$250,000. It is pointed out that the Crown case has changed since committal. The applicant intends to proceed to trial with a trial estimate of two weeks. The applicant contends the Crown case is not strong and he has good prospects of success. This is not a situation where the Crown case indicates an unacceptable risk of failing to appear. The court should take into account all of the matters relevant in section 16 of the *Bail Act 1990* (Qld). It is pointed out that the strength of the Crown case is a relevant consideration. There is no unacceptable risk of him failing to appear.

Respondent's submissions

- [13] The respondent opposes the variation.
- [14] The respondent notes that the Magistrate committed the applicant for trial rejecting a no case submission. It is also pointed out that with respect to the travel to Sweden in December 2018, there were a number of conditions which adequately managed the court's concerns about the applicant's risk of failing to appear. These are not offered here.
- [15] The particulars of the alleged offences are set out in the Crown's particulars. The total amount involved is \$800,000. It is accepted that the bail conditions should not be too onerous. But it is also submitted that there is unacceptable risk of the applicant failing to appear. The respondent relies on the significant ties overseas, the strength of the Crown case and the fact that the applicant does not propose conditions like those which were offered in late 2018. There is a risk of a lengthy period of imprisonment if convicted. Approval is also sought for travel to the United States but it is not clear from the material what the terms of that travel will be. There would be significant delays with any extradition. It is submitted that the letter of Doctor Anseline should be given little weight because any stress is due to general stress from the proceedings.

Discussion

- [16] The power to enlarge, vary or revoke bail is contained in section 8(2) of the *Bail Act 1980* (Qld).
- [17] There is no doubt that bail conditions should not be more onerous for a person than those a court considers necessary to reduce the relevant bail risks.¹ However, one of

¹ Section 11(5) of the *Bail Act 1980* (Qld).

the matters the court must specifically consider whether there is an unacceptable risk of the applicant failing to appear.²

- [18] It is my view that there would be an unacceptable risk of the applicant failing to appear if the variation was made.
- [19] I come to this conclusion for a number of reasons.
- [20] Firstly, whilst it may be there are triable issues with respect to each of these charges,³ the charges are serious ones and the applicant faces a considerable custodial sentence if convicted. The total amount involved is some \$800,000 and it reasonable to conclude a head sentence of the order of six to seven years might be imposed if there was a conviction after trial.
- [21] Secondly, the matter is now coming to the final stages. Next week there is a pre-trial application which involves the cross-examination of a key crown witness. It is highly desirable the applicant be present for that. Additionally, the court is able to offer a judge only trial or jury trial this year. As one comes towards the “sharp end” of the proceedings there is a greater risk of the defendant failing to appear.
- [22] Thirdly, another complicating feature in this case is the issue of COVID-19. It is common knowledge that this pandemic has a very uncertain course. There are many more cases overseas. It is uncertain as to the course this pandemic will take in Europe or the United States. This may well have a significant impact on the applicant returning to Australia for his trial.
- [23] Fourthly, whilst there is proposed travel to Sweden, I note that the applicant wishes to work in the Unites States of America. Aside from the COVID-19 issues concerning that nation, there are no detailed plans put before the court concerning that travel. The court has concerns as to his whereabouts in that nation. In this regard, I also note that the vodka project involves stores in California, the battery project involves the USA and the Asia Pacific Region, the spring water project seems to involve Hawaii, and the property development involves Texas.
- [24] Fifthly, as the respondent submitted the applicant has significant ties overseas including the fact that his family lives in Sweden. Bearing in mind Dr Anseline’s letter, concerning the stress the applicant has suffered being away from his family, one could understand that once in Sweden away from the Queensland courts and with his family, he would decide not to come back to Australia where there is the potential of receiving a significant jail sentence.
- [25] Finally, I accept the respondent’s argument that no similar conditions were offered like in late 2018. However, even if there were, I would still have dismissed the application in light of the other matters.

Conclusion

² Section 11(2) and s 16(2) of the *Bail Act 1980* (Qld).

³ In this regard, it will be necessary for the CDPP to prove that there was a dishonest material representation which induced the complainant to act on it - see *Gould v Vaggelas* [1985] HCA 75; (1985) 157 CLR 215 at 236; *R v Jenkins* [2002] VSCA 224; (2002) 6 VR 81; *R v Laverty* [1970] 3 All ER 432. In this case, there are arguments available as to whether there is any causal link between the representations and the entry into the agreements.

- [26] In conclusion, in light of the forthcoming trial and pre-trial hearing, the serious nature of the charges, the extensive ties the applicant has overseas and the fact that COVID-19 has an uncertain course, I decided to dismiss the applicant's application.