

# SUPREME COURT OF QUEENSLAND

CITATION: *Corrigan v Chief Executive, Department of Corrective Services* [2002] QSC 384

PARTIES: **CORRIGAN, Anthony William**  
(applicant)  
v  
**CHIEF EXECUTIVE, DEPARTMENT OF  
CORRECTIVE SERVICES**  
(respondent)

FILE NO/S: SC No 8830 of 2002

DIVISION: Trial Division

PROCEEDING: Application for Statutory Order of Review

DELIVERED ON: 22 November 2002

DELIVERED AT: Brisbane

HEARING DATE: 20 November 2002

JUDGE: de Jersey CJ

ORDER: **The application is refused**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW  
LEGISLATION – COMMONWEALTH, QUEENSLAND  
AND AUSTRALIAN CAPITAL TERRITORY –  
GROUNDS FOR REVIEW OF DECISION – IMPROPER  
EXERCISE OF POWER – RELEVANT AND  
IRRELEVANT CONSIDERATIONS – application for a  
statutory order of review under *Judicial Review Act* –  
applicant aggrieved over decision to maintain his  
classification as “medium” and to require him to stay in  
secure custody, instead of granting him “open” security  
classification – whether this decision was made in bad faith –  
whether the decision maker failed to take into account  
relevant considerations such as an early parole  
recommendation – whether the decision was “reasonable” –  
consideration of the concept of “reasonableness”

*Corrective Services Act* 2000 (Qld), s 12  
*Judicial Review Act* 1991 (Qld)

*McEvoy v Lobban* [1990] 2 Qd R 235, followed  
*Payne v Deer* [2000] 1 Qd R 535, followed

COUNSEL: The applicant represented himself  
J S Logan SC for the respondent

SOLICITORS: Crown Solicitor for the respondent

- [1] **de JERSEY CJ:** On 13 May 1993 the applicant was convicted on 24 counts of misappropriation of property with circumstances of aggravation, and sentenced, following appeal, to eight years imprisonment. Following his release on parole, he became involved in the business of trafficking in amphetamines, for which he was convicted and sentenced by Mullins J on 29 September 2000 to a cumulative eight year term with a recommendation for early release on parole after three years. That date is 29 September 2003. The recommendation was based on the hope that when released from prison, the applicant would be rehabilitated and have the opportunity to look after his children. When sentenced by Mullins J, the applicant was 50 years of age. He is now 52.
- [2] The security classification of prisoners, determined under s 12 of the *Corrective Services Act* (2000), bears upon their progression to a point where they are granted post-prison community based release. That would ordinarily not be granted to a prisoner who has not progressed to a classification of open security, and, in the case of prisoners serving a term of imprisonment of 10 years or more – as in the case of the applicant, been in that situation for at least six months. The open security classification is of course based on the need for only a low level of supervision.
- [3] Mr Gavin Wright, the Director-General’s authorized delegate for the purpose of making determinations under s 12 of the Act, determined on 4 September 2002 that the applicant should be classified as a medium security prisoner, and remain in a secure facility. The applicant has been given the opportunity to seek a statement of the reasons behind that decision, but has declined to do so. Mr Wright has however provided an affidavit which he outlines the basis for the decision.
- [4] Among the circumstances Mr Wright swears to have considered, are these:  
 “...the applicant’s current sentence and the fact that he becomes eligible for parole on 29 September 2003, the requirement in s 12(3) of the Act for regular classification reviews, the time left to serve before the applicant’s full-time discharge date in 2009, the nature of the offences for which the applicant was imprisoned, the fact that the applicant re-offended previously while on parole, the recommendations and reasoning of the Sentence Management Team and the fact that the General Manager’s recommendation contained in the Sentence Management Review was that the prisoner should be retained as a medium security classification, the applicant’s record of acceptable institutional behaviour, and that the applicant represented a moderate community risk.”
- [5] Prior to 29 September 2003, the applicant’s security classification will be reviewed at least once, possibly twice. The next review date is set for 1 February 2003.

- [6] The applicant is concerned that, assuming he is then reclassified open security, and allowing for the inevitable administrative delays of which Mr Wright gave oral evidence, he would have no prospect of being released on 29 September 2003 as, he contends, Mullins J intended.
- [7] The applicant has applied under the *Judicial Review Act* 1991 for review of the decision “to deny (him) reasonable progression to an open security”.
- [8] His substantial argument is that the recommendation of Mullins J has been ignored or given insufficient weight, undue weight has been placed on the serious nature of the offences committed by him and the circumstance that he re-offended while on parole, and insufficient weight given to recommendations that he should progress to an open classification, made in July 2001 and again in January 2002, by the Sentence Management Team, with favourable comment to similar effect made by the manager of his correctional facility. There is no doubt he has the benefit of favourable opinion expressed in the year 2001 by those within that facility, although he points with concern to the circumstance that the manager expressed a different view in 2002 – that he should not progress to low security, which the applicant characterizes as subjective and whimsical. The applicant has placed a substantial amount of material before me, which of course I have read.
- [9] The challenge mounted by the applicant asserts, for purposes of the *Judicial Review Act*, that the decision-maker failed to take into account relevant considerations, in particular the early parole recommendation, that the decision was unreasonable, and that it was made in bad faith.
- [10] As to the first matter, plainly the recommendation in relation to early parole was a relevant consideration. Mr Wright has sworn that he took account of that recommendation. There is no reasonable basis on which I could reject Mr Wright’s sworn evidence that he took account of it. Such a recommendation, though important, is ultimately but a recommendation, to be weighed in the balance with other relevant considerations.
- [11] As to the reasonableness of the decision made, a decision will be “unreasonable” in the relevant sense if no reasonable person could have reached it (cf. *Payne v Deer* [2000] 1 Qd R 535). I accept the submissions of Mr Logan SC, who appeared for the respondent, that “in theory, a classification decision demonstrably referable to an endeavour to subvert, via the mechanism of an unwarranted, inflated security classification, what would otherwise be the impact of a Judge’s parole recommendation would be amenable to being set aside on, inter alia, the ground that it was unreasonable”; and that “in the same way, a decision by a corrections board to refuse post-prison community based release which did not take into account an early parole recommendation and why it had been made, would be vulnerable to being set aside on administrative law error grounds”. But neither of those positions obtains here.
- [12] I am satisfied that the decision in question was simply a value judgment made against the relevant criteria by an experienced prison administrator acting bona fide. The courts are traditionally, and for good reason, reluctant to interfere with such decisions (cf. *McEvoy v Lobban* [1990] 2 Qd R 235, 241).

- [13] Insofar as the classification ran against some earlier, and current, expression of view within the correctional facility, Mr Wright correctly points out he is not bound by those views. That he did not accede to them is not reason to conclude he did not conscientiously go about the task committed to him.
- [14] As to the suggestion of bad faith, there is no evidentiary basis for it whatever.
- [15] In these circumstances, the application must be refused.