SUPREME COURT OF QUEENSLAND

CITATION:	*Kane v Chief Executive Department of Corrective Services* [2004] QSC 288
PARTIES:	**LESLEY DENNIS KANE** (applicant) v **CHIEF EXECUTIVE, DEPARTMENT OF CORRECTIVE SERVICES** (respondent)
FILE NO:	BS3554 of 2004
DIVISION:	Trial
PROCEEDING:	Application
DELIVERED ON:	9 September 2004; 15 September 2004 (addendum)
DELIVERED AT:	Brisbane
HEARING DATE:	1 September 2004
JUDGE:	Wilson J
ORDERS:	**1) The application is dismissed;** **2) The applicant is ordered to pay the respondent's costs of and incidental to the application to be assessed on the standard basis.**
CATCHWORDS:	CRIMINAL LAW – PROBATION, PAROLE, RELEASE ON LICENCE AND REMISSIONS – QUEENSLAND – where applicant convicted of two counts of possession of a dangerous drug and one count of possession of a thing used in connection with the commission of a crime – where sentenced to 2 years imprisonment – where sentence wholly suspended – where offences committed during operational period of suspended sentence – where suspended sentence activated – where applicant sentenced to 10 months' imprisonment for further offences, to be served cumulatively on activated suspended sentence – where application for remission of 2 year term of imprisonment pursuant to s 75 *Corrective Services Act* 2000 (Qld) unsuccessful. ADMINISTRATIVE LAW – JUDICIAL REVIEW LEGISLATION – COMMONWEALTH, QUEENSLAND AND AUSTRALIAN CAPITAL TERRITORY – GROUNDS FOR REVIEW OF DECISION – IMPROPER EXERCISE OF POWER – RELEVANT AND IRRELEVANT CONSIDERATIONS – where applicant sought remission of term of imprisonment – whether unacceptable risk to community if discharged – where decision-maker considered Exit Report from Cognitive Skills

Program – where applicant submitted his good performance in program not considered – where applicant's performance results mixed.

ADMINISTRATIVE LAW – JUDICIAL REVIEW LEGISLATION – COMMONWEALTH, QUEENSLAND AND AUSTRALIAN CAPITAL TERRITORY – GROUNDS FOR REVIEW OF DECISION – IMPROPER EXERCISE OF POWER – UNREASONABLENESS – where applicant sought remission of term of imprisonment – whether unacceptable risk to community if discharged – where applicant completed Cognitive Skills Program – where performance results mixed – where decision-maker refused remission on basis that applicant posed unacceptable risk to community if discharged – whether conclusion of decision-maker unreasonable in circumstances.

ADMINISTRATIVE LAW – JUDICIAL REVIEW LEGISLATION – COMMONWEALTH, QUEENSLAND AND AUSTRALIAN CAPITAL TERRITORY – GROUNDS FOR REVIEW OF DECISION – IMPROPER EXERCISE OF POWER – OTHER CASES – where applicant sought remission of term of imprisonment – where applicant serving period of imprisonment of 2 years and 10 months – whether decision-maker considered wrong sentence – meaning of "term of imprisonment" and "period of imprisonment" – where reviewable decision related to a term of imprisonment.

ADMINISTRATIVE LAW – JUDICIAL REVIEW LEGISLATION – COMMONWEALTH, QUEENSLAND AND AUSTRALIAN CAPITAL TERRITORY – PROCEDURE ON APPLICATION FOR REVIEW – EXTENSION OF TIME – relevant considerations – whether substantive application has any prospect of success – whether any explanation for delay proffered.

Corrective Services Act 2000, ss 75, 77, 78
Judicial Review Act 1991, ss 20(2), 23, 26
Penalties and Sentences Act 1992, s 4

COUNSEL: SA Lynch for the applicant
MJ Burns for the respondent

SOLICITORS: Price & Roobottom for the applicant
Crown Solicitor for the respondent

[1] **WILSON J**: By application filed on 21 April 2004 (and amended on 1 September 2004), the application seeks -

"(a) an extension of time within which to bring an application for a statutory order of review

(b) to review the decision of the first respondent made 12 February 2004 not to grant remissions on the applicant's period of imprisonment for possess dangerous drug and possess anything used in the connection with the commission of a crime."

Background

[2] On 13 December 1999 the applicant pleaded guilty before RR Douglas J to 2 counts of possession of a dangerous drug and 1 count of possession of anything used in connection with the commission of a crime defined in part 2 of the *Drugs Misuse Act* 1986, as well as a breach of probation. The offences were committed on 25 January 1999. His Honour imposed a sentence of 2 years' imprisonment, but wholly suspended it for an operational period of 3 years.

[3] During the operational period of that sentence, the applicant committed further offences. On 23 September 2002 he pleaded guilty before me to 1 count of the unlawful possession of the dangerous drug cannabis sativa in a quantity exceeding 500 grams, 1 count of the unlawful possession of the dangerous drug methylamphetamine, and 1 count of the possession of a cutting and measuring implement used in connection with the crime of possessing a dangerous drug. These further offences were committed on 21 May 2001. I activated the suspended sentence, and imposed sentences for the further offences. The head sentence I imposed was 10 months for the possession of the amphetamines. The sentences for the further offences were to be concurrent with each other but to be cumulative upon the 2 years he had to serve as a result of the activation of the suspended sentence.

[4] The applicant was eligible to apply for remission of the term of imprisonment imposed for the offences committed on 25 January 1999: see *Corrective Services Act* 2000 s 75(1). Under subsection (2) the respondent had a discretion whether to grant a remission of that term of imprisonment if satisfied -

"(a) that the prisoner's discharge does not pose an unacceptable risk to the community; and

(b) that the prisoner has been of good conduct and industry since the offence was committed; and

(c) of anything else prescribed under a regulation."

A non-exhaustive list of factors which the respondent had to consider in deciding whether his discharge would pose an unacceptable risk to the community was set out in s 77 and those which the respondent had to consider in deciding whether the applicant had been of good conduct and industry were set out in s 78. I shall return to s 77.

Decision

[5] On 12 February 2004 an authorised delegate of the respondent made the following decision -

" **REMISSION DECISION**

Prisoner's name: KANE, Leslie Denis CIS No: B63839
Centre: Borallon Correctional Centre
Sentence under consideration:

Charge: 1-2
Sentence: 2 years from 23 September 2002
Offence: Possess dangerous drug and possess anything used in connection with the commission of a crime.

☑ Office of Sentence Management
Decision: Not Approved

Reason:

In accordance with sections 75, 77 and 78 of the *Corrective Services Act 2000,* consideration has been given to the grant of remission in relation to charge 1-2 of your period of imprisonment.

I have considered all the relevant matters, including correspondence from your solicitor dated 7 January 2004 and 10 February 2004.

I have decided not to grant remission on the basis that I am not satisfied that your discharge does not pose an unacceptable risk to the community in accordance with section 77 of the *Corrective Services Act 2000.*"

Reasons for Decision

[6] The applicant requested a statement of reasons, which was sent to his solicitors. It was dated 18 March 2002 and apparently received on or about 21 March 2004.

[7] In the statement of reasons the decision-maker set out the findings of fact on which the decision was based and the reasons for the decision as follows:

"…

- Your client is serving a period of imprisonment of 2 years and 10 months, with a current term of imprisonment of 2 years for the offence of possess dangerous drug and posses [sic] anything used in connection with the commission of a crime.

- Your client has a criminal history that dates back to February 1997. Offences are mainly drug related offences and property offences. He has also incurred a breach of bail.

- He has demonstrated a poor response to community-based supervision with breaches of probation orders.

- He is currently serving the balance of a suspended sentence after re-offending during the operative period.

- At the time of sentencing Judge [sic] Wilson stated:

  'You were a man of mature years at the time of these offences. They were committed whilst you were on a suspended sentence. I am satisfied that you intended distributing at least some of the drugs to others. I take a particularly dim view of that factor, and a particularly dim view of intended distribution of methylamphetamines. Our legislature has determined that that is one of the most dangerous category of drugs'. *(pg 7, para 3)*

- A Risk Needs Inventory dated 8 October 2003 notes your client's history of substance abuse, which commenced when he was a juvenile. This document further reports that although your client admitted that drug use is serious he did not believe that there were victims to his offences as he was the intended user.

- An initial sentence plan verified 7 October 2003 identified the Substance Abuse: Managing and Preventing Relapse Program and the Cognitive Skills Program as the most appropriate programs to address the antecedents of your client's offending.

- Your client had completed the Cognitive Skills Program and the Substance Abuse: Managing and Preventing Relapse Program.

- The Cognitive Skills Exit Report states: '*While looking at the consequences of his actions for the victim he stated that he lost his liberty, indicating that he was the victim in this instance. Mr Kane struggled to identify any victim of his offending behaviour denying that anyone has been negatively impacted upon by his behaviour. This, in conjunction with verbal statements made throughout the program, would indicate that Mr Kane maintained an external locus of control and continues to rationalise his offending behaviour.' (pg 4 para 3)*

  And:

  'Mr Kane has not addressed his outstanding criminogenic needs.' (pg 5 para 1)

  And:

  'He appears unmotivated to change at this particular time'. (pg 5, para 1)

- While there was no written exit report for the Substance Abuse: Managing and Preventing Relapse Program at the time, a verbal report from a program facilitator to the delegate revealed that your client had successfully completed the program.

- Your client is reported to have had acceptable conduct and industry during the period under review.

- On 26 November 2003 your client reported that his release plans include living with his girlfriend at Hemmant and renovating his home. Your client did not identify any solid employment prospects.

- The Planning Co-ordinator and General Manager of Borallon Correctional Centre did not recommend the granting of remissions.

- A Remission Response prepared by yourself on behalf of your client dated 7 January 2004, which addressed issues of the relevance of your client's response to community based supervision, the use of his breach of suspended sentence, sentencing remarks, your client's acceptable institutional behaviour and his employment prospects.

The decision was made for the following reasons:

Section 75 of the Act outlines that an eligible prisoner may be granted up to one-third remission of the term of imprisonment. I have considered those factors in section 78 of the Act in determining if your client had been of good conduct and industry. Section 78 of the Act outlines the process to determine whether a prisoner has displayed good industry and conduct during their imprisonment. I determined that your client had been of good conduct and industry.

I have considered those factors in section 77 of the Act in determining if your client's discharge does not pose an unacceptable risk to the community in accordance with section 77.

I firstly examined the nature of your client's offending. Your client is serving a period of imprisonment of 2 years and 10 months for offences of possess dangerous drug and posses [sic] anything used in connection with the commission of a crime.

I considered your client's criminal history, which commenced in 1997, and mainly consists of property and drug related offences. I consider [sic] his response to previous court sanctions and noted that your client had been given the opportunity to address his offending through supervision orders, however had failed to respond positively to these orders. I also considered that his current offences were committed during the operative term of a suspended sentence, which he received for drug offences. In considering the above I was concerned that your client has demonstrated a pattern of drug related offending and a disregard for court imposed sanctions.

I had regard to the comments of Her Honour Justice Wilson in noting that your client was in possession of cannabis sativa (< [sic] 500 grams) and methylamphetamine. I noted your client's assertions that the drug was for personal use, however also noted the large

quantities found. I had regard to the comments of her Honour when she stated: *'You were a man of mature years at the time of these offences. They were committed whilst you were on a suspended sentence. I am satisfied that you intended distributing at least some of the drugs to others. I take a particularly dim view of that factor, and a particularly dim view of intended distribution of methylamphetamines. Our legislature has determined that that is one of the most dangerous category of drugs'.*

I was mindful of the fact that your client had undertaken programs to address identified treatment needs. I noted that while no exit report was available following your client's participating in the Substance Abuse: Managing and Preventing Relapse Program, that a verbal report from the program facilitator indicated his acceptable completion of the program. However I also considered that your client did not satisfactorily complete the Cognitive Skills Program and had regard to the program exit report. I was concerned that the facilitators reported that your client viewed himself as the victim and that he struggled to identify any further victims of his offending. I was also mindful that the report stated: *'This, in conjunction with verbal statements made throughout the program, would indicate that Mr Kane maintained an external locus of control and continues to rationalise his offending behaviour.'* I was mindful of this exit report when considering the comments from the Risk Needs Inventory dated 8 October 2003, which notes that your client did not believe that there were victims to his offences. I was concerned that despite completing the Cognitive Skills Program your client remained rigid in this view and therefore had not internalised the program concepts and may not be able to appropriately demonstrate and apply the concepts if he was in the community.

I gave consideration to your client's release plans and was concerned that while he had appropriate accommodation upon his release that he had not investigated or planned for employment options.
I noted that centre staff did not recommend the granting of your remission as they considered that your client was an unacceptable risk to the community.

I gave careful consideration to the entirety of your submission dated 7 January 2004. I noted your comments regarding the use of your client's previous response to community supervision and the use of his suspended sentence as punishing him twice. However I considered that these factors demonstrate that previous court sanctions have not deterred his continued offending. I noted your client contests some of the comments by Judge [sic] Wilson and while I have considered these comments I am mindful that your client was convicted of possession of a dangerous drug. In relation to your client's employment, I considered your clients level of release planning not his employment prospects. With regard to your client's program participation it is your client's inability to internalise and

> apply the program concepts and his continued identification as a victim that is of concern.
>
> Given the matters raised above, I was not satisfied that your clients discharge did not pose an unacceptable risk to the community and decided not to grant remission in accordance with section 75 of the Act."

Application for Statutory Order of Review

[8] The applicant had 28 days from receipt of the statement of reasons in which to file an application for a statutory order of review: *Judicial Review Act* 1991 s 26. His application was filed a few days outside that period. No explanation for the delay has been proffered.

[9] The applicant's prospects of success on the substantive application are relevant to his application for an extension of time. Accordingly I shall consider the substantive application first.

Grounds for review

[10] The grounds upon which an application for a statutory order of review may be made are set out in s 20(2) of the *Judicial Review Act* -

> "(2) The application may be made on any 1 or more of the following grounds –
>
> (a) that a breach of the rules of natural justice happened in relation to the making of the decision;
>
> (b) that procedures that were required by law to be observed in relation to the making of the decision were not observed;
>
> (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
>
> (d) that the decision was not authorised by the enactment under which it was purported to be made;
>
> (e) that the making of the decision was an improper exercise of the power conferred by the enactment under which it was purported to be made;
>
> (f) that the decision involved an error of law (whether or not the error appears on the record of the decision);
>
> (g) that the decision was induced or affected by fraud;
>
> (h) that there was no evidence or other material to justify the making of the decision;
>
> (i) that the decision was otherwise contrary to law."

Consideration of wrong sentence?

[11] The first point taken by the applicant was that the decision-maker considered the wrong sentence. The essence of the submission was that the respondent had wrongly referred to the sentence as being 2 years and 10 months and in doing so had not applied s 75(6) of the *Corrective Services Act* 2000. The applicant tried to invoke paragraphs (b) (non-observance of requisite procedures) and (h) (absence of evidence or other material to justify the decision) of s. 20(2) of the *Judicial Review Act*.

[12] Subsections (5) and (6) of s 75 applied to a prisoner such as the applicant who had been sentenced to cumulative terms of imprisonment; they provided -

> "(5) Subsection (6) applies for the purposes of granting remission of a term of imprisonment if a prisoner has been sentenced to serve the term of imprisonment cumulatively with 1 or more other terms of imprisonment still to be served.
>
> (6) The chief executive must consider whether the prisoner's discharge poses an unacceptable risk to the community as if –
>
> (a) the term were the only term of imprisonment the prisoner was serving; and
>
> (b) the prisoner could be released if remission were granted."

[13] Under the *Corrective Services Act*, and in particular under s 75, there was a distinction between "a term of imprisonment" and "the prisoner's period of imprisonment". Paragraph (a) of s75 (1) referred expressly to "a term of imprisonment, as defined in this Act", and paragraph (c) referred to "the prisoner's period of imprisonment". Schedule 3 of the *Corrective Services Act* provided that the definitions of "period of imprisonment" and "term of imprisonment" were to be found in s 4 of the *Penalties and Sentences Act* 1992, which provided:

> "'**period of imprisonment**' means the unbroken duration of imprisonment that an offender is to serve for 2 or more terms of imprisonment, whether –
>
> (a) ordered to be served concurrently or cumulatively; or
>
> (b) imposed at the same time or different times;
>
> and includes a term of imprisonment.
>
> …
>
> '**term of imprisonment**' means the duration of imprisonment imposed for a single offence, and includes the imprisonment an offender is serving, or is liable to serve –

(a) for default in payment of a single fine; or

(b) for failing to comply with a single order of a court."

[14] The relevant "term of imprisonment" was 2 years, while the applicant's "period of imprisonment" was 2 years and 10 months. The decision-maker was careful to make this distinction. In the Remission Decision the sentence was expressed as "2 years from 23 September 2002", and at the beginning of the statement of reasons she described the decision as one "not to grant remission on your client's **2 year term of imprisonment** for possess dangerous drug and posses [sic] anything used in connection with the commission of a crime." Then on page 3 she said -

> "Your client is serving a **period of imprisonment of 2 years and 10 months**, with a current **term of imprisonment of 2 years** for the offence of possess dangerous drug and posses [sic] anything used in connection with the commission of a crime." *(emphasis added)*

At page 4 she recited that the applicant was eligible for remission of the term of imprisonment. At page 5 she again said -

> "Your client is serving a **period of imprisonment** of 2 years and 10 months for offences of possess dangerous drug, posses [sic] anything used in connection with the commission of a crime." *(emphasis added)*

That was correct, given that the further offences for which I had sentenced him were also possession of dangerous drugs and possession of a thing used in connection with the commission of a crime defined in part 2 of the *Drugs Misuse Act*. The decision-maker was entitled to take account of the applicant's further offending on 21 May 2001 and of his period of imprisonment in deciding whether he posed an unacceptable risk to the community.

[15] RR Douglas J imposed a sentence of 2 years' imprisonment for the offences committed on 25 January 1999. His Honour wholly suspended the sentence. The effect of my order was simply to remove the suspension, and accordingly the applicant began to serve the 2 years on 23 September 2002.

[16] The effect of s 75(6) may be explained this way. What was under consideration was the grant of a remission of one-third of that 2 year sentence; the decision-maker had to consider whether he would pose an unacceptable risk to the community if he were released on the date which was two-thirds through that sentence (even though his actual release date would be that calculated by adding 10 months on to the two thirds point).

[17] The decision-maker did not err in considering the wrong sentence.

Risk to the community

[18] As I have already noted, non-exhaustive lists of factors relevant to determining whether a prisoner would pose an unacceptable risk to the community and whether he had been of good conduct and industry were set out in ss 77 and 78 of the *Corrective Services Act*. Section 77 provided –

> "**77 Risk to community**
>
> In deciding whether a prisoner's discharge or release poses an unacceptable risk to the community, the chief executive must consider, but is not limited to considering, the following –
>
> (a) the possibility of the prisoner committing further offences;
>
> (b) the risk of physical or psychological harm to a member of the community and the degree of risk;
>
> (c) the prisoner's past offences and any patterns of offending;
>
> (d) whether the circumstances of the offence or offences for which the prisoner was convicted were exceptional when compared with the majority of offences committed of that kind;
>
> (e) whether there are any other circumstances that may increase the risk to the community when compared with the risk posed by an offender committing offences of that kind;
>
> (f) any relevant remarks made by the sentencing court;
>
> (g) any relevant medical or psychological report relating to the prisoner;
>
> (h) any relevant behavioural report relating to the prisoner;
>
> (i) anything else prescribed under a regulation."

[19] The applicant submitted that the decision not to grant him a remission was an improper exercise of the power in s 75 (see *Judicial Review Act* s 20(2)(e) in that in assessing the risk to the community –

(a) irrelevant considerations were taken into account (*Judicial Review Act* s 23(a));

(b) relevant considerations were not taken into account (*Judicial Review Act* s 23(b)); and

(c) the exercise of the power was so unreasonable that no reasonable person could have so exercised it (*Judicial Review Act* s 23(g)).

[20] Shortly after the applicant's imprisonment, a Risks Need Inventory was completed. He had been a user of illicit drugs, including heroin, amphetamines and cannabis, since the age of 14. He had used cannabis continuously since that age, and when he was imprisoned he was using it in quantities of about 1 ounce per day. He had previously been convicted of drug offences, and he had previous breached court imposed sanctions (including probation and the suspended sentence). He conceded that drug use is a serious offence, but said that he did not believe there were victims involved in his offences because he was the only individual involved in his drug

use. (In sentencing him for the offences committed on 21 May 2001, I had found that at least some of the drugs were not for his own use, but apparently he continued to challenge that finding, even though he did not appeal against the sentence I imposed.) The assessor recommended that he undertake a number of courses.

[21] The applicant completed an 8 session Substance Abuse Education Program in May 2003, and he undertook a Cognitive Skills Program between 1 September 2003 and 27 October 2003. The decision-maker considered an Exit Report written after he completed the Cognitive Skills Program. He attended 15 out of 16 sessions of the program, and although he was very co-operative and his attitude and behaviour were appropriate, he showed little change in his personal insight or cognitive skill. His results were mixed, even contradictory.

Irrelevant considerations

[22] The applicant submitted that the decision-maker erred in her reliance on a number of comments and conclusions in that report. He contends that the following were irrelevant considerations:

(i) his supposed disregard for Court imposed sanctions;

(ii) his "inability to internalise";

(iii) his "inability to ...apply program concepts"; and

(iv) his supposed "continued identification as a victim".

[23] The applicant's breaches of Court orders were relevant not only to the sentencing process, before both RR Douglas J and me. The decision-maker was entitled to take account of his whole criminal history, including his response to Court imposed sanctions and offences committed after those for which the 2 year term of imprisonment was imposed in considering the risk he posed to the community.

[24] The impugned statements were restatements of opinions expressed by those who prepared the Exit Report. They were conclusions reasonably drawn from the applicant’s performance results and were explanatory of his continued lack of insight into his offending behaviour. As such they were clearly relevant to the consideration of the risk he posed to the community. No error has been shown.

Relevant considerations

[25] The applicant contends that 2 relevant considerations were ignored -

(i) positive results of his performance in the Cognitive Skills Program; and

(ii) that he had plans for employment.

[26] As part of the Cognitive Skills Program, the applicant completed the Psychological Inventory of Criminal Thinking. He received a low score on all thinking styles. According to the Exit Report, this indicated -

> “…a willingness to consider another person’s perspective, an ability to properly discriminate between wants and need, a willingness to

> respect other people's rights and conform to social rules and a tendency to follow through on intentions. Mr Kane's scores further suggest he has a realistic view of the impact that his criminal actions have had on others, as well as on himself."

The applicant contends that the decision-maker erred in failing to take this into account in his favour. But as I have already said, his performance results in the Cognitive Skills Program were mixed. This passage in the Exit Report is followed immediately by -

> "Mr Kane's verbal statements made to the facilitators during and after the program session contradicted this."

The authors then expanded on the negative aspects of his statements. The decision-maker considered the whole report in the context of the Risk Needs Inventory in which the assessor had noted that he did not believe that there were victims to his offences. She adopted the conclusions of the authors. No error has been demonstrated.

[27] The decision-maker's statement that the applicant had not identified any solid employment prospects is an accurate assessment of the material before her, which contained no more than a recitation of his employment before his imprisonment and of the type of work he would like to do if released. No error has been demonstrated.

Unreasonableness

[28] The applicant contends that the exercise of power was so unreasonable that no reasonable person could have exercised it in that manner; in particular –

(i) the Cognitive Skills Program was considered not satisfactorily completed as he had not addressed his criminogenic need of maladaptive problem solving;

(ii) the Cognitive Skills Program should have been considered satisfactorily completed; and

(iii) the Risks Need Inventory dated 8 October 2003 [sic] relied upon as showing the applicant did not believe there were victims to his offending was not accurate of the applicant's beliefs as otherwise documented.

In considering the risk the applicant posed to the community, the decision-maker properly took account not just of the fact of the applicant's participation in the Cognitive Skills Program, but of how he performed overall and of the opinions set out in the Exit Report. After considering the applicant's problem solving skills and strategies, the authors concluded that he had not addressed his criminogenic need for maladaptive problem solving. It was open to the decision-maker to accept that conclusion. The third point is simply inaccurate; in the Exit Report the applicant is recorded as continuing to deny there were victims of his offending. The applicant has not made out this ground of review.

No evidence

[29] In the Statement of Reasons the decision-maker repeated a number of statements in the Exit Report – that the applicant "maintained an external locus of control and continues to rationalise his offending behaviour", that he "had not internalised the program concepts", that he had an "inability to internalise" and that he continued to identify as a victim. The applicant submitted that there was no evidence of these matters, and that even if there were, there was no evidence that because of those matters he posed an unacceptable risk to the community (*Judicial Review Act* s 20(2)(h)).

[30] There is no substance in this ground of review. These were conclusions drawn by those who wrote the Exit Report based on their assessment of the applicant's performance in the Cognitive Skills Program. They all relate to the applicant's lack of insight into his offending behaviour, and so were clearly relevant to the assessment of the risk he posed to the community. The Exit Report itself was before the decision-maker and was evidence of the matters in question. It was for the decision-maker to assess whether, given those matters and the other matters on which she relied, he posed an unacceptable risk to the community.

No extension of time

[31] The applicant has no prospects of success on the substantive application. Nor, as I have said, has he advanced any explanation for the delay in bringing the application. In the circumstances I refuse the application for an extension of time.

Outcome

[32] The application should be dismissed. I will hear counsel on costs.

Addendum – 15 September 2004

[33] In my view there is no reason why costs ought not follow the event. The application was made out of time; no explanation for the delay was proffered; and the application was found to be completely without substance. There was no public interest component such as to warrant consideration of a special costs order under s 49 of the *Judicial Review Act*.

[34] I order the applicant to pay the respondent's costs of and incidental to the application to be assessed on the standard basis.