SUPREME COURT OF QUEENSLAND

CITATION:	*Corrigan v McKenzie & Anor*[2004] QSC 077
PARTIES:	**ANTHONY WILLIAM CORRIGAN** (applicant) v **COLIN MCKENZIE, DIRECTOR-GENERAL, COMMUNITY CUSTODY** (first respondent) and **THE DIRECTOR-GENERAL, DEPARTMENT OF CORRECTIVE SERVICES** (second respondent)
FILE NO:	S7423 of 2003
DIVISION:	Trial
PROCEEDING:	Originating Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	4 March 2004
DELIVERED AT:	Brisbane
HEARING DATE:	2 February 2004
JUDGE:	Douglas J
ORDER:	**Application dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW - JUDICIAL REVIEW - Grounds for review of decision - Abuse of discretionary power - Consideration of irrelevant matter or refusal to consider relevant matter – Refusal to release to community work program – Relevance of reliance on remarks of sentencing judge - Prison management decision *Corrective Services Act* 2000 ss 56, 57(2) *Masters v Chief Executive Department of Corrective Services* (2001) 121 A Crim R 173 applied
COUNSEL:	The applicant in person Ms K. Mellifont for the respondents
SOLICITORS:	The applicant in person CW Lohe, Crown Solicitor, for the respondents

[1] **DOUGLAS J**: In May 1993 a District Court judge sentenced the applicant, Mr Corrigan, to 10 years' imprisonment on four counts of misappropriation from his employer. The amounts involved exceeded $1.2 million. While on parole for that

sentence he produced methylamphetamine commercially for the notorious Fitzgerald inquiry figure, Hector Hapeta, whom he had befriended in prison.

[2] He received more than $150,000.00 for those efforts until he was arrested and charged. He was incarcerated for those drug trafficking and associated offences on 29 September 2000. In relation to the trafficking charge he was sentenced to eight years' imprisonment, later reduced to seven years on appeal, with a recommendation for early release on parole after three years. Mr Corrigan challenges the failure of the Queensland Community Corrections Board to release him in line with that recommendation in another application heard contemporaneously with this one, the reasons for judgment in which are being delivered with these reasons.

[3] This application attacks the decision of the Director-General, Community Custody made on 20 May 2003 to refuse Mr Corrigan's application to take part in a Western Out Reach Camps ("WORC") program, available under s. 56 of the *Corrective Services Act* 2000 ("the Act") as a form of community work designed to help prisoners reintegrate into the community. Eligibility for that program is prescribed by s. 57 of the Act. It is common ground that Mr Corrigan is not excluded from the program because of the grounds of ineligibility set out in s. 57(1).

[4] The chief executive's discretion to allow a prisoner to participate in the program under s. 57(2) is very wide:

> "(2) When deciding whether to allow a prisoner to participate in a WORC or WCC program, the chief executive must consider –
>
> (a) any recommendation of the sentencing court; and
>
> (b) the risk the prisoner may pose to the community, including for example, by considering –
>
> (i) whether the prisoner is likely to escape; and
>
> (ii) the risk of physical or psychological harm to a member of the community and the degree of risk; and
>
> (iii) the prisoner's classification; and
>
> (c) anything else the chief executive considers relevant."

[5] The applicant's principal submission is that the first respondent is not entitled to rely on particular or selected comments of the sentencing Judge to justify denying him a place on the WORC program. The selected comments are contained in the first respondent's reasons for his decision where he gave significant weight to this passage in the sentencing remarks;

> "You were sent to prison to be punished for the conduct which resulted in the misappropriation charges, but, instead of letting that have a rehabilitative effect, you fell in with Hapeta and with others and you started a new criminal career in producing the unlawful dangerous drug methylamphetamine. Your involvement in

> trafficking and producing methylamphetamine, after being in prison and while being on parole shows a flagrant, cynical and callous disregard for the laws of our community."

[6] While the first respondent said that he gave significant weight to those comments it is clear that he also considered a range of other information relevant to the decision from the nature of the applicant's criminal history to the fact that he had "not been subject to breach proceedings", had completed a number of useful programs and had behaved appropriately while in custody.

[7] The applicant's reasons for criticising the reliance on the sentencing remarks were:

(a) that sentencing comments should not be relied on as a relevant consideration, relevance being defined narrowly in his submission to relate to situations arising during the period of incarceration and dealing with a prisoner's behavioural response to the sentence imposed;

(b) in that context that reliance on the sentencing remarks to limit his access to the program amounted to a form of double punishment;

(c) that the sentencing remarks relied on should have included also the factors ameliorating the sentence, the recommendation for early parole and Mr Corrigan's good behaviour while in custody.

[8] There is no reason to confine the statutory discretion in the manner suggested by the applicant. It is easy to conceive of a range of relevant issues that fall within the wide language of the subsection and are not confined to the prisoner's behaviour during a particular prison term. The references in the sentencing remarks to previous attempts to rehabilitate Mr Corrigan in custody that failed are relevant to the decision whether to permit him to take part in this program.

[9] Perhaps more importantly, it is clear that the discretion to grant access to the program is just that, a discretion, forming one of a range of management decisions involving prisoners under Ch. 2 of the Act. No enforceable right is granted. This is a typical case of a prison management decision which this Court should be reluctant to review; *Masters v Chief Executive Department of Corrective Services* (2001) 121 A Crim R 173, 175. Nor is the decision a form of double punishment. It is simply a refusal of a privilege.

[10] Assuming that Mr Corrigan had a right to have his application to participate in a WORC program considered, that has occurred and there is no reason for this Court to interfere in the first respondent's refusal to allow him to participate in the program.

[11] The application is dismissed. I shall hear the parties as to costs.