SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

FRYBERG J [2004] QSC 094

Originating Application No 2231 of 2004

RE AN APPLICATION FOR BAIL BY STUART ANDERSON

BRISBANE

..DATE 19/04/2004

JUDGMENT

HIS HONOUR: This is an application for revocation of bail. It is brought by the Director of Public Prosecutions and is expressed to be brought pursuant to section 30 of the Bail Act.

I raised with Ms Wooldridge, who appeared for the Crown and the Director, the questions whether the Director had any locus standi to make the application, and secondly, whether the application was brought under section 10 rather than section 30.

As to the former, it was submitted that it is the normal form for the Director to bring applications for revocation of bail. If there is a power for the Director to bring such an application, I am not aware of it.

The respondent is in custody at the behest of the Crown, and special powers are granted to the Crown in relation to the custody of people that are not granted to the Director of Public Prosecutions.

Sitting on a busy applications day, I do not have the time or the inclination to undertake a search of other legislation to see whether there is a power in the Director of Public Prosecutions to make this application.

In the absence of being referred to such a power, I am not prepared to proceed on the basis of this application. There was no application to substitute or add the Crown or the State of Queensland as an applicant, and in my judgment that is the first ground upon which the application should be dismissed.

The second ground is that there is no admissible evidence placed before the Court to warrant the granting of the application. I should explain that.

The application is based upon allegations that the respondent breached the conditions of his bail by making three telephone calls to Joanne Mewland in breach of condition 4, which was that he have no contact whatsoever with that lady and, second, that he consumed alcohol in breach of condition 6 that he not consume alcohol.

There is no allegation that he failed to attend regular meetings of Alcoholics Anonymous, nor that he failed to provide an authority in a form satisfactory to the DPP to a nominated person at Alcoholics Anonymous who would advise the DPP of any failure to attend.

The only evidence put forward of these breaches is a hearsay statement by Ms Mewland. That statement is in the usual form of a police statement. There is provision in it for it to be

signed by virtue of section 110A of the Justices Act, and it is signed and dated by Ms Mewland.

However, it is nonetheless, on this application, hearsay evidence. For the applicant it was submitted that it is admissible despite that fact by virtue of section 15 of the Bail Act.

The respondent was unrepresented, and in these circumstances it is, I think, appropriate that the Court be astute to ensure that the law is applied strictly. Section 15 applies in a proceeding for the release of a person under part 2 of the Bail Act.

Section 30, the section under which the Crown brings this application, or more accurately under which the DPP brings this application, is not in part 2. It is true that I was referred to section 10 by Ms Wooldridge and that section which is in part 2 empowers the Court to revoke bail granted to a person in circumstances whether or not the person has appeared in the Supreme Court in connection with the charge.

However, no application for amendment of the application was made and as I understood it the applicant does not seek to convert the application to one under section 10. It may be, as Ms Wooldridge seemed to suggest, that section 10 simply defines the powers which the Court may exercise under section

30. The question then becomes whether that is sufficient to invoke the words of section 15 to which I referred.

It may be - though I have considerable doubt about this reading of the Act given that the liberty of the subject is involved - that the application for revocation could be described as "a proceeding about the release of a person". However, it does not seem to me that it can be said to be a proceeding "under this part" simply because there are powers conferred on the Judge or on the Court when the application is brought pursuant to section 30. Ms Wooldridge informed me that she had found no authority on the point and I am somewhat hesitant about the matter but that is the position as I see it.

In case I be wrong about that I should however say something about the merits of the application. The applicant gave evidence on oath that he did not make the three telephone calls which it is alleged that he made by Ms Mewland. The only evidence of his having drunk any alcohol is her statement that "His voice sounded as though he had been drinking but was not drunk that I could tell." I would not be prepared on that basis to find that he had breached condition 6. Condition 4 is rather different because there is the explicit statement by Ms Mewland. The problem here however is that the applicant has been charged with the offence of breaching his bail undertaking. That charge is to be heard in the Magistrates Court on the 14th of May. He is in custody in any event in relation to that charge.

In my judgment it is most undesirable that I should decide the very issue which is to be decided in the Magistrates Court pre-emptively and on the basis of hearsay evidence. Such a course is calculated to prejudice the conduct of the Magistrates Court proceedings. Moreover I am faced with a conflict between sworn evidence on the one hand from the applicant and hearsay evidence on the other from Ms Mewland.

The applicant was not cross-examined on his sworn evidence on the basis that to be consistent in her submission relating to section 15 Ms Wooldridge took the view that she could not do so by reason of paragraph (b) of that provision. I am not altogether convinced of that since the applicant is not seeking bail on the offence with which he is presently charged and is in custody; and that offence is not the one for which the bail sought to be revoked was granted.

However either way there is no challenge to the sworn evidence and in my view in these circumstances, having regard to the imminence of the Magistrates Court trial it is not a case where I ought to proceed on the basis of the hearsay evidence.

I would, therefore, even were I to allow the hearsay evidence to be given, not be prepared to act upon it.

There is, in my view, no reason why the application should not be brought after the trial of the prosecution in the Magistrates Court for the alleged breach of the bail condition.

Once that trial has been completed there will be no risk of prejudice by reason of my making any finding and there will also be a decision on the merits as to the question of whether the bail condition was breached.

That might raise some interesting questions of issue estoppel or res judicata, but I need not consider that for now.

It would certainly enable the application to be brought afresh by the Crown on the ground that new circumstances had arisen since today.

One might expect that such a new application might be brought on rather better evidence than has been placed before me today, especially if the evidence has been presented on oath in Court.

If the applicant is convicted and sentenced to imprisonment the position will look very different from what it looks today.

The Crown is concerned that he may be convicted, but not imprisoned. Then he would be released because his existing bail would stand and the charge on which he is now held would have been disposed of. If in that eventuality the Crown is minded to apply again for revocation, such weight may be given to the circumstances as the Judge who hears the matter then sees fit.

If the applicant is acquitted it would seem unlikely that the Crown would wish to pursue a further application.

For these reasons it is my view that the application should be dismissed. That is the order of the Court.
