SUPREME COURT OF QUEENSLAND

CITATION:	*Weribone v Senior/Area Manager, Brisbane North Community Corrections* [2005] QSC 347
PARTIES:	**LESLIE JAMES WERIBONE** (applicant) **v** **SENIOR/AREA MANAGER, BRISBANE NORTH COMMUNITY CORRECTIONS** (respondent)
FILE NO/S:	BS No 8321 of 2005
DIVISION:	Trial Division
PROCEEDING:	Applications
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	1 December 2005
DELIVERED AT:	Brisbane
HEARING DATE:	11 November 2005
JUDGE:	White J
ORDER:	**1. Dismiss the application for review** **2. Unless the applicant can persuade the Court to the contrary by written submissions within 14 days of the date on which he receives these reasons the applicant must pay the respondent's costs of the application to be assessed on the standard basis**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – where home assessment report incorrectly stated the offence for which the applicant was convicted – where post-prison community based release refused by the Corrections Board – whether incorrect statements in home assessment report were relied upon by the Corrections Board – whether the making of the report containing the error was reviewable conduct or a reviewable decision *Acts Interpretation Act* (Qld) 1936, s 36 *Child Protection (Offender) Reporting Act* (Qld) 2000 *Corrective Services Act* (Qld) 2000, s 140 *Griffith University v Tang* (2005) 79 ALJR 627, cited *Wilson v David Bidgood, Area Manager Brisbane North Department of Community Corrections and Anor* No 7962 of

2003, unreported decision of 28 April 2004, followed

COUNSEL: The applicant appeared on his own behalf
M O Plunkett for the respondent

SOLICITORS: The applicant appeared on his own behalf
Crown Solicitor for the respondent

[1] On 3 December 2001 the applicant pleaded not guilty in the District Court at Dalby to 13 counts of sexual misconduct against a female complainant who was born on 5 October 1983. The first eight alleged acts occurring at a time when the complainant was under 16 and included a charge of maintaining a sexual relationship with a child under 16. Five of those counts alleged indecent dealing with a circumstance of aggravation in that the child was under 12 and the applicant was her guardian, one alleged exposing the child when she was under 12 to an indecent film and one alleged attempted rape. The other five counts involve conduct against the complainant after she had turned 16. They involved three counts of indecent assault, two with circumstances of aggravation and two counts of rape occurring between 17 March and 30 September 2000 at Toowoomba.

[2] The trial proceeded but on 5 December the applicant was reindicted upon the last five counts, that is, after the complainant had turned 16. The applicant pleaded guilty to those counts. The prosecution entered a nolle prosequi in respect of the first nine counts and he was discharged on those counts.

[3] The applicant was sentenced to six years for each rape offence, three years for the offence of indecent assault and four years for each of the two indecent assaults with circumstances of aggravation, all to be served concurrently. The applicant had been in custody for 52 days prior to sentence which was deemed to be imprisonment served under the sentence. The applicant's appeal against conviction was dismissed by the Court of Appeal on 18 October 2002. The applicant's ground of appeal was that he was pressured into changing his plea to guilty by his counsel and family. It has been and continues to be his assertion that he is not guilty of any of the subject offences. The applicant's wife was a witness to the last offence in September 2000 and gave evidence against him on voir dire despite earlier attempts by him to have her alter her evidence.

[4] The applicant is aged 45 years and has a lengthy criminal history commencing at the end of 1977 involving numerous unlawful use of motor vehicle and unlicensed driving offences, stealing and other dishonesty offences and assault occasioning bodily harm on a female in 1990 and aggravated assault on a child in 1989. He has had problems with alcohol abuse. He has served terms of imprisonment.

[5] The applicant was admitted to Arthur Gorrie Correctional Centre after sentence. He was given an eligibility date of 14 October 2004 for post-prison community based release. His full time discharge date is 13 October 2007.

[6] The applicant submitted an application for post-prison community based release on 30 September 2004. He proposed living at the home of his aunt and uncle with whom he had spent a considerable part of his younger life.

[7] A home assessment report was completed by the Brisbane North Community Corrections Office in which the assessor did not recommend post-prison release. In due course the applicant was assessed by Dr Prabal Kar, a consultant psychiatrist, at the request of the West Moreton Regional Community Corrections Board ("the Board"). The Board advised the applicant by letter dated 29 March 2005, received by the applicant on 5 April 2005, that he was not an acceptable risk to the community on any form of post-prison community based release and refused his application but giving him an opportunity to respond within 14 days if there was other information which the Board had not considered and the applicant considered important.

[8] On 7 April 2005 the applicant made an application to the Freedom of Information Unit of the Department of Corrective Services requesting access to all information relevant to his application for post-prison community based release including the home assessment report. He received that information on 22 July 2005.

[9] In the meantime, on 21 April 2005, the applicant sought a statement of reasons from the Board. On 1 June 2005 he received those reasons.

[10] The applicant received two home assessment reports pursuant to his Freedom of Information application. The first is associated with a facsimile header sheet to Margaret Cameron, Secretary to the Board, dated 19 October 2004 and contains under the heading *General Comments*

> "The applicant is currently incarcerated for a number of sexual assault charges committed upon a female.
>
> The applicant has maintained his innocence throughout despite the guilty plea."

The second report, also dated 19 October 2004, is the same as the first but under the heading *General Comments* appears the following

> "The applicant is currently incarcerated for a number of sexual assault charges committed upon a female child over a number of years. The offending commenced when this child was aged 10 years and continued on for a period of approximately 5 years.
>
> The applicant has maintained his innocence throughout despite the guilty plea."

[11] It is the conduct of the respondent in including that incorrect statement of fact which is the subject of the present application for review.

[12] The second statement set out above was clearly an incorrect statement of the offences for which the applicant was committed to prison and has been admitted to be so by the respondent in a letter to the applicant.

[13] A perusal of the statement of reasons of the Board makes it abundantly clear that the Board did not misapprehend the offences in respect of which the applicant was convicted. Those five counts are correctly set out at para 1.3 of the statement of reasons and the affidavit of Margaret Cameron establishes that the Board received

the home assessment report which did not contain the incorrect passage, that is, the report which I have described as the first report in para 10 of these reasons.

[14] The Board did rely on the findings and recommendations of Dr Kar. In his report he canvassed all the material in the Queensland Police Service documents (QP9s) which included the facts and circumstances relating to counts 1-8 for which the prosecution had entered a nolle prosequi and which Dr Kar seems to have accepted as established facts. Dr Kar concluded that the applicant "has a diagnosis of Paedophilia Sexually Attracted to Girls, Non-Exclusive Type. He also has the diagnosis of a severe Antisocial Personality Disorder and Alcohol Abuse Currently Abstinent due to being in a Controlled Environment." Dr Kar further concluded that the applicant had very significant narcissistic personality features which possibly qualified for a diagnosis of Narcissistic Personality Disorder in addition to his Antisocial Personality Disorder. This condition, he thought, might explain his unwillingness to admit the subject offences.

[15] Although the applicant does not challenge the Board's decision he does complain (although not formally in his application) of the retention in his files of the QP9s with their tendency to mislead the reader about the truth of the allegations by the complainant relating to counts 1-8. There is no statement by the complainant in the QP9s or elsewhere. Although that complaint does not impact on this application, it is worth observing that care needs to be taken about how this material is used.

[16] By letter dated 19 August 2005 the respondent replied to the applicant's complaint about the misstatement of his offences in the first home assessment report. The applicant complained at this hearing that the respondent incorrectly stated the nature of his offences even in that letter. The paragraph in the letter to which he takes objection is

> "You are presently incarcerated following your conviction of multiple offences of a sexual nature committed on a female child. Those offences were committed over a period greater than one year. You were charged with other offences of a sexual nature alleged to have been committed against the same female child prior to her attaining 16 years however those charges were discontinued part-way through trial."

[17] The applicant objects to the description to the complainant as a "child". The complainant was born on 5 October 1983. The last of the offences occurred on 30 September 2000. She was, accordingly, not yet 17 and not an adult. A "child" is defined as "an individual who is under 18" in the *Acts Interpretation Act* 1936, s 36. The period over which counts 9-13 were committed was less than a year.

[18] The respondent undertook that the Department would ensure that any future home assessment reports would contain information which reflected the position set out in the quoted paragraph.

[19] A fresh home assessment report was prepared dated 19 August 2005. The assessor investigated the proposed placement of the applicant which is still with his uncle and aunt. The assessor's major concern was that the sponsor, the applicant's 76 year old uncle who has known the applicant all his life and is conversant with the applicant's criminal history and current offences, insists that the applicant is

innocent of the current offences. The premises were not deemed suitable since the sponsor would encourage contact between the applicant's children and the applicant, and there were no safety measures in place to protect any young person who entered the dwelling. The assessor noted that the applicant is a "reportable offender" under the *Child Protection (Offender) Reporting Act* 2000. The applicant takes exception to this. Rape is a Class 1 offence under that Act when it is committed against or in relation to a child. As mentioned, the complainant was a child.

[20] By letter dated 7 November 2005 to the applicant the Board indicated that it had considered his further application for post-prison community based release at its meeting on 18 October 2004 and concluded that since he was still to accept full responsibility for his offences he remained a high risk of repeating such behaviour, and until that was addressed by satisfactorily completing a sex offender's treatment program, refused his application and giving him an opportunity to provide further information.

[21] Notwithstanding the existence of a home assessment report which contained incorrect information about the applicant's subject criminal offending it was not the report which was sent to the Board and which the Board considered when entertaining the applicant's first application. The applicant does not point to errors in the home assessment report provided for the second application for post-prison community based release.

[22] The plain answer to the applicant's application, therefore, is that the incorrect statements contained in the report were never relied upon by the Board in making either decision to refuse post-prison community based release.

[23] The answer, in administrative law terms is different, but no less clear. A Corrections Board is independent of the Department of Corrective Services and, whether the Queensland Board or a regional board, considers a prisoner's application for post-prison community based release. A board may make use of any information that it considers necessary to make the decision, s 140 *Corrective Services Act* 2000. The recommendation contained in the home assessment report was just that – a recommendation to the Board. The Board considered that report as well as some 17 other documents when making its decision. Of itself, the home assessment report is not a decision made under an enactment, *Griffith University v Tang* (2005) 79 ALJR 627. Douglas J came to a similar conclusion in respect of a home assessment report in *Wilson v David Bidgood, Area Manager Brisbane North Department of Community Corrections and Anor* No 7962 of 2003, unreported decision of 28 April 2004. If there were errors in a home assessment report and a board relied on the erroneous parts of that assessment that may constitute a ground for challenging the decision of a board. But that is not this case.

[24] Accordingly the making of the report which contained the error was neither reviewable conduct nor a reviewable decision.

[25] The application is dismissed.

[26] Unless the applicant can persuade the Court to the contrary by written submissions within 14 days of the date on which he receives these reasons the applicant must pay the respondent's costs of the application to be assessed on the standard basis.