SUPREME COURT OF QUEENSLAND

CITATION:	*Mott v Queensland Community Corrections Board* [2006] QSC 346
PARTIES:	**MELVIN THOMAS MOTT** (applicant) **v** **QUEENSLAND COMMUNITY CORRECTIONS BOARD** (respondent)
FILE NO/S:	2687 of 2006
DIVISION:	Trial Division
PROCEEDING:	Originating Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	17 November 2006
DELIVERED AT:	Brisbane
HEARING DATE:	8 September 2006
JUDGE:	Philip McMurdo J
ORDER:	**The application for review is dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEW OF DECISIONS – GROUNDS OF REVIEW – UNREASONABLENESS – applicant seeks judicial review – respondent refused applicant's application for post-prison community based release – applicant argues he is kept in prison because of his denial of guilt and that the respondent was misinformed as to the applicant's release proposal – whether the respondent acted unreasonably in refusing the application for post-prison community based release ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEW OF DECISIONS – GROUNDS OF REVIEW – IRRELEVANT CONSIDERATIONS – applicant argues the respondent acted upon an irrelevant consideration by characterising him as a rapist – whether respondent took into account irrelevant considerations *Corrective Services Act* 1988 (Qld) *Judicial Review Act* 1991 (Qld), s 23(g) *Mott v Queensland Community Corrections Board* [1995] 2 Qd R 261, cited

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

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

[1] **PHILIP McMURDO J:** The applicant is Mr Melvin Mott, who is Queensland's longest serving prisoner. He has been in jail since 1965, and for most of that time, he has been serving a life sentence for murder, imposed after a trial in 1968. He has been in prison since he was 21 and he is now 63. In January 2006, he was (again) refused parole by the respondent Board. He applies for judicial review of that decision.

[2] Before going to his grounds for that application, it is necessary to summarise his criminal history and his previous attempts to be paroled. The applicant was born in March 1943. As a minor, he committed an offence of indecently assaulting a girl under the age of 16 for which he was released on probation. He first went to prison on 5 March 1965, after a trial in the District Court in which he was convicted of having unlawful carnal knowledge of a 14 year old girl. The offence was committed earlier that year when the applicant was 21. For that he was sentenced to 12 months imprisonment.

[3] On 13 August 1965, he escaped from custody, and on the same day, committed an offence of unlawful and indecent dealing with a 12 year old girl. He pleaded guilty to that charge and he was sentenced to a further term of 18 months, cumulative upon his existing sentence.

[4] Before he had served that term, he was charged with the murder of a 13 year old girl, who had gone missing in October 1964 and whose remains were discovered in bushland at Kallangur in September 1966. The girl had been shot through the back of the head. The applicant was tried and convicted of her murder in April 1968. His appeal against conviction was dismissed.

[5] Apart from his escape in 1965, the applicant has behaved well as a prisoner. In 1983, he started to do some work outside the prison. In 1985, he was transferred to the Numinbah State Prison Farm, and was allowed leave to work for a private employer and as well as some weekend leave in which he stayed with friends. He was then apparently well on the way to being paroled. In 1987, he was recommended for parole by the then Parole Board. But its power was to make a recommendation only, and State Cabinet rejected it. In 1988, the Parole Board again recommended his release, which was again rejected by State Cabinet. By this time, he had spent years working under the work to release scheme and apparently, nothing had occurred in any of his time outside prison which had indicated any significant risk of his re-offending. Nevertheless in 1989 and 1990, there were two further occasions on which the Parole Board's recommendation for his release was rejected by the Cabinet.

[6] Subsequently, the *Corrective Services Act* 1988 (Qld) applied, under which the Parole Board was reconstituted as the Queensland Community Corrections Board and was given the power to grant parole rather than merely to recommend it. In August 1991, that Board conducted a hearing at which it received evidence from four psychiatrists, before deciding to refuse the applicant parole. In its reasons for

that decision, the Board said that it was of the view that the applicant posed an unacceptable risk of committing "another offence involving a young girl" and "noted your non-acceptance of your conviction and your failure to demonstrate any desire to involve yourself in programs specifically designed for sex offences."

[7] In September 1992, the Board again refused him parole, expressed its concern that he would re-offend and noted his persistent denial of guilt. The applicant applied for judicial review of that 1992 refusal. At first instance Dowsett J held that the decision should be set aside and the matter should be reconsidered by the Board.[1] Dowsett J said that the Board's reliance upon the applicant's refusal to admit guilt as a ground for refusing parole, without at the same time considering the nature and strength of the evidence by which he was found guilty, "was either to take into account an irrelevant consideration (namely his refusal) or to fail to take into account relevant considerations (namely the state of the evidence against him at the trial)". His Honour was concerned by the state of that evidence, noting that the prosecution case had "depended largely upon 'prison yard' confessions" which were by then "assessed with rather more care than was the case at the time of this trial".

[8] That judgment was reversed on appeal.[2] McPherson JA saw fit to examine the record of the trial and seemed not to share Dowsett J's concern as to the merit of the prosecution case. McPherson JA considered that it was necessary that the Parole Board consider the trial record, because it "was relevant in assessing the nature and circumstances of the offence of which he was found guilty, and so of providing a comparison with the other offences against young girls of which the applicant had been convicted". His Honour was also critical of the Board for its having acted upon information that had come from press reports rather than using the trial record. But given the passage of time between the Board's decision in 1992 and the disposition of the appeal in 1994, His Honour held that the preferable course was not to set aside the original decision but to permit the applicant to pursue a further application which the Board would consider "free of any constraints that its previous decision may be thought to impose". Davies JA agreed in the result but for somewhat different reasons. In his view, whilst in some cases it would be desirable, or even necessary, for the Board to look at the evidence against the prisoner at his trial, this was not such a case. Fitzgerald P held that the Board should not have examined the trial record, at least to assess whether the applicant had been fairly convicted, because it was not for a parole board to investigate whether the prisoner had in truth been innocent. Like Davies JA, Fitzgerald P found no relevant error in the Board's decision.

[9] A further refusal of parole was the subject of a further unsuccessful application for judicial review, which this time was determined by Mackenzie J in December 1997.[3] In refusing that application, the Board strongly recommended to the applicant that he participate in a sexual offenders' treatment program "with respect to the offences which you admit having committed". But the applicant then denied and continues to deny the offence of murder or any other offence, including the suggestion that he raped the victim, associated with that murder. The applicant argued before Mackenzie J that the administrative arrangements at the time did not permit him to participate in the program recommended by the Board. However, his

[1] Unreported, Supreme Court of Queensland, No 359 of 1993, 14 December 1993.
[2] [1995] 2 Qd R 261.
[3] Unreported, Supreme Court of Queensland, No 3812 of 1997, 2 December 1997.

application for judicial review was dismissed, because he showed no basis for impugning the Board's view that it was not satisfied that the protection of the community could be assured upon his release.

[10] In September 2003, the Board again refused parole. An application for judicial review of that decision was dismissed by Muir J in July 2004. As his Honour's judgment shows, there were many points advanced by the applicant but his principal argument was that the Board had treated him as a rapist, upon the basis that he had raped the girl he killed, whereas he was not convicted of rape. Muir J said that the Board had material from which it was able to conclude that the victim had been raped and that on "any reasonable view of the evidence, the killing was a sexually-related one." In any event, Muir J said, it did not appear that the Board would have reached a different decision had it not thought that the applicant had raped the victim.

[11] I turn then to the Board's decision the subject of the present application. On 25 November 2005, the Board wrote to the applicant advising that it seemed to the Board that he "may not be an acceptable risk to the community on any form of post prison community based release order," and that it was therefore minded to refuse his application. He was given the opportunity of making a further submission. He provided some further material to the Board which then advised of its refusal of his application by letter dated 20 January 2006. The Board's reasons for this decision appear from the letter of 25 November 2005 and from the documents discussed within that letter. The Board had procured reports from Dr Lawrence, psychiatrist and from two psychologists as well as a report from a community corrections officer. In summary, the Board was not satisfied that the applicant would be an acceptable risk to the community if released.

[12] The applicant argued his own case here and not surprisingly, some of what he said was more appropriate for a merits review than an application of this kind. But in effect he advanced three arguments.

[13] The first is a complaint that the Board was misinformed as to the applicant's proposal that, if released, he would live with a Mr and Mrs Baker. Mr Baker is a long term friend. The information upon which the Board acted was to the effect that Mr Baker is in very poor health, which was said to be relevant in two respects: first, that he would not be able to provide adequate supervision and guidance for the applicant and, secondly, that before long, he might die, in which event Mrs Baker has said that she would not want the applicant to stay in her house. According to the Board's information, Mr Baker has diabetes, has had one leg amputated and is confined to a wheelchair, has lost sight in one eye, has high blood pressure and suffers from hypertension. In response to the Board's request (in its November letter) for any further submission, the applicant wrote to the Board on 19 December 2005 saying, amongst other things, that he was sure that Mr Baker "could keep an eye on me" and he enclosed a letter which he had received from Mr Baker in which Mr Baker had said:

> "I am sorry for the delay but my doctor is away until 4/1/06 and is booked out all of January. However, I can ring him ... and he will write me a letter to state my current health and that I am alive and well with reference to whether I would be able to watch over you or be in a position to address your situation … please advise me if I

> have to spend money on a visit to the doctor to show whoever that I am at present alive and well. Can't read into the future just yet."

It seems that the applicant did not take up Mr Baker's suggestion that a letter from his doctor be obtained and the Board was given no other information to consider against what it had received in the report from the community corrections officer which made detailed reference to Mr Baker's health problems as well as to other problematical circumstances associated with the applicant's living with him. In my view there was no reviewable error in the Board's acting upon the premise that Mr Baker's health was as serious as the community corrections officer had described in his report.

[14] The second of the applicant's arguments is that the Board considered his case upon the premise that he also raped the girl who was murdered. Whilst he continues to deny his guilt of murder, he says that the Board has acted upon an irrelevant consideration in treating him also as a rapist. In its November 2005 letter, the Board did not so describe him. But the applicant says that the Board proceeded upon that premise, because it acted upon the report of Dr Lawrence, which it had procured in May 2005, which in turn referred to her report about the applicant written in 1991, in which Dr Lawrence had said that the applicant "was found guilty of the wilful murder of a thirteen year old girl who had also been raped."

[15] On this point, it is relevant to refer to the trial record, as Dr Lawrence did in her 2005 report. This is not to question the jury's verdict, because that would be an impermissible approach for a parole authority which, as Fitzgerald P said in the applicant's 1994 appeal, must proceed from the premise that the prisoner has been rightly convicted.[4] In his summary of the trial record in his judgment in that appeal, McPherson JA described the prosecution case as standing or falling on the prison yard confessions, which the applicant had disputed. According to this evidence, the applicant had said that he had raped the girl before killing her. Conceivably, the jury could have been satisfied that the applicant's claim to the prisoners that he had killed the girl was true, without being satisfied as to his claim of rape. Accordingly, his conviction of murder does not have the necessary implication that he was guilty of rape. But the Board should not be understood to have thought that it did. It acted upon the basis of Dr Lawrence's opinions, and her report of May 2005 does not misstate the position. In particular, it does not suggest that he was convicted of rape, instead Dr Lawrence referred to the fact that the confessions related by the prisoners had also involved admissions of "sexual assault". As Muir J said in dismissing a previous application for judicial review, "on any reasonable view of the evidence, the killing was a sexually related one". Equally relevant to the Board's present decision was his Honour's comment (about the decision challenged before him) that "it is difficult to see how the opinion of the Board would have altered, or how the opinions of those on which the Board placed reliance would have altered, had the conduct in relation to the victim being classified or described as unlawful carnal knowledge rather than rape." In the light of these matters there is no demonstrated error in the Board's proceeding upon the facts related in Dr Lawrence's report, and in particular upon the premise that the applicant had sexually assaulted the girl whom he killed.

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[4] [1995] 2 Qd R 261, 269-270.

[16] Thirdly, the applicant argues that the Board's decision is unreasonable. On this point, he sought to compare his case with that of another prisoner who had been granted parole notwithstanding that prisoner's denial of guilt, and the applicant maintains that he has been kept in prison essentially because he denies his guilt. That submission misinterprets the Board's reasoning, as I will discuss below.

[17] In the 1994 appeal, Fitzgerald P said that while there are no express provisions dealing with what matters must or may be taken into account in deciding whether to grant or refuse parole, there is a wide discretion, related both to considerations affecting the interest of the prisoner for whom parole is being considered and public interest considerations, which it is necessary and undesirable to circumscribe[5]. In its letter of 25 November 2005, the Board said that it "was very conscious that its primary obligation is the protection of the community." But that statement, in itself, does not indicate that the Board was excluding other relevant considerations.

[18] In essence, the Board reasoned that the applicant's release was too risky because of what it described as an "unviable release plan". By that it was referring to the applicant's proposal to live with Mr and Mrs Baker. Dr Lawrence advised the Board that that proposal was not "feasible" because of Mr Baker's poor health and also because of the presence from time to time of children in that household. And there was other evidence which the Board had which was to the same effect: Dr Palk, psychologist, advised the Board that the applicant "needs to be encouraged to present a community release plan that demonstrates that he has relapse prevention strategies in place that preferably deny him contact with young girls and certainly not permit him to be alone with young girls." Dr Lawrence concluded in her most recent report that "a very carefully structured and controlled transition with close supervision would be needed and supervision would need to continue indefinitely in order to decrease the low but real risk of Melvin Mott re-offending."

[19] When the applicant enjoyed regular periods of leave from prison in the 1980s, it was with Mr and Mrs Baker that he stayed. Now, nearly twenty years on, this environment is considered unacceptable. In all of this, there has been clearly a shift in policy, adverse to the prisoner's parole prospects. That shift was recognised by Dowsett J in the applicant's 1993 application. But that does not make the present decision one which is unreasonable in the relevant sense.[6] The Board was required to make a value judgement in weighing the risk to the community against other matters and particularly the interests of the prisoner. The merits of this decision could be debated but that is not the present question. The decision is apparently logical and based upon professional advice.

[20] On a broader level, the result, which is that the applicant remains in prison with no immediate prospects of release, is worthy of administrative consideration. Although the policy of the parole authorities has shifted somewhat in favour of the maximisation of the protection of the community, still the legislation continues to recognise the importance of the potential for parole, not only in the interests of prisoners but also for the discipline of prisoners and for their rehabilitation. That is why even the most serious offenders become eligible for parole. It may or may not be anyone's fault that this prisoner has no suitable place to go if released. But the decision for the Board was whether, absent of such an arrangement, the applicant

[5] [1995] 2 Qd R 261, 269.
[6] *Judicial Review Act* 1991 (Qld), s 23(g).

should be released having regard to the safety of the community. It cannot be said that the Board's decision in these circumstances was so unreasonable that it could be regarded as a misuse of its powers.

[21] Ultimately then the applicant has failed to demonstrate that the decision is unreasonable in the required sense or that it is otherwise susceptible to judicial review. The application must be dismissed.