SUPREME COURT OF QUEENSLAND

CITATION:	*Griffiths v Department of Corrective Services* [2006] QSC 390
PARTIES:	**LAWRENCE MATTHEW GRIFFITHS** (applicant) **v** **CHIEF EXECUTIVE, DEPARTMENT OF CORRECTIVE SERVICES** (respondent)
FILE NO/S:	6692/05
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	4 August 2006
DELIVERED AT:	Brisbane
HEARING DATE:	4 August 2006
JUDGE:	Philip McMurdo J
ORDER:	**1. That the decision of the delegate of the Chief Executive made on 10 April 2006 be set aside.** **2. That the matter be remitted to the Chief Executive or to a delegate of the Chief Executive for reconsideration according to law.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW OF ADMINISTRATIVE ACTION – IRRELEVANT CONSIDERATIONS – where the Act provides certain mandatory considerations – where there are recommendations dealing with those considerations - where the decision maker refers to the willingness to undertake a particular programme in future – whether the completion of the programme was an irrelevant consideration. ADMINISTRATIVE LAW – JUDICIAL REVIEW OF ADMINISTRATIVE ACTION – FAILURE TO EXERCISE DISCRETION – GENERAL – where an Act requires an individual to undertake half-yearly reviews according to particular considerations - where there is a purported delegation of that power – where that delegation imposes additional conditions restricting the power of review – whether the delegated review is a review under the Act.

	Corrective Services Act 2000 (Qld)
	Judicial Review Act 1991 (Qld)
COUNSEL:	Mr Griffiths (in person) for the applicant
	K A Mellifont for the respondent
SOLICITORS:	Crown Law for the respondent

Transcript of Proceedings

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State Reporting Bureau
Date: 21 August, 2006

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

McMURDO J

No BS6692 of 2005

LAWRENCE MATTHEW GRIFFITHS — Applicant

and

CHIEF EXECUTIVE, DEPARTMENT OF CORRECTIVE SERVICES — Respondent

BRISBANE

..DATE 04/08/2006

ORDER

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

HIS HONOUR: This is an application for judicial review of a decision of Mr G N Brown who is the General Manager of Wolston Correctional Centre. The decision sought to be reviewed was one made by Mr Brown on or about 10 April 2006 purportedly pursuant to sections 12 and 53 of the Corrective Services Act 2000. Section 12 provides for the classification of prisoners and subsection 12(4) provides that the Chief Executive must review a prisoner's classification, relevantly for this case, at intervals of not longer than six months.

The Chief Executive is able to delegate that discretionary power and there is a purported delegation in this case to which I will return. The delegation was to Mr Brown and he had to decide in this prisoner's case whether the classification should remain at the level of medium security or whether it should be either low security or something else. The applicant had sought to be reclassified to open security and by these proceedings seeks that result.

Section 53 provides for the transfer of a prisoner from a Corrective Services facility to another facility. The provisions are related because the classification of a prisoner in many cases has an immediate bearing upon where he will be kept. The applicant was seeking to go to a prison farm, and in particular it seems Palen Correctional Centre.

The present application, however, can be discussed by reference to the decision to be made according to section 12. There are five classifications which are provided for by that

section. The third of them is medium security. The one which is next in line and less secure than that is low security and that which is the most favourable to a prisoner is open security.

Subsection 12(3) provides that when deciding a prisoner's classification, the Chief Executive must consider all relevant factors, including the matters which are then set out in the various paragraphs within that subsection. The first of those is "the risk of the prisoner to the community", and other factors include the nature of the offence for which the prisoner is charged or has been convicted and the period of imprisonment the prisoner is serving.

The applicant here is serving a life sentence for the offence of murder, which he committed in 1995. His term of imprisonment commenced on about the 25th of October 1995. The earliest date on which he could be considered for early release is the 25th of October 2008.

His real purpose in seeking reclassification is to advance his prospects of early release once that date arrives. As is common ground, he is more likely to be released earlier rather than later if he has attained an open security classification and has proved himself in a corresponding facility.

He also has a subsequent conviction in this Court for contempt of Court. It is unnecessary to discuss the course of those proceedings, which culminated in orders of the Court of

Appeal. The result was that he has that contempt conviction, with no addition to the time he must spend in custody, but with remarks from the Court of Appeal to the effect that the fact of his conviction for contempt ought to be a relevant matter on any consideration of his early release.

The application is made upon a very large number of grounds, apparently incorporating every conceivable ground of review under the Judicial Review Act. And there is also an argument by the applicant, who presents his own case, to the effect that Mr Brown was not the subject of a due delegation to exercise the discretion under section 12.

It is unnecessary to reach a concluded view as to that last submission, having regard to the view I will subsequently explain about his application. But some discussion of his submission is appropriate as it may affect what happens in any future decision involving Mr Griffiths.

The Chief Executive, understandably, has sought to delegate what would otherwise be an impracticable burden of personally exercising the discretionary power under section 12. The instrument of delegation is dated 7 February 2006. It relevantly delegates to the general manager of a corrective services facility, as Mr Brown is, authority to exercise the discretionary powers contained in subsections (2) and (4) of section 12. However, it does so upon conditions. Relevantly, one of those conditions is in these terms: "For a prisoner serving a period of imprisonment of 10 years or more, a

general manager may only classify a prisoner open security if the prisoner is already classified open security."

So, on its face, the delegation does not authorise a general manager to classify a prisoner as open security on a six-monthly review pursuant to subsection 12(4), unless that involves a decision to simply maintain an existing classification of open security.

The argument the applicant advances is, in effect, that the purported delegation is not, in substance, an authority to exercise the discretionary power which must be exercised under subsection 12(4): but rather, it is an authority to decide whether, in the case of a medium security prisoner, that prisoner should remain of that classification or be reclassified as either maximum, high or low security.

In other words, the argument is that the purported delegation does not relieve the Chief Executive of the responsibility to decide whether a prisoner should be assessed as open security, and there is no evidence to suggest that the Chief Executive or any other delegate, other than Mr Brown, has considered that particular matter. On its face, that argument has force, but it is unnecessary to adjudicate upon it because of the ground of review which is otherwise established, as I will now discuss.

As already mentioned, one of the considerations for the Chief Executive is the risk of the prisoner to the community. That

was a matter specifically mentioned by the delegate in his written decision. The decision-maker has not been asked for a statement of reasons, but the written decision was in these terms. They are brief and I will set them out in full:

> "The recommendations contained within this document have been carefully considered together with all relevant legislation including s.12(3) and 53 of the Corrective Services Act 2000.
>
> In determining this document notice was taken of the relevant Legislation and Procedure together with all aspects of the prisoner's case, information contained within the document and the comments of the Sentence Management Team.
>
> This life sentence offender is in the final stages of the Substance Abuse: Preventing and Managing Relapse Program and is willing to undertake an assessment for the High Intensity Violence Intervention Program.
>
> After considering all factors I gave particular regard to the prisoner's length of sentence, nature of the offence, along with the risk of the offender to the community and was of the opinion that in accordance with section 12(3) of the Corrective Services Act 2000, the offender is to remain as a medium security classification.
>
> I then gave consideration to the offender's placement. In determining the transfer/placement of this prisoner exercised the discretion delegated in accordance with Section 53 of the Corrective Services Act 2000.
>
> The offender is recommended for placement at Wolston Correctional Centre.
>
> G. Brown
> General Manager
> Wolston Correctional Centre."

Mr Brown's reference to "the recommendations contained in this document" is, as the respondent accepts, a reference to a three-page document which is the recommendation of a panel and dated 28 March 2006. The document is described by Mr Brown as an offender management plan review. The document begins with a statement that the applicant has been assessed for review of

his classification on 28 March 2006, and that the panel had had regard to sentence management procedures as well as having regard to "(the) factors of section 12(3) of the Corrective Services Act 2000".

The document then refers to various matters by reference to the paragraphs within subsection 12(3). So it begins by a reference to the matter in paragraph (a) which, as I have said, is the matter of "the risk of the offender to the community". As to that, the panel referred to five matters, all of which were favourable to the applicant. The first of them was the applicant's completion of various programs within the prison. The second was the fact that the applicant was then undertaking certain other programs which he was due to complete within a week or so. The third was his willingness to undertake an assessment to what is described as "the high intensity violence intervention program", and there are then references to his employment and his good institutional conduct.

Later in that document, the panel recommended that the applicant be reclassified to open security, and it further recommended that he be placed at Palen Correctional Centre.

Another document which was before the decision-maker is what is headed "Advice to Sentence Management". It is a two-page document, apparently written on or shortly after 17 March 2006 after an interview by an officer from the department of the applicant on that day. This document refers to the various

programs which had been undertaken by the applicant and to the programs which he was then undertaking. It refers to his good performance in the current programs. It then states that the applicant "has no outstanding criminogenic needs. However, as his PPCBR draws closer, it will be appropriate that he participates in the transitions program in order to meet his non-criminogenic needs." It said that the prisoner mentioned that he was willing to undertake "all recommended programs".

On the second page of this document this was written:

> "The prisoner was previously recommended for an assessment in the VIP, however as the VIP has been replaced by the HIVOP but the prisoner case does not meet the administrative criteria, it would need to be removed form his recommendation. With the new integrated offender strategy and the process of phasing out some existing programmes, the prisoner will no longer be recommended to complete the VIP."

There are some spelling errors at least in that passage and there may be significant errors of punctuation. But it seems to me it has to be read with what appears on the previous page, and in particular the author's statement that the applicant had no outstanding criminogenic needs. As I read this document it was the author's view that the applicant did not need to undertake any further programme.

The fact that the applicant had said, in effect, that he was willing to undertake any programme recommended did not of itself indicate any likely need for the programme and the contrary is indicated by this document. It is then somewhat

difficult to understand the terms of this decision in which the delegate said that he gave particular regard not only to the prisoner's length of sentence and nature of the offence, which of course were relevant considerations, but also the risk of the offender to the community. On its face his decision puts that risk together with the nature of his offence and his length of sentence as the critical considerations for not reclassifying him.

I am conscious of the distinction which must be kept in mind between a merits review and a review which is according to the Judicial Review Act, but I am ultimately persuaded that there is an error within this decision which provides a ground of review. It seems to me that the decision maker has considered an irrelevant matter, which is the high-intensity Violence Intervention Programme, and the need for his completion of that programme before the decision maker could be sufficiently satisfied as to the level of risk which he posed to the community in terms of subsection 12.3(a).

On the face of the material which the delegate had, apart from the nature of the offence, there was really nothing which could reasonably found an assessment of risk to the community on which was adverse to the prisoner for the purposes of this decision. The matter of participation in the programme was in the light of the advice as to criminogenic needs, a consideration of an irrelevant matter in my view.

Of course, it was a decision to be made by the delegate. He was not obliged to accept the advice of the panel or of the author of the other document I have mentioned, but I am left with the impression that his assessment of that matter of risk has gone awry by a consideration of an irrelevant matter.

The result is that there is a ground of review made out and the question then is what is the appropriate relief. The establishment of that ground of review is sufficient to warrant an order which sets aside the decision made on 10 April 2006. But of course it is not a case where the establishment of that ground presently entitles the applicant to some relief from this Court to the effect that he should be by this Court's order classified as open security. That will be a matter for the consideration of the Chief Executive or the Chief Executive's delegate.

The circumstances, I think, are not such as should prevent the matter being returned to Mr Brown for his particular consideration if the Chief Executive wishes that to happen. I do not see, in other words, that Mr Brown has shown that he is not able to bring an open mind to bear upon this question. In addition the decision involved in a reconsideration of this classification must be made on the circumstances as they now exist. So if, for example, the author of that advice to sentence management document had not intended to say what I believe has been said in the document, then it would be open to that person to provide some explanation to the decision maker.

I am conscious of the fact that the statute requires a review in any event at intervals of not less than six months and that the next review is to take place in any event in October. But it seems to me that as the applicant has made out a ground of review, he should be entitled to a reconsideration of the matter now rather than waiting until some point in a couple of months' time.

The order will be that the decision of the delegate of the Chief Executive made on 10 April 2006 will be set aside and the matter will be remitted to the Chief Executive or to a delegate of the Chief Executive for reconsideration according to law.
