

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

APPLEGARTH J

No BS 7888 of 2004

ATTORNEY-GENERAL FOR THE
STATE OF QUEENSLAND

Applicant

and

JAMES ALFRED DUGDALE

Respondent

BRISBANE

..DATE 06/11/2009

JUDGMENT

HIS HONOUR: There are two applications before the Court. The Attorney-General seeks certain orders pursuant to section 22 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld). The respondent to that application, who I'll refer to for convenience as Mr Dugdale, brings his own application pursuant to sections 21(3) and 21(4) of the Act that he be released from custody pending a final decision concerning the application in respect of the contravention proceedings.

The statutory framework for an application brought by Mr Dugdale is the subject of consideration by Judges of this Court. The legislative intent is that a person in Mr Dugdale's situation not be released from custody pending a final decision of the Court, unless he or she shows exceptional circumstances. The legislative requirement to show exceptional circumstances should not be undermined by regarding any case in which there is a prospect that there will not be a continuing detention order made at the contravention hearing as exceptional.

Exceptional circumstances will, of course, be shown in a case where a contravention is trivial. Exceptional circumstances have been shown in other cases in which the Court forms an assessment that the risks involved arising from the alleged contravention are not such as to justify continuing detention for a short period or perhaps in some cases for an extended period.

The protection of the community is the key consideration, and there is a material difference between an alleged contravention that involves conduct that is directly related to the type of conduct that justified the making of a supervision order and conduct which may only be very indirectly related to the risk of reoffending or which might have no particular bearing on the risk of committing a further sexual offence.

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It is common that conditions of supervision orders require compliance with matters such as abstaining from illicit drugs or alcohol. In some cases, a minor breach of such a condition does not heighten the risk of further offending to such an extent to justify continuing detention and in those types of cases exceptional circumstances are shown.

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Against that background I turn to the circumstances of the present case. On 3 March 2005 Muir J made a supervision order. Condition (p) of that order provided for Mr Dugdale to "not establish and maintain contact with children under 16 years of age." Mr Dugdale is alleged to have contravened that condition in circumstances in which, on the night in question, he drove with three people, an adult uncle, his nephew and a niece, to a dance club for the nephew to participate in a dance competition. He did so at the request of the children's mother to whom he is distantly related. During the evening he twice left the dance club in his vehicle to check his account balance at the ATM. A 13 year old female accompanied him on each of these journeys. On one such occasion he is alleged to

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have indecently dealt with her in the back of the vehicle.
However, he was acquitted at a trial in respect of that matter
in September 2009.

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Mr Dugdale was brought before this Court on 5 September 2008
by a section 20 warrant. Dutney J ordered that he remain in
custody and it has only been upon the resolution of the
criminal proceedings that the matter has come back before the
Court for further orders in relation to the contravention
hearing.

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The disposition of the criminal proceedings has a relevance to
the determination of whether exceptional circumstances have
been shown. However, the jurisdiction of the Court to order a
party's release pending a contravention hearing is not one
which is determined on the basis that the applicant has been
sufficiently punished for the alleged contravention by reason
of his having been held in custody for a substantial period.
The objective of the Court is to avoid the risk identified by
the Legislature namely that, if released pending the final
contravention hearing, the safety of the community will be
placed at risk.

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In this case, a matter of obvious concern is that the alleged
contravention involved contact with a young female. There is
an argument that the contact in question did not amount to a
contravention of condition (p), emphasis being placed upon the
term "not establish" as suggesting some ongoing or permanent
contact.

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I have regard to the fact that the applicant says that, in the light of events, he now appreciates how unwise it was of him to have contact with a child in his car in circumstances where he did not think at the time that it amounted to establishing or maintaining contact with the child.

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It is not for me to make a prediction as to the likely outcome of the contravention hearing because that will depend, amongst other things, upon further evidence that will be gathered in advance of it. However, doing the best that one can on limited materials, a distinctly likely outcome of such a contravention hearing, if a contravention is found, is that Mr Dugdale will be subject to a further supervision order with additional conditions reinforcing the importance of his not having contact with children under 16 years of age.

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There is the possibility that no contravention will be established.

I take it into account that Mr Dugdale's experience of having been held in custody for a period of 14 months as a result of the events on the night in question are likely to prove a salutary lesson to him about having contact with children under 16 years. I also consider that the risk that he will engage in such conduct again can be reduced to an acceptable level by the imposition of additional requirements of the kind that appear in the draft order, which include not having any supervised or unsupervised contact with children under 16

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years without the prior written approval of an authorised
Corrective Services officer, and not undertaking any care of
children without such approval.

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It seems to me that the continuing detention of Mr Dugdale in
the circumstances gives rise to exceptional circumstances. If
a contravention is established, it is very unlikely that he
will be the subject of a continuing detention order. If he
remains in custody until the contravention hearing, he will be
held in custody for several months.

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The material shows that he has a good employment history
whilst released on supervision. He has stable accommodation
arrangements. If released again, he can be initially
accommodated at the Wacol precinct.

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Ultimately, it seems to me that the risks of concern to the
Legislature in establishing the presumptive position that a
person in Mr Dugdale's situation will be kept in custody
absent exceptional circumstances can be adequately addressed
by conditions. I find that he has established exceptional
circumstances.

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In addition, having decided that he has established
exceptional circumstances, I consider that it is more likely
to be beneficial for his rehabilitation and the avoidance of
unacceptable risks of further offending if he re-establishes
employment and attempts to re-establish suitable living
arrangements in circumstances in which he will be subject to

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more exacting conditions than were previously imposed upon
him. Those will be conditions that he will need to observe,
conscious of the risk that, if he breaches those conditions or
any other conditions, he will be immediately returned to
custody.

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I therefore consider that it is appropriate to make an order
pursuant to section 21(2) that Mr Dugdale be released from
custody subject to the existing supervision order amended by
adding the requirements that appear in the draft order.

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I also consider that it is appropriate in preparation for the
contravention hearing that he undergo examinations by the two
psychiatrists mentioned in the draft order and that I should
make an amended supervision order that incorporates those
conditions.

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Accordingly, I make an order in terms of the two draft orders
that have been placed before me.

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