

SUPREME COURT OF QUEENSLAND

CITATION: *A-G for the State of Queensland v Johnson* [2011] QSC 370

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
PETER JOHN JOHNSON
(respondent)

FILE NO/S: SC No 10293 of 2008

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: Delivered ex tempore 3 November 2011

DELIVERED AT: Brisbane

HEARING DATE: 3 November 2011

JUDGE: Atkinson J

ORDERS:

1. **The contravention hearing pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* be adjourned to a date to be fixed.**
2. **Pursuant to s 21(4), (6) and (7) of the Act, the respondent be released from custody subject to the existing supervision order made by Martin J on 2 February 2009, subject to the following amendments:**
 - (i) **add the words “*that is not directly inconsistent with a requirement of the order*” to the end of requirement(xiv);**
 - (ii) **add requirement (xxxiii) *must comply with any reasonable direction under section 16B given to the prisoner about his accommodation, his rehabilitation or care or treatment, or drug or alcohol use by him, that is not directly inconsistent with a requirement of the order;***
 - (iii) **add requirement (xxxiv) *Must advise an authorised Corrective Services officer of the make, model and phone number of any mobile phone owned, possessed, or regularly utilised by him within 24 hours of connection or commencement of use. This includes reporting any changes to mobile phone details;***
 - (iv) **add requirement (xxxv) *must allow any device including a telephone to be randomly examined. If***

- applicable, account details and/or phone bills are to be provided upon request of an authorised Corrective Services officer; and*
- (v) *add requirement (xxxvi) must not, except with prior written approval from an authorised Corrective Services officer, own, possess or regularly utilise more than one mobile phone.*

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent was released on a supervision order pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – where contravention proceedings were brought against the respondent and he was detained in custody – where the respondent brought an application that he be released on an interim supervision order – whether exceptional circumstances exist such as to justify the respondent being released on an interim supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 16, s 21, s 22

COUNSEL: J M Sharp for the applicant
P E Smith for the respondent

SOLICITORS: Crown Law for the applicant
Legal Aid Queensland for the respondent

HER HONOUR: This is an application pursuant to section 21(4) of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* ("the Act") that the respondent be released on an interim supervision order. The application, in the circumstances, is not opposed.

The circumstances are that the respondent was ordered to be released on a supervision order under the Act on 2 February 2009. On 14 October 2009 he was charged with sexual offences. Contravention proceedings were brought against him on 15 October 2009 in relation to an alleged contravention of requirements (xii) and (xiii) of his supervision order, that is, that he not commit an offence of a sexual nature and not commit an indictable offence.

When that matter came to this Court, it was ordered that the contravention hearing be adjourned to a date to be fixed, and consistently with section 21(2)(a), that the respondent be detained in custody until the final decision of the Court under section 22, being the section that deals with contravention proceedings.

Section 21(4) provides for the circumstances in which a respondent in this situation may be released, pending the hearing of the contravention hearing. It provides that the Court may order the release of the respondent only if he satisfies the Court on the balance of probabilities that his detention in custody, pending the final decision, is not justifiable because exceptional circumstances exist.

It cannot be seriously suggested that exceptional circumstances do not apply to this case.

The exceptional circumstance in this case is that the respondent has been acquitted of the offences which were said to be committed in breach of the order, and he was discharged on the indictment. The acquittal was directed by the judge on the basis that a 'No Case' submission, which appears to have been decided on the merits of the case and not just on a technical question, was successful, and a verdict of acquittal was directed, and verdicts of not guilty were returned by the jury.

There are no other breaches alleged against him, and indeed, the electronic monitoring to which the respondent was subject appeared to prove that his alibi was correct.

Section 21(6) provides that if the Court orders the released prisoner's release, the Court must order the prisoner be released subject to the existing supervision order, as amended, under sub-section 7.

I therefore release him under the supervision order originally made by Justice Martin on 2 February 2009. The amendments referred to under sub-section 7 fall into two categories. The first are amendments that are necessary to satisfy all of the requirements under section 16(1) of the Act, if the order does not already include all of those requirements. That is the case here because when the order was originally made not all

of the requirements currently mandated under section 16(1) were in the Act. I will make the amendments to the order that are required as a result of section 21(7) (a) of the Act.

In addition, the Court may amend the existing order to include other requirements the Court considers appropriate to ensure adequate protection of the community. Those requirements involve some monitoring of the respondent's use of a mobile phone. They do not prevent its use, but allow an authorised Corrective Services officer, where appropriate, to monitor its use.

Those additional conditions are not opposed by the respondent. I am prepared to amend the existing order to include those requirements to ensure adequate protection of the community.

The order will be as per the draft, as amended by me, which I will initial and place with the file.
