

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Armstrong*
[2012] QSC 93

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(Applicant)
v
ARMSTRONG
(Respondent)

FILE NO/S: BS 10494 of 2010

DIVISION: Trial Division

PROCEEDING: Hearing

ORIGINATING COURT: Supreme Court

DELIVERED ON: 30 March 2012

DELIVERED AT: Brisbane

HEARING DATE: 30 March 2012

JUDGE: McMurdo J

ORDER: **1. The respondent be released subject to the supervision order made by the court on 14 March 2011.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS - *Dangerous Prisoner (Sexual Offenders) Act 2003* – where the applicant breached a supervision order by smoking a joint of cannabis detected in a random urine analysis – where the applicant has been detained in custody from the date of the breach until this hearing – whether, despite this recent contravention, the adequate protection of the community can be ensured by the existing supervision order
Dangerous Prisoner (Sexual Offenders) Act 2003, s22

COUNSEL: J M Sharp for the applicant
T Ryan for the respondent

SOLICITORS: Crown Law for the applicant

Legal Aid Queensland for the respondent

HIS HONOUR: This is an application pursuant to section 22 of the Dangerous Prisoner (Sexual Offenders) Act 2003.

The application is made on the basis of an alleged contravention of a supervision order made by the Court on 14 March 2011. The alleged contravention was by the use of cannabis last December. That contravention is now admitted.

Therefore, it is for the released prisoner to satisfy the Court on the balance of probabilities that the adequate protection of the community can, despite the contravention of the existing order, be ensured by the existing order.

The circumstances of the respondent's offending, and which led to the supervision order made last year, are fully set out in the judgment by which that order was made and it is unnecessary to repeat them here. It is sufficient to say that the respondent has an extensive history of offending and, as a man now in his early 40s, he has spent, it would appear, most of his adult life in prison.

As also appears from the judgment last year, the supervision order was made in circumstances where the Attorney-General did not press for a detention order. That appears to be entirely consistent with the

psychiatric evidence as summarised by the Judge who made that order. Her Honour then had the benefit of the evidence of three psychiatrists. Two of them have again assessed the respondent for the purposes for this application.

The contravention was detected by a random urine analysis conducted on 8 December 2011. Further testing revealed a relatively low level of cannabis consumption.

A complaint and arrest warrant was sworn and issued on 13 December and, on the following day, the respondent was brought before the Court where he was ordered to be detained in custody until a final decision of the Court on this application. He unsuccessfully applied subsequently for interim release, the Court not being persuaded then that there were exceptional circumstances for that interim release.

As I have mentioned, he has now been reassessed by two of the psychiatrists who assisted the Court when the supervision order was made. They are Professor James and Dr Grant. Their reports on the occasion of the supervision order are, of course, summarised in the judgment by which that order was made.

The current opinions of each of these psychiatrists is favourable to the respondent's case. Professor James has now described the respondent as presenting a "very

favourable impression" on examination. He has assessed the current risk of sexual re-offending as moderately low and he supports the release of the respondent on the same terms as the existing supervision order.

Dr Grant was also impressed with the respondent's presentation, describing him as "cooperative, polite and pleasant" and as accepting responsibility for his reincarceration. Dr Grant is of the opinion that the risk of sexual offending would be high in the absence of a supervision order but that "the risks relate particularly to a resumption of alcohol and drug use and also to his antisocial personality traits."

He goes on to say; "in my opinion, the risk of re-offending can be significantly reduced by the application of an appropriate supervision order. The previous supervision order under which Mr Armstrong was released is, in my opinion, appropriate. It proved effective in detecting substance abuse at an early stage and therefore his substance abuse did not progress to a level that significantly increased his risk. Continued close monitoring with appropriate screening programs is necessary." Like Professor James, he does not propose any changes to the existing supervision order.

In the light of this evidence, nor does the Attorney-General suggest any change to the terms of the existing

order. There is no term which must be added to the terms of the present order pursuant to section 22(7)(a).

The contravention in question cannot be described as trivial. The use of cannabis by the respondent, given the connection between substance abuse and his offending in the past, is a serious matter. The psychiatrists who have had the advantage of assessing him recently, having also seen him for the purposes of last year's proceedings, are, however, confident in his prospects of now complying with his supervision order. In particular, they are of the view that this has caused him to be particularly aware of his responsibilities in complying with the order and of the high likelihood that he would return to prison if he does not do so.

Similarly, it is my view that the respondent's experience over the past few months is likely to have demonstrated to him, if he was not otherwise aware of it, that the regime under which he will be supervised, according to this order, is one which will involve, diligent monitoring and management by Corrective Services officers.

In all the circumstances, I am satisfied that the adequate protection of the community can, despite this contravention, be ensured by the existing order.

Therefore, there will be an order that he be released,
subject to the supervision order made by the Court on 14
March 2011. I have signed a draft to that effect which
will be placed with the file.
