# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Neale, Re an Application for Bail* [2013] QSC 310 |
| PARTIES: | **Matthew Thomas NEALE**<br>**(Applicant)**<br><br>**V**<br><br>**The Office of the Director of Public Prosecutions**<br>**(Respondent)** |
| FILE NO: | S706/13 |
| DIVISION: | Trial |
| PROCEEDING: | Applications |
| DELIVERED ON: | 7 November 2013 |
| DELIVERED AT: | Townsville |
| HEARING DATE: | 7 November 2013 |
| JUDGE: | North J |
| ORDER: | The applicant, Matthew Thomas Neale be granted bail on the conditions that:<br>1. He reside at Site 44, 14 Sunset Drive, Winston, Queensland 4825 or at such other address as he may notify in writing to the officer in charge at the Mount Isa Police Station;<br><br>2. He report every Monday and Friday to the officer in charge of the Mount Isa Police Station between the hours of 9.00a.m. and 4.00p.m. |
| CATCHWORDS: | CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – BAIL – grounds for granting or refusing – before trial – generally – onus on applicant |
| LEGISLATION: | *Bail Act* 1980 (Qld) 1980 s 10, s 16(1), s 16(3A), s 16(3C)<br><br>*Criminal Code Act* 1988 (Qld) s 1, s 60A, s 60B<br><br>*Criminal Code (Criminal Organisations) Regulation* 2013 (Qld)<br><br>*Judiciary Act* 1903 (Cth) s 78B |
| CASES: | *Williamson v Director of Public Prosecutions* [2001] 1 QdR 99<br><br>*Lacey v DPP (Qld); Lacey v DPP* [2007] QCA 413<br><br>*Magaming v The Queen* [2013] HCA 40 |
| COUNSEL: | Ms C McKinnon for the Applicant. |

Mr M Cowen for the Respondent.

SOLICITORS: Anderson Telford Lawyers for the Applicant.

Office of the Director of Public Prosecutions for the Respondent.

[1] The applicant, Matthew Thomas Neale, is in custody and applies for bail. He is charged before the Magistrates Court at Mount Isa with two offences against s 60B(1) of the *Criminal Code* alleging that as a participant in a criminal organisation he entered a prescribed place. The particulars of the charges are that he was a participant in the motorcycle club known as the Rebels and the prescribed place was 1 Zena Street, Mount Isa. One charge alleges that the offence was committed on 25 October 2013 and the other the 18th October 2013. An offence against s 60B(1) carries a minimum penalty of six months' imprisonment served wholly in a corrective services facility and a maximum penalty of three years' imprisonment.

[2] Notwithstanding that the charges are pending before the Magistrates Court at Mount Isa the Supreme Court has jurisdiction to grant bail to a person held in custody under s 10 of the *Bail Act* 1980.

[3] Section 60B(4) of the *Criminal Code* defines a prescribed place to mean "a place declared under a regulation to be a prescribed place". The *Criminal Code (Criminal Organisations)* Regulation 2013[1] declares 1 Zena Street, Mount Isa to be a prescribed place for the purposes of s 60B(4) of the *Criminal Code*.

[4] Both sections 60A and 60B of the *Criminal Code* use the term "criminal organisation". The definitions found in s 1 of the *Criminal Code* relevantly define criminal organisation to be "an entity declared under a regulation to be a criminal organisation". The *Criminal Code (Criminal Organisations)* Regulation 2013 declares "the motorcycle club known as the Rebels" to be a criminal organisation.

[5] Section 60B(4) of the *Criminal Code* incorporates into that section the definition of the term "participant, in a criminal organisation" found in s 60A(3) of the Code. It is not necessary for me to set out that definition. For reasons that will become apparent it is likely that at any trial the evidence will focus attention upon the provisions found in s 60A(3)(b) (and perhaps (c) and (e)).

[6] The applicant has been in custody in the Mount Isa watch house since his arrest on 28 October 2013.

[7] Section 16(3A) of the *Bail Act* 1980 relevantly provides:

> "If the defendant is a participant in a criminal organisation, the court or police officer must –

[1] (which came into effect on 17 October 2013).

(a) refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified; and …"

[8] For the purposes of the *Bail Act* the definitions in s 6 pick up the definition of "participant, in a criminal organisation" found in s 60A of the *Criminal Code* and concerning the term "criminal organisation" the definition found in s 1 of the *Criminal Code.*

[9] The curiosity of s 16(3A) is that it does not specify the offence or offences with which a participant in a criminal organisation might be charged that the provision is to apply. This tentative view seems to be reinforced by s 16(3C) which appears to be intended to have effect that s 16(3A) is to apply whether a defendant is charged with an indictable offence, a simple offence or a regulatory offence.[2]

[10] Both counsel submitted, correctly in my view, that in considering the applicant's application to show cause why his continued detention in custody was not justified attention should focus upon the matters specified in s 16(1) of the *Bail Act* 1980 and other relevant discretionary considerations, namely the strength of the prosecution case and the time that might elapse between the application and when the defendant might stand his trial which have been identified in a number of cases binding upon myself.[3]

[11] Ms McKinnon pointed to evidence that the applicant told persons he had, or the members had, stood down or that they had handed in their colours. Concerning the former it is not immediately clear what the term "stand down" means in the context of membership or association or a motorcycle club. Its ordinary meaning suggests inactivity rather than resignation or retirement from membership or association. As to the latter Mr Cowen pointed to the evidence of the vest with the alleged colours attached found during the search on 26 October.

[12] On behalf of the applicant Ms McKinnon of counsel informed me that the matters are listed for a mention on 26 November 2013 at the Mount Isa Magistrates Court. Concerning the considerations relevant to a show cause application she submitted that the prosecution case could not be described as an overwhelming one or even a strong one. She indicated that it was not challenged by the applicant that he attended the particularised address on the dates in question and that that address was a "prescribed place" for the purposes of the legislation. What is contentious is whether at the relevant time he was a participant in a criminal organisation. She conceded that there was ample evidence to show that the applicant had previously been an "associate" of the Rebels Motorcycle Club[4], but she submitted, there was evidence that the applicant had "disassociated" himself from involvement with the club as at 17 October 2013.

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[2] The words used "it does not matter whether" might rise the eyebrow of a draftsman.

[3] *Williamson v Director of Public Prosecutions* [2001] 1QdR 99; *Lacey v DPP (Qld); Lacey v DPP* [2007] QCA 413

[4] Note the phrase "associated with" or "association with" in s 60A(3)(b) and (c) of the *Criminal Code.*.

[13] For the respondent I was directed to the evidence gathered when a search warrant was executed upon the applicant's premises on 26 October 2013 where among other things a "nominee" vest was seized as was the applicant's mobile phone. I was also directed to some text messages that had been downloaded from the applicant's phone. One records a message apparently sent from the applicant's phone on 19 October 2013 – "We have stood down atm". At the trial the court will be asked to infer that "atm" means at the moment.

[14] I have read the affidavits, the annexures and considered the evidence contained therein. I consider that the prosecution has available to it a body of evidence, assuming it can be proven in an admissible form, capable of proving to the requisite standard words or conduct on the part of the applicant on or after 17 October 2013 where he asserted or declared or advertised[5] his membership of or association with the "motor cycle club known as the Rebels" or words or conduct whereby he sought to be associated with that organisation. While I would not describe the prosecution case as an overwhelming one, I would not describe it as a weak one.

[15] In the affidavits read before me there is conflicting evidence of the availability of an early trial. Ms McKinnon informed me that assuming disclosure can be concluded in time it might be possible at the mention on 26 November 2013 to ask for a trial date. She was hopeful that the parties could cooperate upon the issue of disclosure but her optimism was reserved because some of the evidence the prosecution would rely upon is in electronic format and it is not yet clear that the relevant examinations of a computer can be concluded by that time. From the Bar table I was informed by both counsel that there had been a mention at the Magistrates court in Mount Isa late yesterday afternoon attended by representatives of both sides. For various reasons the court informed the parties that the earliest possible trial dates would be on 17 February 2014 and following. If that were the case then by the time the defendant stood his trial he would, if not granted bail, have served four months of the statutory minimum sentence of six months.

[16] Turning to the matters specified in s 16(1) of the *Bail Act* 1980 counsel for the respondent did not assert that there was any risk to the safety or welfare of any person in the circumstances of this applicant nor was there any evidence that there was any risk if granted bail that he would interfere with witnesses or otherwise obstruct the course of justice. There was no assertion that there was any basis for fear and apprehension that he should remain in custody for his own protection.

[17] With respect to the risk of reoffending the respondent pointed to the repetition of the conduct alleged on 18 October when intercepted again on the 25th October. Otherwise the respondent conceded that the applicant had no criminal history and was in full time employment.

[18] Concerning the risk that the applicant might fail to appear the respondent pointed to the circumstances that the applicant, while he is employed fulltime at a mine in Mount Isa, has an address at a caravan park, that he has travelled to Perth with the motorcycle club and that in a recent text message had indicated a

[5] As to this see his T shirt when he attended the Mount Isa Police Station on 26 October 2013.

desire to visit Brisbane. In submissions before me counsel for the respondent pointed to the circumstance that the motorcycle club Rebels had a membership in other parts of the State and nation and that it might be possible for the applicant to evade detection or arrest with the assistance of others. More immediately I was directed to an affidavit of AC Moynihan which revealed that the defendant and his girlfriend had been served with an eviction order by the proprietor of the caravan park. According to the affidavit the applicant had until 20 December 2013 to vacate the caravan park.

[19] In *Williamson v Director of Public Prosecutions*[6] Thomas JA noted that no grant of bail is risk free[7]. I am conscious there is some risk because the defendant's ties to Mount Isa seem to be limited to the circumstance of his employment, his now temporary residence at a caravan park and his association with the motorcycle club that there is some risk that he might fail to appear and surrender into custody. However in view of his unblemished "criminal history" his employment and his seeming co-operation with the police investigators (he attended at the Townsville Police Station on two occasions to enquire about property but in a manner that seemed to be cooperative) I do not consider that there is an unacceptable risk in this respect.

[20] There is no suggestion that the defendant has been charged with any other serious offending. In submissions on behalf of the respondent I was reminded that the applicant had allegedly committed two offences knowing that it was unlawful to attend the premises (assuming he was a participant at the relevant time). In the circumstances I am satisfied that there is not an unacceptable risk that the applicant would commit an offence if granted bail. While, in the past, it is conceded he has been associated with, what has now been declared to be a criminal organisation, the applicant has satisfied me on the state of the evidence that the grounds for the grant of bail are made out. In other words he has satisfied me that there is not in the circumstances an unacceptable risk that if released on bail he would fail to appear and surrender into custody or while released on bail commit an offence or endanger the safety or welfare of any person or interfere with a witness or otherwise obstruct the course of justice.

[21] In the circumstance where the applicant has satisfied me of those matters, and of the time that will elapse before trial in the exercise of my discretion I propose to grant him bail.

[22] In the course of argument I raised with counsel the question of whether the application before me involved in any way a matter arising under the constitution or its interpretation[8]. I raised this not because I could identify such a matter but because of speculation in the course of some commentary upon what has become a public issue. Neither counsel suggested that the determination of this application for bail relevantly raised a matter.

[23] Lest there be any misunderstanding or misinterpretation nothing that I have said in these reasons nor the orders that I make are intended to serve any purpose other than to determine an application for bail in accordance with settled

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[6] [2001] QdR 99.
[7] I will not repeat his Honour's well-known observations recorded at length at [22].
[8] See s 78B *Judiciary Act* 1903 (Cth) and the obligation to give notices.

principles. Judges may work in cloistered confines but they do not live outside the community with the consequence that all judges are aware of controversies in the public domain. Be that as it may the following is a clear reminder of what I understand to be the orthodox view:

> "[105] The enactment of sentences by the legislature, whether as maxima or minima, involves the resolution of broad issues of policy by the exercise of legislative power. A sentence enacted by the legislature reflects policy-driven assessments of the desirability of the ends pursued by the legislation, and of the means by which those ends might be achieved. It is distinctly the province of the legislature to gauge the seriousness of what is seen as an undesirable activity affecting the peace, order and good government of the Commonwealth and the soundness of a view that condign punishment is called for to suppress that activity, and to determine whether a level of punishment should be enacted as a ceiling or a floor.
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> [106] In laying down the norms of conduct which give effect to those assessments, the legislature may decide that an offence is so serious that consideration of the particular circumstances of the offence and the personal circumstances of the offender should not mitigate the minimum punishment thought to be appropriate to achieve the legislature's objectives, whatever they may be".[9]

[24] The orders that I make are that the applicant, Matthew Thomas Neale be granted bail on the conditions that:

1. That he reside Site 44, 14 Sunset Drive, Winston, Queensland 4825 or at such other address as he may notify in writing to the officer in charge at the Mount Isa Police Station;

2. That the applicant report every Monday and Friday to the officer in charge of the Mount Isa Police Station between the hours of 9.00a.m. and 4.00p.m.

[9] *Magaming v The Queen* [2013] HCA 40 (11 October 2013) per Keane J at [105]-[106].