



Transcript of Proceedings

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Date: 19 January, 2005

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MUIR J

No 304 of 2005

RE: AN APPLICATION FOR BAIL BY JOHN MAJOR CLUMPOINT

BRISBANE

..DATE 14/01/2005

ORDER

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the Child Protection Act 1999, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application to vary conditions of bail to which the applicant consented a comparatively short while ago. It is apparent from the consent that the conditions were, at the time the consent was given, thought to be acceptable. Of course, the applicant has now had experience of the practical consequences of those conditions and is in a much better position to appreciate their full impact.

Mr Boe, who appears for the applicant submits that the condition of residence in Townsville in particular is unduly onerous. That is because its effect is that the applicant is required to live apart from his wife and children.

Another consequence of it is that he is deprived of the ability to continue the employment which he had whilst resident on Palm Island. This in turn, Mr Boe submits, occasions the applicant and his family financial hardship.

Now, this is only a brief statement of the, a brief summary rather, of the submissions made on the applicants behalf. Extensive written submissions, some 15 pages in length, were provided by Mr Boe. Those submissions argue the applicant's case lucidly, persuasively and in considerable detail.

I am required by section 16 subsection (1) of the Bail Act to have consideration to whether there is an unacceptable risk that the applicant if released on bail would, amongst other things, commit an offence or interfere with witnesses or otherwise obstruct the course of justice.

In this regard, section 16 subsection (2) provides that in assessing whether there is an unacceptable risk in any such regard the Court must have regard to the nature and seriousness of the offence, the character, antecedents, associations, home environment, employment and background of the defendant, the strength of the evidence against the defendant and the history of any previous grants of bail. I mention these matters because they seem to have strayed from the minds of some of the deponents on the side of the respondent.

Affidavits have been sworn which seem to imply that terms and conditions of bail ought be set as a form of punishment for offences not yet proven or by way of redress to victims of such crimes. That loss of perspective creates some doubt about the objectivity of the deponents in question.

The respondent's deponents expressed concern about the volatility of the situation on Palm Island. On the applicant's side, affidavits have been filed which are designed to show that matters on Palm Island are settling down and that the risk of further violent incidents is receding.

The parties' approach in this regard acknowledges, in my view correctly, that the risk of reoffending on the part of the applicant is, to an extent, related to the volatility of the situation on Palm Island and the risk of a reoccurrence of group violence or disorder. Mr Boe's written submissions implicitly acknowledge that, disregarding rights and wrongs of

past conduct, what is likely to happen on Palm Island is affected by the perceptions of members of the local community. It is difficult to assess on the state of the material the likelihood of what Mr Boe refers to as the "frustrations" of the community resulting in violent actions.

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The evidence shows that steps are being taken which are designed and are probably likely to reduce the risk of group violence. But I accept the submissions of Mr Martin of Senior Counsel on behalf of the respondent that it is too early as yet to conclude that the risk is at a level where I could be satisfied, so far as the applicant is concerned, of the existence of no unacceptable risk in terms of section 16 subsection (1) of the Bail Act.

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In arriving at this conclusion I have had regard to the prior criminal history of the applicant. That history does not suggest to me an appropriate capacity on the part of the applicant to hold himself aloof from an emotionally triggered outbreak of violence occasioned by some grievance, pent-up frustration or occurrence. I do not think for present purposes that is particularly useful for me to speculate as to matters which might give rise to difficulties on Palm Island but the material refers to the commencement of a Coroner's inquiry in the near future.

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That is an event of some significance. Presumably at that time and as events unfold around it, it will become possible to form a more accurate assessment of the degree or risk which

would be posed by the applicant's returning to reside with his family and continue with his employment. Plainly, it is highly desirable that he be permitted to do so at the first reasonable opportunity as long as the requirements of the Bail Act can be met.

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I am also not persuaded on the material before me that having regard to the necessarily close contact the applicant would have with other residents on the island that there would be an acceptable risk of interference with witnesses. Again, with the passage of time, it seems likely that this risk will diminish to an acceptable level. In my view, that time has not yet arrived.

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In reaching these conclusions I think it appropriate to have regard to the evidence of the learned Magistrate who on 21 December 2004 entertained applications for variation of bail.

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Now, Mr Boe, should I adjourn the application or dismiss it?

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MR BOE: I'd prefer you adjourned it.

HIS HONOUR: I adjourn the application to a date to be fixed.

MR BOE: Thank you.

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