Queensland Government

QUEENSLAND COURTS AND TRIBUNALS

TRANSCRIPT OF PROCEEDINGS

MENTAL HEALTH COURT

RYAN J

[redacted]

[redacted]

APPEAL FROM MENTAL HEALTH REVIEW TRIBUNAL

[redacted] **Appellant**

OFFICE OF THE CHIEF PSYCHIATRIST **Respondent by Election**

ATTORNEY-GENERAL **Respondent**

[redacted]

[redacted]

DAY 1

REASONS FOR FINDING

RESTRICTED ACCESS TRANSCRIPT

Any rulings in this transcript may be extracted and revised by the presiding Judge.

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.

[redacted]

HER HONOUR: Returning to the matter of [redacted], in this appeal, my order is that the decision of the Mental Health Review Tribunal on [redacted] confirming the defendant's forensic order (community category) on certain conditions, including the condition that the defendant not drive a motor vehicle, is confirmed. The appellant has not succeeded in his appeal against that decision, but I want to now set out my reasons.

The appellant argued formally two grounds of appeal. The first was that the hearing proceeded in his absence, and in that sense, he had been denied procedural fairness. The second ground was an objection to the condition imposed that he not drive a motor vehicle (as a blanket condition). Previously, he had been permitted to drive with the consent of the relevant authorised psychiatrist. Although not an express ground of appeal in the documentation, he had previously indicated, and the parties were happy to proceed on the basis, that he also argued that the tribunal ought to have stepped down his forensic order to a treatment order, asking how would his risk change if the forensic order was reduced to the less restrictive order.

The appellant supported his appeal with lengthy written submissions, during which he explained that life was difficult without a driver's licence. He made complaints about the way he had been treated historically, which are relevant by way of background to the present appeal. He explained that in either [redacted] or perhaps [redacted], he was permitted to drive again but that permission was withdrawn after a decline in his mental health in [redacted]

He explained in his written material his perspective of the reported decline in his mental health, and he admitted to a long-term drug problem. He explained how his mother was trying to help him clean up his life. He explained that he wished to see an addiction specialist. It was hard to quite understand what that might have been for, but for some sort of opinion about the impact of his drug use on his ability to drive. His written arguments to the Court outlined other stressors. He made an argument that he had been positive for the use of methylamphetamine or ice previously and nothing had been done about his driving or his licence, and his complaint seems to be that out of the blue, something was done on this occasion.

[redacted] advocated competently in this Court on his behalf, as she has done so for many years in many different forums. She provided lengthy and well-expressed written arguments for the Court, supported by documentation which hit on the three questions for me. I consider it necessary to acknowledge at the outset that she was astute to recognise not only errors or at least one error in the material before the tribunal, but the cut and paste approach to report writing for various purposes under the Mental Health Act regime.

I acknowledge that the Mental Health Act regime and a forensic order in particular imposes constraints on liberty, and it is no surprise at all that she and her son would feel very aggrieved at the perception that decisions about [redacted] were based on inaccurate information or information cut and pasted from one report to the next

[redacted]

without fresh consideration of that information. I acknowledge also the importance of hope in any person's recovery from any illness.

A forensic order is, of course, not designed to take away hope. It is imposed when a person has committed serious criminal offences whilst seriously mentally unwell, and it reflects the law's recognition that a seriously unwell person ought not to be held criminally responsible for their crimes and ought not to be punished by, for example, lengthy terms of imprisonment which would have been imposed on a person without mental illness who committed those crimes.

But the fact that a person has committed crimes whilst unwell and has put the public at risk can't simply be ignored or excused. The law, as expressed in the *Mental Health Act*, requires oversight and control of such a person until they are healed from their illness, or at least healed to the extent to which they pose no risk of serious harm to the community. In that sense, forensic orders are intended to compel engagement with mental health professionals for the purposes of healing the person subject to them so that ultimately, they are no longer necessary.

But the law is alive to the reality that, as [redacted] himself recognises, some illnesses are very difficult to treat, and the point of healing may take some time to reach, and as everyone in this room well knows, forensic orders are subject to regular reviews and the Act obliges the MHRT to consider whether anything less restrictive is appropriate to achieve one of the principal objects of the Act, and that is all about community safety.

Everyone in this room knows that illicit drugs, including cannabis and especially methylamphetamine, can cause a serious deterioration in mental health, and everyone in this room knows that persons affected by illicit substances, whatever illness they may or may not have, should not get behind the wheel of a car. People do, and our Courts see the tragic consequences of that all too often, but I suspect that everyone in the room knows that it would be dangerous to simply hand car keys to a person who is consuming drugs on a regular basis.

Having said that, I acknowledge that that is not what [redacted] is seeking, but I consider it important to put those things on the record so that we have context for this appeal. I want to mention one other thing. What the Mental Health Court, that is what my Court can do, on an appeal against a decision of the Mental Health Review Tribunal is spelt out in the legislation. There are limits on my power.

The material before me suggests that, at least from the point of view of [redacted] and his mother, there is not the level of trust and support or rapport and encouragement between [redacted] and those treating him as is necessary for him to optimise his treatment and potential for healing. I want to make it clear immediately that I am not suggesting that those treating [redacted] have anything other than his best interests at heart, but we all know that time and resource constraints and all sorts of other matters beyond people's control can bear adversely on any relationship.

[redacted]

It is then very encouraging tha[redacted] now has a recovery coach who is clearly committed to him, committed enough to attend at this hearing and to make submissions on his behalf. I have not seen that happen before, and I would not be surprised, and it may be hoped, that with [redacted] input, the relationship between [redacted] and his mother on the one hand and those treating him on the other will improve. But my focus has to be on this appeal, the grounds of the appeal, and what I am obliged to do in it.

Turning to the grounds of appeal. On the question whether any issue arises because the tribunal proceeded in [redacted] absence, counsel for the Attorney-General drew my attention to section 747 of the Act, which permits the tribunal to proceed in the absence of an involuntary patient which, by section 11, includes a person subject to a forensic order in certain circumstances. Those circumstances include where the person chooses of their own free will not to attend, thus the tribunal proceeded lawfully and there is nothing on that ground of appeal. I observe that if [redacted] fears he does not understand the clinical report or has not had enough time to check it, he is better off appearing and making those points to the tribunal rather than staying away in despair or protest.

Arguments about the need for the forensic order and the blanket prohibition on driving are, as I understand them, linked. The question for me on this appeal, which is by way of rehearing, is the same as the question before the Mental Health Review Tribunal. I have to ask myself whether a forensic order is necessary because of the appellant's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property, and I have to consider whether there is any less restrictive way to protect the community. I have to think about the impact of the Human Rights Act, and I have to think about the conditions attached to the forensic order.

In hearing this appeal, I am to consider the information that was before the MHRT and anything additional, so all of the additional material provided by the appellant and his mother. As I have already said, it is common sense and well-known, but on the evidence, which is what I have to base my decision, that just as there is for any person suffering from mental illness, there's an obvious link between [redacted] illicit drug use and the risk of decline in his mental health.

I proceed on the basis that his drug consumption is declining, and that is a positive thing, but by his own admission, it continues, and while it continues, the risk of mental deterioration and all that goes with it exists. The information before me which I considered, which was also before the MHRT, sets out the progress of the appellant's illness since about [redacted]

I will not go through the details of what we call the index offences. I do not want to dwell on the negative, and I note that those offences were committed a long time ago, but I cannot pretend that they were not serious, and I cannot pretend that there is no risk that if the appellant becomes seriously unwell again, he might behave in a similar way. I cannot ignore the fact that the index offending occurred in

[redacted]

the context of the appellant's then habitual drug use, and I cannot ignore the fact that drug use has been a problem for the appellant for a long time and still is.

What is encouraging to note is that the appellant has much more insight now into his illness than he had in the [redacted] I see that in a report from [redacted] that the appellant was then insightless and without a commitment to his treatment. That is clearly not the case now. [redacted] advised me, acknowledging his addiction and acknowledging that he had an illness that is difficult to treat are signs of the appellant's insight. I suspect that it is likely now that as an older person, the appellant himself appreciates that there is a risk of his reoffending whilst under the influence of a drug like methylamphetamine, but all of the indications in the material before me are, as I have observed, that there has been a reduction in [redacted] drug consumption but he remains a consumer of illicit substances. Also, among the material before me, as it was before the tribunal, is [redacted] risk assessment report. Before the forensic order in this case can be revoked such a report is necessary. I have read through that report. It outlines the appellant's history of violence and expresses [redacted] opinion that relapses of the appellant's mental illness were most likely to occur in the context of substance use or non-adherence to antipsychotic medication. There does not seem to be any risk of non-adherence with antipsychotic medication that has given any prominence in the material, but there are risks associated with drug use. If the appellant were to relapse, in [redacted] view, the risk of harm to himself and others was high. [redacted] referred to the appellant's convictions for driving offences and his admitted continued use of drugs and offered the opinion, a common-sense one, that that increased the risk of the appellant's misadventure including by way of motor vehicle accidents. [redacted] opinion, the appellant's continued use of drugs carried the risk of a relapse of his mental illness and a risk of harm associated with such a relapse.

At about the time that [redacted] was assessing the appellant for the purposes of that report, the appellant had – perhaps this is part and parcel of not having much hope - no particular interest in ceasing his drug use or distancing himself from his drug using associates. And I acknowledge that there has been a shift. [redacted] report also describes episodes of violence, and I will not go through the details – but episodes of violence that occurred in [redacted] (they were threats rather than actual violence), and [redacted]. There were issues about the appellant failing to return to hospital in [redacted], and a breach in [redacted] of the conditions of limited community treatment.

Noted in the material was that the appellant obtained employment in [redacted], but of course issues around his driving got in the way of his being able to continue with that employment. In [redacted], so a few months ago now, he said that he was not motivated to abstain from substances. And he said, in effect, that he might be motivated were the Mental Health Review Tribunal to step down his forensic order to a treatment support order. That is not what the law permits the Mental Health Review Tribunal

[redacted]

or indeed this Court to do, to motivate someone to behave by loosening restraints. Restraints will be loosened when there is an appropriate change in behaviour.

In [redacted], the appellant had little insight into his chronic relapsing mental illness, his relapse signature, his need for treatment or the risks of illicit drug use, and he recommended the confirmation of a forensic order. [redacted] report on [redacted] was to similar effect, although [redacted] noted the appellant's period of relative stability but expressed concerns. Again the same thing emerges about his continuing to use illicit substances.

In around [redacted], because there had been episodes of erratic driving and minor accidents, on the strength of an OT assessment, further driving lessons were recommended before the appellant was permitted to drive. As I understand things, permission was granted for him to drive towards the end [redacted], if not by [redacted] but after [redacted] further concerns were raised and ultimately the prohibition was imposed.

Coming back to [redacted] report, he considered at the time of writing his report that there had been insufficient progress in terms of engagement or substance cessation to warrant a consideration of a revocation of the forensic order. Primarily because a rapid decline in the appellant's mental state might occur if his use of methylamphetamine increased. Other information before me shows, indeed it is not denied, a drug urine screen that reveals the consumption of methylamphetamine in [redacted]. Consumption around that time coincided with a decline the appellant's mental state which the appellant's mother also observed. [redacted], the Order and Risk Management Committee recommended that the appellant not be permitted to drive whilst he remained substance dependent, and their opinion was before the Mental Health Review Tribunal.

The most recent report about the appellant is [redacted] report dated [redacted]. It includes information that Dr McArdle told the appellant about the result of his Mental Health Review Tribunal hearing on [redacted]. He told the appellant that the panel was concerned about his driving in the context of ongoing drug use, and he was not attending certain appointments at [redacted]a for the purposes of addressing his substance use issues in [redacted]. [redacted] report notes that the appellant became irritable and said that he would use even more drugs now that it was a condition of his order that he not drive. I do not treat that as anything other than a statement made in anger.

The appellant told [redacted] in June that he continued to use amphetamine twice a week and cannabis four or five times a week. And in [redacted] he was still ambivalent about addressing his substance use issues. As I have noted, that seems to have changed quite recently. He was seen again by [redacted] on [redacted], and I do not think, [redacted], you had been appointed at that point.

[redacted]: No.

[redacted]

HER HONOUR: No. [redacted] the appellant reported that he was still using amphetamine twice a week and cannabis four times a week, and he was encouraged again to engage with a drug and alcohol service. Longitudinally, over [redacted] set out the decline in [redacted] and how it was manifested. I will not go through all the details of that. [redacted] outlined why concerns were raised about the impact of illicit substances on the appellant's mental state and his ability to drive. [redacted] observed that the appellant's engagement with the mental health team was fairly superficial and that while there had been no significant disturbance since March there was still this continued drug use, as I have observed. [redacted] report predated the appointment of a recovery coach. I would like to think that things will improve from here on in.

But bearing in mind the questions for me on the material in front of me, the risks remain while drug use is a problem. Whether the drugs are consumed intravenously, smoked or consumed in any other way. While drug use is still an issue for the appellant this court cannot ignore, and the evidence supports, the risk of serious deterioration in his mental state and that goes hand in hand with the risk of harm to others. It goes hand in hand with the risk to other road users were he to drive. In reaching my conclusion that the decision of the Mental Health Review Tribunal ought to be confirmed I adjusted the information before the tribunal in the sense that I ensured that I was aware of the accurate position. Having done so, I confirm, as I said, that decision. The time has not yet arrived for a step down of that order, but it may be hoped that now with the support of [redacted] the appellant can take steps to grapple with his drug use issues and that the appointment of [redacted] is what has been for the past 20-odd years the missing piece in healing the appellant.

Is there anything I have overlooked, [redacted]?

[redacted]: No, your Honour.

Thanks, Madam Bailiff.