

Court Drug Diversion Initiatives Conference 2006 Drug Diversion – A Supreme Court Perspective

1. The importance of the Drugs Court programme was demonstrated in the case of *R v Muller* [2005] QCA 417 where I observed at [59] – [61]:

“[This case] shows the benefit to the community of orders made under the *Drug Rehabilitation (Court Diversion) Act 2000* (Qld). Had such an order not been made, there seems little reason to doubt that the applicant would have continued to commit offences with the same relentless persistence that he demonstrated prior to the making of that order on 22 June 2004. He has not offended since 10 August 2004 – the longest period of his adult life when he has not offended whilst not in custody. Not surprisingly that has coincided with the time in which he has been drug-free, as monitored by fortnightly urine testing. His life is almost a text book case of the direct link between illegal drug usage and addiction and criminal offending and the difficulties and set backs faced by those who attempt to rehabilitate themselves.

There is no doubt that the community has benefited by the cessation in his criminal activity. So has the applicant. He now has a job, a partner and has purchased a house. He is living a stable, productive life. Unfortunately returning him to custody for breaches committed in late 2003 and early 2004 of a suspended sentence imposed in August 2002, is likely to put all that in jeopardy.

He cannot continue in employment if he is in prison and he will once again be exposed to all the stresses and temptations of a custodial environment. Those are the factors which lead me to the conclusion that it would indeed be unjust, both to the community and to the applicant, in these most unusual circumstances, to require the applicant to serve all or any of the sentence of imprisonment that was imposed upon him in 2002.”

2. There has been a 60 per cent growth in criminal matters before the Supreme Court from 2002-2003 (469 matters) to 2004-2005 (750 matters). That growth relates to serious drug crime. In the Supreme Court, very few of the serious drug matters go to trial: most are pleas of guilty. It must be said that those that do go to trial are mostly long and complex.
3. The Supreme Court deals with drug problems both in bail applications and in sentencing. It is important to recognise the significance of drug rehabilitation conditions in bail and community based orders.
4. Bail (so many offenders with drug problems)
 - why it was necessary to include such conditions
 - the significance of bail in terms of carrot and stick
 - important to have a variety of available drug rehabilitation conditions from live in to community based counselling, random urine analysis, other types of assessment and counselling.

5. I have attached a standard form of drug rehabilitation conditions found in bail orders.
6. It is important to analyse whether or not these are successful.
7. An evaluation done by Julanne Murray then from the DPP and Fiona Rafter then from the Legal Aid Office of the success or otherwise of these bail orders. Such orders are now common because of their proven success. The conclusion of that report was “it can be said that the experts in drug rehabilitation of the various organisations are of the view that drug rehabilitation as a condition of bail provides an added powerful incentive to the successful rehabilitation programme. The programme unusually succeeds at first attempt.”
8. The point of sentencing is the protection of the community e.g. from methylamphetamine labs, violence and broken families. If possible the best way of achieving this is by deterring the offender from future offending behaviour. In the case of a drug addicted or affected offender, dealing with the drug problem is paramount. I received a letter just this month from a man with a history of drug offending and a number of attempts at rehabilitation that had failed. I put him on an intensive corrections order with very strict drug rehabilitation conditions. Not only has he rehabilitated himself he has now almost completed a university degree with a GPA of 6.5, he is in a stable family relationship and volunteered an extra 500 hours in addition to the volunteer work he was required to do of 12 hours a week for a year under the intensive corrections order.
9. In spite of the large number of conditional orders made, very few are breached.
10. What do we need for the future?
 - (1) education on drugs – particularly designed to prevent drugs being referred to as “soft” drugs or “party” or “recreational” drugs;
 - (2) much more emphasis on fixing the problem of drug usage – it is demand driven;
 - (3) community based programmes: rehabilitation programmes of many different types;
 - (4) programmes in custody
 - (5) recognition that a punitive approach to users is unlikely to be successful; what is needed is support, incentive and the fear of realistic sanctions.
- 11. The aim is to make the offender a functioning member of mainstream society again.**

Justice RG Atkinson
Supreme Court of Queensland

IN THE SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER:

RE: AN APPLICATION FOR BAIL BY

ORDER

Before:

Date of Order:

Document initiating this hearing: Application filed on

IT IS ORDERED THAT in relation to the charges of:

the Applicant be admitted to bail upon his/her own undertaking in respect of those charges, such undertaking being conditioned that:-

1. The applicant appear and surrender himself/herself into custody;
 - a) At the Brisbane Magistrates Court on ... and such other dates and times as the Magistrates Court may determine.
 - b) Before the Brisbane Supreme Court on ... and such other criminal sittings of the Supreme Court to which he/she has been committed in respect of the offences or any of them at the sittings specified by the Court to which he/she is so committed at the date, time and place, fixed for the trial or sentence, notice of which shall be given to him/her or his/her solicitor by the Director of Public Prosecutions or a person authorised by the Director of Public Prosecutions.
 - c) Before the criminal sittings of the Brisbane District Court to which he/she has been committed in respect of the offences or any of them at the sittings specified by the Court to which he/she is so committed at the date, time and place, fixed for the trial or sentence, notice of which shall be given to him/her or his/her solicitor by the Director of Public Prosecutions or a person authorised by the Director of Public Prosecutions.
 - d) The Applicant not depart from either Court without leave of the court and so often as leave is granted, return at the time appointed by the court and again surrender himself/herself into custody.

1. The Applicant remain at Arthur Gorrie Correctional Centre until the Department of Corrective Services are advised that a bed is available for the Applicant in an appropriate drug rehabilitation program at [Logan House, 75 Kirk Rd, Chambers Flat, Queensland 4114].
2. Upon a bed becoming available for the Applicant at [Logan House, 75 Kirk Rd, Chambers Flat, Queensland 4114] the Applicant shall remain at Arthur Gorrie Correctional Centre until a person who has previously been approved in writing by the Office of the Director of Public Prosecutions is able to transport the Applicant from Arthur Gorrie Correctional Centre directly to [Logan House, 75 Kirk Rd, Chambers Flat, Queensland 4114].

3. The Applicant shall reside at [Logan House, 75 Kirk Rd, Chambers Flat, Queensland 4114] to complete the live-in drug therapy program.
4. The Applicant shall reside at [Logan House] for the duration of the live-in drug therapy program and shall not leave the Centre unsupervised, except for the purpose of appearances in Court. Should the Applicant leave Logan House unsupervised at any time before the completion of the drug rehabilitation program, other than for the purpose of attending Court, the Applicant will be in breach of this bail order.
5. The Applicant, while residing at [Logan House, 75 Kirk Rd, Chambers Flat, Queensland 4114] abide by all rules and conditions associated with the program.
6. The Applicant provide a signed authority (attached) to the [Executive Director at Logan House, 75 Kirk Rd, Chambers Flat, Queensland 4114] to notify the Director of Public Prosecutions when the Applicant completes the program or in the event that the Applicant should be discharged from the program, breach any rules or conditions of the program or fail to complete the program.
7. On completion of the live in program at [Logan House, 75 Kirk Rd, Chambers Flat, Queensland 4114] the Applicant reside at ... or at such other addresses for which the Applicant has received the prior written consent of the Director of Public Prosecutions.
8. On completion of the live in program at [Logan House] the Applicant report each Monday, Wednesday and Friday between the hours of 8am and 4pm to the Officer in Charge of the ... Police Station or such other police station as authorized in writing by the Director of Public Prosecutions or on such other days and times as authorised in writing by the Director of Public Prosecutions.
9. The Applicant not leave the State of Queensland without the prior written consent of the Director of Public Prosecutions.
10. The Applicant not use any illegal drug whilst the subject of this Order.
11. Three days prior to his/her completion of the live in rehabilitation program at Logan House the Applicant shall nominate a Medical Practitioner he/she will attend upon in order to submit to random drug testing.
12. The Applicant upon nominating a Medical Practitioner provide a written authority (attached) to his/her nominated Medical Practitioner or their nominee to disclose the results of any drug testing to any person employed by the Director of Public Prosecutions.
13. The Applicant attend at such times as requested by the Director of Public Prosecutions upon the nominated Medical Practitioner for the purpose of drug testing which shall be conducted randomly but not more frequently than once a month.

Deputy Registrar