

The Queen v Poulson [2003] NTSC 53

PARTIES: THE QUEEN
v
NEIL POULSON

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN
TERRITORY EXERCISING TERRITORY
JURISDICTION

FILE NO: 20202800 & 20112431

DELIVERED: 14 May 2003

HEARING DATES: 13 May 2003

JUDGMENT OF: MARTIN CJ

REPRESENTATION:

Counsel:

Appellant: C Roberts
Respondent: DPP

Solicitors:

Appellant: D Bamber
Respondent: CAALAS

Judgment category classification: C
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Poulson [2003] NTSC 53
No. 20202800 & 20112431

BETWEEN:

THE QUEEN
Appellant

AND:

NEIL POULSON
Respondent

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 14 May 2003)

- [1] Application for bail. On 19 February 2003 a jury found the applicant unfit to stand trial pursuant to Div 3 of Pt IIA of the Criminal Code 1999 (NT). The applicant was alleged to have committed two counts of aggravated assault and one of aggravated unlawful entry.
- [2] The learned trial Judge then determined that there was not a reasonable prospect that the applicant might, within 12 months, regain the necessary capacity to stand trial (s 43R). In those circumstances the court must hold a special hearing within three months thereafter. It has power to extend that period for not more than a further three months, s 43U, and there is no limit to the number of extensions which the court may so order.

- [3] The provisions of the Code relating to a special hearing are set out in Div 4 of Pt IIA. They envisage a hearing of the kind conducted when an accused pleads not guilty to a charge or charges brought on indictment. If the jury finds the offence is proved, then the court must proceed to invoke Div 5 relating to the making of a supervision order, or discharge the accused person unconditionally.
- [4] A supervision order continues for a time which in a court's opinion would have been the appropriate period of sentence of the person had he or she been found guilty, s 43ZG. The person may be committed in custody to prison or another appropriate place, s 43ZA(1)(a).
- [5] It is understood that there are other charges pending against the applicant. One of them has given rise to this application in the following circumstances.
- [6] His Honour granted bail to the applicant pending the clarification of a number of issues, including how the Director of Public Prosecutions proposed to proceed further with particular reference to the multiple charges, and, the fixing of a period for the conduct of a special hearing or hearings. Amongst other things, the applicant undertook that he would reside at Yuendumu, not enter Alice Springs except for certain specific purposes, not drink alcohol and obey the reasonable instructions of his father. On 23 April last he broke each of those undertakings and, it is

alleged, committed another assault. He was apprehended and placed in custody. Hence this application.

- [7] I heard from the applicant's father, Christopher Jabanardi Poulson. He explained that the applicant had gone to Yuendumu to reside there with his father and other members of his family. The applicant was known to have drunk alcohol to excess previously, but had not drunk any whilst living with his father who does not drink. The applicant was obliged to obey his father's directions and those of his second father and did so.
- [8] However, according to Mr Poulson, unbeknown to him the applicant's "uncle" brought him to Alice Springs so that the applicant could make arrangements with Centrelink in regard to his social security benefits. Whilst in Alice Springs he got into that trouble.
- [9] If the applicant was given another chance, his father said that he would take him straight back to Yuendumu and would tell all the family members that the applicant was not to be taken away from there. Mr Poulson said that he would bring the applicant to court when required. The applicant does not drive a motor vehicle. There is a police station at Yuendumu open every day and there is no difficulty in reporting to the police there. Mr Poulson said he was prepared to give his undertaking to the court that the applicant would abide by his bail conditions.
- [10] Prior to the alleged offending which led to the current proceedings, the applicant had been convicted on a number of occasions for assault, including

upon women and whilst armed with an offensive weapon. The details of the offending are not presently available. The sentences imposed are not clear from the record produced, but it is plain the applicant has offended on numerous occasions.

- [11] It appears from his Honour's decision to conduct a special hearing that the applicant is mildly retarded, probably as a result of complications at birth resulting in lack of oxygen to his brain. Alcohol adversely affects his condition.
- [12] The breaches of the bail undertakings are serious and allegedly have led to a further assault. The Director is rightly concerned that if the applicant is released again, and fails in his undertakings, he will pose a threat to members of the public. I accept that that is possible.
- [13] However, there are other considerations. It may be doubted that the applicant has a full understanding of a bail undertaking. If bail is refused he will be obliged to spend an indeterminate time in custody since the Director has not yet indicated to the applicant's legal representatives how he intends to proceed. No time can yet be confidently fixed for the special hearing or hearings. The time, if any, to which he may be the subject of a supervision order and the nature of that order cannot be estimated.
- [14] The applicant can only be held in the meantime in a prison, an unsatisfactory environment for a person with his mental disability. What is painfully obvious is that at this stage the interests of the community and the

welfare of the applicant both call for him to be under supervision designed to ensure, so far as is possible, that he does not have the opportunity to drink alcohol.

[15] As already indicated, the applicant's father is prepared to give his undertaking to the court to be responsible for his son at Yuendumu. Further, the role of supervision is enhanced by the knowledge that the police are stationed there. If the applicant failed in an obligation to report to the police on a daily basis, then I would think that police would be on the look out for him. I would hope that arrangements could be made so that the conditions attaching to his release from prison will be carefully and patiently explained to the applicant in a language he will understand and within his limited intellectual capacity.

[16] I have decided that in all the circumstances bail should be granted, but warn the applicant that any breach may well lead to his being placed in prison and not given the same opportunity to be at large on bail in relation to these matters again.

[17] The applicant will be released on bail on his own recognizance in the sum of \$500 upon his undertaking to appear before the court at Alice Springs on 26 May 2003 at 10am or such other date, time and place as is specified in a notice given to him or the legal practitioner representing him by the Director of Public Prosecutions or a person authorised by the Director in writing in that behalf, and upon the following conditions:

1. That he will not approach or contact either directly or indirectly Catherine Connolly or Anthony Tennyson.
2. That upon his release from custody he shall proceed immediately to Yuendumu and reside there.
3. That he not leave Yuendumu except for the purposes of seeking medical or dental treatment and as required for attendances at court.
4. That he not drink alcohol.
5. That he obey all reasonable instructions of his father or any person standing in the place of his father.
6. That he report daily to the officer in charge of the police station at Yuendumu between the hours of 8am and 5pm.
7. That Christopher Jabanardi Poulson, the applicant's father, enter into an agreement, without security, to forfeit the sum of \$500 if Neil Poulson fails to comply with his bail undertakings.

[18] It will not be necessary for Neil Poulson to attend at court on 26 May providing he is then represented by a legal practitioner unless the Director of Public Prosecutions requires his attendance by the serving of the appropriate notice.
