

**IN THE DISTRICT COURT
AT MANUKAU**

**CIV-2016-092-472
[2016] NZDC 4505**

IN THE MATTER OF an application by the Chief Executive for
the imposition of interim special
conditions on a returning prisoner

BETWEEN THE CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
Applicant

AND GAVIN JOHANSEN
Respondent

Hearing: 26 February 2016

Appearances: S Symon and D Dufty for the Applicant

Decision: 17 March 2016

DECISION OF JUDGE J H LOVELL-SMITH

[1] This is an application by the Chief Executive of the Department of Corrections for the imposition of interim special conditions on Mr Johansen, a returning prisoner pursuant to s 27(5) the Returning Offenders (Management and Information) Act 2015 (“the Act”) without notice. Mr Johansen is returning to New Zealand having been deported from Australia pursuant to s 501 of the Australian Migration Act 1958, on 26 February 2016.

[2] The interim special conditions sought to be imposed in respect of Mr Johansen are:

- (a) To reside at an address as directed by a probation officer, and not to move from that address without the prior written approval of a probation officer.

- (b) To attend and engage in a rehabilitative assessment, and any subsequent recommended treatment or programme, as directed by the probation officer and/or assessor/treatment provider.
- (c) Not to travel outside of New Zealand, unless with the prior written approval of the probation officer.
- (d) Not to possess or consume alcohol.
- (e) The above conditions are to remain in force for 30 working days following the respondent's arrival in New Zealand on 26 February 2016 and will therefore expire on 12 April 2016.

[3] I have considered the following documents in support of this application:

- (a) Notice of originating application for interim special conditions on returning prisoner signed by Michael Colin Ernest Arroll, dated 25 February 2016. Pursuant to s 41 of the State Sector Act 1988 the Chief Executive of the Department of Corrections has delegated to him authority under the "Act" to make this application.
- (b) Affidavit of Michael Colin Ernest Arroll dated 25 February 2016 annexing Mr Johansen's criminal history.
- (c) Determination notice under s 19 of the Act dated 11 February 2016 signed by Inspector G T Byers together with a delegation of authority signed by Michael Bush, Commissioner of Police, dated 18 November 2015.
- (d) Memorandum as to Background by the applicant dated 25 February 2016.

[4] The determination notice under s 19 of the Act dated 11 February 2016 signed by Inspector G T Byers has determined that Mr Johansen is a returning prisoner in accordance with the criteria set out in s 17 of the Act, namely:

- (a) On 3 November 2015 Mr Johansen was convicted in Australia, being an overseas jurisdiction, of:
 - (i) Aggravated assault occasioning bodily harm and threaten to kill, which involves conduct that constitutes an imprisonable offence in New Zealand;
- (b) In respect of the convictions, Mr Johansen was sentenced to 20 months imprisonment which is more than one year.
- (c) Mr Johansen was released from custody within six months of his return to New Zealand which will be on 26 February 2016.

[5] Section 27(2) of the Act provides that the Court must impose a special condition sought unless satisfied they are unnecessary. Section 26(3) of the Act provides that the Court must not impose a special condition unless it is designed to:

- (a) Reduce the risk of offending by the returning prisoner; and
- (b) Facilitate or promote the rehabilitation and reintegration of a returning prisoner; or
- (c) Provide for the reasonable concerns of victims of the returning prisoner.

[6] Mr Arroll, on behalf of the Chief Executive of the Department of Corrections, has certified pursuant to s 27(2) of the Act that:

- (a) Mr Johansen has a conviction for an offence in respect of conduct that would be a relevant sexual or violent offence for the purposes of Part 1A of the Parole Act 2002 in New Zealand; and
- (b) that the interim special conditions referred to above are immediately necessary and should be imposed until the hearing of the substantive application; and

- (c) that in his view the interim special conditions sought are immediately necessary for the purposes specified in s 26(3) of the Act, namely:
 - (i) reduce the risk of reoffending by Mr Johansen; and
 - (ii) facilitate or promote the rehabilitation and reintegration of Mr Johansen.

[7] Mr Arroll deposes in his affidavit that he considers the interim special conditions are immediately necessary because they will reduce the risk of reoffending and facilitate or promote rehabilitation and reintegration. The interim special conditions would do this by providing Community Corrections with the ability to effectively oversee Mr Johansen's reintegration back into the community and closely monitor him to reduce the risk of him reoffending.

[8] The applicant is seeking an interim special condition that Mr Johansen reside at an address as directed by a probation officer and not to move from that address without prior written approval of the probation officer. This special condition is also sought on an interim basis only, and may be removed once he has a suitable address within the community. The standard conditions do not allow Community Corrections to check whether a property is suitable prior to Mr Johansen residing there and there is a risk that he will move, that the property will be unsuitable. This would require Community Corrections to direct him to find an alternative address which would not promote his reintegration into the community.

[9] The applicant is seeking an interim special condition that Mr Johansen is not to travel outside of New Zealand without the prior written approval from a probation officer. This condition is sought on an interim basis to prevent Mr Johansen from leaving New Zealand while Community Corrections is establishing contact with him and assisting with his reintegration back into the New Zealand community. It is unknown what level of support or familial ties, if any, Mr Johansen has in the New Zealand community. Once initial contact is made and further information is received, the Department will evaluate its need for this condition. Without this condition it is considered that reintegration into the community may not occur and

there is an increased risk of reoffending or risk to public safety, should he choose to leave New Zealand.

[10] The applicant also seeks an interim condition requiring Mr Johansen to undergo a rehabilitative assessment and programmes where appropriate. This condition is immediately necessary to facilitate rehabilitation.

[11] The applicant also seeks an interim condition preventing Mr Johansen from possessing or consuming alcohol. The Department considers that this condition is necessary to decrease the risk of Mr Johansen reoffending and to enhance his rehabilitation and reintegration back into the community. The Department can further evaluate the extent to which this condition is needed after it has had an opportunity to obtain further information from and about Mr Johansen.

[12] At this stage the applicant has only limited information about Mr Johansen which has been provided by the Australian authorities. The applicant was only recently notified of his imminent travel. Further information is therefore being sought.

[13] The applicant has not filed applications for final special conditions at this stage. Once further information is obtained and Community Corrections have had the opportunity to meet with Mr Johansen, a better risk assessment can be conducted. At a later date an application for final special conditions may be sought or interim conditions may be varied or withdrawn.

[14] Section 27(6) of the Act provides that interim special conditions imposed under this section expire after 30 working days after the returning prisoner returns to New Zealand, but a Court may extend the expiry of the conditions by a reasonable period to allow an application under s 26(1) to be finally determined.

[15] I am satisfied that the interim special conditions sought by Mr Arroll need to be imposed immediately from the time Mr Johansen returns to New Zealand and meet the criteria set out in s 26(3) of the Act namely:

- Monitoring by the Probation Service is widely acknowledged as helpful in reducing the risk of reoffending; as well as rehabilitation and reintegration – that is especially so, considering that Mr Johansen has returned to New Zealand from overseas.
- Attending assessment and engagement in rehabilitative programmes will, likewise, be of assistance to Mr Johansen and deal with the concerns of victims; and
- Monitoring overseas travel will enable the Probation Service to properly provide for the interests of victims and prevent unlawful re-entry into Australia.

[16] For these reasons, there will be an order for interim special conditions to be imposed on Mr Johansen from 26 February 2016 as follows:

- (a) To reside at an address as directed by a probation officer, and not to move from that address without the prior written approval of a probation officer.
- (b) To attend and engage in a rehabilitative assessment, and any subsequent recommended treatment or programme, as directed by the probation officer and/or assessor/treatment provider.
- (c) Not to travel outside of New Zealand, unless with the prior written approval of the probation officer.
- (d) Not to possess or consume alcohol.
- (e) The above conditions are to remain in force for 30 working days following the respondent's arrival in New Zealand on 26 February 2016 and will therefore expire on 12 April 2016.

J H Lovell-Smith
District Court Judge