Federal Court of Australia

 Gale v Homewood [2024] FCA 264

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| File number: |  |
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| Judgment of: | **PERRAM J** |
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| Date of judgment: | 20 March 2024 |
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| Catchwords: |  **CRIMINAL LAW –** application for interim control order (‘ICO’) under s 104.4 of the *Criminal Code* (Cth) – where ICO not opposed except for condition relating to electronic monitoring – whether that condition was reasonably necessary, and reasonably appropriate and adapted, for a purpose within s 104.4(1)(d) of the *Criminal Code*  |
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| Legislation: | *Criminal Code* *Act 1995* (Cth), Sch 1, ss 80.2C, 104.4 *Firearms Act 1996* (NSW) |
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| Cases cited: | *Homewood v R* [2023] NSWCCA 159 |
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| Division: |  |
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| Registry: |  |
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| National Practice Area: |  |
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| Number of paragraphs: | 16 |
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| Date of last submissions: | 19 March 2024 |
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| Date of hearing: | Determined on the papers |
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| Counsel for the Applicant: | Mr T Glover |
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| Solicitor for the Applicant: | Australian Government Solicitor |
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| Solicitor for the Respondent: | RJ O’Halloran & Co |
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ORDERS

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|  | NSD 264 of 2024 |
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| BETWEEN: | MATTHEW JOHN GALEApplicant |
| AND: | WADE JOHN HOMEWOODRespondent |

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| order made by: | PERRAM J |
| DATE OF ORDER: | 20 March 2024 |

THE COURT ORDERS THAT:

1. The Applicant bring in short minutes of order to give effect to these reasons.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

PERRAM J:

1. Detective Superintendent Matthew Gale of the Australian Federal Police (‘DS Gale’) has applied for an interim control order (‘ICO’) pursuant to s 104.4 of the *Criminal Code* (Cth)(being Sch 1 of the *Criminal Code Act 1995* (Cth)) in relation to the Respondent, Mr Homewood. Mr Homewood is presently being held in the Goulbourn Correctional Centre. His sentence expires this Friday, 22 March 2024, following which he will be released. With the consent of the Commonwealth Attorney-General (in his capacity as AFP Minister within the meaning of the *Criminal Code*), DS Gale seeks an ICO which will place a series of limitations on Mr Homewood upon his release.
2. Mr Homewood, who is represented by his solicitor, Mr O’Halloran, consents to the making of the ICO with the conditions proposed by DS Gale save that he does not consent to the imposition of the first condition, that he should wear a monitoring device for the duration of the ICO. In relation to that condition, I note that DS Gale no longer seeks condition 1.6(d).
3. The details of Mr Homewood’s offending are set out in the Court of Criminal Appeal’s remarks in *Homewood v R* [2023] NSWCCA 159 (‘*Homewood v R*’), with which these reasons assume familiarity. He was convicted and sentenced for advocating terrorism contrary to s 80.2C(1) of the *Criminal Code* and for the offence of failing to store ammunition in an approved storage space contrary to s 40(1) of the *Firearms Act 1996* (NSW).
4. Mr Homewood is an isolated man with a number of issues which have led him down the rabbit hole of right-wing on-line extremism. Following his arrest, Mr Homewood’s electronic devices were analysed which revealed his advocacy on multiple online platforms of serious violence, including the mass murder of people of colour and people of the Jewish and Islamic faiths, the assassination of certain named Australian government leaders and the lionising of right-wing perpetrators of racially motivated mass killings: *Homewood v R* at [22] per Ierace J. DS Gale set out a large number of Mr Homewood’s online posts and they are, to say the least, alarming.
5. At the time of his arrest, Mr Homewood was found with 8,312 rounds of ammunition of assorted calibres together with a copy of ‘Mein Kampf’ and a print out of the United States Department of the Army titled ‘Improvised Munitions Handbook’ which, amongst other things, explained how to make a 9 mm pistol from a metal pipe. In the sentencing proceedings, Dr Seidler, a psychiatrist, assessed the risk of Mr Homewood committing acts of violence as low but that there was a moderate risk that he might engage in less direct behaviours associated with violent extremism: *Homewood v R* at [43] per Ierace J.
6. There are two views of Mr Homewood’s on-line activities. One is that he is serious in his advocacy of violence; the other is that he is a ‘keyboard warrior’ who derives meaning from attracting attention on-line by advocating extremist behaviour. Dr Seidler reported that Mr Homewood did not describe himself as a keyboard warrior although he ‘did express a desire to educate others about what he considered to be important issues’. The presence of 8,312 rounds of ammunition at the time of his arrest makes me incline to the view that he is probably serious, or at least that there is a real risk that he is serious.
7. I am satisfied on the balance of probabilities that the imposition of the conditions to which Mr Homewood consents is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act in accordance with s 104.4(1)(d)(iii) of the *Criminal Code* and also for the purpose of preventing the provision of support for or the facilitation of a terrorist act in accordance with s 104.4(1)(d)(iv) of the *Criminal Code*. I am satisfied of the other matters in s 104.4(1).
8. It was not in dispute that I should make the ICO with each of the conditions sought by DS Gale, with the exception of the first condition. That condition would require Mr Homewood to wear an electronic monitoring device. DS Gale believes that this is necessary because it will permit the police to monitor Mr Homewood’s whereabouts and activities including whether he is engaging in activities of security concern such as the purchase, stockpiling or secreting of firearms or ammunition. Having regard to the fact that at the time of his arrest he had 8,312 rounds of ammunition, I consider this a legitimate concern.
9. Mr Homewood submits that this condition should not be imposed for five reasons. First, the problems confronting Mr Homewood are medical problems rather than problems about a monitoring device. Reference is made to §104 of Dr Seidler’s report which is in these terms:

On the basis of the present assessment, it is recommended that Mr. Homewood would gain from intervention in a number of areas in order to address his criminogenic needs and ameliorate his risk to the community. Firstly, it is important that Mr. Homewood engages in psychological treatment. I am aware that Mr. Homewood has ongoing sessions with Mr. Foxlewin however, with respect, I am of the view that his treatment needs would be best served by a clinical psychologist, ideally with experience with personality disorder and also forensic matters. Through the process of psychological treatment, Mr. Homewood needs to develop symptom management strategies, skills for improved affective coping, as well as interpersonal skills more broadly. Further to this, he has past traumas to resolve. It is my opinion that Mr. Homewood’s needs in this domain are long term and that he will not get the intervention he requires in custody.

1. It is not clear to me how Mr Homewood’s needs for psychological treatment mean that he ought not to be required to wear the monitoring device. Accordingly I do not accept this submission.
2. Secondly, it was submitted that the first condition would have no effect because the whole case against Mr Homewood was connected to his computer use and the other conditions imposed on him would prevent him from engaging in the kind of on-line activity which led him to be convicted in the first place. These conditions place limitations upon Mr Homewood’s ability to use the internet. I accept that these conditions are likely to hamper Mr Homewood in accessing the internet for the purposes of right-wing on-line extremism. I nevertheless remain concerned, however, about the need to ensure that Mr Homewood does not acquire ammunition. I therefore do not accept that restricting Mr Homewood from engaging in on-line activity is a panacea for the concerns to which the ICO is directed and accordingly do not consider that the electronic monitoring condition will have no effect.
3. Thirdly, it was said that Mr Homewood needs to integrate back into the community. With this one can readily agree. I do not see, however, that wearing the monitoring device will prevent this from happening. In particular, I do not accept the submission that requiring him to wear the monitoring device will prevent him from making friends or pursuing new opportunities such as employment.
4. Fourthly, reliance was placed on §61 of Dr Seidler’s report where it was said:

I also asked Mr. Homewood about the ammunition offence and Mr. Homewood acknowledged his involvement in this offence. He claimed that he “hadn’t gone (sic) around to” making a box safe enough to store ammunition because “everything was off the rails”. By way of context, Mr. Homewood claimed that his online activities had encouraged him to begin “stock piling” a raft of goods in order to survive in the event of an “economic collapse”. Therefore, he had apparently purchased ammunition, believing that the price would increase over time. Mr. Homewood also told me however, that he has a long history of hunting with his father, which is why he would have access to ammunition. Mr. Homewood suggested that he would engage in any activity with his father that would allow him to connect with him. As such, Mr. Homewood stated that he held a firearms license and he would use guns around the property. He denied having any intention of using firearms or ammunition for any criminal activity.

1. It was said that the unchallenged evidence of Dr Seidler therefore showed that DS Gale had misconceived the issue relating to ammunition. I do not accept this submission. The passage set out above is not the opinion of Dr Seidler but rather her report of what Mr Homewood told her. I have already explained what her opinion was and my own concerns about the 8,312 rounds of ammunition. I am unpersuaded by the submission that Mr Homewood bought the ammunition in bulk so that he and his father could hunt. I therefore do not agree that the 8,312 rounds of ammunition are to be ignored in considering DS Gale’s application for the monitoring device condition.
2. Finally, it was submitted that the first condition was unnecessary because the other conditions would be sufficient and adequate to manage the risk Mr Homewood poses to the community. I do not agree. There are good reasons for the police to know where Mr Homewood is.
3. In principle, I accept that the interim ICO should be made. The short minutes of order provided by the Australian Government Solicitor on 19 March 2023 are in principle suitable. However, the orders are missing the statement of grounds required by s 104.5(1)(h) of the *Criminal Code*. I note the orders do not contain Condition 1.6(d) which was initially sought by DS Gale which I understand to be intentional. DS Gale should now provide a further set of short minutes of order containing the statement of grounds. I will fix the confirmation hearing to take place on 20 September 2024 at 9.30am. Once the short minutes of order are provided I will make them in chambers.

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| I certify that the preceding sixteen (16) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Perram. |

Associate:

Dated: 20 March 2024