

ANNEXURE A: EXAMPLES OF APPLICATIONS UNDER THE NSW TERRORISM (HIGH RISK OFFENDERS) ACT 2017

State of NSW v RC (No 2) [2019] NSWSC 845

RC was a cognitively impaired indigenous young person (19 years old) who had never been convicted of any terrorist offence nor any serious violence offence. His criminal offending was described by the Court as “largely towards the lower end of the scale of seriousness of criminality.” RC suffered from psychotic disorder, borderline to extremely low range intellectual functioning levels and a neurological functioning detected to be in the extremely low range. He had spent a substantial portion of his life in custody, as a juvenile and then as a young adult. He professed conversion to Islam whilst in custody and made verbal threats associated with the conduct of ISIS.

The State applied for a 3-year Extended Supervision Order to keep RC under strict surveillance and monitoring at the conclusion of his sentence. In dismissing the application, the Court found that:

Taken in the context of the incidents.... the incidents amount to statements made by an immature young man confined in a correctional environment where it is necessary to affect a persona of toughness so as to avoid being the victim of other inmates. The incidents occurred in the course of a struggle for identity of a kind that most teenagers engage in and whilst being exposed to events of a kind which are entirely unfamiliar with the life that the defendant had previously led. As well, the expressions were of anger towards juvenile correctional staff for what was perceived to be unfair treatment. (at [112]).

The Court also accepted that statements relied on by the State were made in the context of RC trying to build up a reputation and to give the appearance of toughness as an individual:

No doubt the defendant thought that, in light of his reasonably short stature, he needed to project himself as a tough, ruthless individual so as to avoid trouble whilst in custody. (at [71]).

State of New South Wales v Dickson [2020] NSWSC 100

The respondent was an Aboriginal man whose main political ideology concerned the legalisation of cannabis. He wrote a number of letters and pamphlets threatening violence against authorities in demonstration against the impacts of the drug war.

While at a festival in Nimbin promoting the legalisation of cannabis in 2018, Mr Dickson was arrested by police and charged with possession of 4g of cannabis, fail to move on and resist arrest. He was bailed from Lismore Police Station late at night, and police refused to drive him back to Nimbin, leaving him to wander the streets of Lismore through the May night with a blanket to keep warm. He was homeless. In this context, he smashed the windows of two police cars.

While on remand for the resulting charges of damage property, Mr Dickson participated in a group 'communication' session with other inmates. When it was his turn to introduce himself to the group and discuss his communication skills, he said: *'I am [a] political activist and member of the marijuana party. I want to set fire to each police station in the state and country*

to teach the 'state' and country a lesson and hit them where it hurts financially. I would like to blow up Parliament House.'

These statements were recorded and passed on to NSW police. Mr Dickson was subsequently transferred to a mental health facility where he was provisionally diagnosed and treated for schizophrenia.

The above statements were relied on by the State to support its argument that Mr Dickson was a high-risk terrorist offender. Mr Dickson had no criminal history for violent offending other than the index offences, and no significant criminal history. The index offences were the first for which he received a sentence of imprisonment.

The State's application was dismissed. Mr Dickson had been subject to an interim supervision order for 3 months pending the decision, during which time he had been refused permission to return to his family in South Australia, including to visit his father before he died and to attend his father's funeral.

State of New South Wales v GB by his Tutor [2020] NSWSC 913

The State of NSW applied for a 3-year extended supervision order in relation to GB, an 18-year-old Aboriginal man from the Yuin Nation. GB had a mild intellectual disability and a history since infancy of severe abuse and neglect. He spent the majority of his adolescence in custody. He suffered from post-traumatic stress disorder as a result of his early experiences of neglect and abuse and subsequent out of home placement symptoms, and restraints, and period of confinement in juvenile detention. He had been also been diagnosed with a myriad of other mental health conditions including schizophrenia, substance use disorder and conduct disorder. He had self-harmed on a number of occasions.

The State alleged that GB was a terrorism activity offender, because of his historical 'association' with certain other youths in custody and an adult who had espoused violent extremist ideas in the past. All the relevant 'associates' were in custody at the time of the application. The State also relied on scrawlings alleged to have been made by GB in juvenile detention apparently advocating support for violent extremist ideologies.

GB had never committed a terrorist offence. The index offences for the purpose of the State's application were personal violence and property damage offences committed as a juvenile and for which he had been sentenced to a control order by the Children's Court.

Experts described GB as having a 'rudimentary understanding of the basic practices of the Islamic faith and that he rated low for commitment to an ideology that justifies the use of extreme violence'. GB had voluntarily engaged in a de-radicalisation program in custody and prior to COVID-19 had weekly face-to-face engagement with his mentor as well as telephone contact.

The Court noted that all instances of violence, outbursts apparently advocating support for violent extremist ideology, or graffitiing the walls with the same apparent ideology, were precipitated by self-harm and mental health breakdowns including head banging, hearing voices, gouging eyes, and cutting his face. Experts further opined that GB used terror related imagery and statements most likely related to his anger at staff and relative lack of power in the situation he found himself in.

A month before the ESO application GB was placed by the Mental Health Review Tribunal on a 12-month Forensic Community Treatment Order, to be converted to a Community Treatment Order on his release from custody.

The State's application was dismissed at the preliminary hearing on the basis that there was insufficient evidence to establish, even on a prima facie basis, that GB posed an unacceptable risk of committing a serious terrorism offence.

The Court described the *patriarchal approach [of the State] to this application, rather than a real identified risk that the defendant will commit a terrorism offence as defined.* (at [77]).

The Court was particularly critical of the "preposterously short timeframe" within which the proceedings had to be prepared: the application was filed 9 days before GB's sentence expiry date (and therefore was required to be determined within that period) and involved voluminous and complex evidence. The Court observed:

It is of significant concern to me as a Judge of this Court that orders seeking to criminalise and curtail the movements and rights of an 18-year-old man, in custody for offending as a minor, who has significant mental illness and cognitive impairments, are sought on such a last minute basis.

On the morning of the preliminary hearing, the State successfully applied for a weapons and firearms prohibition order against GB.