AUSCRIPT AUSTRALASIA PTY LIMITED
ACN 110 028 825

AUSCRIPT
FAST PRECISE SECURE

T: 1800 AUSCRIPT (1800 287 274)
W: www.auscript.com.au
E: clientservices@auscript.com.au

TRANSCRIPT OF PROCEEDINGS

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

DOUGLAS J

No 2814 of 2019

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND — **Applicant**

and

SIMON HICKEY — **Respondent**

BRISBANE

12.03 PM, THURSDAY, 19 SEPTEMBER 2019

JUDGMENT

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application to commit the respondent, Simon Hickey, to prison for contempt of Court. The application relates to contemptuous statements regarding the Queensland magistracy on two websites and on a Google Drive electronic storage system. The application particularises the published statements said to be contemptuous and seeks to summarise their effect by pleading that the statements have a tendency to interfere with the administration of justice and give rise to a real risk of undermining public confidence in the administration of justice by carrying the implication that identified magistrates – the magistracy generally and female magistrates – as not conducting proceedings in accordance with the law, as being incapable of properly performing their judicial functions impartially, as being dishonest and not worthy of respect, as improperly exercising judicial power, as being involved in a criminal conspiracy with Auscript and other government agencies to pervert the course of justice, as conducting secret trials, as being corrupt and as being deceitful. The application also seeks that the respondent immediately and permanently remove the statements.

The legal principles related to contempt of Court in this context are quite clear. They have been expressed by the High Court in *Gallagher v Attorney-General of the Commonwealth* (1983) 152 CLR 238, at page 243 in particular in these terms:

> *The law endeavours to recognise two principles. One principle is that speech should be free, so that everyone has the right to comment in good faith on matters of public importance, including the administration of justice, even if the comment is outspoken, mistaken or wrong-headed. The other principle is that 'it is necessary for the purpose of maintaining public confidence in the administration of law that there shall be some certain and immediate method of repressing imputations upon courts of justice which, if continued, are likely to impair their authority' ... The authority of the law rests on public confidence, and it is important to the stability of society that the confidence of the public should not be shaken by baseless attacks on the integrity or impartiality of courts or judges. ...*

Further, in *R v Dunbabin; ex parte Williams* (1935) 53 CLR 434, Rich J said at 442-443:

> *The jurisdiction is not given for the purpose of protecting the Judges personally from imputations to which they may be exposed as individuals. It is not given for the purpose of restricting honest criticism based on rational grounds of the manner in which the Court performs its functions. The law permits in respect of courts, as of other institutions, the fullest discussions of their doings so long as that discussion is fairly conducted and is honestly directed to some definite public purpose. The jurisdiction exists in order that the authority of the law as administered in the courts may be established and maintained.*

Again, in *Gallagher* at the same page, their Honours went on to say:

> *However, in many cases, the good sense of the community will be a sufficient safeguard against the scandalous disparagement of a court or judge, and the*

> *summary remedy of fine or imprisonment 'is applied only where the Court is satisfied that it is necessary in the interests of the ordered and fearless administration of justice and where the attacks are unwarrantable.*

5 The attacks in this case are very numerous. They are exhibited in the two affidavits relied upon by the applicant and they have been summarised in attachments to those affidavits. It is not appropriate for me to go through them all, but I should give some examples of the sorts of criticism made by the respondent on the websites controlled by him For example, one which is described as screenshot 4 says:

10

> *Smerff –*

which appears to be a company associated with him:

15

> *...is attacked relentlessly by Queensland courts, who don't even pretend they are fair. I can now be excused for taking matters into my own hands when I've been wronged. When the law is applied only against us and we are denied the same legal rights in turn. The remaining options are limited – and taking decisive action to teach these degenerates a lesson is an option I won't take off the table.*

20

In screenshot 5, he said:

> *So in Queensland courts the judiciary can distort the law with impunity, prosecutors can tell the most outrageous, obvious fabrications and the average taxpayer can stand up with the most clear-cut of cases and still lose. Why would any of these people consider themselves 'honourable'? Why should the public not flog them in the streets should they ever dare to step outside away from their armed guards? Why should we adhere to any laws at all when they refuse to themselves? These scumbags need to be made accountable for their actions. Most drug dealers are more honest than those who sit in court judgement* [sic] *of them. A drug dealer soon finds himself in serious trouble if he cheats or ignores his client in any way, yet these alleged 'honourable men' can do the opposite of what's right and proper with no questions asked.*

25

30

35

Similarly, in screenshot 19, he said:

> *Do you understand now why I hold the Queensland legal system in the lowest possible regard and am convinced the Queensland government has people hidden in positions who unfairly target Smerff for extra treatment?*

40

It goes on rhetorically to ask:

> *What is most revealing about the above post? That this can go on in a modern 'court of law'? What's most revealing to me is that I have openly labelled the serving Queensland judiciary as liars, as frauds and as perverting the course of justice. Yet none of them will bring a libel suit. Why? Because the transcript would have to be produced as evidence and the allegations would be proven.*

45

> *Bring the court into disrepute? They are doing a good enough job of that themselves. Stay tuned for Smerff to be silenced any other way they can.*

And then in screenshot 26, annexed to the first affidavit of Ms Thorsen, he says the following:

> *The only thing that keeps us from pointing it out is their fragile egos which can't tolerate any dissent. Nobody should dare point out the absolutely disgusting, immoral, unfair and deceitful actions of our courts, even when that somebody can prove every aspect. The Queensland legal system often behaves in a way that would disgust most people. Our courts now regularly engage in dishonest activities that would shock the average citizen. That's if the citizen only knew what was going on. Queensland courts with Auscript are partners in keeping these circus courts under wraps. Queensland courts are worthy of contempt. They are certainly not worthy of respect.*

Those and other postings by Mr Hickey, to which I have not referred, were made the subject of a letter to him from the Crown solicitor of 9 November 2018, requesting the removal of the website material from two particular domain names which, the letter said made:

> *... extensive reference to the involvement of your business Smerff Electrical in various legal proceedings.*

The letter goes on to say:

> *We note that the websites contain numerous disparaging and contemptuous statements relating to particular named Queensland Magistrates, the Magistracy in general and female Magistrates –*

and asks that the statements be taken down by 12 November 2018. Apparently, in response to that, in what is described as screenshot 16, in a further exhibit attached to Ms Thorsen's affidavit, appears the following:

> *I have considered your request to remove my reports of what happened of my hearings. I have also researched what is and what isn't considered contempt of court. It seems some very prominent people have stated quite clearly that criticism of the courts is not only acceptable but encouraged in a robust democracy. In my case the pieces I have written can be labelled criticism yes, but had the courts not engaged in this sort of behaviour I would have nothing to report on. I did even remove the pieces there temporarily but it's just not right. The courts in this instance need to be made fun of. They deserve to lose some credibility in the eyes of the public.*

Subsequently, further postings by the respondent were identified, which are exhibited to the second affidavit of Ms Thorsen, filed in these proceedings and dated the 15th of August 2019. Again, there are numerous screenshots critical particularly of

individual magistrates and Magistrates Court. One example will suffice in this instance:

> *Beenleigh Magistrates Court –*

this is from screenshot 1:

> *...is the funnest court in all the land. Here you can see the pinnacle of human evolution pass through on a daily basis. From the Boguns* [sic] *to the Bevins* [sic] *plus the Skanks and the Hoes – that's just the judiciary. The clientele here is a few Centrelink payments down from that. Apparently this place calls itself a court of law. A circus would be more accurate. Try your luck here at Beenleigh Magistrates/Kangaroo/Circus/Step Right Up.*

Now, it seems clear to me that those and the other screenshots identified are such as to, on any view of the law of contempt, be regarded as in contempt of court and, again are, to my mind, unwarrantable attacks where it is necessary in the interest of the administration of justice that they should be punished.

One comment made, for example, in *Attorney-General for New South Wales v Munday* [1972] 2 NSWLR 887 at 910, in the context of discussing qualifications as to the right of criticism, is apparent. The court said:

> *In the first place, criticism will constitute contempt if it is merely scurrilous abuse. One might comment here that a charge of criticism constitutes scurrilous abuse should be a very strong one before it is dignified by being the subject of proceedings in the Supreme Court. In the second place, the criticism may constitute contempt if it 'excites misgivings as to the integrity, propriety and impartiality brought to the exercise of the judicial office' ... It is this qualification which must cause the greatest concern for any would-be critic for its application in particular circumstances can give rise to great difficulty; it is certainly not every such criticism that amounts to contempt, and the boundary between what is and what is not contempt involves questions of degree, and therefore uncertainty.*

It is apparent from some of the posts I have quoted but also from all of them that Mr Hickey has engaged not only in merely scurrilous abuse, but also he has made statements which excite misgivings as to the integrity, propriety and impartiality brought to the exercise of the judicial office.

He says to me now, in Court, that he wishes to negotiate with the Attorney to take down the offending screenshots, and that is something that has been open to him at least since he was first requested to do so in November 2018, and he says in one of the screenshots that for a while he took them down. But he says to me now – because he is incarcerated in respect of other matters – that he is not in a position to take them down, but would still like to negotiate to remove them. That goes someway to mitigate the contempt, I find, that he has committed. But the posting of these comments over such a period does, in my view, amount to a serious contempt

which deserves punishment, and I shall hear submissions about the nature of that punishment in due course.

It is also significant, however, that in making that offer, Mr Hickey, in Court, to some extent, repeated the effect of his statements by assertions that they were true and could be proved. Therefore, I would find that he has been in contempt of Court on the basis referred to in paragraph 1(f) of the application.

What do you wish to say about penalty? There is something in the written submissions for the Attorney which addresses the issue of penalty; do you wish to say something about that?

MR HICKEY: I do not think I will participate any further at this stage. All of those comments that you just made were taken completely out of context. They all – they were all honest criticism. They all had rational grounds. They were all fairly conducted and honestly directed. The idea that I just made those statements alone without a body of text that led up to them proving this – their truthfulness is absurd. It is – it is insane to – to think that these such prominent people can make such direct statements, such as Malcolm Turnbull, the Attorney – the – when he was acting – when he was Prime Minister of Australia, that he is – he said that – he refers to the principle:

> *...including all Australians, including politicians, have the freedom to criticise the Courts and judges without the risk of criminal prosecution.*

In 2002, former Chief Justice of the High Court – Australia's – Sir Anthony Mason said that:

> *...recognising the strong public interest in free discussion of the matters of importance, the Courts have been increasingly reluctant to use contempt powers simply to protect the judges from criticism. Statements criticising the judges for their decisions do not attract an exercise of the contempt power at least when the criticism is fair and honest.*

All those statements that you just took out of context were fair and honest with the exception of the last one, which was clearly an attempt at humour, which was clearly an attempt to generate reader interest. And the last one was clearly humour; it was not anything to do with the first group. But the first group were the conclusion to the paragraph. The entire paragraph that led up to those statements that I made at the end qualified and gave good grounds, honest criticism and rational grounds for the criticism that was labelled. It is – it is not – it is not – it is not an unwarrantable – it is not an unwarrantable attack in aspect of the word.

The submissions of penalty, I would – I would suggest is I cannot remove – I physically – the other thing I would like to add at this point is all of those statements were made prior to November of this year. I – they – the websites have not been added to or – or changed, as such, in this whole year. The only thing that has happened is they have been rebooted from backup because, strangely enough, when I was incarcerated they were all hacked. And only my websites which were hacked

were the ones that criticised the Queensland Government. That is not a bizarre coincidence, isn't it.

So when I was released from jail, I – I sort – I sort about removing the malware that had been placed on there by the Queensland Authorities. In doing so, we could not remove it; all we could do was load from backup. So any changes that were made in August of this year were just loaded from backup, which would have been from December, whenever – well, January – when I was incarcerated. No further statements have been made since that point. The only way that any – any of this material can be removed is with me not in jail. I would be prepared to remove it all if I would be given Court ordered parole.

The – the penalties that I would make on submissions is some sort of fine or, I do not know, three to four months in jail because I will be in jail that long anyway. The statements that I made: any rational person that was viewing – that read the whole page – or the whole criticisms that I made of – of the Queensland Courts will find that that it was a – it was a fair and honest criticism and it was warrantable and state issues should be addressed.

If those issues were addressed, I would have no problem removing the whole lot from the website. The only reason this was labelled up is because the issues were never addressed; they were hidden. I was prevented from accessing my Court records on numerous occasions. Literally, I was – I cannot even hear the accusations made against me in the Court of Law and I am still, to this day, prevented from accessing those Auscript records. And in – in a modern – in a modern legal system that is insane.

HIS HONOUR: Do you know whether there is any regime that could be set up where you can be enabled to remove the - - -

MR MUNASINGHE: Yeah, no, I am not – I am not aware if that - - -

HIS HONOUR: - - - while he's in custody?

MR MUNASINGHE: Well, I am not aware that that is something that Corrective Services would provide for. The alternative order your Honour might, of course, make is that he be ordered to remove the material upon his release from custody.

HIS HONOUR: Okay. Anything else you want to say about penalty?

MR HICKEY: I would accept that order and – and I would, in good faith, remove the whole lot on my release from custody if my release from custody was very close to today. If I were to spend an extended period in custody it would only add a stack more material that could be added to those websites. And – and now I have lost my business, my family, my income, everything. There is no point in my staying in Queensland anyway. So I am happy to remove it all – I am happy to remove it all

and – and do the right thing if – if I am released, in good faith, in time for summer so I can make some money and pay my debts with - - -

HIS HONOUR: I am not bargaining with you.

MR HICKEY: Sorry?

HIS HONOUR: I am not bargaining with you.

MR HICKEY: Okay. Then I have nothing more to add to that submission.

HIS HONOUR: Do you wish to add anything to your written submissions?

MR MUNASINGHE: No – yes, your Honour. Your Honour, it seems from Mr Hickey's comments in Court today, that his motivation with respect to offer to remove the posts is simply to avoid further time in custody. He has displayed very little in the way of remorse. He has displayed very little in the way of insight as to the seriousness of his offending. I have endeavoured to provide your Honour with some comparative decisions. The closest is, perhaps, that of Mahaffy. Your Honour would see there was a sentence of – an [indistinct] sentence of six months imprisonment imposed in that matter. However, I made this observation: the breadth of Mr Hickey's offending is objectively far worse than that in Mahaffy or any of the other comparatives that have been offered.

In Mahaffy, the circulation of the material was quite limited, that being, to the judge's Associate and other parties involved in the litigation. In this matter, Mr Hickey has made this material available for the world to see for a protracted period of time, has not responded to offers to remove the material and, even in Court today, makes statements that the material was posted honestly and rings true. This can only lead, in my respectful submission, to a penalty where a period of actual imprisonment is inevitable and a period in excess of that which was handed down in Mahaffy. Other than that, I rely on my written submissions.

HIS HONOUR: Thank you. Is there anything you want to say in reply to that?

MR HICKEY: The only thing I would like to say in reply is if – if the Prosecution or the Court doubts any of the truthfulness of any of the statements, can we just take one at random and examine it for truthfulness. If they are found to be truthful then they are honest criticisms. They – every single statement on that website is truthful.

HIS HONOUR: I have heard that.

MR HICKEY: I submit that – I submit that nobody should be held in jail for – for allegedly just speaking his mind on any issue, no matter who – no matter who gets to – to view or see those words. The general public decides on what is – on what is worth listening to and what is not. If I was running around, telling people the world – the sky is going to fall on their heads then everybody would tune out and in – in no

time. The only judge of what is – what – what the public listens to is the public themselves and whether it rings true or not.

No man should be imprisoned for speaking his mind or criticising the Courts in line with the Prime Minister of Australia and the – and what the former High Court Justice – I am sorry, it is hard to read – what the – what the former High Court Justice stated in their comments that fair and honest criticism of Australia's judiciary Court system is encouraged in a robust democracy. If the claims were untrue then it would be easy to have them thrown out in a civil matter. I have – I am – I would prefer not to spend much more time in custody. Obviously, I would – I would undertake to remove them if I was – if I was not to spend much time in custody. If – if I was to spend a long time in custody it would only add to my frustration. Thank you, your Honour.

HIS HONOUR: Thank you. In this matter, I have found that the respondent has committed contempt of Court. It was submitted that it was done in circumstances where he was invited, much earlier than now, to remove the material. He did not do that initially and says he is now incapable of doing it because he is incarcerated in respect of other matters. But it is true, as was submitted by Mr Munasinghe for the Attorney-General that, in his submissions in this Court, he has shown very little remorse or insight and has, in many respects, compounded the contempt by defending what he posted.

There are few authorities comparable, but the one relied on most by the Attorney was Mahaffy v Mahaffy (2018) 97 NSWLR 119. That is a case where a sentence of six months' imprisonment was imposed. This is much more extensive publication over a longer period, including very serious allegations which the respondent had every opportunity, earlier on, to remove, but persists in seeking to justify. In those circumstances, it seems to me that a period of nine months' imprisonment is appropriate and I sentence him to nine months' imprisonment for contempt of Court. Do you have a draft order? If I insert an order 3 of the words after the word "permanently after his release from custody", is that what you were proposing?

MR MUNASINGHE: That is what I propose, your Honour. Thank you.

HIS HONOUR: Do you want to say anything about costs, Mr Hickey?

MR HICKEY: You have taken all my money already anyway. I have not got no money to pay anyway.

HIS HONOUR: Okay. The order will be, therefore, that you are found in contempt of Court. You are sentenced to a term of imprisonment of nine months. And I further order that you immediately and permanently, after your release from custody, remove all contemptuous statements from the websites identified in the application and the Google drive electronic storage system, and you pay the applicant's costs of the application on the standard basis. I will initial that order and place it with the file. Thank you. Adjourn the Court.

NOTES ON THE ABOVE TRANSCRIPT AS INSERTED BY SIMON HICKEY, AUGUST 2020.

The astute reader may notice the great big REVISED stamped all over this document. I wasn't able to obtain any copies of this material until I was released from prison. Once I read the transcript and realized that this too was inaccurate, large parts were missing, I wrote to Auscript. I asked them who stamped REVISED on it, and why there were parts missing. Most notably, the comment that I made to Justice Douglas that the courts behavior was worthy of contempt. The email is below

From: Simon Hickey <jacksparow@y7mail.com>
Sent: Saturday, 15 August 2020 9:40 AM
To: Transcript Coordination Team <tct@justice.qld.gov.au>
Subject: Re: :ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND -V- H 19/9/2019

To whom it may concern,
I have a copy of this. I need the rest of the transcript. This is incomplete. I was there I know what was said. Why does the transcript have REVISED stamped all over it?

Are you really going to tell me that in a case where I was jailed for alleging that Queensland courts are altering official records, namely, the transcripts, even this transcript has been changed?

Seriously? Monty Python couldn't write better satire.
Please send me the recording of the proceeding. I will transcribe it myself for accuracy.

Thank you
regards

Simon Hickey

The reply I got from Auscript was something to behold.

Thursday, 20 August 2020, 10:00:49 am AEST, Transcript Coordination Team <tct@justice.qld.gov.au> wrote:

Good morning Mr Hickey,

Thank you for your email.
The transcript you received on 11 August 2020 is the "Judgment" portion of proceedings only. The "Hearing" portion, comprising the submissions prior to the Judgment, was received from Auscript on 18 August 2020 and distributed to you the same day

The Judgment transcript bears a "REVISED" watermark because **the transcript has been revised by the Judge.** The transcript was initially generated verbatim by Auscript and provided to the presiding Judge for review before final release. During a review, the presiding Judge might make minor adjustments to the text of the document.

If I can be of any further assistance please don't hesitate to contact me.

Best Regards

Team Leader
Transcript Coordination Team
Department of Justice and Attorney-General