

**IN THE SUPREME COURT OF
VICTORIA
AT MELBOURNE
COMMON LAW DIVISION**

No S CI 2013 02960

BETWEEN:

JULIAN KNIGHT
(plaintiff)

- and -

JAN SHUARD
COMMISSIONER
CORRECTIONS VICTORIA
(1st defendant)

&

DENNIS ROACH
DIRECTOR
CUSTODIAL SERVICES
G4S AUSTRALIA P/L
(2nd defendant)

AFFIDAVIT

Mr Julian Knight
Port Phillip Prison
PO Box 376
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Port Phillip Prison
DX-39334
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IN THE SUPREME COURT OF VICTORIA
02960
AT MELBOURNE
COMMON LAW DIVISION

No S CI 2013

BETWEEN:

JULIAN KNIGHT
plaintiff

- and -

JAN SHUARD & DENNIS ROACH
defendants

AFFIDAVIT

Date of document: 4 June 2013
9217 7200
Filed on behalf of the plaintiff
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Prepared by the plaintiff
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AUSDOC:

I, **JULIAN KNIGHT**, prisoner, of Port Phillip Prison at
Laverton North in the State of Victoria, do solemnly and
sincerely affirm that;

Introduction

1. I am the plaintiff in this matter. I am a Life sentence prisoner at Port Phillip Prison ("PPP") at Laverton North.
2. I was arrested on 9 August 1987 and I was received into the Victorian prison system on 11 August 1987 as a 19-year-old first time offender. My Corrections Reference Number ("CRN") is 49821.
3. On 10 November 1988 I was sentenced by Hampel J in the Supreme Court of Victoria at Melbourne to a term of Life imprisonment with a minimum non-parole term of 27 years (Ref: **R v Knight** [1989] VR 705). My Earliest Eligibility Date ("EED") for release on parole is 8 May 2014.

Vexatious Litigant Declaration

4. On 19 October 2004 I was declared a vexatious litigant for a period of 10 years, pursuant to section 21 of the *Supreme Court Act 1986* (Vic), by Smith J in the Supreme Court of Victoria at Melbourne (see **A-G (Vic) -v- Knight** [2004] VSC 407). At the time of this declaration I had 10 years left to serve of my minimum non-parole term.

Statutory Framework

5. The statutory framework regarding the granting of Emergency Management Days ("EMDs") consists of section 58E & 112(1)(r) of the *Corrections Act 1986* (Vic) ("the Act"), and regulation 78 of the *Corrections Regulations 2009* (Vic) ("the Regulations").
6. Sections 58E & 112(1)(r) of the Act relevantly provide:

Division 3A – Emergency management days

58E Emergency management days

- (1) The Secretary may, in accordance with the regulations, reduce the length of a sentence of imprisonment being served by a person or the length of the non-parole period (if one has been fixed in respect of the sentence) on account of good behaviour while suffering disruption or deprivation—

- (a) during an industrial dispute or emergency existing in the prison or police gaol in which the sentence is being served; or
 - (b) in other circumstances of an unforeseen and special nature.
- (2) Subsection (1) applies to all sentences of imprisonment, including any imposed for murder, irrespective of whether the sentences were imposed before or after the commencement of this section.

112 Regulations

- (1) The Governor in Council may, subject to disallowance by Parliament, make regulations for or with respect to any of the following matters—
 - (r) the reduction of the length of a sentence of imprisonment or of the non-parole period, if one has been fixed in respect of the sentence, on account of good behaviour while the person serving the sentence is suffering disruption or deprivation—
 - (i) during an industrial dispute or emergency existing in the prison or police gaol in which the sentence is being served; or
 - (ii) in other circumstances of an unforeseen and special nature;

7. Regulation 78 of the Regulations relevantly provides:

PART 7—EMERGENCY MANAGEMENT DAYS

78 Emergency management days

- (1) If the Secretary grants emergency management days to a prisoner, the length of the non-parole period or, if a non-parole period has not been fixed in respect of the sentence, the length of the sentence of imprisonment is reduced by the number of emergency management days granted.
- (2) The number of emergency management days granted must not exceed—
 - (a) 4 for each day or part of a day on which the industrial dispute or emergency exists;
 - (b) 14 in other circumstances of an unforeseen and special nature.

8. The granting of EMDs is also administered by Corrections Victoria's *Commissioner's Requirement* concerning Emergency Management Days issued in November 2009. The stated purpose of this document is,

'To outline the procedure for the application and granting of' EMDs.

Previous Grants of EMDs

9. Prior to 22 April 1992, prisoners serving a sentence for murder were not entitled to EMDs (then known as Director-General's Special Remissions - "DGSR").

10. During the period from my reception into the Victorian prison system on 11 August 1987 to 22 April 1992, a total of 44 DGSR were awarded to prisoners not serving a sentence for murder.

11. Since 22 April 1992, I have been awarded a total of 92 EMDs consisting of 89 EMDs awarded as a result of good behaviour while suffering disruption or deprivation during an industrial dispute, and 3 EMDs awarded for meritorious conduct. I was specifically excluded from receiving 16 EMDs awarded in February 2004 to every prisoner in the Victorian prison system, as I was one of a handful of prisoners incarcerated during the relevant period in the Acacia High Security Unit at HM Prison Barwon.

12. On 17 November 2000, I found a fellow prisoner hanging in his cell in Banksia Unit at HM Prison Barwon. Two other prisoners assisted me in cutting him down. A prison officer and I then resuscitated this prisoner until medical help arrived and he was transported to hospital. On 19 November 2000, the prisoner's life support was turned off and he subsequently died. The two prisoners who had assisted me to cut the prisoner down applied for up to 14 EMDs. They were later awarded 3 EMDs for meritorious conduct. Following the

inquest into the prisoner's death in April 2003, where counsel for Corrections Victoria submitted that he would not suggest that I "did anything other than act in a skilful, courageous and humane manner", I also applied for up to 14 EMDs on 1 July 2003. I was subsequently awarded 3 EMDs for meritorious conduct on 7 August 2003.

13. The award of EMDs for meritorious conduct is exceedingly rare. I know of only one other case where EMDs have been awarded for meritorious conduct.

Application for EMDs

14. At around 1625hrs on 13 June 2012, I was walking in the back compound of PPP when I heard a loud "crack" and saw that another prisoner, 65-year-old Prisoner Richard Watson (DOB 11 May 1947, CRN 190439), had tripped and fallen on the east-west concrete pathway. I went to Prisoner Watson's aid and helped him to his feet. He was bleeding from a gash above his right eye and was unsteady on his feet. I took hold of him, placing my hand over the gash in his forehead and told him that he would need to go to the prison hospital. I then supported him as we made our way to the prison hospital at the northern end of the prison. As we approached the gate outside the prison's gymnasium I called out to the prison officers there to open the gate. As one of them did so, Supervisor Sue Hutcheson called a "Code Black" (medical emergency) over her prison radio. She then instructed me to seat Prisoner Watson on the chair in the prison officer's cubicle outside the gymnasium. I reassured Prisoner Watson, held him upright and kept my hand placed over his wound until medical personnel arrived and conveyed him to the prison hospital. He subsequently received 22 stitches to the gash in his forehead.

15. Following this incident I was tasked with cleaning up the blood spill resulting from Prisoner Watson's accident. I have been tasked with cleaning up blood spills (including vomit, excreta and infectious disease waste) at PPP since 7 May 2008. Since 7 May 2008, I have cleaned-up 25 spills including 21 blood spills. I am paid \$5 for each spill I clean-up.

16. On 12 September 2012, I submitted an *Application for Emergency Management Days* at PPP. I applied for 1 EMD on the basis that, with respect to the accident involving Prisoner Watson, my 'conduct has been ... meritorious during the service of [my] sentence'. Now produced and shown to me and marked "**Exhibit JK-1**" is a copy of my *Application for Emergency Management Days*.

17. On 10 January 2013, the 2nd defendant recommended to the 1st defendant that my application for EMD not be granted. His view was 'that whilst [my] actions were very much appreciated they do not meet the criteria for the granting of Emergency Management Days.' That day he wrote to me to advise me of his recommendation. Now produced and shown to me and marked "**Exhibit JK-2**" is a copy of the 2nd defendant's letter to me dated 10 January 2013.

18. On 24 January 2013, the 1st defendant, acting on the 2nd defendant's advice, denied my application for EMD. That day she wrote to me to advise me of her decision. Now produced and shown to me and marked "**Exhibit JK-3**" is a copy of the 1st defendant's letter to me dated 24 January 2013.

Incident Report

19. In early March 2013, I learnt that the accident involving Prisoner Watson on 13 June 2013 had been listed as an "incident" on Corrections Victoria's Prisoner Information Management System ("PIMS"). It was listed as Incident No 162152 and PPP Incident No 1192/2012. A *PIMS-R-034 Incident Report* was completed and the incident listed on my *PIMS-V-223 Incident Enquiry* record. This computer record constitutes a permanent record of my discipline record in custody.

20. Of the 25 spills I have cleaned-up since 7 May 2008,
only the blood spill on 13 June 2012 and a blood spill
I cleaned up on 1 May 2012 have been listed as
"incidents" on my PIMS records.

Affirmed at Port Phillip Prison)
at Laverton North in the State of)
Victoria this 4th day)
of June 2013) **[signed]**

Before me:

[signed]

Michael De Young

VLA, 350 Queen Street, Melbourne

An Australian legal practitioner

within the meaning of the

Legal Profession Act 2004

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No S CI 2013

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EXHIBIT JK-1

Date of document: 4 June 2013
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Fax: (03)

AUSDOC:

This is the Exhibit marked "JK-1" now produced and shown to
Julian Knight at the time of affirming his affidavit on
4 June 2013.

Before me:

DESCRIPTION:

VLA, 350 Queen Street, Melbourne

Management

An Australian legal practitioner

within the meaning of the

Legal Profession Act 2004

Application for

Emergency

Days

dated 12/9/2012

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EXHIBIT JK-2

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AUSDOC:

This is the Exhibit marked "JK-2" now produced and shown to
Julian Knight at the time of affirming his affidavit on
4 June 2013.

Before me:

DESCRIPTION:

VLA, 350 Queen Street, Melbourne

An Australian legal practitioner

within the meaning of the

Legal Profession Act 2004

Letter from

2nd defendant

to Julian Knight

dated

10 January 2013

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EXHIBIT JK-3

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AUSDOC:

This is the Exhibit marked "JK-3" now produced and shown to
Julian Knight at the time of affirming his affidavit on
4 June 2013.

Before me:

DESCRIPTION:

VLA, 350 Queen Street, Melbourne

An Australian legal practitioner

within the meaning of the

Legal Profession Act 2004

Letter from

1st defendant

to Julian Knight

dated

24 Jan 2013