SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Lawrence* [2017] QSC 61
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **MARK RICHARD LAWRENCE** (respondent)
FILE NO/S:	BS No 7468 of 2007
DIVISION:	Trial Division
PROCEEDING:	Hearing
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	20 April 2017
DELIVERED AT:	Brisbane
HEARING DATE:	11 April 2017
JUDGE:	Martin J
ORDER:	**1. The decision made on 3 October 2008 that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act be affirmed.** **2. The respondent continue to be subject to a continuing detention order made 3 October 2008.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where a continuing detention made under Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 on 3 October 2008 has been affirmed on many occasions since – where the applicant seeks at annual review that the respondent remain subject to the continuing detention order – where the respondent consents to the applicant's draft order –

whether "detailed reasons" must be provided at annual review – whether consent of the respondent may affect the making of an order – whether the respondent should remain subject to the continuing detention order

Dangerous Prisoners (Sexual Offenders) Act 2003

Attorney-General (Qld) v Lawrence [2016] QSC 58

Attorney-General for the State of Queensland v Lawrence [2008] QSC 230

Lawrence v Attorney-General (Qld) [2017] QCA 27

Siebe Gorman Ltd v Pneupac Ltd [1982] 1 WLR 185

COUNSEL: J B Rolls for the applicant
B Mumford for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

[1] On 3 October 2008 Mark Richard Lawrence was made the subject of a continuing detention order under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 pursuant to a decision of Fryberg J.[1] The order was that Mr Lawrence be detained in custody for an indefinite term for control. Since then, in accordance with s 27 of the Act, that order has been reviewed and affirmed on a regular basis.

[2] The last review was heard in 2016 and the continuing detention order was affirmed.[2] The history, until then, of the detention order was described by Atkinson J in the following way:

> "[20] The first detention order under the DPSOA was made on 3 October 2008. The respondent appealed the making of that order and the appeal was dismissed by the Court of Appeal on 22 May 2009. An application for special leave to the High Court of Australia was refused on 2 October 2009.
>
> [21] On 4 October 2011, a judge of this court, having been satisfied that the respondent was a serious danger to the community in the absence of a Division 3 order, decided that the respondent ought to be released upon the 'imposition of appropriate conditions'. An appeal by the Attorney-General was allowed by the Court of Appeal and the order for his release on a supervision order was set aside on 2

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1 *Attorney-General for the State of Queensland v Lawrence* [2008] QSC 230.

2 *Attorney-General (Qld) v Lawrence* [2016] QSC 58.

> December 2011. It was ordered that the respondent continue to be subject to the continuing detention order that had originally been made. An application for special leave to appeal to the High Court was refused on 5 October 2012.
>
> [22] On 6 December 2012, another Supreme Court judge who conducted a review under Part 4 of the DPSOA affirmed the decision that the respondent was a serious danger to the community in the absence of an order and ordered that he continue to be subject to the continuing detention order made on 3 October 2008.
>
> [23] On 2 May 2014, another Supreme Court judge affirmed the decision that the respondent was a serious danger to the community in the absence of an order under the DPSOA but ordered that the continuing detention order be rescinded and the respondent be released from custody subject to the requirements set out in his Honour's reasons for judgment. On 2 September 2014, the Court of Appeal allowed the appeal against those orders and ordered that the respondent continue to be subject to the continuing detention order which had been made on 3 October 2008. An application for special leave to the High Court by the respondent was dismissed."

[3] Her Honour also summarised the history of the evidence given in earlier review applications[3] and in the matter before her.[4] I had regard to that in making the orders in this hearing. In March this year an appeal from the orders made by Atkinson J was dismissed.[5]

[4] The respondent submitted that the court should affirm the decision that he is a serious danger to the community in the absence of a Division 3 order. The original, written argument then went on to propose that the paramount consideration under the Act – the need to ensure adequate protection of the community – could be met by making a supervision order with appropriate conditions.

[5] In this review hearing, evidence was received from a number of specialists and from Mr Lawrence. After the cross-examination of Mr Lawrence, Mr Mumford sought a short adjournment to obtain instructions. Upon the resumption of the hearing Mr Mumford said:

> "In light of the evidence given by the psychiatrists called by the applicant and the evidence by the respondent, there is no opposition to the order that was sought [by the Attorney-General]."

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3 At [8] to [16].

4 At [26] to [147].

5 *Lawrence v Attorney-General (Qld)* [2017] QCA 27.

[6] I then made the order. These are my reasons for doing so. But, before I turn to those, I need to deal with two matters which arise out of the circumstances of this case.

Is there a need for "detailed reasons"?

[7] An issue arises on an application of this type: are "detailed reasons" required? In Part 2 Division 3C of the Act, s 17 provides:

> "**17 Court or relevant appeal court to give reasons**
>
> (1) If the court or a relevant appeal court makes any of the following orders, it must give detailed reasons for making the order—
>
> (a) a continuing detention order;
>
> (b) an interim detention order;
>
> (c) a supervision order;
>
> (d) an interim supervision order.
>
> (2) The reasons must be given at the time the order is made."

[8] A "continuing detention order" is defined in s 13(5)(a) as an order "that the prisoner be detained in custody for an indefinite term for control, care or treatment". This was the order made by Fryberg J in 2008.

[9] The scheme of the Act dictates that, when a continuing detention order is made, no new order of that kind need be made on review. Section 30 (which is found in Part 3 of the Act) provides:

> "**30 Review hearing**
>
> (1) This section applies if, on the hearing of a review under section 27 or 28 and having regard to the required matters, the court affirms a decision that the prisoner is a serious danger to the community in the absence of a division 3 order.
>
> (2) On the hearing of the review, the court may affirm the decision only if it is satisfied—
>
> (a) by acceptable, cogent evidence; and
>
> (b) to a high degree of probability;
>
> that the evidence is of sufficient weight to affirm the decision.
>
> (3) If the court affirms the decision, the court may order that the prisoner—
>
> (a) continue to be subject to the continuing detention order; or

(b) be released from custody subject to a supervision order.

(4) In deciding whether to make an order under subsection (3)(a) or (b)—

(a) the paramount consideration is to be the need to ensure adequate protection of the community; and

(b) the court must consider whether—

(i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and

(ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers.

(5) If the court does not make the order under subsection (3)(a), the court must rescind the continuing detention order."

[10] Thus, a court may, if satisfied as required:

(a) affirm a decision that the prisoner is a serious danger to the community in the absence of a Division 3 order; and

(b) order that the prisoner continue to be subject to the continuing detention order.

[11] Neither the affirmation nor the order of continuation is a continuing detention order as defined in s 13(5)(a). A consequence of that is that s 17(1) does not apply and so there is no requirement for "detailed reasons" or for the reasons to be given at the time the order is made.

What is the effect of "consent" or an absence of opposition?

[12] In this case the respondent does not oppose the making of the orders sought. In ordinary civil proceedings that attitude would come within the second type of consent order identified by Denning MR in *Siebe Gorman Ltd v Pneupac Ltd*:[6]

> "It should be clearly understood by the profession that, when an order is expressed to be made 'by consent' it is ambiguous. There are two meanings to the words 'by consent' … One meaning is this: the words 'by consent' may evidence a real contract between the parties. In such a case the court will only interfere with such an order on the same grounds as it would with any other contract. The other meaning is this: the words 'by consent' may mean 'the parties hereto not objecting'. In such a case there is no real contract between the parties. The order can be altered or varied by the court in the same circumstances as any other order that is made by the court without the consent of the parties. In every case it is

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6 [1982] 1 WLR 185 at 189.

necessary to discover which meaning is used. Does the order evidence a real contract between the parties? Or does it only evidence an order made without obligation?"

[13] This type of application does not fit within that type of analysis. This is not a private dispute between citizens. This is a case in which the interests of the public are at the forefront of consideration. While it is open to the parties to this type of application to "consent" to an order, it does not relieve the court from further consideration of the statutory requirements.

[14] Even if a respondent accepts that a decision should be affirmed, the court cannot make that affirmation unless it is satisfied in accordance with s 30(2), namely:

> "… the court may affirm the decision only if it is satisfied—
>
> (a) by acceptable, cogent evidence; and
>
> (b) to a high degree of probability;
>
> that the evidence is of sufficient weight to affirm the decision."

What must be shown?

[15] Section 30(1) mandates that the court must have "regard to the required matters". The "required matters" are those matters referred to in s 13(4) and any report produced under s 28A. The matters in s 13(4) are:

> "(4) In deciding whether a prisoner is a serious danger to the community … the court must have regard to the following—
>
> (aa) any report produced under section 8A;
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> (a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;
>
> (b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;
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> (c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;
>
> (d) whether or not there is any pattern of offending behaviour on the part of the prisoner;

(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;

(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;

(g) the prisoner's antecedents and criminal history;

(h) the risk that the prisoner will commit another serious sexual offence if released into the community;

(i) the need to protect members of the community from that risk;

(j) any other relevant matter."

[16] So far as those matters are concerned, it was not disputed that Atkinson J's review met all the requirements of that section at the time of that review. I relied upon her Honour's careful analysis of the evidence before her and considered the fresh evidence called by the applicant from Dr Madsen (a consultant psychologist) and Drs Beech and Aboud (consultant psychiatrists).

[17] It is unnecessary for me to set out at length the evidence contained in the reports from the specialists or the evidence given under examination or cross-examination. There has been little change in the views expressed by Dr Madsen. There was, though, greater emphasis on the use of anti-libidinal drugs as a means of dealing with Mr Lawrence's sex drive. This was seen by Dr Madsen as an essential ingredient in any regime which would see Mr Lawrence being released under supervision.

[18] Dr Beech was asked questions about the level of risk associated with Mr Lawrence's possible release. He said, among other things, that:

> "The risk is that he has ongoing sadistic fantasies, or that they will be reignited once he is in the community and that they will go undetected and he will over time mentalise them or ruminate about them and, as he did in 1983, he will form a plan, and I think that once that plan is formed and he develops the intention to act on that plan, I am not sure how a supervision order could detect at early – any early stage. So he could just go out and commit another offence."

[19] Dr Beech further said:

> "… I think there might not be any signs at all, and I would think … that that's probably what occurred back in 1983. He was in hospital being treated because he had committed some form of sexual offending. He – the psychiatrists were aware of it. There was some form of supervision if you like. I think he was kept to the grounds, and yet very quickly he acted on a

> fantasy that had been brewing for a long period of time, and I would assume gone undetected by the clinicians that were seeing him."

[20] Part of the uncontradicted evidence was that Mr Lawrence, when subjected to tests for determining psychopathy, produces results which support a diagnosis of psychopathy. In that regard, when asked about the effect of a psychopathic personality disorder on the reliability of self-reporting, Dr Beech said:

> "… It's got a great impact … psychopathy, I guess, as a concept is about – about people who are callous, but also untrustworthy. … Manipulative, and anti-social and not regarding the rights of others or just societal norms, and I think, you know, others have commented that he has been untrustworthy in the past."

[21] Much of the cross-examination of the specialists concerned the use of anti-libidinal medication.

[22] Dr Aboud said:

> "The nature of his offending history involves a number of offences that, to some extent, represent an escalation. Also, the development at a very early stage of deviant sexual fantasy, which he has told me on interview that he was rehearsing from, really, his teenage years, and that he came close to abducting a potential female victim, in fact, many years before he finally killed a victim. He's also described – or he's said to have thoughts about smothering his own sister. I believe this man has longstanding psychological difficulties and that when he committed the index offence – and by the index offence, I mean the 1983 or the early 1980s offence whilst in Park Hospital – it was the culmination and the acting out of, really, a very well-formed fantasy to rape and to kill, and when he did it he gained pleasure from it and he, in fact, has admitted that he subsequently would masturbate thinking about what had happened. I think that that – that presents the foundations of the risk that I would not feel confident could be managed while he has an active sexual drive; sexual drive being the key moderator of the risk."

[23] Dr Aboud's view was that it was necessary that the respondent commence a course of anti-libidinal treatment before he could be considered for any form of release under supervision. One of the types of drugs which is available under the Pharmaceutical Benefits Scheme ('PBS') is taken orally and on a daily basis. Whether Mr Lawrence could be relied upon to comply with such a treatment regime was the subject of consideration. While he could be tested monthly, there would be a high degree of reliance placed upon his own self-reporting. This raised issues of risk due to his unreliability and because when he had, in the past, undergone such treatment he had stopped because of the side effects of the drug. Another treatment which would involve monthly injections was dismissed as a possibility because it is not available under the PBS and is prohibitively expensive. On the current state of the evidence, if Mr

Lawrence were to be released on some future review, it would be on the basis of him being subject to, among other conditions, some type of verifiable and effective anti-libidinal drug treatment.

[24] In cross-examination, Mr Lawrence was asked:

> "… What you're asking his Honour to do at this review is to, in fact, detain you in custody for – indefinitely – to affirm the continuing detention order so that you can undergo anti-libidinal medication and be reviewed in 12 months' time?--- I reckon it should be less than 12 months.
>
> … Is it the case that you're really asking, by virtue of the fact that you're now accepting anti-libidinal medication, that you're accepting the continuing detention order remain in place so that that treatment can be administered to you in accordance with what the psychiatrists have indicated?--- … It is up to your Honour, right. I can start it out in the community if your Honour wants that, as well, but if I've got to do it in prison, I'm happy to do it either way. Outside or inside."

[25] No evidence was called to contradict anything said by any of the professional witnesses. I am satisfied that the evidence given adequately dealt with all the matters contained in s 13(4) and that it was both acceptable and cogent. I am further satisfied, to a high degree of probability, that the evidence was of sufficient weight to affirm the decision.

[26] It is for those reasons that I accepted it was appropriate to make the orders.