

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Dooley*  
[2017] QSC 138

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(applicant)  
v  
**NEILSON HAROLD DOOLEY**  
(respondent)

FILE NO/S: No 5247 of 2017

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 13 July 2017

DELIVERED AT: Brisbane

HEARING DATE: 21 June 2017

JUDGE: Boddice J

ORDER: **I make orders in terms of the draft which I initial and place with the papers.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the applicant seeks orders pursuant to s 8 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) that the respondent undergo a risk assessment for purposes of an application for a Division 3 order – where the respondent opposes the making of an order pursuant to s 8 of the Act – whether the respondent is a serious danger to the community in the absence of a Division 3 order – whether an order should be made pursuant to s 8 of the Act

*Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 8,

s 13

*Attorney-General for the State of Queensland v SBD* [2010]  
QSC 104

COUNSEL: J Tate for the applicant  
J Crawford for the respondent

SOLICITORS: Crown Law for the applicant  
Legal Aid Queensland for the respondent

- [1] The Attorney-General for the State of Queensland seeks orders, pursuant to s 8 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (“the Act”), that the respondent undergo a risk assessment for the purposes of an application for a Division 3 order.
- [2] The respondent opposes the application. At issue is whether there are reasonable grounds for believing the respondent is a serious danger to the community, in the absence of a Division 3 order.

### **Background**

- [3] The respondent was born on 23 October 1981. He is presently serving a sentence of 6 years imprisonment for sexual and other offences. The respondent is due for release on 11 November 2017.
- [4] Relevantly, the respondent’s prior criminal history commenced in 1995 when he was convicted in the Children’s Court of an aggravated assault on a female. The complainant was the respondent’s mother. The complainant had sought to break up a fight between the respondent and his brother. The respondent was sentenced to a good behaviour bond for six months.
- [5] In 2002, the respondent was convicted of behaving in an indecent manner in a public place. The respondent, who was aged 20 at the time, engaged in consensual sexual intercourse with his adult female partner whilst travelling on a train. Other passengers were present at the time. The respondent was convicted and fined \$800.
- [6] In addition to those convictions, the respondent was in 2006 charged with two counts of unlawful stalking. The charges concerned two female complainants, aged 10 and 14 years. The charges were discontinued by the prosecution.

### **Index offences**

- [7] On 7 January 2013, the respondent was convicted on his own pleas of guilty of one count of rape and three counts of indecent treatment of children under 16 years. The respondent also pleaded guilty to the dangerous operation of a motor vehicle. The respondent was sentenced to 6 years imprisonment for rape, and to lesser concurrent

terms of imprisonment for the other offences. The respondent was declared to be eligible for release on parole on 12 November 2013.

- [8] The offences of rape and indecent treatment of children under 16 all occurred during the one incident on the evening of 12 November 2011. The circumstances were summarised in the sentencing remarks of Judge Koppenol:<sup>1</sup>

“On November 12, 2011 you came across two young girls; they were 14 and 15 years old; you invited them to go back to your place to have a few drinks. They agreed. On the way you bought some alcohol. At your home you touched one of the girl’s breasts and her bottom and her genitals on a number of occasions; you also drew on her naked breasts with a pen while you were explaining something about tattoos and you rubbed her leg with your penis.

During that night, you also had sexual intercourse with the other complainant girl who was 14. She was asleep at the time.

You locked the doors to your house to prevent the girls leaving. The girls gave you no encouragement for what you did but at the time you were heavily affected by alcohol and drugs. That is a problem that you have had for most of your life.

When the police interviewed you about those matters you told them that you thought that the girls were much older – but I don’t accept that you did. I think that you knew that the girls were young and underage and that you were, because of your drug and alcoholic state, sexually attracted to them.

You acted in a brazen way, you preyed on those two young girls for your own sexual gratification. I think that is an accurate way of looking at the matter. Your conduct was predatory.

[...]

You took advantage here of two young girls. You plied them with alcohol and then took advantage of them sexually. I think your background had a very significant contributing effect upon your actions that night. You knew what you were doing was wrong. You now know what you did then was wrong.

You pleaded guilty at an early time – an acknowledgement, I think, that you knew that you had done the wrong thing. Rape is a very serious criminal offence and the 14 year old girl was asleep when you had sexual intercourse with her.”

## **Incarceration**

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<sup>1</sup> *R v Dooley* (unreported) 7 January 2013, Koppenol J.

- [9] The respondent has a number of recorded breaches whilst in custody. Relevantly, on 9 January 2015, the respondent declined to provide a sample of urine for a drug screening test. As a consequence, he was deemed to have tested positive for the consumption of a prohibitive substance and breached accordingly.
- [10] In January 2016, the respondent was breached after he was observed to have his hand under the skirt of a visitor. The breach was for acting in a way contrary to the security or good order of a corrective services facility and offensive behaviour. The respondent's behaviour has otherwise been generally good. He has retained employment. The respondent has completed educational courses.
- [11] The respondent has also completed all programmes recommended prior to his release. Those programmes include the "Stepping Up Program", the "Getting Started Preparatory Program", the "Substance Abuse Maintenance Intervention Program", the "High Intensity Sexual Offending Program" (HISOP) and the "Sexual Offending Maintenance Program". In each, the respondent's engagement was considered appropriate, with an acknowledgement of gains in his understanding of the consequences of substance abuse, particularly in the context of sexual conduct and as a coping mechanism.
- [12] The HISOP facilitators considered that the respondent had made some gains in relation to his treatment needs but acknowledged there would need to be an ongoing process. The facilitators recommended the respondent seek further professional counselling to address his deviant sexual interests. This specialist intervention would allow the treatment to be targeted in order to minimise and manage the risk of deviant sexual interests.
- [13] The facilitators of the Sexual Offending Maintenance Program also acknowledged that the respondent had some awareness of the need to continue to work on strategies surrounding emotional management and regulation. However the facilitators noted that fluctuating engagement made it difficult to ascertain if the respondent had made any further shifts or consolidated any gains from the HISOP. The facilitators recommended continued engagement with a specialist psychologist to address the respondent's deviant sexual interests.

### **Parole**

- [14] The respondent applied for parole in April 2015. Assessments of his proposed accommodation on release on parole were all considered unsuitable. Ultimately, the Parole Board refused parole on the basis that the respondent would be an unacceptable risk to the community.

### **Reporting psychiatrist**

- [15] Dr Sundin interviewed the respondent for the purposes of undertaking an assessment of his risk of sexual recidivism on 2 December 2016. As part of the preparation of her

report,<sup>2</sup> Dr Sundin had access to the respondent's criminal history and other relevant documentation. Dr Sundin also administered a number of formal assessments.

- [16] Dr Sundin noted the following background history. The respondent reported a significantly dysfunctional upbringing, with a very disrupted educational environment. He attended multiple primary schools. He was suspended and subsequently expelled from primary school for disruptive behaviour. He was expelled from secondary school in Grade 8 for threatening a teacher with a knife. The respondent said he received a diagnosis of Attention Deficit Hyperactivity Disorder when aged around 11. He left home in his early teens. Initially, he lived on the streets. He engaged in criminal conduct. He spent times in foster homes and youth hostels. He reported persistent oppositional behaviour to his carers in those foster homes.
- [17] The respondent reported that after his arrival at BoysTown, when aged 14 years, he was the victim of a pack rape. His attackers were never charged; the respondent was moved to another house. The respondent also reported being physically assaulted by two of the Brothers at BoysTown. The respondent reported that he gave evidence to the Royal Commission and subsequently received a financial settlement from the Catholic Church.
- [18] The respondent reported that after leaving BoysTown he lived off and on with his parents, in youth shelters, on the streets and with friends. He had various occupations.
- [19] The respondent reported having a number of sexual relationships with adult women. He estimated he had at least 15 girlfriends and more than 20 one night stands. He is the father of five children from four different mothers.
- [20] The respondent reported commencing alcohol consumption at the age of 10 and cannabis at the age of 11. He regularly abused both substances thereafter. His alcohol consumption extended to drinking both beer and spirits on a daily basis. On occasions, he would drink all day. The respondent commenced using amphetamines at the age of 14. He developed a significant habit. He engaged in criminal activities to fund that habit.
- [21] The respondent reported having consulted a psychiatrist on several occasions prior to his incarceration. He had voluntarily overdosed on psychoactive medications in the past. The respondent reported having made multiple suicide attempts in the past. The respondent had also received regular psychiatric care in custody. The respondent is currently prescribed antidepressant medication and anti-psychotic medication. The respondent said he was currently depressed and had ongoing symptoms from his assaults at BoysTown. He had continuing feelings of anxiety and paranoia associated with his amphetamine abuse. He also reported chronic insomnia, despite the prescription of sedatives.

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<sup>2</sup> Affidavit of J J Sundin sworn 16 May 2017, Exhibit 'JJS2' (Court Document 6).

- [22] Dr Sundin opines that the respondent suffers from substance use disorder, mixed personality disorder, attention deficit hyperactivity disorder and possibly post-traumatic stress disorder. Her risk assessments supported a conclusion the respondent was of moderate risk of future recidivism. His score on the Hare Psychopathy Checklist was elevated but fell short of a formal diagnosis of psychopath. Dr Sundin did, however, note the presence of a number of relevant issues, namely aggressivity, promiscuous sexual behaviour, early behavioural problems, lack of realist long term goals, impulsivity, juvenile delinquency, revocation of conditional release and criminal versatility.
- [23] Dr Sundin also observed that the respondent had a poor attachment pattern, a lack of successful intimate partner relationships and a degree of both sexual entitlement and disparaging views of women around issues to do with intercourse. The respondent also had a limited understanding of the pathway to his offending behaviour with a continued reliance by way of partial excuse of focusing on his intoxication at the relevant times.
- [24] Dr Sundin accepted the respondent expressed remorse and disgust at his own behaviour but considered the reduced insight and expressed plan to re-engage with an avoidant coping style was of great concern. These factors heightened the respondent's risk of rapidly relapsing back into abuse of intoxicating substances in the absence of adequate supervision.
- [25] Dr Sundin concluded:<sup>3</sup>

“On the face of it, he does not present as either a predatory or repeat sexual offender or at the same level of seriousness as other offenders I have reviewed in the past; but these offences do represent an escalation of offending, did involve deprivation of liberty of the victims and were undertaken by an individual who was giving himself a number of permission statements to act in a sexually violent fashion towards two vulnerable girls.

Taking all of these factors globally I consider that Mr Dooley represents a moderate risk for future sexual recidivism and a high risk for future general recidivism. His risk for sexual recidivism would rise to high should he revert back into abuse of intoxicating substances. Future offences are likely to occur opportunistically in the setting of intoxication and may involve teenage girls or adult women.

He is an individual whom I would recommend be considered further for placement under a supervision order so that his risks factors around substance abuse, avoidant coping and emotional dysregulation problems can be better managed.”

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<sup>3</sup> Ibid, pp 26-27.

- [26] Dr Sundin provided an addendum report<sup>4</sup> as a consequence of the provision of further information from the respondent's case files from Corrective Services. The information related to newspaper cut-outs and pages torn out of a novel which were found in his cell. The recorded description of that material was that it contained some quite explicit details "detailing a girl being murdered, sexual assault and how the male enjoyed it and was fantasising about it".<sup>5</sup>
- [27] Dr Sundin opined that the additional material was of concern. Whilst Dr Sundin had not personally viewed the material or spoken to the respondent about its contents, Dr Sundin considered the description of the material suggested it needed to be explored further. Its content suggested the respondent may have a greater level of deviant sexual preoccupation than previously evident. The material also caused Dr Sundin to question the degree of remorse expressed by the respondent at interview.
- [28] Dr Sundin recommended the respondent be referred to a forensic psychologist for individual treatment as part of any supervision order, noting that the HISOP did not have the capacity to address sexually deviant cognitions on an individual basis.
- [29] Dr Sundin maintained those opinions in evidence. She explained that her risk assessment tools allowed for the fact that the respondent was charged but not convicted of the two counts of unlawful stalking in 2006. The risk assessment tools also allowed for the consequences of the respondent's participation in programmes whilst in custody, including sexual offending programmes. The respondent's risk assessment, based on actuarial scales, was high. Dr Sundin reduced that risk to moderate taking into account the respondent's age and his participation and achievement in custodial programmes. Dr Sundin accepted that any person who had a conviction for a sexual offence with other violent offences is "pretty much always going to score moderate".<sup>6</sup>
- [30] Dr Sundin said her ultimate conclusion as to the ongoing risk of sexual violence was based on her clinical judgement taking into account the whole of the respondent's longitudinal history, including his participation in programmes and any achievements and gains with regards to insight. In her opinion, the respondent did have sexually deviant cognitions:

"From my perspective, he had engaged in rape. He had engaged in exploitative behaviour to vulnerable girls. He had escalated their intoxication in order to be able to exploit them. And this occurred against a background of reliance upon sex as coping, attitudes of sexual entitlement. And putting all of those factors together, I thought that added up to a – a set of sexually deviant cognitions."<sup>7</sup>

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<sup>4</sup> Affidavit of J J Sundin sworn 16 May 2017, Exhibit 'JJS4' (Court Document 6).

<sup>5</sup> Affidavit of J J Sundin sworn 16 May 2017, Exhibit 'JJS3' (Court Document 6).

<sup>6</sup> Transcript 1-11/45-46.

<sup>7</sup> Transcript 1-8/19.

- [31] The respondent also viewed women as sexual objects. Dr Sundin accepted the respondent was not a sexual predator or a paedophile and that he did not demonstrate any paraphilia. She also accepted the respondent's interest generally was in adult women.

### **Legislative scheme**

- [32] The Act provides a regime by which certain prisoners who are found to be a serious danger to the community may be the subject of continued detention or, alternatively, be released subject to supervision. The Act only applies to prisoners who are serving a period of imprisonment for a serious sexual offence, being an offence of a sexual nature against children or involving violence.
- [33] Pursuant to s 13 of the Act, a prisoner is only a serious danger to the community if the Court is satisfied by acceptable, cogent evidence and to a high degree of probability that there is an unacceptable risk the prisoner will commit a serious sexual offence if released from custody, or released without a supervision order being made pursuant to the Act. In that event, release subject to supervision is only appropriate if the proposed conditions ensure the adequate protection of the public whilst the prisoner is living in the community.
- [34] Section 13(4) of the Act provides factors the Court must consider in determining whether a prisoner is a serious danger to the community. They are:
- “(aa) any report produced under section 8A;
  - (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;
  - (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.”

[35] Section 8 of the Act provides a procedure for obtaining a risk assessment of a prisoner for the purposes of an application. A Court may only make a risk assessment order if the Court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of orders being made under the Act for the prisoner’s ongoing detention or supervision.

[36] A determination of the application for a risk assessment order only requires the Court to consider whether it is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community. The Court does not have to be satisfied the prisoner is a serious danger.

[37] The matters for consideration in the determination of an application for a risk assessment order were considered by P Lyons J in *Attorney-General for the State of Queensland v SBD*:<sup>8</sup>

“[48] It therefore seems to me to be correct to say that matters for consideration on an application for orders under s 8 include whether there are reasonable grounds for believing that there is an unacceptable risk that the person in question will commit a serious sexual offence if released from custody, or if released from custody without a supervision order being made. The range of considerations set out in s 13(4), save for that in paragraph (a), are accordingly relevant. Those conclusions are, I understand, consistent with the contentions made by Counsel for both parties.

[49] A question arises whether, when considering the issues raised by s 8, I should bear in mind the provisions of s 13(3):

- ‘(3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) 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 justify the decision.’

...

[51] It seems to me to be possible that s 13(3) has some indirect relevance to an application for orders under s 8. That is to say in dealing with such an application, the court does not need to be

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<sup>8</sup> [2010] QSC 104 at [48], [49], [51].

satisfied that a person is a serious danger to the community in accordance with the standard set out in s 13(3). But in determining whether there are reasonable grounds for believing that a person is a serious danger to the community in the absence of a Division 3 order, it seems to me that one can bear in mind the standard in s 13(3) will apply in the final determination of the question whether a person is a serious danger to the community in the absence of such an order.”

### **Submissions**

- [38] The Attorney-General submits there are reasonable grounds for believing the respondent is a serious danger to the community in the absence of a Division 3 order. Whilst the respondent has been convicted of sexual offences on only one occasion, the offences involved two minors who were plied with alcohol obtained by the respondent, before the respondent committed the sexual offences upon them. The rape was committed whilst the female complainant was asleep.
- [39] The Attorney-General submits that that conduct, when viewed in the context of his previous offending behaviour, supports Dr Sundin’s conclusion that the respondent’s sexual offending is properly to be viewed as an escalating behaviour in the context of the use of sex and intoxicating substances as coping mechanisms. Notwithstanding the respondent’s reported gains from the completion of all relevant programmes, his limited insight and avoidant behaviours support an acceptance of Dr Sundin’s opinion that he represents a moderate risk of future sexual recidivism which increases to high in the event he reverts back to abusing intoxicating substances. As his future offences may involve teenage girls, there are reasonable grounds for believing the respondent is a serious danger to the community in the absence of a Division 3 order.
- [40] The respondent submits the evidence is insufficient to establish reasonable grounds for believing the respondent is a serious danger to the community in the absence of a Division 3 order. The respondent’s prior sexual offences were committed in the context of the abuse of intoxicating substances. There is no allegation he used violence to commit those offences.
- [41] Further, the respondent has undertaken every course asked of him and completed each such course appropriately. There is no allegation he has engaged in violence in any prior sexual relationships despite having multiple adult female partners. His earlier offences were not of a sexual nature. The behaving indecently in a public place involved a consensual act of intercourse with an adult female when the respondent was 20 years of age.
- [42] Finally, the respondent submits that Dr Sundin’s assessment incorrectly placed weight on the respondent’s prior offending having regard to the lack of any conviction of a prior sexual offence. Dr Sundin also had regard to the contents of the material recently disclosed from his case file in circumstances where she failed to obtain any explanation from the respondent as to the circumstances of his possession of that material.

## Discussion

- [43] Whilst the only sexual offences for which the respondent has been convicted are the index offences, I accept Dr Sundin's characterisation of the respondent's conduct in respect of the index offences as being escalating in nature. The index offences involved the giving of alcohol to female minors for the purposes of engaging in sexual activities with those minors. The act of rape, whilst not involving any physical violence, was perpetrated on the 14 year old complainant whilst she was asleep. Such conduct is appropriately characterised as deviant, even if it is viewed as not being predatory.
- [44] In addition to those matters, the material supports Dr Sundin's opinion that the respondent continues to exhibit limited insight into his use of sex as a coping mechanism and the objectification of women for his sexual pleasure. Of particular concern is his continued reliance on intoxication as a partial excuse for his offending behaviour.
- [45] The continuing lack of insight into his inappropriate use of sex, particularly whilst intoxicated, gives cause for serious concern as to the risk the respondent presents in relation to future sexual offending if released into the community. That concern is not lessened by the fact that the respondent has only the index offences as past sexual offences.
- [46] I accept Dr Sundin's opinion that the respondent represents a moderate risk of sexual recidivism in the future. I also accept that the respondent's likely victims in the future include female minors. The index offences support such a conclusion. His future risk of sexual re-offending therefore involves a serious sexual offence as any such sexual offence may be against children.
- [47] I do not accept that Dr Sundin's opinion was based on an incorrect assessment of the respondent's past offending or that she improperly had regard to sexual deviation and psychopathy. Dr Sundin appropriately considered those factors in forming her ultimate opinion. Similarly, Dr Sundin appropriately had regard to documentation found in the respondent's cell. The entry referred to by Dr Sundin plainly is descriptive of the contents of that material.
- [48] Having considered all of the information placed before me, including Dr Sundin's assessment and opinion, the respondent's past offending behaviour, his responses to programmes and efforts to address the causes of his offending behaviour, his likely risk of committing another serious sexual offence if released into the community and the need to protect members of the community from that risk having regard to the respondent's antecedents and criminal behaviour, I am satisfied there are reasonable grounds for believing the respondent is a serious danger to the community, in the absence of a Division 3 order.
- [49] In reaching this conclusion, I have had regard to the fact that the legislation requires acceptable, cogent evidence and a high degree of probability before reaching a conclusion that the respondent is properly to be subject to the legislative regime. The

evidence placed before me is acceptable and cogent. It is sufficient to satisfy me to the requisite standard that there are reasonable grounds for believing the respondent is a serious danger to the community in the absence of a Division 3 order.

- [50] I am satisfied it is appropriate to make orders for the hearing of an application for a Division 3 order and for the respondent to undergo examination by two independent psychiatrists.

### **Orders**

- [51] I make orders in terms of the draft which I initial and place with the papers.