

SUPREME COURT OF QUEENSLAND

CITATION: *A-G for the State of Qld v Gray* [2017] QSC 260

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
MAXWELL EDWARD GRAY
(respondent)

FILE NO/S: BS No 7877 of 2010

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 30 October 2017 – Delivered ex tempore

DELIVERED AT: Brisbane

HEARING DATE: 30 October 2017

JUDGE: Ann Lyons SJA

ORDER: **The Court makes Orders in terms of Schedule 1 attached to these reasons.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT SEXUAL OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent contravened a condition of a Supervision Order to abstain from the consumption of alcohol and use of illicit drugs – where the applicant applies for relief pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) - whether the Supervision Order should be rescinded and a continuing detention order made or whether the adequate protection of the community can be ensured with an amendment to existing Supervision Order

*Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) s 13,
s 22*

COUNSEL: B H Mumford for the applicant
C Morgan for the respondent

SOLICITORS: GR Cooper Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

The current application

- [1] These are proceedings under Part 5, Division 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*. On 23 October 2017, a complaint was made to a Magistrate alleging that Mr Gray had contravened requirements 22 and 23 of the Supervision Order made by this Court on 2 December 2010. Requirement 22 was that the respondent abstain from the consumption of alcohol for the duration of the Order, and requirement 23 was that he abstain from illicit drugs for the duration of the Order. A warrant was issued and on 25 October 2017 and Mr Gray was brought before the Court. He has been in custody since that time. At a review before the Judge supervising the dangerous prisoners list on 27 October 2017, a contravention hearing was set for today.
- [2] The respondent admits the contraventions that have been set out in the affidavit material and, in particular, he accepts that on 9 October 2017 he submitted a sample of urine for analysis and that the sample returned a positive result for cannabis. The respondent accepts that he contravened requirement 22 and 23 of the Supervision Order. He also accepts that on 22 October 2017 he consumed alcohol which indicates he has contravened the Supervision Order. It would seem clear therefore that at this final hearing, the applicant Attorney-General seeks orders either that the court rescind the Supervision Order of Justice Peter Lyons made on 2 December 2010 as amended, and order that Mr Gray be detained in custody for an indefinite term for care, control or treatment pursuant to the Act or, alternatively, that Mr Gray is released on the original Supervision Order subject to conditions.
- [3] Further reports have been obtained from two psychiatrists who have previously provided reports to this Court. I note that Dr Donald Grant has provided a report dated 26 October 2017, and Dr Scott Harden has provided a report dated 29 October 2017. I note that neither Dr Grant nor Dr Harden has interviewed Mr Gray again but have, rather, reviewed the material that has been sent to them in relation to this breach.

Dr Grant's Reports

- [4] Dr Grant has provided a report on a number of other occasions. It would seem he has provided five risk assessment reports in the past. In his previous reports and in this report, Dr Grant notes the history of chronic alcohol and drug abuse, and that Mr Gray's

ongoing use of cannabis has resulted in multiple breaches of the Supervision Order, and that Dr Grant confirms his previous opinion that alcohol and drug use are a significant factor in the history of sexual offending and remains a relevant risk factor. However, Dr Grant notes there has, in fact, been no sexual offending by the respondent.

- [5] Dr Grant specifically referred to the Integrated Offender Management System (IOMS), and notes that that does not reflect any evidence that Mr Gray is displaying symptoms of thought disorder or of any obvious psychosis, and that there is no suggestion of any psychotic symptomatology. In any event, Dr Grant notes that there is no evidence that there was psychotic symptomatology in his previous sexual offending. It would seem clear that Mr Gray has not been on any anti-psychotic medication for several years, and Dr Grant notes that there has been no relapse of schizophrenia which was the original diagnosis in the period in question.
- [6] Dr Grant indicates that whilst he considers a definite diagnosis of sexual paraphilia could be made, he notes that Mr Gray is not currently engaged in any sexual relationship, and that he has currently no deviant fantasies and is not experiencing sexual dysfunction. I note that Dr Grant indicates that Mr Gray has a diagnosis of a serious medical condition which requires major surgery and the prognosis is unclear. Dr Grant also notes that there have been increasing physical symptoms in relation to this disease and, in particular, there has been nausea and pain in the abdomen and epigastrium.
- [7] Dr Grant also notes that Mr Gray has been diagnosed as suffering from a form of pancreatic cancer with possible liver and kidney involvement and was booked to have major surgery on 31 October 2017. Dr Grant, in his evidence today, indicates that a Whipple Procedure had been scheduled. He notes that this is a major operation for pancreatic cancer and requires the excision of a large number of organs. Dr Grant states that this seems to be a precancerous diagnosis and that there may not be any active cancer at this point in time. He notes, however, that whilst it is precancerous, it is a large cyst and it is very painful and debilitating. He also notes that surgery is required for the removal of the cyst, and that if there is no cancer found and the cyst is removed, then whilst there may be the need for chemotherapy, a full recovery would be envisaged in those circumstances.
- [8] Dr Grant considers that, against that history, the current level of risk for sexual reoffending would be reduced from the original level of high to a current level of low. I note that the risk could rise again in the future if Mr Gray recovers from his physical condition and regains sexual vigour, especially in the presence of alcohol abuse. Dr Grant considers that that is the risk in the future should the surgery be successful. He notes that cannabis use is a lesser risk but that there is concern in relation to the presence of alcohol abuse.
- [9] Overall, Dr Grant considers that the current risk for sexual reoffence is low, and a supervision order would continue to be effective in containing that risk.

Dr Harden's Reports

- [10] Dr Harden has also provided a report. He has provided reports on four previous occasions, and his current report incorporates material from his other reports. I note, as does Dr Harden, that Mr Gray has been difficult to supervise during the period of his Supervision Order, and most of his breaches have involved cannabis use and, concerningly, the 2016 breach involved threats to his ex-partner. Dr Harden also indicates that the recent use of alcohol is very concerning. Dr Harden considers that with increasing age, and I note Mr Gray is now 55, but with ongoing breaches, it is likely that Mr Gray's risk of sexual offending lies in the moderate to high range but that the continuation of the supervision program reduces the risk to moderate.
- [11] Dr Harden considers that the Supervision Order does manage a number of the risk factors effectively. Dr Harden also notes the IOMS records, and the scheduled surgery on 1 November which was for the cyst over Mr Gray's pancreas. Dr Harden considers that it is unlikely that Mr Gray's risk to the community is going to change rapidly unless the health problems deteriorate. Dr Harden recommends that if Mr Gray is released into the community, that he continue to be monitored for alcohol and substance use and that if he continues to have chronic pain, that a management plan could be developed with a medical practitioner that appropriately manages the pain, and he recommends the individual psychological therapy continue if Mr Gray is released into the community.

History of offending

- [12] There is a sufficient amount of material before the Court to indicate Mr Gray's continual offending. This is the seventh time Mr Gray has been the subject of contravention proceedings, and he was found to have contravened a requirement in the order on 23 November 2011 related to a positive test for cannabis, 22 October 2012, a positive test for alcohol and cannabis, on 7 April 2014, a positive test for cannabis, on 29 September 2014, a positive test for cannabis, and on 20 June 2016, a positive test for cannabis, as well as the commission of an indictable offence.
- [13] It was of great concern that on 7 January 2016 the respondent pleaded guilty in the Rockhampton Magistrates Court for the offence of using a carriage service to menace, harass or cause offence. That was between September 2015 and January 2016, as well as a further offence contrary to the Commonwealth Criminal Code on 7 January 2016. As I have indicated, on 20 June 2016 there was a formal finding that Mr Gray had contravened the requirements of the order and, despite the contravention, he was released subject to the Supervision Order with additional requirements.
- [14] The affidavit material before me sets out the record of Mr Gray's interactions with Corrective Services. It is clear that since his release in June 2016, concerningly, Mr Gray has returned urine samples positive to cannabis on 18 occasions, the last being on 9 October 2017 which has been specifically admitted. On 28 June 2017, Mr Gray was dealt with in the Rockhampton Magistrates Court for an offence against section 43AA of the Act which was the cannabis sample, and he was sentenced to three months

imprisonment wholly suspended for 12 months. The affidavit material also sets out the dates on which the respondent has returned positive urine samples for both cannabis.

Legislative Framework

- [15] Section 22 of the Act provides the relevant legislative framework. The jurisdiction of the Court under section 22 of the Act is engaged if the applicant establishes on the balance of probabilities that the respondent has contravened a requirement of the Supervision Order.
- [16] I am satisfied that the applicant has established that there has been a breach of the Supervision Order, and the respondent indeed accepts that he has breached the requirements of the Act. Pursuant to section 22, upon the Court being satisfied on the balance of probabilities that the respondent is likely to contravene a requirement, then, unless the respondent satisfies the Court on the balance of probabilities that the adequate protection of the community can, despite the contravention, be ensured the Court must in the case of an existing supervision order rescind it and make a continuing detention order.
- [17] For the purpose of deciding whether to make a continuing detention order, the Court can act on the evidence which was before the Court. The applicant submits that, prima facie, a continuing detention order should be made and it is clear that the onus is on the respondent to demonstrate that adequate protection of the community is able to be ensured by his release on a supervision order. In order to discharge the onus, it is necessary for the Court to conclude on all of the evidence that a supervision order would be efficacious in constraining Mr Gray's behaviour by preventing the opportunity for the commission of sexual offences.

Conclusion

- [18] It is clear that Mr Gray has not been deterred by the fact that he has been detained since his original release for periods totalling two years and eight months for the breaches that have already occurred. It is clear that normally when a breach occurs, he is detained in custody on each occasion for four, five or six months before the contravention hearing can occur. In the circumstances of this case, the contravention hearing was expedited in an effort to ensure that the surgery could occur on 1 November 2017, however that opportunity has now been lost.
- [19] It is clear, however, that in the circumstances of this case, whilst there has been continual contravention of the Supervision order, and that has been admitted, Mr Gray has not committed a further sexual offence since he was released on the Supervision Order. Mr Gray's most recent conviction for a sexual offence was over 20 years ago, and there has been no indication of any sexual offending whilst he has been in the community, subject to supervision under the Act.

- [20] I also note the IOMS records indicate that Mr Gray is engaged in therapy with Dr Madsen, a psychologist in the community, that he resides in his own home and has support from family members. As I have indicated, I have considered the reports of the psychiatrists. I am satisfied that the respondent has satisfied the onus on him in satisfying the Court that despite the contravention, the adequate protection of the community can be ensured by the respondent's release, subject to the requirements of the existing Supervision Order.
- [21] There will be orders in terms of the draft which has been initialled by me and placed with the file which indicates that, whilst I am satisfied Mr Gray has contravened the requirements of the Supervision Order made on 2 December 2010 as amended by me on 20 June 2016, I order that Mr Gray be released from custody on 30 October 2017 and he continue to be subject to the Supervision Order made on 2 December 2010 as amended on 20 June 2016. The terms of those orders are set out in Schedule 1 to these reasons.

SCHEDULE 1

ORDER

THE COURT being satisfied to the requisite standard that the respondent, Maxwell Edward Gray, has contravened requirements of the Supervision Order made by Justice P. Lyons on 2 December 2010 and amended by Justice A Lyons on 20 June 2016 ORDERS THAT:

- 1. The respondent, Maxwell Edward Gray, be released from custody on 30 October 2017 and continue to be subject to the Supervision Order made by Justice P. Lyons on 2 December 2010, as amended by Justice A. Lyons on 20 June 2016.**