

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Bugler* [2017] QSC 261

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(Applicant)
v
GREGORY ERNEST BUGLER
(Respondent)

FILE NO/S: BS No 5878 of 2017

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 13 November 2017

DELIVERED AT: Brisbane

HEARING DATE: 13 November 2017

JUDGE: A 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 applicant seeks orders pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) that the respondent be detained in custody for an indefinite term of care, control or treatment or alternatively that the respondent is released from custody subject to a Supervision Order – whether the respondent presents a serious danger to the community in the absence of a Division 3 Order – whether the respondent should be subject to a Division 3 Order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) s 13

Attorney-General for the State of Queensland v Fardon [2011] QCA 111
Attorney-General for the State of Queensland v Waghorn [2006] QSC 171
Fardon v Attorney-General (Qld) (2004) ALJR 1519; [2004]

HCA 46

COUNSEL: A Meisenhelter for the applicant
J Horne for the respondent

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

The current application

- [1] On 10 October 2013 the respondent was sentenced to a period of five years imprisonment for attempted rape with 318 days were declared as pre-sentence custody. His full-time discharge date is 25 November 2017.
- [2] The applicant, the Attorney-General for the State of Queensland seeks orders pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (“the Act”). The applicant seeks orders either that the respondent be detained in custody for an indefinite term for care, treatment or control or alternatively, that he be released from custody subject to a supervision order on conditions which the court considers appropriate.

Background

- [3] The respondent’s criminal history is as follows:

Date	Description of Offence	Sentence
15/03/1999 Gladstone District Court	Indecent treatment of children under 16 (under 12 years) between 1/10/98 and 3/11/98.	Conviction recorded. Imprisonment 12 months wholly suspended for a period of 5 years.
27/02/2001 Gladstone District Court	Indecent treatment of children under 16 (under 12 years) on or about 17 October 1998.	Conviction recorded. Probation 3 years.
10/10/2013 Ipswich District Court	Attempted rape between 23/11/12 and 26/11/12.	Conviction recorded. Imprisonment 5 years. 318 days pre-sentence custody declared. Parole eligibility date: 27/05/2015

- [4] The respondent is currently 51 years of age. As the criminal history notes, he has previous convictions for offences of a sexual nature. In 1999 he was convicted after a trial of indecently dealing with a child. The complainant was a 10 year old boy and the

respondent had placed the child on his lap and touched him on his penis in an attempt to masturbate him.

- [5] In 2001, the respondent was convicted after a plea of another sexual offence which occurred around the same time as the offence in 1999. The offending occurred when the complainant child, a boy, was sleeping at the respondent's home. The child was 11 years old. The respondent told the child to come into a bedroom and he would put some cream on the child's testicles. The respondent put cream on the child's genitals and pulled on his foreskin three times.
- [6] The current offences for which the respondent is serving a period of imprisonment occurred in 2012. He was convicted of attempted anal rape of a complainant child. The child was six years of age at the time. The complainant's mother was friends with the respondent. They were away on a weekend camping in a caravan the complainant and another child stayed with the respondent in his caravan. The complainant child went to bed in the same bed as the defendant and whilst the child was playing on a computer game, the respondent rubbed his penis on the outside of his leg and tried to penetrate him.
- [7] The respondent has been interviewed by a number of psychiatrists for the purposes of this application. The respondent is a divorced man with four children.

The report of Dr Ken Arthur

- [8] Dr Ken Arthur, psychiatrist, in a report dated 3 February 2017 notes that the respondent maintains his innocence in relation to all of the sexual offences for which he has been convicted and denies any sexual interest in children.
- [9] In his interview with Dr Arthur, the respondent denied the use of illicit substances, but accepted that he would drink occasionally in a social setting. Dr Arthur considers that based on the respondent's history of convictions he would consider there is a diagnosis of a paedophilic disorder, non-exclusive attracted to males. Dr Arthur conducted a number of risk assessments using the risk assessment tools. On the Static-99R he scored 3, placing him at the average risk level. On the Hare Psychopathy Checklist he scored 11 out of 40, indicating few psychopathic traits and well below the cut-off for psychopathy.
- [10] In relation to the Risk for Sexual Violence Protocol (RSVP), Dr Arthur considers that the respondent's offending is infrequent and that it occurred in episodes 14 years apart. He does not consider there is evidence of increasing physical coercion but rather that it involved the abuse of his position of authority and responsibility. He also noted that he engages in minimisation and denial.
- [11] Dr Arthur overall considered that the respondent's risk of further sexual offending to be low to moderate. He noted however that there were factors that may increase his risk of future offending and they included his lack of social supports in the community and the likelihood of sourcing employment upon release, as well as his high possibility of returning to an itinerant lifestyle considering he intends to purchase another caravan and

live in it. Dr Arthur stated that there are also concerns that the respondent continues to maintain his innocence and has not engaged in treatment or rehabilitation.

- [12] Dr Arthur considers the risk of re-offending could be managed by limiting supervised access to pre-pubescent boys and conditions which required that any future partner should be made aware of his offending history. Dr Arthur considered that a risk assessment of his accommodation choices would be useful and that psychological therapy would be of benefit in assisting him to improve the quality of his future relationships.

The report of Dr Karen Brown

- [13] Dr Karen Brown, psychiatrist, also prepared a report dated 29 September 2017. Dr Brown's report notes that the respondent denies experiencing sexual attraction to children of any sex and that he denies responsibility for any of the sexual offences for which he has been convicted and provides different factual explanations for each of the offences. Dr Brown noted that the respondent indicated he would comply with the supervision order in order to be released from custody as long as he did not have to admit his guilt. He also agreed he would wear a GPS tracker and live at Wacol if required.
- [14] Dr Brown also diagnosed a paedophilic disorder non-exclusive type, and a major depressive disorder currently in remission. She also considered that the respondent's ability to manage his anxiety was limited and that he uses avoidance denial and minimisation to manage his own unwanted thoughts and emotions. She was of the view that this was evidenced by his denial of various sexual offences for which he has been convicted, along with a denial of his sexual attraction to children. Dr Brown also noted that he also makes claims of incompetence of his legal representatives and flawed court processes.
- [15] Dr Brown also utilised the number of risk assessment tools. On the Static 99 the respondent scored 3, placing him in the average risk. The PCL-R which was used to diagnose psychopathy resulted in a score of 10 out of 40 which was well below the cut-off. In relation to the RSVP, that tool indicated that the likelihood of future sexual violence is increased due to the presence of sexual deviance as well as a denial of incidents and difficulties with self-awareness.
- [16] Overall, Dr Brown considered the respondent's risk of future sexual offending without a supervision order to be moderate. She considered that although the respondent was an opportunistic offender, there were elements of grooming behaviour as well.
- [17] Dr Brown considered that the respondent's five years in custody could not be relied on as a deterrent to prevent future offending, particularly in the absence of participation in a sexual offender treatment program, as well as his limited capacity to understand his emotions. She considers the respondent has not developed an understanding of his offence cycle, or shown any responsibility for his actions. She considers the management of risk will need to rely on procedural measures.

- [18] Dr Brown considers that a supervision order would reduce the risk to a manageable level. She recommends that there be a number of conditions put in place including restricting access to children, informing new partners of his history, monitoring by electronic devices and the engagement in sexual offender therapy.

The report of Dr Jane Phillips

- [19] Dr Jane Phillips, psychiatrist, prepared a report dated 24 October 2017. Dr Phillips also obtained an account from the respondent of his offending in which he denied all of the offending. Whilst she noted that the respondent had engaged in a preparatory program in the beginning, he had maintained his stance of innocence and was therefore deemed unsuitable for future programs due to his denial of the offending. Dr Phillips also noted the denial of offending and the externalisation of his blame onto his mother. He also denied any sexual interest in children.
- [20] Dr Phillips considered that he has very little understanding of risk management interventions and that he did not see the need for a supervision order, and he did not think this would add anything because he was already on a Register and had to report his movements.
- [21] Dr Phillips noted that his plans included making applications to boarding houses but he acknowledged he would probably end up at the Wacol precinct. He had previously planned to live with his son but is currently unable to contact him. Whilst the respondent told Dr Phillips he did not want to be on a detention or supervision order, he indicated he would comply with the supervision conditions. Dr Phillips also scored the respondent with a 3 on the Static 99-R and that the RSVP indicated a moderate risk of offending. He also scored a score of 10 on the psychopathy checklist, and the Historical Clinical Risk (HCR) indicated his future risk of physical violence was in the low range.
- [22] Overall, Dr Phillips opined that the risk of future sexual re-offending was moderate if the respondent was released without a supervision order and that the risk of physical violence was low. Dr Phillips considers that a supervision order would assist in reducing the risk of re-offending by offering assertive monitoring and intervention to target dynamic risk factors for sexual offending. Dr Phillips considered that with psychological intervention and robust supervision, the risk of sexual re-offending would be relatively low.
- [23] Dr Phillips recommended individual therapy with a forensic psychologist and that the order should preclude unsupervised contact with children and be a 4 to 5 year duration.

The requirements of the Act

- [24] The objects of the Act, as stated in s 3, are:
- (a) To provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community; and

- (b) To provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.

- [25] The Act establishes a scheme for the continued detention in custody or supervised release of prisoners who are deemed to be at risk of committing serious sexual offences if released at all, or if released without appropriate supervision. The Act makes provision for the Supreme Court to hear applications for orders under the Act.
- [26] The primary orders which may be granted under the act are “Division 3 Orders”, which are provided for in s 13 of the Act.
- [27] Pursuant to this section, the first enquiry the court must make is whether or not the respondent is a serious danger to the community in the absence of a Division 3 Order.

Is the respondent a serious danger to the community in the absence of a Division 3 Order?

- [28] A prisoner or a respondent will be a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence, if released from custody, or if released from custody without a supervision order being made.¹ The expression “*unacceptable risk*” is undefined by the Act. It is incapable of precise definition but is an expression which requires the striking of a balance.² The relevant risk is the risk of the commission of a serious sexual offence i.e. an offence of a sexual nature involving violence or against children. Risk means the possibility, chance or likelihood of the commission of such an offence. An unacceptable risk is a risk which does not ensure adequate protection of the community.
- [29] In *Attorney-General for the State of Queensland v Waghorn*,³ McMurdo J observed:
- “[24] In deciding whether to make a continuing detention order or a supervision order, the paramount consideration is the need to ensure adequate protection of the community: s 13(6). The purpose of orders under s 13 is not punishment but the protection of the community: *Fardon v Attorney-General (Qld)*. The existence of some risk of re-offending is not sufficient: the risk must be of an unacceptable order. Each of the psychiatrists is of the view that the risk is high and in my conclusion it is unacceptably high even under a supervision regime as is proposed. Of course the drastic consequences of a continuing detention order must be considered. And the objects of the Act include the provision of control, care or treatment to facilitate the rehabilitation of the prisoner: s 3(b).”
- [30] It must be necessary to conclude, on all the evidence, that a supervision order would be, “efficacious in constraining the respondent’s behaviour by preventing the opportunity

¹ *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*, s 13(1).

² See *Fardon v Attorney-General (Qld)* (2004) ALJR 1519 at [22], [60] and [225].

³ [2006] QSC 171.

for the commission of sexual offences”⁴ or to put it another way, “...the likely effect of a supervision order in terms of reducing the opportunity to the appellant to engage in acts of seduction of children to an acceptably low level”.

Conclusion

- [31] After a consideration of all of the matters I am required to take into account pursuant to s 13(4) of the Act, I am satisfied, to a high degree of probability, that there is sufficient cogent evidence that if released without a Division 3 Order under the Act, the respondent presents an unacceptable risk of committing a serious sexual offence as defined by the Act. In this case, it is a risk of sexual offending against children.
- [32] The evidence of Dr Arthur, Dr Phillips and Dr Brown indicates that the unmodified risk of sexually re-offending is low to moderate in the long-term, given the respondent has ongoing themes of minimisation and denial, not only in relation to his offending, but with respect to his sexual attraction to children. He continues to externalise blame, has no insight and has not engaged with treatment programs given his denials of offending.
- [33] There is therefore sufficient evidence to conclude that an order under the Act is necessary to ensure the adequate protection of the community. The reports together with the respondent’s criminal history, his pattern of offending and his lack of participation in programs satisfies me that the evidence indicates without a Division 3 Order, the respondent would pose and serious danger to the community.
- [34] I am then required to determine the appropriate order in accordance with s 13(5) and s 6 of the Act. The paramount consideration is of course the need to ensure the adequate protection of the community and the court needs to consider whether the adequate protection of the community can be reasonably and practically managed by a supervision order. The psychiatrists are clearly of the view that the risk is managed primarily by restricting access to young boys and that the risk would be reduced to a manageable level on a supervision order.
- [35] There is also evidence to indicate that psychological intervention and robust supervision would also reduce the risk to low. I am satisfied that the conditions proposed will adequately address any risk, particularly given that they include a prohibition of unsupervised access to children as well as individual psychological therapy and a requirement that he inform new partners of his offending history. There is also a requirement that he be monitored by electronic devices.
- [36] I am satisfied there should be orders in the terms of the draft initialled by me and placed with the file. The terms of those orders are set out in Schedule 1 to these reasons.

⁴ See *Attorney-General for the State of Queensland v Fardon* [2011] QCA 111 per Chesterman JA at [29].

SCHEDULE 1

THE COURT, being satisfied to the requisite standard that the respondent, Gregory Ernest Bugler, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the Act), ORDERS THAT:

1. The respondent be subject to the following conditions until 13 November 2022:

The respondent must:

Statutory Requirements

1. report to a Corrective Services officer at the place and on a date directed by Queensland Corrective Services, and at that time, advise the officer of the respondent's current name and address;
2. report to, and receive visits from, a Corrective Services officer at such times and at such frequency as determined by Queensland Corrective Services;
3. notify a Corrective Services officer of every change of the respondent's name, place of residence or employment at least two (2) business days before the change happens;
4. be under the supervision of a Corrective Services officer;
5. comply with a curfew direction or monitoring direction;
6. comply with any reasonable direction under section 16B of the Act given to him;
7. comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order;
8. not leave or stay out of Queensland without the permission of a Corrective Services officer;
9. not commit an offence of a sexual nature during the period of the order;

Employment

10. seek permission and obtain approval from a Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;

Accommodation

11. reside at a place within the State of Queensland as approved by a Corrective Services officer by way of a suitability assessment and obtain written approval prior to any change of residence;
12. if this accommodation is of a temporary or contingency nature, you must comply with any regulations or rules in place at this accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed by Queensland Corrective Services;
13. not reside at a place by way of short term accommodation including overnight stays without the permission of the Corrective Services officer;

Activities and associates

14. not commit an indictable offence during the period of the order;
15. respond truthfully to enquiries by a Corrective Services officers about his activities, whereabouts and movements generally;
16. not to have any direct or indirect contact with a victim of his sexual offences;
17. disclose to a Corrective Services officer the name of each person with whom he associates and respond truthfully to requests for information from a Corrective Services officer about the nature of the association, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;
18. not visit or attend a caravan park without the prior written approval of a Corrective Services officer;
19. notify a Corrective Services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;
20. submit to and discuss with a Corrective Services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
21. if directed by a Corrective Services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as

nominated by a Corrective Services officer who may contact such persons to verify the full disclosure has occurred;

Alcohol and Drugs

22. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by the Corrective Services officer;
23. disclose to a Corrective Services officer all prescription and over the counter medication that he obtains;
24. take prescribed drugs as directed by a medical practitioner and disclose details of all prescribed medication as requested to a Corrective Services officer;

Medical treatment

25. attend upon and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by a Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;
26. permit any medical, psychiatric, psychological, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;
27. attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health professional where appropriate;
28. must develop a risk management plan in consultation with a treating psychologist or psychiatrist and discuss it as directed with a Corrective Services officer;

Contact with children

29. not establish or maintain any supervised or unsupervised contact, including undertaking any care of children under 16 years of age, except with prior written approval by a Corrective Services officer. The respondent is required to fully disclose the terms of the order and nature of offences to the guardians and caregivers before any such contact can take place; Queensland Corrective

Services may disclose information pertaining to the offender to guardians or caregivers and external agencies (i.e. Department of Child Safety) in the interests of ensuring the safety of the children;

30. not establish or maintain contact with a child under 16 years of age without the prior written approval of a Corrective Services officer; except in the case of the respondent's daughter/son and grandchildren by way of supervised contact and communications in writing or by telephone if agreed between the respondent and the mother of the child or approved by order of a court order under the *Family Law Act 1975*;
31. to advise a Corrective Services officer of any repeated contact with a parent of a child under 16 years of age. The respondent shall if directed by a Corrective Services officer make complete disclose the terms of the order and nature of offences to any person as nominated by a Corrective Services officer who may contact such persons to verify that full disclosure has occurred;
32. not access schools or child cares centres at any time without the prior written approval of a Corrective Services officer;
33. not to visit or attend on the premises of any establishment where there is a dedicated children's play area or child minding area without the prior written approval of a Corrective Services officer;
34. not visit public parks without prior written permission from a Corrective Services officer;
35. must notify a Corrective Services officer before attending the premises of any shopping centre, including the times in which you wish to attend;
36. not join, affiliate with, attend on the premises of or attend at the activities carried on by any club, organisation or group in respect of which there are reasonable grounds for believing there is either child membership or child participation without prior written permission from a Corrective Services officer;

Technology, telephones and devices

37. supply to a Corrective Services officer any password or other access code known to him to permit access to such computer or other device or content accessible through such computer or other device where the internet is accessible to be randomly examined using a data exploration tool to extract digital information or any other recognised forensic examination process;

38. supply to a Corrective Services officer details of any email address, instant messaging service, chat rooms, or social networking sites including user names and passwords;
39. except with prior written approval from a Corrective Services officer, you are not to own, possess or regularly utilise more than one (1) mobile telephone;
40. advise a Corrective Services officer of the make, model and phone number of any phone number of any mobile telephone owned, possessed or regularly utilised by you within 24 hours of connection or commencement of use and includes reporting any changes to mobile telephone details; and

allow any other device including a mobile telephone to be randomly examined. If applicable, account details and/or phone bills are to be provided upon request of an authorised corrective services officer.