

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Cobbo* [2017] QSC 273

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
DAMIEN SCOTT COBBO
(respondent)

FILE NO: 6968 of 2017

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 20 November 2017

DELIVERED AT: Brisbane

HEARING DATE: 20 November 2017

JUDGE: Applegarth J

ORDER: **A supervision order in the form annexed to these reasons**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANERGOUS SEXUAL OFFENDERS – GENERALLY – where the applicant seeks a supervision order – where the making of the order is not opposed, and is supported by the respondent as an aid to his ongoing rehabilitation – where the respondent’s rehabilitation, and therefore protection of the community, will be prejudiced if the respondent is not assisted to find suitable and stable accommodation for himself

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)

COUNSEL: J B Rolls for the applicant
L C Falcongreen for the respondent

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

[1] The applicant seeks orders pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* (“the Act”). The facts and the law are not in contention. The respondent concedes that the material supports a finding that he is a “serious danger to

the community” as that phrase is defined in s 13(2) of the Act in the absence of a Division 3 order.

- [2] The evidence supports the respondent’s release on a supervision order. The applicant does not contend that there should be a continuing detention order. Instead, the applicant submits that the respondent be released pursuant to s 13(5) of the Act, and be subject to the requirements of a supervision order for a period of five years. I intend to make such an order.

The statutory scheme

- [3] The statutory scheme has been the subject of authoritative discussion by a number of judges of this Court, and there is no contest about the process by which a court assesses whether there is an “unacceptable risk” that a person will commit a serious sexual offence in the absence of a supervision order or a continuing detention order.
- [4] Although the facts are uncontested and might be shortly summarised in a few paragraphs, this is the first occasion upon which the respondent has been the subject of an order under Division 3 of the Act. Accordingly, it is convenient to set out the factual background to the present proceeding. In doing so I adopt substantial parts of the applicant’s outline of submissions which are accepted by the respondent.

Background

- [5] The respondent was born on 6 May 1987. He is currently 30 years of age.
- [6] On 14 December 2007, he was convicted and sentenced in the District Court at Beenleigh upon his own plea to nine charges across three indictments.
- [7] The first indictment resulted in convictions for unlawful use of a motor vehicle, deprivation of liberty and three counts of rape. The offending occurred while the respondent was still a minor. The respondent was sentenced to a period of four years’ imprisonment.
- [8] The second indictment resulted in conviction for three counts of rape. The offending occurred while the respondent was an adult. He received a sentence of 10 years’ imprisonment. This meant that he was automatically required to serve 80 per cent of his sentence before being eligible for parole.
- [9] The third indictment related to a breach of an intensive correction order.
- [10] The respondent’s custodial end date is 2 December 2017.

Criminal history

- [11] The following table sets out the respondent’s relevant criminal history:

Date	Description of Offence	Sentence
04/04/2003 Ipswich District Court	<ul style="list-style-type: none"> • Sexual assault • Stealing from the person • Robbery with actual violence – in company and uses personal violence • Four charges of enter dwelling and commit indictable offence 	No conviction recorded – <i>Juvenile Justice Act</i> , Community Service 180 hours, probation of 2 years, with special conditions: submit to drug and alcohol counselling if necessary and attend other counselling if required
14/12/2007 Beenleigh District Court	<ul style="list-style-type: none"> • Deprivation of liberty • Rape (3 charges) • Unlawful use of a motor vehicle • Rape (3 charges) • Breach of intensive correction order 	Conviction recorded, imprisonment of 12 months On all charges: conviction recorded, imprisonment of 4 years. On all charges: conviction recorded, imprisonment of 10 years, declare that time spent in pre-sentence custody time already served (10 days), declare that the conviction be that of a serious violent offence. Breach proven. Order revoked. Resentenced for original offences. Conviction recorded. Imprisonment 12 months. All terms of imprisonment to be served concurrently.

The current offences

[12] As stated, on 14 December 2007, the respondent pleaded guilty and was sentenced in the District Court at Beenleigh on a number of charges.

- [13] The first indictment relevantly comprised one count of deprivation of liberty and three counts of rape. The respondent was 15 years of age at the time of the offending. The female complainant was 14 years of age at the time of the offending. On 2 January 2003 the respondent was drinking wine under a bridge at Ipswich with other youths and the complainant. As the complainant and her friend left they were followed by the respondent, and another male.
- [14] While the complainant's friend and the other male were talking privately, the respondent stood behind the complainant, put his hand over her mouth, grabbed her by the hair, and pushed her into a demountable building. He then raped her. These acts amounted to the offence of deprivation of liberty and the first count of rape. The respondent then took an object and pushed it into the complainant's vagina. This constituted a second count of rape. The third involved non-consensual aggressive sex with her.
- [15] The second indictment charged three counts of rape. The respondent was 19 years of age at the time of the offending. Counts 1 and 2 concerned a 15 year old complainant, who had been at a public phone box. The respondent approached her and asked for a drink of water. She felt obliged and walked him to a house and gave him a glass of water. The respondent then followed her into her bedroom, closed the door and turned off the light. He then slapped her across the face and told her to be quiet. He forced her to remove her clothes and then raped her.
- [16] The third count concerned a 13 year old child, who was at a park looking for friends. She did not know the respondent. The respondent told her to come towards a bikeway, grabbed her singlet and forced her to walk with him. He forced her into the bush and up to a fence. He attempted to kiss her and then pushed her legs apart and digitally penetrated her. He then ran off.
- [17] The sentencing judge urged the respondent to take advantage of the rehabilitation services offered in prison and, in particular, emphasised the necessity of him undertaking a sexual offender's treatment program prior to his release.

Previous offences of a sexual nature

- [18] On 4 April 2003, the respondent was sentenced in the District Court at Ipswich in relation to a number of charges including sexual assault. The respondent was tried as a juvenile. For the sexual assault, the respondent had no conviction recorded. He was sentenced to 180 hours of community service and two years' probation pursuant to the *Juvenile Justice Act 1992 (Qld)*. There were special conditions attached to the order which stipulated that the respondent had to submit to drug and alcohol counselling, if necessary, and attend other counselling, if required.
- [19] During the respondent's participation in Crossroads: High Intensity Sexual Offending Program (HISOP), he described this offence in his written work. He reported that he committed a sexual assault at the age of 14 against an adult female. He advised that he had been consuming alcohol on the day. He approached the victim who was in a phone booth. He reported that he had tried to engage the victim in conversation, however the victim did not wish to interact with him. He reported that he touched her on the buttocks. She then fled the area.

Family history

- [20] The respondent described his family history during his participation in the High Intensity Sexual Offending program. He is an indigenous man who reports to be a part of the Wakka Wakka Jinda tribe from the Gayndah/Cherbourg area. The respondent is one of six children, having four sisters, and one brother. He grew up in Bundaberg until the age of 12. He described an unstable and transient childhood. From a young age he was exposed to violence, observing his step-father abuse his mother. He also had frequent exposure to alcohol and other drugs. The respondent does not know his biological father. He identified feeling abandoned by his mother, as she was in and out of prison for the majority of his childhood.
- [21] The respondent lived with his mother until around four years of age. Given her problems, he mainly lived at his grandfather's house between the ages of four and 12, residing with his mother for short periods when she was at liberty. He acknowledged that his grandfather was the closest to a role model he had. However, he resisted the support of his grandfather to connect with him and the encouragement to connect with his culture and heritage. This led him to a lack identity and no sense of culture.
- [22] At the age of 12, the respondent was "kicked out" of his grandfather's house for stealing cigarettes from the local shops. He was physically beaten. He was then told to leave. At times, he would live with aunts who had alcohol problems.
- [23] The respondent has discussed having anger and hatred towards his mother as he grew up. He felt conflicted over this hatred. In exploring the respondent's attitude towards his mother and women in general, he advised that he witnessed violence against women regularly when socialising with peers. He stated that it was common to witness his male peers act out violently towards their female partners. Violence against women was normalised throughout his adolescence.

Relationship history

- [24] The respondent reports that he is currently single but says that before his incarceration, he had several short relationships that were based mainly on drugs and sex.
- [25] In his report, Dr Moyle considered a youthful relationship that the respondent had with his older cousin to be especially relevant to his sexual development. It was suggested that while the respondent was looking for love, acceptance and appreciation, his cousin was purely looking for sex and eventually abandoned him. Dr Moyle hypothesised that this contributed to the respondent forming a negative view of women, and suggested that his later sexual searches would try and recapture the sexual excitement he felt in that relationship. There was even the suggestion that some of the victims resembled this cousin.

Education and employment history

- [26] The respondent completed grade 7 at Bundaberg West State School. He started grade 8 but was only enrolled for about two months and was often truant. The respondent struggled at school. He said that he became frustrated and angry when he could not complete the required work. Although he was never expelled, he was suspended on two

occasions, for three days each, for “wagging”. He was also in trouble for fighting and swearing at teachers.

- [27] He has a limited employment history. His jobs have included restumping houses, working at the Amberley Airbase and working at Ikea for about five months. He said that his job at Ikea was compromised by drinking and drug use.
- [28] The respondent has an employment history whilst incarcerated. In addition to some formal studies, he has worked in the kitchen as a leading packer for around eight months and in sewing for approximately 12 months. He also noted working as a cleaner, in the laundry and as a water tank maker. He has also been successful in completing a number of basic academic and vocational education programs.

Drug and alcohol history

- [29] The respondent has personally identified alcohol and drugs as being linked to his offending. There is a history of alcohol and drug abuse in his family.
- [30] The respondent’s substance abuse started when he was six or seven years old, smoking cigarettes he stole from family or got from friends. He was 10 or 11 when he started drinking alcohol, at parties or with older cousins. When he drank, he drank enough to feel drunk.
- [31] The respondent smoked marijuana from seven to eight years of age when his mother gave it to him.
- [32] From 11 to 13 years old he started sniffing inhalants. He stopped when he was 18 or 19 years old. He denied using cocaine, ecstasy or other drugs, but had taken methylamphetamine (speed).

Medical and psychiatric history

- [33] The respondent has no significant medical or psychiatric history. He has reported previous head trauma from some violent altercations, but says that medical examinations in prison have revealed no abnormalities.

Events in prison

Conduct in prison

- [34] The respondent is currently incarcerated at Townsville Correctional Centre. He has a high security classification. He has been involved in two breaches and five incidents. The first was a fight which he said occurred when he was 18 to 19 which was sparked by him being called a black paedophile. The second was for smoking tobacco in his unit. The third was for getting a tattoo in prison, the fourth was for swearing and the fifth was for fighting his cousin, for which he was sent to the secure unit for nine months.

Treatment programs

- [35] During his current term of incarceration, the respondent has participated in treatment programs which sought to address drug and alcohol abuse, general offending patterns and sexual offending.
- [36] Between 7 January and 11 January 2013, the respondent completed Ending Offending, a six session cognitive behavioural program designed to meet the needs of Aboriginal offenders in a culturally appropriate manner. The overall aim of the program is to modify the drinking and offending behaviour of Aboriginal offenders in the correctional system. The respondent agreed to attend the course on the basis of there being a history of both personal and family alcohol misuse. He reportedly attended all sessions. He displayed interest in every session. The respondent was able to connect his offending with his substance misuse. While he did not discuss his index offences in detail, he did note the fact that he was often under the influence when he offended. He also reportedly demonstrated empathy for his victims and their families.
- [37] The respondent commenced CHOICES: Recovery from Substance Abuse on 24 July 2014, participating in 11 out of the 12 program sessions offered. Program facilitators reported that the respondent participated well in the sessions for the most part and said that he appeared to gain good insight into the relationship between his family background, conflict management, and substance use. The respondent was considered to be at a low risk of hazardous drinking and substance dependence. He seemed to be willing to engage with support when provided.
- [38] Between 23 April 2013 and 31 May 2013, the respondent completed the Getting Started: Preparatory Program (GS:PP). In an exit report detailing the respondent's participation in the GS:PP, program facilitators reported that he was a motivated and committed participant who presented an open and honest account of his offending behaviour. He engaged meaningfully in group sessions. He was noted as being open to exploring all aspects of his offending behaviour. Overall, the respondent was said to be a self-motivated person who was ready, willing and able to participate in further intervention to change previous behaviours.
- [39] Between 30 March 2015 and 11 April 2016, the respondent participated in Crossroads HISOP, completing approximately 352 hours of treatment over 128 sessions.
- [40] In an exit report detailing the respondent's participation in HISOP, program facilitators reported that the respondent was able to empathise with others, and provide them with affirming and encouraging feedback and support. It was noted that he sometimes struggled with his emotional management, particularly impatience and anger. But he presented as being open to feedback in these areas and acknowledged that emotional regulation would be an area of continuing development.
- [41] The respondent was reported to have been frank and open in exploring the circumstances of his sexual offending, expressing a level of victim empathy throughout his presentation. It was noted that the respondent generally appeared to take responsibility for his offending behaviour.

- [42] The following high risk factors were identified: substance abuse, negative peer influences, rejection, loneliness, and negative views of women leading to the sexual objectification of women and promiscuous behaviours.
- [43] It was recommended that if the respondent was to be released, he engage with a qualified psychologist or psychiatrist to support the gains he has made. The respondent was also said to have outstanding treatment needs which are unable to be met by QCS. In particular, it was suggested that he would need specific treatment in the community related to his sexual deviancy. The respondent was also recommend to complete the Staying on Track: Sexual Offending Maintenance Program.

Parole history

- [44] The respondent's parole eligibility date was set at 3 December 2015. The respondent made an application for parole on 30 November 2015. At its meeting of 27 May 2016, the Queensland Parole Board considered the respondent's application. It formed a preliminary view not to grant his release on parole. The Board noted that the respondent's completion of HISOP stood in his favour, but said that the respondent's nominated accommodation was unsuitable. The Board said that they would not be willing to approve the respondent's release until he had satisfactory accommodation available to him.
- [45] On 1 December 2015, the respondent had made a second application for parole. At its meeting of 12 February 2016, the Board considered the respondent's application and formed a preliminary view not to grant his release on parole.

Medical and psychiatric reports

Report of Peter Stoker, dated 2 December 2007

- [46] Following the respondent's arrest for the index offences, he was interviewed by psychologist Peter Stoker on 14 November 2007. The report Mr Stoker prepared was quoted by Dearden DCJ in his sentencing remarks. In his report, Mr Stoker said:

“It is my opinion that, since the sexual abuse he suffered during childhood as well as witnessing his mother being raped and quite seriously abused over a number of years, this young man has been suffering from a Posttraumatic Stress Disorder.

He continues to have nightmares and flashbacks of these abusive episodes. He self-medicated with the use of alcohol and illicit drugs and, as such, was suffering Alcohol, Cannabis and Amphetamine Dependency Disorders. He hails from a very abusive and dysfunctional family with multiple carers from a very young age. There has been little stability in the young man's life.

He appears to certainly be projecting a lot of blame onto his mother and this anger has generalised to women, particularly women whom he considers to be of low moral standing. He also has some anti-social traits in his personality. He has severe depression and anxiety and strong suicidal ideation. He should undergo immediate psychiatric treatment to assess his suicidal risk and his need for psychotropic medication...

This young man, in my opinion, requires psychological counselling to address issues raised in this report as well as a drug rehabilitation program whilst in prison and follow-up care when released. Counselling would focus on his own abuse and the abuse of his mother, and how this has resulted in him being angry towards his mother and other women.

I note this man has low intelligence and the use of alcohol and drugs as well as his anger towards women resulted in an inability to gain insight into the consequences of his offending. However, it is my opinion that there exists a window of opportunity to change the direction of this man's life.

He is highly remorseful for his offending behaviour and, as he has stated, he has poor memory in regards to the events of many of these offences. I consider there will be a commensurate reduction in the likelihood of this man reoffending with appropriate counselling, abstinence of drug and alcohol abuse and his continued motivation to change the direction of his life."

- [47] The respondent was referred by his solicitors, Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, for psychological assessment and the preparation of a psychological pre-sentence report.

Report of Dr Robert Moyle, Consultant Psychiatrist, dated 30 November 2016

- [48] Dr Moyle's report was prepared on instructions from Crown Law. The report was based on an interview with the respondent at Townsville Correctional Centre on 24 September 2016 as well as extracts from the Office of the Director of Public Prosecutions files, QCS files, the respondent's criminal history and transcripts of the relevant court proceedings.
- [49] Dr Moyle reported that the respondent presented as cooperative, but had little depth to his emotions. His speech was spontaneous. He was quite impulsive, neglecting to stop and think before commenting. The respondent denied any paraphilic interests.
- [50] In his conversation with Dr Moyle, he acknowledged that power, dominance and relief of sexual tension did guide his thinking. There were times, in the past, when he was hypersexual in his arousal. Dr Moyle opined that the respondent was insightful. He had no signs of a mental disorder sufficient to affect his judgment, nor sufficient intellectual or educational slowing.
- [51] The respondent's sexual development was regarded as precocious but within the bounds of normal childhood exploratory behaviour.
- [52] The respondent suggested that from the age of 10 to 12 years he met girls attending parties. The respondent has said that he used to think of girls as sluts from whom he could take sex if he could get it. He says that he never received any proper sexual education until he began HISOP.
- [53] In his interview with the respondent, Dr Moyle made enquiries regarding his sexual offending history. In relation to the respondent's sexual assault of 2002, the respondent explained that he was 13 or 14 years of age and had been drinking when he approached

a girl in a telephone box and touched her buttocks. In relation to his first rape, which occurred in 2003 when the respondent was 15 and the victim was 14, the respondent explained that the offending emerged from a context of paint sniffing, which he suggested increased his sexual desire. He said that on the day of the offence he went into town high on paint fumes with the intention of seeking out sex. There is a clearly identifiable link between the respondent's offending behaviour and substance abuse. The respondent also stated that the rape was at least, to some extent, motivated by the victim rejecting him.

- [54] The respondent went on to offer an explanation of the context of his second rape. He again approached the victim seeking consensual intercourse. Again, the victim denied his advances, protesting the fact that she had a boyfriend. This rejection made the respondent agitated and angry. The respondent slapped the victim and recognised that she was scared. Reportedly, the permission statement that he gave himself was, "If she's got a boyfriend why can't I have sex with her". He supposedly found the event exciting for both sexual relief and because he had authority over her to get what he wanted when he wanted it. The respondent stated that the wrongfulness of the act never crossed his mind. He said that he committed the offence because he wanted sex, it was exciting.
- [55] His next rape occurred only two weeks later, reportedly within the context of the respondent arguing with his mother and feeling angry. When the offence occurred, the respondent again approached a woman who was largely unknown to him with the intention of having sexual intercourse with her. Again, the victim denied his advances at which point the respondent pinned her down and fondled her vagina. This time, however, upon seeing the victim cry, the respondent told the victim to go and did not continue his offending to the point of penile vaginal rape, as was the case with his previous two victims.
- [56] The respondent's main goals were pro-social, that is, to work, settle down with a girlfriend, have a family, and to have his own place. He reports that he now dreams of intimacy and having a relationship. He denies that he thinks of sex all the time like he did in his teens. Despite these claims, Dr Moyle did note that the respondent was repeatedly avoidant when asked about his current sexual arousal.
- [57] Dr Moyle undertook a number of formal assessments of the respondent in order to assess his risk of sexual recidivism. The results of Dr Moyle's risk assessment are as follows.
- [58] On the Static-99, Static-99-R and Static 2000 the respondent was rated as high risk.
- [59] On the Psychopathy Checklist – Revised, the respondent received a score of 20. Dr Moyle opined that this was indicative of, "reaching a level where one might be a little concerned but not overly concerned".
- [60] On the Sexual Offending Risk Appraisal Guide, the respondent was placed in category 7. Dr Moyle explained that generally people in this category have a 58 per cent chance of reoffending sexually at seven years and an 80 per cent chance of reoffending sexually at 10 years.
- [61] On the Stable, the respondent was given a score of 6, placing him as a moderate risk.

- [62] On the Risk of Sexual Violence Protocol, Dr Moyle did not give the respondent a specific score, but noted that when he was first arrested, the respondent would have had 13 positive items out of 22, seven negative items and two questionable items, rating him, at that time, at least a moderate if not a moderately high risk. Dr Moyle rates the respondent as only scoring positively on two items – problems with inmate relationships and non-inmate relationships. He suggests that the respondent still has some questionable ratings on other items, but no rating at all on eight items.
- [63] Dr Moyle opined that the respondent is largely a ‘power’ rapist from a deprived, neglectful and immoral background who made self-interested choices as a teen to experience sex, whether or not the victims wished it. It was suggested that from a clinical standpoint, the respondent’s lack of social and survival skills mean that he would require considerable support in returning to the community.
- [64] In terms of the respondent’s current mental state, Dr Moyle made the following observations:
- “Now in jail, he remains a little prone to emotionality, impatience and perhaps a little impulsive, but he has done well on the programs and has had a long period of imprisonment to settle down and stabilise himself in a non-drug and alcohol abusing environment, and he does not seem to have dirty urines or severe breaches other than interpersonal difficulties. In a minor way he does as he wants because and when he wants even though prohibited, such as getting tattoos or smoking where he is not allowed to smoke. There have been few breaches. He does not paint the picture of an overly psychopathic young man, mainly emotional and educationally-deprived from a neglected upbringing that makes it hard to develop true moral decision making and empathy for others.”
- [65] Dr Moyle believes, that through the HISOP, he has good insight into the ‘power’ rape and anger elements of his offending. He does not see any evidence of paedophilic interest. While the respondent does not currently report hypersexuality, Dr Moyle noted that this has been a feature in the past and suggested that if it were to become an issue again, the use of biological treatments to lower sexual arousal could be explored.
- [66] Ultimately, Dr Moyle formed the following conclusions about the respondent:
- “It is my opinion that Damien Scott Cobbo is now at moderate risk of sexual reoffending if released into a similar environment to what he was living prior to prison – i.e. an environment where he lived, off and on, with an antisocial and substance abusing mother and her partners, mixing mainly with antisocial and substance abusing peers. That risk is lowered considerably should he choose to seek psychological counselling and support with an avenue to refer to psychiatrists at the first signs of hypersexuality, so that biological management of power-driven sexual fantasies might assist him. If he is able to live with pro-social others and form relationships with pro-social others and partake in interests and activities that promote his positive identity, while not consuming substances with the support of Substance Abuse Programs, then I think the risk is considerably reduced. In such an environment, if he does get meaningful employment, he might reach some of the goals he wishes. I think, with

counselling, he could then start looking at developing non-sexually-based relationships with women before he starts overvaluing sex and undervaluing the relationship. This is going to be difficult, because he does not have a mental image as to what a loving relationship of mutual respect looks like to fall back on. He has learned much in the programs.

While I see him on the border of those of such high risk as to be subject to the DPSOA I also see little organisation of alternative living arrangements to those from which he came that promote antisocial offending and drug and alcohol abuse.

Therefore, the risk was high on coming into jail and is now moderate that he will reoffend, at worst by rape, although he is developing inhibitions against injuring or hurting female victims. The victims are likely to be strangers, on their own, in the community. If angry enough and feeling rejected enough, this could amount to violent rape, more so if victims turn away his advances due to having a boyfriend as he has powerful rage when feeling his wishes rate second to the girl's boyfriend. He has learned a lot in the programs and does not report deviant sexual interests or attitudes supporting rape. This modifies the risk downwards."

Report of Dr Andrew Aboud, Consultant Psychiatrist, dated 20 October 2017

- [67] This report was prepared as a consequence of an order under s 8 of the Act.
- [68] Dr Aboud interviewed the respondent on 18 August 2017. He also had regard to the substantial material. Dr Aboud considered the respondent met the diagnostic criteria for:
- antisocial personality disorder;
 - polysubstance dependence disorder (cannabis, inhalants and stimulants); and
 - alcohol dependence disorder.
- [69] There was no evidence to support a diagnosis of a mental illness. Although there had been a suggestion at the respondent's sentence that he suffers from post-traumatic stress disorder, Dr Aboud could find no evidence to support this diagnosis.
- [70] The respondent is not considered to have a paraphilia. Although three of the rape victims were under 16, Dr Aboud could find no evidence that the respondent targeted them because of a paedophilic drive. Instead, his choice of victim appeared to be highly opportunistic. The victims were vulnerable.
- [71] Dr Aboud noted that there is evidence to suggest a hypersexuality prior to incarceration.
- [72] Dr Aboud administered a number of risk assessment instruments.
- [73] On the Static-99-R, the respondent received a score of 10, placing him in the group regarded as high risk of offending. On the Risk Matrix 2000/S, the respondent was, upon assessment, placed into a group which is regarded as being at a very high risk of reoffending. On the Risk Matrix 2000/V, the respondent achieved a score of 7, placing him in the group which is regarded as a very high risk of reoffending.

- [74] On the Hare Psychopathy Checklist, the respondent achieved a score of 21/30, which is below the cut off for a diagnosis of psychopathy to be made.
- [75] On the HCR 20, which uses static and dynamic variables to structure assessment and assist professional/clinical judgment in estimating future general violent risk and how to manage that risk, the respondent achieved an overall score of 27/40. Dr Aboud considered this score is indicative of a risk between moderate and high. There was a clear static loading and also a loading for future dynamic risk.
- [76] Dr Aboud noted the high score of risk management items, which is suggestive that the future risk of instability post release requires attention. The respondent requires significant pre-release planning and engagement. He requires close support and supervision.
- [77] On the Risk for Sexual Violence Protocol (RSVP), which uses both static and dynamic variables associated with risk of sexual violence, the respondent was considered to have positive scores for the following items:
- physical coercion in sexual violence;
 - psychological coercion in sexual violence;
 - problems with substance use;
 - problems with intimate relationships;
 - problems with non-intimate relationships;
 - non-sexual criminality;
 - problems with planning; and
 - problems with supervision.
- [78] Dr Aboud considered the respondent to have possible/partial scores for the following items:
- chronicity of sexual violence;
 - diversity of sexual violence;
 - escalation of sexual violence;
 - attitudes that support or condone sexual violence;
 - problems with self-awareness;
 - problems with stress or coping;
 - problems resulting from child abuse;
 - psychopathic personality disorder;
 - problems with employment; and
 - problems with treatment.
- [79] Dr Aboud considered the respondent, should he reoffend, would offend opportunistically, mostly likely in the course of social interaction with women in a group setting, such as a party or meeting a woman in a public place. He would target a female stranger, most likely an adult but the possibility of younger females could not be excluded. The respondent would attempt to follow her, isolate her, engage her in conversation and then make sexual overtures. If she resists, he would become angry and irritable. He will resort to insults, verbal threats of violence and actual violence. He will force himself upon her and rape her. His objective will be sexual gratification.

- [80] Dr Aboud also considered that the sexual offending might occur in the course of a robbery, break and enter or general assault. The respondent would be at a significantly increased risk of offending when intoxicated by alcohol or substances. However, there would be an escalation of risk when the respondent is feeling bored, stressed, sexually preoccupied or experiencing negative affective states such as anger.
- [81] Dr Aboud expressed the view that the respondent's overall unmodified risk would currently be above moderate in respect of both sexual violence and non-sexual violence.
- [82] Dr Aboud considered that the respondent has undergone significant maturation over the past 10 years. He has a greater understanding of the risk factors of offending. He has developed strategies to manage the risk. Dr Aboud noted the respondent received positive reports from all programs he participated in. Further, he is proactively engaged in future planning. He has adopted some realistic plans for the future. He has agreed to be subject to a supervision order. It appears that he would be likely to accept the conditions.
- [83] Dr Aboud considered the respondent's risk of sexually offending would be reduced to below moderate and would be manageable in the context of a supervision order. He requires access to stable accommodation, abstinence from alcohol and substances, enhancement of pro-social personal family supports, management of associations with criminogenic peers and peers who misuse alcohol and substances, management of isolation, efforts to enhance structured pro-social daily activities and routine, provision of professional support from a psychologist and participation in a sexual offender maintenance program. The presence of an ongoing hypersexuality should be referred to a psychiatrist for consideration of biological treatment options.
- [84] Any order should be imposed for a period of at least five years.

Report of Dr Michael Beech, Consultant Psychiatrist, dated 8 October 2017

- [85] This report was prepared as a consequence of the same order.
- [86] Dr Beech interviewed the respondent at the Townsville Correctional Centre on 8 September 2017. Dr Beech also had regard to the substantial written material.
- [87] Dr Beech also administered a number of actuarial instruments.
- [88] On the Static-99R, the respondent achieved a score of 10, placing him in the group of offenders seen to be at high risk of offending. Dr Beech considered that the static score, "artificially elevates the risk". Some issues were moderated, such as the fact that the offences occurred during youth when he was highly sexually driven, immature and acting out childhood emotional issues. Nevertheless, Dr Beech considered the risk was still in the moderate/moderate high area for these static factors.
- [89] On the Risk for Sexual Violence Protocol, Dr Beech noted the following factors:
- persistence of offending;
 - use of physical coercion;
 - attitudes that condone sexual violence (past);
 - problems with stress or coping (past);

- problems from child abuse;
- problems with substance abuse;
- violent ideation;
- problems with intimate relationships;
- problems with employment (past);
- criminality; and
- problems with supervision.

- [90] Dr Beech considered the respondent has matured and some of these matters may not necessarily be relevant. The risk is on release into the community that they might be enlivened again.
- [91] On the Hare Psychopathy Checklist, the respondent achieved a score of 17/28 which is not in the range of psychopathy.
- [92] Dr Beech considered the risk remains moderately high. It is lowered by his maturity, his rehabilitation and his insight. Dr Beech is concerned that any gains have yet to be tested in the community.
- [93] Dr Beech considered the respondent would benefit from supervision in the community and stable accommodation to help him adjust.
- [94] Dr Beech also considered the respondent required further counselling and monitoring in the community,. He would also need to abstain from substances. With these safeguards in place, the risk would be reduced to below moderate.

Respondent's submissions about the psychiatric material

- [95] The respondent's submissions note:
- (a) Dr Moyle opines the respondent was presenting a high risk when he came into jail. However he has now developed inhibitions against injuring or hurting female victims. He expresses the opinion that he sees the respondent as being on the border of such a high risk as to be subject to the Act.
 - (b) Dr About states the respondent has undergone significant maturation over the past 10 years. He has a greater understanding of his risk factors, and has developed strategies to manage future risk. He opines that his risk of reoffending sexually would be reduced to below moderate and would be manageable in the context of a supervision order.
 - (c) Dr Beech notes that the exit report from the HISOP indicates the development of insight and awareness, an understanding of how his offending occurred, and risk factors for further offending. He notes there is evidence of significant benefit from his rehabilitation. Dr Beech notes that there is some uncertainty as the respondent has not lived in the community as an adult. He opines that the respondent's risk would be substantially lowered, below moderate, if supervised in the community.

Respondent's attitude to order

[96] The respondent's affidavit (sworn 14 November 2017) states that he believes that the supervision order is an opportunity to prove himself in the community, and as such he wishes to be placed upon it to prove his rehabilitation.

[97] The respondent does not have any private accommodation. He will be placed in contingency accommodation in a precinct for sexual offenders, which is located close to the Townsville Correctional Centre. The respondent says in his affidavit that he intends to find and rent a private residence in a timely fashion upon release.

Conclusion

[98] Although the respondent concedes that a Division 3 order should be made in the form of a supervision order, I must consider independently the exercise of my discretion to make such an order, which imposes severe restrictions upon the respondent's liberty.

[99] I am satisfied that there is sufficient cogent evidence to conclude that the respondent presents an unacceptable risk of the commission of a "serious sexual offence" as defined by the Act. There are no reasons as to why I should not exercise my discretion to make an order.

[100] I accept the applicant's submission, joined in by the respondent, that the respondent should be released subject to a supervision order.

[101] The applicant submits:

"It is clear that the respondent harbours ambitions to succeed in the community. He has insight into his offending. He has matured. He has developed understanding of risk factors involved and has developed strategies to manage this risk.

However, in order to manage that risk to an acceptable level, it is submitted that a supervision order which would provide the respondent with assistance in finding accommodation, mandate abstinence from alcohol, mandate separation from persons who misuse alcohol and substances or who would otherwise adversely affect the respondent's management in the community, to assist with psychological and, if necessary, psychiatric support and would mandate participation in a sexual offender maintenance program. All of these features would go a considerable way to assisting the respondent in reintegrating into the community and overcoming some of the stressors that he will undoubtedly encounter. It would also provide adequate protection to the community."

[102] The parties agree that the order should be for a period of five years. I have reviewed the terms of the proposed order and make an order in those terms. A copy is annexed to these reasons.

The importance of suitable and stable accommodation

[103] The respondent's commitment to his rehabilitation, during the many years he has been in custody, and now in wanting to be placed on a supervision order as an opportunity to prove himself to the community, is commendable. He had a very prejudiced upbringing, witnessing violence from an early age. He lacked parental guidance. His

prejudiced upbringing means that he has not had the experiences and developed the life skills of many citizens of his age. He left school in grade 8. Unlike many teenagers, he did not progress into work or further study, and live in rented accommodation either on his own or with friends.

- [104] Rather than possessing at the age of 30 a 10 year rental history, which might allow him to compete in the private rental market, he has spent the last 10 years in prison, improving himself. Despite his motivation to succeed and to continue his rehabilitation upon release from prison, he faces many challenges in obtaining secure accommodation and employment. He has lived an institutionalised life for the last 10 years.
- [105] The respondent's rehabilitation, and therefore the protection of the community from a relapse into crime, depend upon the respondent obtaining both supervision and support. The affidavit of the Acting Manager of the High Risk Offender Management Unit filed 9 November 2017 indicates that inquiries will be made with an appropriately qualified psychologist for the respondent to engage in psychological treatment. Consideration also will be given to referring the respondent to a Cultural Mentoring Program based on his cultural ties and needs. Such a program is available in the Townsville area. The respondent will be provided with contact details for the Alcohol Tobacco and Other Drugs Service (ATODS) in Townsville, and he can attend Alcoholics Anonymous.
- [106] As earlier noted, Dr Moyle says that the respondent's lack of social and survival skills means that he will require considerable support in returning to the community. Dr Aboud says that the respondent requires access to stable accommodation. Dr Beech agrees that the respondent would benefit from stable accommodation to help him adjust.
- [107] The applicant's submissions, as quoted above, indicate that a supervision order will provide the respondent with assistance in finding accommodation. However, that assistance is limited. I was told during the hearing that a case worker would assist the respondent to access websites upon which private accommodation is advertised. One hopes that this and other assistance will provide the respondent with the stable accommodation which he needs. However, his lack of a rental history, his current lack of employment and his lack of social skills must present a significant impediment to his securing private accommodation which is stable and suitable. Few private landlords might be expected to offer accommodation to someone with his background who is subject to an order under the Act, compared to someone without such a criminal record. Even if the applicant obtains an offer of private accommodation, it must be approved by those who supervise his order. Based upon my experience in other matters under the Act, many forms of accommodation in the general community are not approved.
- [108] Given the limited pool of private accommodation which would be approved if the respondent ever succeeded in obtaining an offer of accommodation, considerable assistance in helping the respondent to find suitable accommodation will be required.
- [109] Unless and until the respondent can find suitable long-term accommodation in the community, he will be housed in "contingency accommodation". Queensland Corrective Services provides "contingency accommodation" at Wacol, Rockhampton and Townsville for persons released to supervision orders under the Act. This accommodation is provided for an initial three month period and is subject to review thereafter. While some initial support is offered on a case by case basis in sourcing

suitable accommodation in the community, persons subject to a supervision order are responsible for their reintegration in accordance with the conditions of their order.

- [110] This hearing is not the occasion for a general inquiry into the availability of suitable and stable accommodation for persons released on supervision orders. This is a matter of public policy and resource allocation. Also, I do not have the data which would permit any precise prediction about whether the respondent is likely to obtain the stable accommodation which he obviously needs in order to continue his rehabilitation, and thereby reduce the risk of reoffending. Some general information was provided to me about the number of places in the three precincts and the number of individuals who are currently subject to supervision orders. These figures suggest that about half the number of individuals subject to supervision orders under the Act reside at the three precincts. There may be some individuals who prefer to live in such a precinct rather than in the community. However, these basic statistics suggest that the precincts provide accommodation for many individuals well after the initial contingency period of three months. I infer that many individuals simply cannot find suitable accommodation either in the private rental market or in public housing. In previous cases I have been told that there was only one bed in a hostel in Far North Queensland made available to persons released under supervision orders.
- [111] The immediate concern is the respondent's need for suitable and stable accommodation. Understandably, given his history and the lack of any proposal about where he might obtain private accommodation, he can expect to reside in the Townsville precinct or in some other precinct for some time. The Townsville precinct is close to the Townsville Correctional Centre. It is a considerable distance from services, including places in which the respondent can obtain treatment, education and support. There is no suggestion that the respondent, or others like him in a similar position, are prime candidates for public housing or that any available public housing would be approved by Corrective Services. However, I expect the respondent's case manager to explore available public housing opportunities and waiting lists with the respondent. There is no suggestion that there is suitable hostel-style accommodation which the respondent can access.
- [112] The twin objects of the Act are ensuring adequate protection of the community by orders made under Part 3 and providing for the continuing control, care or treatment of certain prisoners to facilitate their rehabilitation. The twin aims of community protection and rehabilitation are not inconsistent. In a case like this, the respondent's successful rehabilitation helps ensure adequate protection of the community. He needs ongoing treatment from a suitably qualified psychologist to address many matters, and to build upon the treatment he has received in custody. The respondent needs cultural mentoring and programs to address the problems which he has experienced in the past with alcohol. The success of psychological and other treatment, the prospects of further education and the chances of the respondent obtaining employment all will be enhanced if he obtains stable accommodation. The three psychiatrists emphasise his need for support in the community and access to stable accommodation. The importance of the respondent obtaining suitable and stable accommodation cannot be overstated. With his background and lack of familiarity with securing private accommodation for himself, he probably will need a good social worker to assist him to find accommodation and to make other practical arrangements to aid his rehabilitation.

[113] It would be unfortunate, to say the least, if the respondent's commitment to his rehabilitation and self-improvement was prejudiced by an inability to find suitable and stable accommodation outside of the contingency accommodation. I expect those with the responsibility for supervising and supporting the respondent will assist him to find suitable accommodation. A failure to do so would impede his rehabilitation and, as a consequence, undermine the objectives of the Act.

ANNEXURE

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS6968/17

Applicant **ATTORNEY-GENERAL FOR THE STATE OF
QUEENSLAND**

AND

Respondent **DAMIEN SCOTT COBBO**

SUPERVISION ORDER

Before: Applegarth J

Date: 20 November 2017

Initiating document: Originating Application filed 7 July 2017 (CFI 1)

THE COURT, being satisfied to the requisite standard that the respondent, Damien Scott Cobbo, is a serious danger to the community in the absence of an order pursuant to Part 2, Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, ORDERS THAT:

1. The respondent be subject to the following conditions until 2 December 2022:

The respondent must:

Statutory Requirements

1. report to a Corrective Services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 9:00am and 4:00pm on the day of his release from custody, and at that time advise the officer of his 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 his name, place of residence or employment at least two 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 *Dangerous Prisoners (Sexual Offenders) Act 2003* given to him;
7. comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of this 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 this 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;
11. notify a Corrective Services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed at least two days prior to commencement or any change;

Accommodation

12. 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;
13. if this accommodation is of a temporary or contingency nature, 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 for suitability by Queensland Corrective Services;
14. not reside at a place by way of short term accommodation including overnight stays without the permission of a Corrective Services officer;

Indictable Offences

15. not commit an indictable offence during the period of the order;

Movements, Associates and Disclosure

16. respond truthfully to enquiries by a Corrective Services officer about his activities, whereabouts and movements generally;
17. not have any direct or indirect contact with a victim of his sexual offences;
18. 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;
19. 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;

20. 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 that full disclosure has occurred;

Motor Vehicles

21. notify an authorised 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;

Alcohol and Drugs

22. abstain from the consumption of alcohol and illicit drugs for the duration of this order;
23. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Corrective Services officer;
24. disclose to a Corrective Services officer all prescription and over the counter medication that he obtains;
25. not visit premises licensed to supply or serve alcohol, without the prior written permission of a Corrective Services officer;
26. not visit public parks without the prior written approval of a Corrective Services officer;

Medical and Treatment

27. 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;

28. permit any medical, psychiatrist, psychologist, 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;
29. 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 practitioners where appropriate;

Contact with Children

30. 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 of 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 of the children 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;

Computers, Telephones and Technology

31. notify a Corrective Services officer of any computer or other device connected to the internet that he regularly uses or has used;
32. supply to a Corrective Services officer any password or other access code known to him to permit access to a computer or other device, or content accessible through a computer or other device, and allow any device where the internet is accessible to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;

33. 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;
34. allow any other device including a telephone to be randomly examined. If applicable, account details and/or telephone bills are to be provided upon request of a Corrective Services officer; and
35. advise a Corrective Services officer of the make, model and telephone number of any mobile telephone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use, and this includes reporting any changes to mobile telephone details.