SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Currie* [2017] QSC 318
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **JOEL GEORGE CURRIE** (respondent)
FILE NO:	BS10864 of 2015
DIVISION:	Trial Division
PROCEEDING:	Review of continuing detention order
DELIVERED ON:	21 December 2017
DELIVERED AT:	Brisbane
HEARING DATE:	11 and 21 December 2017
JUDGE:	Mullins J
ORDER:	**1. The decision that the respondent is a serious danger to the community in the absence of a division 3 order is affirmed.** **2. The respondent continue to be subject to the continuing detention order made by Byrne SJA on 11 March 2016 for control, care and treatment.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where a continuing detention order had been made in respect of the respondent – where first review of the continuing detention order required – whether decision that the respondent is a serious danger to the community in the absence of a division 3 order should be affirmed – whether respondent should continue to be subject to the continuing detention order or be released from custody subject to a supervision order *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 27, s 30 *Attorney-General for the State of Queensland v Currie* [2016] QSC 48, related
COUNSEL:	J Tate for the applicant

The respondent appeared in person

SOLICITORS: G R Cooper, Crown Solicitor for the applicant

[1] This is the first review under s 27(1A) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (the Act) of the continuing detention order made by Byrne SJA on 11 March 2016 in respect of the respondent Mr Currie: *Attorney-General for the State of Queensland v Currie* [2016] QSC 48 (the reasons). Mr Currie was not represented by lawyers when the oral evidence was adduced and submissions were made on 11 December 2017. Mr Currie conducted the cross-examination of the witnesses himself.

Why the continuing detention order was made

[2] Mr Currie is a 33 year old indigenous man. The history of Mr Currie's sexual offending is set out in [3] to [8] of the reasons.

[3] Mr Currie was assessed by three psychiatrists, Dr Beech who interviewed him in June 2015, Dr Harden who interviewed him in September 2015, and Dr Sundin who interviewed him in December 2015, each of whom diagnosed Mr Currie with an antisocial personality disorder with psychopathy and at a high risk of violent sexual offending. Both Dr Beech and Dr Sundin anticipated that Mr Currie was likely to need individual therapy before undertaking an intensive sexual offender program. Both Dr Sundin and Dr Harden recommended that Mr Currie undertake the High Intensity Sexual Offenders Treatment Program (HISOP) before release from custody.

[4] Byrne SJA at [25] of the reasons summarised the effect of Mr Currie's evidence on the application:

> "The material which the respondent himself adduced in evidence confirms the assessments of the psychiatrists that he minimises his violent sexual offending, lacks empathy with victims, has little or no remorse, is fixated on his own difficulties, and has unrealistic post-release plans."

[5] Evidence was provided by Queensland Corrective Services (QCS) of Mr Currie's behavioural record in prison and his lengthy record of breaches and incidents covering failing to comply with directions, violent and threatening behaviours towards staff, and claims of assaults from prisoners and correctional staff. He had been housed in detention units in the various correctional centres where he was held which precluded participation in any program. Reference was made at [28] of the reasons to the evidence that Mr Currie had not been offered a place on any sexual offending program because he had been "assessed as an unacceptable risk, and being unable to demonstrate a significant period of appropriate behaviour whilst in custody".

[6] Byrne SJA recorded his conclusion at [36] of the reasons that it had been proved by acceptable, cogent evidence and to a high degree of probability that Mr Currie was a serious danger to the community in the absence of a division 3 order and in particular

that "he poses a high risk of committing a sexually violent offence against females, young and older, if released into the community at this stage".

Mr Currie's progress under the continuing detention order

[7] Mr Currie has been housed in four prisons since the making of the continuing detention order: Wolston, Brisbane, Capricornia and Woodford. There are 22 incidents on his violation history between 3 April 2016 and 14 November 2017, one of which was recorded as a major breach on 3 April 2016.

[8] In March 2017 Mr Currie accepted an offer to participate in the Positive Futures Program which takes a cultural approach to family violence and substance abuse, but Mr Currie was unable to commence the program due to an insufficient number of protection prisoners accepting placement on the program at Woodford. In mid-2017 two offers were made to Mr Currie to participate in the Low Intensity Substance Intervention (LISI) Program at Woodford, but Mr Currie refused to participate.

[9] In June 2017 Mr Currie accepted a place on the Resilience Program that focuses on supporting participants to identify coping strategies and build resilience, but due to association issues with another prisoner, Mr Currie did not commence the resilience program. He subsequently commenced the resilience program on 10 August 2017, but did not continue after attending one session, advising that he was willing to engage only in HISOP.

[10] On 14 March 2016 Mr Currie was referred to the Forensic Psychology Centre (FPC) for individual treatment. He commenced treatment with forensic psychologist Ms Wood on 24 March 2016 on approximately fortnightly basis. From 11 November 2016 Mr Currie's individual treatment was forensic and clinical psychologist with Dr Madsen of the FPC. Dr Madsen's latest written psychological treatment progress report is dated 10 September 2017.

[11] In August 2017 the Offender Intervention Unit of QCS undertook the review of Mr Currie's program recommendations and determined that Mr Currie was not suitable for engagement in the recommended sexual offending programs. This is on the basis that Mr Currie had been unable to demonstrate commitment and motivation to develop the skills to more effectively self-regulate his emotions in preparation for more challenging and intensive programs.

[12] On 23 November 2017 a case conference was undertaken to review and update Mr Currie's program recommendations. This involved representatives from OIU, Specialised Clinical Services and the High Risk Offender Management Unit (HROMU). A report of that case conference was prepared. Relevantly, the summary of the outcome of that case conference and the decision was recorded as:

> "Prisoner Currie has been unable to demonstrate the capacity to manage his emotions and behaviour in a way that is conducive to inclusion in more challenging and intensive programs by failing to complete recommended low intensity programs. As such, OIU considers him presently unsuitable for sexual offending programs. Until such time that prisoner Currie can

participate in and complete the recommended low intensity interventions, he will not be offered a place on the GSPP.

Taking into consideration prisoner Currie's consistently poor institutional conduct, with his last recorded incident being as recent as 14 November 2017, OIU considers him to pose too great a risk to the safety of both programs staff and fellow group participants. Until such time that prisoner Currie can demonstrate a reasonable period of stability in this regard, he will not be offered a place on the GSPP.

HROMU have advised OIU that given prisoner Currie is yet to meet the requirements for inclusion in sexual offending programs, he will continue to engage with Dr Madsen for the purposes of providing individual intervention. OIU supports this decision.

Should prisoner Currie demonstrate a willingness to engage in and complete low intensity group-based programs, he will again be afforded the opportunity to participate in the LISI and the Resilience program to support his progression towards his recommended sexual offending programs. However, any future decision relating to program offers or participation in group-based intervention will invariably need to consider his institutional conduct in the preceding period as well as his immediate risk to others.

OIU will conduct a further review of prisoner Currie's program recommendations at a suitable time to ensure fair consideration is given to his referral for and access to sexual offending intervention. As per the process for the current case conference, such a review will encompass his institutional behaviour and other responsivity factors, his participation in low intensity programs, and his progress with individual intervention."

The psychiatric evidence

[13] For the purpose of this first review, Dr Sundin interviewed Mr Currie on 3 August 2017 and provided a written risk assessment report dated 20 August 2017. Although Dr Sundin had been informed by a female staff member that no female staff were allowed to be alone with Mr Currie, Dr Sundin interviewed Mr Currie for two hours in an interview room in the protection unit where they were both present in the same room without any intervention of any corrective services staff and there were no problems, with Dr Sundin describing Mr Currie in these terms:

> "Throughout the two hour interview, Mr Currie behaved in an appropriate manner towards me. Whilst he was his usual narcissistic and verbose self, keen to hold the floor and delineate in detail all the ways in which he has been victimised; he was nonetheless respectful and even when angry and animated did not behave in a threatening manner."

[14] Dr Sundin confirmed her diagnoses that Mr Currie meets the criteria for anti-social personality disorder and psychopathy. Dr Sundin considers that his demonstrated paranoid and narcissistic personality traits were in the spectrum of his prominent anti-social personality disorder. Dr Sundin notes that Mr Currie's previous substance use disorder appears to be in remission whilst in prison. Using the risk assessment

instruments, Dr Sundin's evaluation of Mr Currie remains unchanged from 2016, although Mr Currie does express "a more positive attitude towards intervention". Dr Sundin continues to be of the opinion that Mr Currie's unmodified risk for future sexual violence remains high.

[15] Dr Sundin supports the suggestion that Mr Currie might respond to the Sexual Offending Program for Indigenous Male (SOPIM).

[16] Dr Sundin's ultimate conclusion in her report is that Mr Currie is currently not suitable for release into the community, even with the benefit of a supervision order. Although he has made progress over the last year, it was not sufficient progress to allow Mr Currie to be released safely into the community under a supervision order. Dr Sundin explained this in her oral evidence:

> "… the biggest problem we have with Mr Currie is that he does have very significant psychopathic features, into which he has no insight, but which are a direct issue in the risk he poses for future sexual offending. And which, in my opinion, render him an unacceptable risk to the community as things currently stand. I think the risk that he poses is sufficiently high at the stage that he can only be managed in the unit and indeed in a specialised unit within the prisons."

[17] Dr Sundin was asked for her opinion about a letter that had been located on 7 November 2017 written by Mr Currie that he was attempting to send to the girlfriend of another prisoner. The letter was never sent, but was encouraging the recipient to bring him drugs secreted on her person in return for payment. He was also proposing that they have a sexual relationship. Dr Sundin considered the letter exemplified one of Mr Currie's core problems which is "his lack of insight as to issues around his own behaviour, which are inappropriate, unacceptable, likely to cause offence, potentially harming to others". In reaching her ultimate conclusion, Dr Sundin drew on the collateral material that detailed his involvement in various incidents and breaches within the prison that showed he was "demonstrating quite significant emotional volatility, behavioural dis-regulation".

[18] In response to Mr Currie's question whether Dr Sundin had any objection in his doing a one-on-one program outside the prison with a trained doctor, Dr Sundin confirmed her view that an individual one-to-one program outside prison would not adequately meet his treatment needs or adequately ensure the safety of the community.

[19] Dr Harden interviewed Mr Currie on 4 September and 12 October 2017 for a total period of two hours and 30 minutes. His written report is dated 22 November 2017. Dr Harden compared Mr Currie with his presentation when interviewed in 2015. Dr Harden described the content of Mr Currie's contribution to the interview in these terms:

> "The dominant themes of his speech were his dislike of the supervision order process and assessment, his dislike for other inmates, his allegations regarding corrupt officers, his preoccupation with being a victim of racism and his frequently declared dislike of tracking devices on supervision orders."

[20] Dr Harden's observations on Mr Currie's view of his sexual offending were:

> "He appeared to have very limited insight into his own functioning with regard to his prior sexual offences. He seemed to use a range of cognitive distortions and defences including partial denial, minimisation, rationalisation and others. He also had limited insight into the effect of his behaviour on others particularly his aggressive, threatening and out of control behaviour. He always had a rationalisation to explain this and an external locus of control to defray his responsibility for his actions."

[21] Dr Harden obtained the same results for Mr Currie in applying the assessment instruments that he obtained in 2015. Dr Harden considers that Mr Currie meets the diagnostic criteria for antisocial personality disorder with significant psychopathic personality features and that his poly-substance abuse is in remission, because of incarceration.

[22] Dr Harden is of the opinion that there are clearly identified outstanding treatment needs in respect of Mr Currie's sexual offending, noting that Mr Currie "has little or no insight into the risk he poses to others in the community, nor any genuinely expressed concern regarding this".

[23] Dr Harden considers that Mr Currie's ongoing unmodified risk of sexual re-offence in the community is still in the high range and that, if he were released from custody on a supervision order in his current state, his risk of sexual reoffending would continue to be high, as his lack of co-operation and lack of intervention for his sexual offending would not result in the supervision order significantly altering his risk.

[24] Dr Harden makes these recommendations:

> "He should undertake the group **High Intensity Sexual Offending Program** in custody prior to any consideration of release on any kind of order. Alternatively given his level of concern about what he sees as institutionalised racism and corruption, it might be worth considering him undertaking the **Sexual Offending Program for Indigenous Males** offered at Lotus Glen Correctional Centre.
>
> He will require ongoing individual therapy and support from a practitioner experienced in managing individuals with severe personality disorder during any group intervention program."

[25] Dr Harden also recommends that Mr Currie should abstain completely and permanently from alcohol and drug use.

[26] Dr Harden was of the view that the Resilience program and the LISI program were being offered to Mr Currie to give him a chance to demonstrate that he could participate successfully in a group program. If he could successfully undertake a low level program, he would then be able to do them Getting Started Preparatory Program which would enable him to undertake either HISOP or SOPIM.

[27] When it came to the opportunity to cross-examine Dr Harden, the respondent declined to do so, saying "I've got nothing to say, because it's all bullshit". It's just lies after lies."

Dr Madsen's evidence

[28] In his report dated 10 September 2017, Dr Madsen expressed his opinion on Mr Currie as follows:

> "Mr Currie is obviously a very difficult individual to establish rapport with and meaningfully engage in psychological treatment. Within sessions he controls the process through his dominant interpersonal manner, occasional hostility and implied (and not so implied) threats. He demonstrates poor insight to concerns related to his sexual offending risk, is un-motivated for treatment, is highly egocentric, believes that he is superior, is generally callous and lacking in empathy. Whilst a likely contributing factor to some of the difficulties of working with Mr Currie have related to the uncertainty with regards to his access to the group program (i.e. HISOP), the inability to establish an effective rapport and a focus within sessions, largely relate to his psychopathic personality traits."

[29] Dr Madsen is of the opinion that some of Mr Currie's documented behaviour in prison shows him playing staff off against each other and that he seeks to dominate and intimidate others which are "serious treatment-interfering behaviours". Dr Madsen proposes to counteract "the interpersonal manipulation and staff splitting" by having a collaborative team approach to those working with managing Mr Currie where each team member has a specified role and there is a clear structure and goals for the intervention.

[30] Dr Madsen's conclusion in this report is:

> "In sum, Mr Currie is a very complicated individual who presents a treatment provider and the prison with unique challenges. It is my view that it is unrealistic to expect that individual treatment alone, without an overarching engagement and management strategy, can successfully treat this challenging individual. At this time there is potentially an opportunity to do this, however, this would require more intensive collaboration between stake holders and the development of a shared strategy. Further to this, Mr Currie would also require a greater level of one-to-one engagement (i.e. weekly sessions); whilst the 'treatment team' would need to regularly liaise regarding his progress, on-going behaviours and management in the prison."

[31] Dr Madsen had been informed by QCS that Mr Currie was not being considered for a group sex offending treatment program, so Dr Madsen considered he should try to address Mr Currie's outstanding sex offender specific treatment needs through an individual treatment program. At the time of the hearing, that proposal had not yet been implemented, as Mr Currie had been placed in a detention unit. The meeting which Dr Madsen anticipated would take place between Mr Currie, Dr Madsen and the other psychologists involved in the treatment of Mr Currie had been postponed, but Dr

Madsen had conveyed his intention to Mr Currie to provide him with an individual sexual offender treatment program.

[32] Dr Madsen was not involved in the case conference about Mr Currie that took place on 23 November 2017 and was not privy to the strategy that had been resolved for treating Mr Currie. He thought the strategy was sound, but the challenge would be in getting Mr Currie in a group program and keeping him in the group. When asked to express an opinion on the likely success of a one-on-one sex offender treatment program in reducing Mr Currie's risk of reoffending, Dr Madsen's prognosis was guarded.

[33] During cross-examination by Mr Currie, Dr Madsen agreed that the one-on-one sexual offender treatment program he was devising for Mr Currie could be delivered in the community.

The evidence of Mr Currie's sister

[34] Support during the hearing of the application for Mr Currie was provided by the presence of some family members, including his sister who gave oral evidence in support of him. Ms Currie emphasised the importance of kinship and culture in the indigenous community and how that could be used positively to assist her brother in his rehabilitation. Ms Currie felt her experience during the last five years as a family support worker informed her view on what should happen to her brother.

[35] Ms Currie proposed that her brother be allowed to return to his country where the local indigenous community had its own enterprises and would be able to support him. There was farm property which was isolated which she considered would be a "perfect spot" for Mr Currie to complete the rehabilitation and to work on the property without the torment he had encountered in prison. Ms Currie is pessimistic about how Mr Currie will respond to any of the programs that the psychiatrists suggested he should complete, as she did not think the programs would suit him, because the prison system had not treated him well. He has informed her of abuse he had to tolerate. Ms Currie did not support Mr Currie being transferred to north Queensland to undertake the SOPIM, as he would be away from family. On the resumed hearing on 21 December 2017, Mr Currie relied on a letter from Mununjali Jymbi Centre that confirmed the availability of the types of services Ms Currie described in her evidence.

Mr Currie's submissions

[36] Mr Currie submitted that a division 3 order was not conducive to the rehabilitation of a sex offender because of the stress that it imposes on the sex offender. That, in his case, "to collar [him] like an animal" would be to set him up for failure. He submitted that if he had been allowed to do HISOP at an earlier time during his sentence and then obtain the parole order, he would not be before the court on an application under the Act. He wished to continue with his Aboriginal artwork and teach the next generation about art. He was willing to continue with counselling with Dr Madsen, if he were allowed to undertake his rehabilitation in the community.

Supplementary evidence

[37] During the hearing on 11 December 2017 when Dr Madsen gave evidence, it was apparent that the psychiatrists had been unaware of Dr Madsen's proposal that he deliver an individual sex offending treatment program to Mr Currie. A transcript of the hearing on 11 December 2017 was sent to each of Dr Sundin and Dr Harden with a request they provide supplementary opinions, in the light of the further material that emerged during the hearing.

[38] Dr Sundin has provided a supplementary report dated 15 December 2017 in which she states:

> "Having reviewed Dr Madsen's testimony it appears that after supplying his most recent report to the Court. Dr Madsen met with staff from Woodford to determine what other options for management were available to assist Mr Currie specifically address his risk for future sexual offending. I was not aware that this had taken place when I testified in Court.
>
> An individual treatment programme addressing emotional self-regulation and capacity to safely participate within a group therapy programme was considered. In addition it appears that Dr Madsen has been trying to determine a strategy by which together with a psychologist based in Woodford Correctional Centre, he might work with Mr Currie on a 1:1 basis to deal with his risk factors for future sexual offending.
>
> This is not the same as participation in the High Intensity Sexual Offenders Programme but nonetheless is worthy of the significant effort it will require and may alleviate the problems that have prevented Mr Currie participating in some form of therapy to address is outstanding treatment needs."

[39] Dr Sundin reviewed the QCS material relating to an alleged sexual assault by Mr Currie on another prisoner on 4 July 2017 and a copy of that prisoner's withdrawal of complaint in September 2017, but noted that she remained of the opinion that Mr Currie represents an unacceptable risk to the community for sexual offending and should be detained in prison for further treatment.

[40] Dr Harden has provided a supplementary report dated 18 December 2017, but expresses the view that the new material does not broadly alter his previous opinions regarding Mr Currie's risk of sexual recidivism. Dr Harden does alter his recommendations, however, in the light of the new material on the basis of the identified problems in placing Mr Currie in a group program in the near future and states:

> "However, if he were to successfully complete the individual program outlined by Dr Madsen to a high level including compliance with program content and demonstrated appropriate institutional behaviour and compliance over a 12 month period or greater this would give me more confidence in his ability to comply with a supervision order in the community.
>
> If he were compliant with the strictures of a supervision order in the community in my opinion this would reduce his risk of sexual recidivism to moderate via the monitoring, reporting and substance abstinence provisions."

[41] Mr Tannock who is the acting principal adviser of the HROMU has provided a further affidavit as a result of the hearing on 11 December 2017 that sets out the view of QCS that the benefits of a group-based program such as the HISOP cannot be replicated on an individual basis, stating:

> "The intensity level of the program, the peer challenges and interpersonal reactions within a broad group of individuals cannot be delivered in one-one-one therapy."

[42] Mr Tannock also advises that the dynamics of a group-based program and a participant's responses and interactions often provide QCS with valuable information about the participant which can be useful in developing management strategies and supervision for the participant.

[43] Mr Tannock remains of the view that the recommendations from the case conference held on 23 November 2017 remain applicable for Mr Currie, but notes that QCS will be guided by psychiatric and psychological opinion and recommendations regarding the respondent's treatment. QCS proposes to provide opportunities for the respondent to engage in individual treatment with a suitably qualified psychologist and will continue attempts to prepare Mr Currie to participate in a group-based sexual offending treatment program.

Is Mr Currie a serious danger to the community in the absence of a division 3 order?

[44] Under s 30(2) of the Act, the court may affirm the decision that Mr Currie is a serious danger to the community in the absence of a division 3 order only if it is satisfied by acceptable, cogent evidence and to a high degree of probability that the evidence is of sufficient weight to affirm the decision.

[45] The psychiatric opinions from Dr Sundin and Dr Harden leave no doubt that Mr Currie is at a high risk of sexual offending, if released into the community unsupervised. Although there may be room for debate as to the level of fault attributable to Mr Currie for each of the breaches or incidents on his prison file since the continuing detention order was made, the essence of the psychiatrists' opinions reflects the attitudes displayed by Mr Currie in the interviews with the psychiatrists and the application of the risk assessment instruments to his history. I am therefore satisfied by the psychiatric evidence to the high degree of probability required under s 30(2) of the Act that the decision that Mr Currie is a serious danger to the community in the absence of a division 3 order should be affirmed.

[46] It was apparent from how Mr Currie conducted himself in the court that his focus is on himself and not on developing insight into his past offending and what strategies he should undertake to avoid reoffending in the future. His complaint that he was never given parole and he should not be under the Act misses the point that he is the subject of a continuing detention order under the Act made on 11 March 2016 and that is a starting point for this review hearing. Rather than dwelling on the past and his failure to be given parole, his dissatisfaction at being moved between correctional centres, and his opposition to the application of the Act, Mr Currie needs to accept the inevitability that

any release from custody will require him to be under a supervision order and work towards completing the programs and focusing on the skills that will make a supervision order effective in reducing the risk of sexual reoffending by him in the community. The support expressed for Mr Currie by his sister is more likely to be successful in assisting Mr Currie comply with a supervision order, after Mr Currie has completed the further treatment that is recommended for him in the prison.

[47] The preponderance of evidence before the court on this review does not support Mr Currie's preferred option of receiving individual treatment and counselling in the community. In the context of the compelling psychiatric evidence that Mr Currie is a serious danger to the community in the absence of a division 3 order and the reasons for that which remain unaddressed by participation by Mr Currie in appropriate programs and other treatment, the Attorney-General has discharged the onus of showing that a supervision order is not feasible at this stage for Mr Currie.

Orders

[48] From Mr Currie's perspective, it is frustrating that he has not been released from custody, despite serving in full the sentences imposed on him. That is the consequence, however, of the application of the Act which has as a prime objective the adequate protection of the community from offenders who are at risk of violent sexual re-offending. From the QCS perspective, Mr Currie presents an ongoing challenge (which must continue to be addressed) in managing his behaviour and emotions, so that he is equipped to participate in recommended programs that aim at assisting him in gaining insight and developing strategies to avoid sexual reoffending, but also to co-operate with the supervision that is provided under a supervision order.

[49] It follows that the orders which should be made are:

1. The decision that the respondent is a serious danger to the community in the absence of a division 3 order is affirmed.

2. The respondent continue to be subject to the continuing detention order made by Byrne SJA on 11 March 2016 for control, care and treatment.