

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Winston* [2017] QSC 336

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
DENIS WINSTON
(respondent)

FILE NO: BS No 9202 of 2008

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 16 November 2017

DELIVERED AT: Brisbane

HEARING DATE: 16 November 2017

JUDGE: Burns J

ORDERS: **The orders of the court are:**

- 1. Pursuant to s 30(1) of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* ('the Act'), the decision made on 6 February 2009 that the respondent, Denis Winston, is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act is affirmed.**
- 2. Pursuant to s 30(5) of the Act, the continuing detention order made on 6 February 2009 is rescinded.**
- 3. Pursuant to s 30(3)(b) of the Act, the respondent is released from custody subject to the conditions set out in the Schedule to this judgment.**

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 was made with respect to the respondent pursuant to s 13(5)(a) of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – where the Attorney-

General applied, pursuant to s 27 of the Act, for the review of that order – whether the respondent is a serious danger to the community in the absence of an order under Division 3 of the Act – whether the continuing detention order ought be affirmed – whether the adequate protection of the community can be reasonably and practically managed by a supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 13(4), s 13(5)(a), s 13(6), s 16, s 27, s 30, s 30(1)

Attorney-General for the State of Queensland v Fardon [2011] QCA 111, cited

Attorney-General for the State of Queensland v Winston [2015] QSC 297, cited

COUNSEL: J Rolls for the applicant
K Prskalo for the respondent

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

HIS HONOUR: The Honourable Attorney-General for the State of Queensland has applied pursuant to s 27 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* for the review of a continuing detention order made in relation to respondent, Denis Winston.

On 6 February 2009, Byrne SJA ordered that Mr Winston be detained in custody for an indefinite term for care, control and treatment pursuant to s 13(5)(a) of the Act.

On 27 May 2010 the order was reviewed by Douglas J and affirmed.

On 26 October 2015 the order was reviewed, on this occasion by A Lyons J, and again affirmed: see *Attorney-General for the State of Queensland v Winston* [2015] QSC 297.

On 24 October 2016, the order was reviewed by Applegarth J. His Honour affirmed the decision.

Mr Winston is 69 years of age. In January 1996 he was dealt with in the District Court at Brisbane for a number of offences against children under the age of 16 years. He was placed on probation for three years and a wholly suspended period of two years imprisonment was also imposed.

On 19 August 1997, Mr Winston pleaded guilty to a significant number of offences against children. These included maintaining an unlawful relationship of a sexual nature with a child under 12, indecent dealing with a child under 12 and carnal knowledge by anal intercourse with a person, not an adult, under the age of 12. He was sentenced to various terms of imprisonment, the effect of which was that he received an overall head sentence of 10 years.

On 2 October 1997 Mr Winston appeared before Chief Judge Wolfe. The suspended sentence that had been imposed on 24 January 1996 was wholly activated when her Honour found that he had committed offences in breach of that sentence. In consequence, Mr Winston was sentenced to a further period of two years imprisonment to be served cumulatively on the sentence imposed on 19 August 1997. As such, at least by 2 October 1997, Mr Winston faced an overall term of 12 years imprisonment.

As discussed in the material before this court, in February of next year it will be 21 years since Mr Winston was sentenced to imprisonment. He has remained in custody to this day.

The application for review is governed by s 30 of the Act. By s 30(1), that provision applies if, on the hearing of a review, such as this is, and having regard to the matters mentioned in s 13(4) and s 13(6) of the Act, the court affirms a decision that the prisoner is a serious danger to the community in the absence of a Division 3 order.

On the hearing of a review the court may only affirm the decision if satisfied by acceptable cogent evidence and to a high degree of probability that the evidence is of sufficient weight to affirm the decision. If the court affirms the decision, the court may order that the prisoner continue to be subject to the continuing detention order or be released from custody subject to a supervision order. In deciding which of those orders should be made the paramount consideration is the need to ensure the adequate protection of the community.

Furthermore, in determining whether the decision ought be affirmed, the court must have regard to the various matters set forth in s 13(4) of the Act. That includes any reports prepared by a psychiatrist. In this case, Mr Winston has been most recently assessed by both Drs Harden and McVie. I shall come to their opinions in a moment.

The onus is on the Attorney-General to satisfy the court that the decision ought be affirmed. Thus, it is for the Attorney-General to persuade the court that the prisoner is a serious danger to the community in the absence of a Division 3 order. When considering the further question as to whether the prisoner should continue to be subject to a continuing detention order or released on supervision, the paramount consideration is, as I have already observed, the need to ensure the adequate protection of the community.

In this regard, the court must consider whether the adequate protection of the community can be reasonably and practically managed by a supervision order and that the requirements under s 16 of the Act can be reasonably and practically managed by Corrective Services officers. As Mr Rolls, who appears for the Attorney-General, has submitted, the court is not required to be satisfied that the order will provide an absolute guarantee of protection. All that is required to be demonstrated is that the order is sufficient to provide adequate protection of the community. The question is whether a “supervision order would be efficacious in constraining the respondent’s behaviour by preventing the opportunity for the commission of sexual offences”: per Chesterman JA in *Attorney-General for the State of Queensland v Fardon* [2011] QCA 111.

Turning then to the opinions offered by Drs Harden and McVie, they may be summarised as follows.

Mr Winston has borderline intellectual functioning or, expressed another way, mild mental retardation. He presents with a constellation of other problems including, most relevantly, paedophilia and advancing features of dementia. He is a “high-needs” individual. There is also a history of dependent personality disorder. He has a well-documented history of maladaptive functioning whilst in custody.

Despite his age, Mr Winston remains a high risk of re-offending sexually. Both psychiatrists have therefore expressed the opinion that, if he is released on a supervision order, he will require secure nursing home-type accommodation. In addition to the protection of the community that such a security measure will provide, both psychiatrists also recommend the making of further conditions, including electronic monitoring and steps to ensure that Mr Winston does not have any unsupervised contact with children.

Some time ago the High Risk Offender Management Unit within Queensland Corrective Services was requested by those instructing Mr Rolls to provide information regarding accommodation and treatment options available to Mr Winston in the event that he is released from custody under a supervision order.

Following the making of that request, many people have been engaged in searching for and assessing suitable accommodation; that is, a secure nursing home facility, and further, one that would be prepared to accommodate Mr Winston in light of his many problems. That cannot have been easy. It no doubt involved a great deal of work and at times considerable frustration. But those involved in the search for appropriate accommodation are to be congratulated because they have been successful in locating suitable accommodation which has now been assessed as such by others within Corrective Services. Additionally, on 30 October 2017, the Office of the Public Guardian approved the accommodation and, on 1 November, the Public Trustee provided finance approval.

It would have been obvious to all those involved in the search for accommodation that, had they not succeeded, this man would have no hope of being released, given the current expression of opinion from the psychiatrists. Because they have been successful, they should be thanked for the work they have done because it means that this man can finally be released from custody (albeit under very strict supervision) after almost 21 years.

In addition to the assessment of the accommodation by Corrective Services and the Public Guardian, Drs Harden and McVie have been briefed on the type of facility proposed and each has provided a supplementary report expressing their opinion as to the suitability of that accommodation.

To be clear, the facility is located in the greater Brisbane area. It is an aged care facility and it can provide long-term accommodation for Mr Winston. There are a number of beds in a dementia unit which has access via a PIN code. It is proposed that Mr Winston be housed in that unit. He will not be allowed to leave the dementia unit unless an emergency requires his relocation, in which event Corrective Services will be immediately notified. Children do not have access to the dementia unit, medical specialists are on-site and the accommodation is surrounded by a six foot high fence and has gated access. The nearest child care centre, school or shopping centre is approximately 880 metres away.

This is precisely the type of accommodation that Drs Harden and McVie previously said would be required in order to reduce the risk to the community in this man's case to an acceptable level; that is, at a level sufficient to provide adequate protection to the community. To the point, in Dr Harden's most recent report, he said this:

With regard to placement in the dementia unit of a nursing home as identified in the material provided to me, this would reduce the risk of sexual recidivism into the low range.

I am satisfied by acceptable cogent evidence and to a high degree of probability that the evidence before the court is of sufficient weight to affirm the decision of Byrne SJA made on 6 February 2009 that Mr Winston is a serious danger to the community in the absence of a Division 3 order. However, I am satisfied that the adequate protection of the community can be reasonably and practically managed by a supervision order in the terms proposed conjointly by the parties and that the requirements under s 16 of the Act can be reasonably and practically managed by Corrective Services officers.

Accordingly, the continuing detention order made on 6 February 2009 will be rescinded and I will order that Mr Winston be released from custody subject to the conditions of the supervision order I am about to make for the next 10 years; that is, until 16 November 2027.

I make it clear that my decision to release Mr Winston on a supervision order is only made because suitably secure accommodation has been located and is now available for Mr Winston to move into, and further, because of the various conditions of the supervision order, each of which is set out in the Schedule to these reasons.

Order as per draft, initialled by me and placed with the papers.

Attorney-General (Qld) v Winston**SCHEDULE****Conditions of Supervision Order****The respondent must:****General terms**

1. report to a Queensland Corrective Services officer at the Queensland Probation and Parole Office closest to his place of residence between 9am and 4pm 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 Queensland Corrective Services officer at such times and at such frequency as determined by Queensland Corrective Services;
3. notify a Queensland Corrective Services officer of every change of his name, place of residence or employment at least two (2) business days before the change happens;
4. be under the supervision of a Queensland Corrective Services officer for the duration of this order;
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 Queensland Corrective Services officer that is not directly inconsistent with a requirement of this order;
8. not commit an offence of a sexual nature during the period of this order;
9. not commit an indictable offence during the period of this order;

Residence

10. not leave or stay out of Queensland without the permission of a Queensland Corrective Services officer;
11. reside at a place within the State of Queensland as approved by a Queensland Corrective Services officer by way of a suitability assessment and obtain written approval prior to any change of residence;
12. not reside at a place by way of short term accommodation including overnight stays without the permission of a Queensland Corrective Services officer;

Contact with victims

13. not have any direct or indirect contact with the victims of his sexual offences;

Requests for information

14. respond truthfully to enquiries by a Queensland Corrective Services officer about his activities, whereabouts, associates and movements generally;

Disclosure of plans and associates

15. if directed by a Queensland 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 the Queensland Corrective Services officer, who may contact such persons to verify that full disclosure has occurred;

Alcohol and other substances

16. abstain from the consumption of alcohol and illicit drugs for the duration of this order;
17. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Queensland Corrective Services officer;
18. disclose to a Queensland Corrective Services officer all prescription and over the counter medication that he obtains;
19. take prescribed drugs as directed by a medical practitioner;

Treatment and counselling

20. 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 Queensland Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;
21. 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 this supervision order and/or ensuring compliance with this order;
22. attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a Queensland Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;

Children

23. not establish or maintain any supervised or unsupervised contact with children under 16 years of age, including undertaking any care of children under 16 years of age, except with prior written approval of a Queensland Corrective Services officer. The respondent is required to fully disclose the terms of this 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 respondent to guardians or caregivers and external agencies (i.e. Department of Child Safety) in the interests of ensuring the safety of the children;
24. advise a Queensland 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 Queensland 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 Queensland Corrective Services officer who may contact such persons to verify that full disclosure has occurred;
25. not 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 Queensland Corrective Services officer;
26. not visit public parks without the prior written approval of a Queensland Corrective Services officer;
27. obtain the prior approval of a Queensland Corrective Services officer before attending the premises of any shopping centre;
28. not join, affiliate with, attend on the premises of or attend at the activities carried on by any club or organisation in respect of which there are reasonable grounds for believing there is either child membership or child participation without the prior written approval of a Queensland Corrective Services officer;
29. not collect any material that contains images of children, and dispose of such material if directed to do so by a Queensland Corrective Services officer;

Mobile phones and other devices

30. obtain the prior written approval of a Queensland Corrective Services officer before accessing a computer or the internet;
31. supply to a Queensland 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 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;
32. not access child exploitation material or images of children on a computer or on the internet or in any other format;

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