

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Waghorn*  
[2018] QSC 23

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(applicant)  
v  
**SHANE CHARLES WAGHORN**  
(respondent)

FILE NO/S: SC No 1358 of 2006

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court, Brisbane – 12 February 2018

DELIVERED EX TEMPORE ON: 12 February 2018

DELIVERED AT: Brisbane

HEARING DATE: 12 February 2018

JUDGE: Boddice J

ORDERS: **Delivered ex tempore 12 February 2018:**

- 1. Pursuant to section 30(1) of the Act, the decision made on 14 July 2006 that the respondent 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 Pursuant to section 30(5) of the Act, the continuing detention order made on 30 May 2016 is rescinded.**
- 3. The respondent is released, subject to a supervision order, on the conditions set out in the draft order, the respondent to be subject to such conditions until 12 February 2026.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where an application is made for a continuing supervision order pursuant to the *Dangerous Prisoners (Sexual Offenders) Act* – where the respondent has a significant past history of serious sexual offending against children – where the respondent has diagnosed psychiatric conditions – where the respondent demonstrated five risk factors in sexual violence

history – where pharmaceutical intervention represents a change in the respondent’s position – where the imposition of a supervision order renders the risk of sexual reoffending in the future no longer unacceptable

*Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*,  
s 13(4), s 27, s 30(1), s 30(5), div 3

COUNSEL: J Rolls for the applicant  
J Lodziak for the respondent

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

- [1] **BODDICE J:** The Attorney-General for the state of Queensland makes application, pursuant to section 27 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*, for a review of the continuing detention of the respondent Shane Charles Waghorn.
- [2] The Attorney-General accepts that whilst the respondent continues to represent a serious danger to the community in the absence of an order under the Act, the preponderance of evidence supports a conclusion that the continuing detention order ought to be rescinded and the respondent ought to be released into the community, subject to a supervision order for a period of 10 years.
- [3] The issue for this Court is whether such an order would provide an adequate protection for the public, having regard to what risks the court might find from the respondent’s release into the community absent such an order. In considering that issue, it is important for this Court to have regard to the respondent’s background as well as the contents of the material relied upon by the applicant, including the more recent psychiatric reviews undertaken pursuant to this Act.
- [4] The respondent was born on 16 September 1960. He is presently 57 years of age. On 14 July 2006, the respondent was the subject of an application by the Attorney-General for orders under division 3 of the Act. That application was heard by Justice Phillip McMurdo. His Honour gave consideration to the respondent’s past history, as well as the then current psychiatric material. His Honour was satisfied, having regard to that material, that there was an unacceptable risk of reoffending if the respondent was released into the community even under strict supervision. Accordingly, his Honour made an order for the continuing detention of the respondent.
- [5] That order was reviewed by this Court on 5 December 2007, 5 December 2008 and 27 May 2010. On each occasion, the finding that the respondent was a serious danger to the community in the absence of an order was affirmed, as was the continuing detention order.
- [6] On 9 January 2012, the continuing detention order was again reviewed by this Court. On that occasion, the Court confirmed the finding that the respondent was a serious danger to the community in the absence of an order under the Act, but was satisfied the adequate protection of the community could be met by the respondent’s release

subject to a supervision order. A supervision order was made, to remain in place until 9 January 2027.

- [7] On 14 December 2012, the respondent was arrested on the basis it was alleged he had breached a condition of his supervision order. On 26 August 2013, that contravention was established but the Court was satisfied the adequate protection of the public could be met by the respondent's release pursuant to the supervision order previously made. On 26 September 2013, the respondent was again arrested on the basis it was alleged he had breached his supervision order. That breach arose in circumstances where a search of the respondent's mobile phone had revealed it contained child pornography.
- [8] A contravention proceeding was undertaken and heard in this Court on 30 May 2016. On that occasion, Justice Peter Lyons found the contraventions established. His Honour was not satisfied the adequate protection of the community could be ensured by the respondent's release on a supervision order. Accordingly, the supervision order was rescinded and the respondent was made subject to a continuing detention order. It is that order that is the subject of review today.
- [9] In considering the question of whether the respondent represents an unacceptable risk to the community in the absence of an order, it is important for this Court to first consider the circumstances in which the respondent came to be in custody and subject to the provisions of this Act.
- [10] The respondent has a not-insubstantial history of past offending involving sexual offences against children. On 21 August 1992, the respondent was convicted, on his own pleas of guilty, of two counts of indecent assault with a circumstance of aggravation, one count of attempted rape and one count of deprivation of liberty. The offences involved the same female complainant who was 20 years of age.
- [11] It was that offence which resulted in the respondent being initially subject to a declaration that he be detained at Her Majesty's pleasure. That declaration was subsequently set aside and the respondent was sentenced to a term of 14 years' imprisonment.
- [12] The respondent had, prior to that offence, an offence in 1984 for which he had been imprisoned in the Australian Capital Territory. That also involved a young female complainant. The respondent was convicted of abducting that child with the intent to carnally know her. The respondent was convicted at the same time for another sexual assault in 1984 upon a young woman. Prior to that, in 1980, the respondent had been convicted of an offence of sexual intercourse with a 14-year-old female complainant. In 1981, he had been convicted of sexually molesting a seven-year-old girl.
- [13] The psychiatric evidence placed before the Court at the time of the initial order that the respondent be subject to a continuing detention order established that the respondent suffered from paraphilia, which appeared to be paedophilic exclusively female. In Dr Lawrence's opinion, there was no evidence of psychopathy, but the respondent did have flaws in his personality. He was also described as being susceptible to episodes of depressed mood and despondency. Dr Moyle came to a similar conclusion, as did Professor Whiteford.

- [14] That history is of importance when the Court considers whether the respondent represents an unacceptable risk in the absence of an order. The question is whether the respondent, having regard to all of the circumstances and all of the evidence, represents a serious danger to the community that he will commit a serious sexual offence if released at all or if released without a supervision order. A serious sexual offence means an offence of a sexual nature involving either violence or against children.
- [15] Having regard to the respondent's past offending and the past psychiatric assessments, there is no doubt the respondent represents a serious danger to the community should he be released into the community. The respondent has a significant past history of serious sexual offending against children in circumstances where he has a diagnosed psychiatric condition which renders him likely to engage in sexual conduct with minors, particularly females.
- [16] I am satisfied, in the circumstances, that the respondent represents a serious danger to the community in the absence of an order under the Act. I am satisfied the evidence is cogent and compelling in respect of that conclusion.
- [17] The question that must then be considered is whether, on the evidence, the respondent represents an unacceptable risk if released subject to a supervision order. Having regard to the respondent's past history, there is good reason to be concerned in relation to that question.
- [18] The respondent has previously been the beneficiary of a supervision order after being subject to a continuing detention order. He breached that order on more than one occasion. It ultimately led to a finding by this Court that the community could not be adequately protected by his release subject to a supervision order. The respondent was accordingly ordered to be subject to a continuing detention order.
- [19] There is, however, evidence placed before this Court which indicates the respondent has undertaken a significant change in his attitude in respect of these matters which is relevant to the question whether he would represent an unacceptable risk if released subject to a supervision order. That evidence arises having regard to the most recent psychiatric assessments. Those assessments have been undertaken by Dr Sundin and Dr Brown.
- [20] Dr Sundin interviewed the respondent on 26 October 2017. Dr Sundin has previously had the opportunity to assess the respondent as far back as 2011 and has done so on a continuing basis in 2013 and 2015. Dr Sundin is of the opinion the respondent suffers from a number of conditions. Relevantly, they include complex paraphilia, paedophilia where he is sexually attracted to females, mixed personality disorder with anti-social and paranoid personality traits and persistent depressive disorder which is now in remission, having regard to the fact the respondent is undertaking antidepressant therapy.
- [21] Dr Sundin considers the respondent represents a high to very high risk of sexual reoffending without supervision and treatment. That risk occurs in circumstances where there is a high risk of a high level of violence with serious damage being sustained to the victim. Dr Sundin, however, noted there was a significant change since the reimposition of the continuing detention order. The respondent was now undertaking pharmacological intervention in relation to both his depression and his

sexual proclivities. Dr Sundin considered the respondent had benefitted from his recent incarceration. He also had benefitted from this pharmacological intervention and some psychological therapy he had received from Dr Palk. In Dr Sundin's opinion, if the respondent is released into the community it is important that treatment continue by both of those practitioners. Ultimately, Dr Sundin considered these changes were of such a magnitude that the risk the respondent poses to the community could be satisfactorily managed under a supervision order.

- [22] Dr Sundin did note that any unauthorised dropping out from that ongoing treatment or non-compliance with the requirements of the supervision order should be seen as a very early warning sign of a potential relapse back into his paraphilic cognitions and should trigger an immediate return to incarceration. Dr Sundin also noted an abuse of substances ought not to be tolerated in the future.
- [23] Dr Brown interviewed the respondent on 18 October 2017. Dr Brown undertook a number of risk assessments using appropriate instruments. Those risk assessments indicated the respondent was well above the average risk range for sexual reoffending. Indeed, he demonstrated five risk factors in sexual violence history.
- [24] Dr Brown noted there were problems with self-awareness and that he had limited coping strategies. However, in Dr Brown's opinion, the respondent no longer presented with depression. If he ceased his antidepressant medication there may be a recurrence of those symptoms. Dr Brown also noted the respondent was working well on social adjustment with this therapist and was engaged well with that therapy and keen to continue it in the future.
- [25] In Dr Brown's opinion, the respondent's ongoing medication was a major factor in the reduction to the respondent's sexual drive and had led to his improvement in emotional regulation and behaviour towards others. Dr Brown did note a word of caution. The respondent's risk scenario was one that if he was to experience rejection, there was a risk he could deteriorate, particularly having regard to his poor self-awareness.
- [26] Dr Brown also noted that his personality is one which may not lead to him revealing fantasies to his therapist or his corrective services case manager. A use of substances would also result in disinhibition, thereby increasing the risk of reoffending to high. The risk to the victim in that event would be one of considerable harm.
- [27] Dr Brown opined that the respondent had a diagnosis of paedophilic disorder of a nonexclusive type with a history of sexual sadism and exhibitionism. He also had a diagnosis of persistent depressive disorder which was in remission. He had a past substance abuse disorder which was also in remission. Dr Brown considered the respondent had a mixed personality disorder with anti-social schizoids, anti-social paranoid and narcissistic traits.
- [28] Dr Brown considered that notwithstanding those conditions and his past history, there had been a major change in the respondent's position since his last release from custody. That change was that he was now accepting the benefits of his antidepressant and other medication and was finding significant benefits from that medication. Dr Brown noticed that the use of Androcur was particularly important in relation to suppressing his previous intrusive thoughts and fantasies about sex.

- [29] In Dr Brown's opinion, these change were of such a magnitude that whilst the respondent continues to represent a high risk if released into the community, that risk could be rendered no longer unacceptable if he was subject to a supervision order. In Dr Brown's opinion, a supervision order would be likely to reduce the respondent's risk from high to moderately low and to a moderately low and manageable level in the community. That release should be subject to a number of specific conditions.
- [30] In determining whether the respondent's ongoing risk is an unacceptable risk, the Court is to have regard to a number of matters. Those matters are set out in section 13(4) of the Act. They include past and present reports prepared by psychiatrists and other relevant medical practitioners, information in relation to his ongoing propensity to commit serious sexual offences, any patterns of behaviour, any efforts undertaken by him to address his offending behaviour, his ongoing participation in such programmes, his antecedence and criminal history, the risk that he will commit another serious sexual offence if released into the community, the need to protect members of the community, and any other particular matters relevant to the respondent.
- [31] Having considered all of the material, I am satisfied that whilst the respondent does represent an ongoing serious danger to the community in the absence of an order under the Act, the matters referred to by Dr Sundin and Dr Brown are of such a magnitude that the respondent's ongoing risk would no longer be unacceptable if he were released subject to a supervision order.
- [32] The matters referred to by Dr Sundin and Dr Brown suggest there are compelling reasons to believe that the respondent has benefitted from his most recent period of incarceration and from his medication regime. That benefit is not only a change in relation to his attitude to the need for ongoing therapy. That change also is in relation to his willingness to comply with the terms of a supervision order.
- [33] That willingness is important, having regard to his past history of contraventions of the terms of a supervision order. That past history is particularly relevant in the respondent's case because both psychiatrists identify that the respondent is a person who, if he were to no longer continue with this medication or his therapy, could significantly deteriorate into a situation where he would once again represent a serious risk of sexual reoffending involving violence.
- [34] Having considered all of the material, and in particular the matters set out in section 13(4) of the Act, I am satisfied the material provides cogent, compelling evidence that notwithstanding the respondent's ongoing danger of committing serious sexual offences in the future, that risk can be met by the terms of a supervision order.
- [35] The draft supervision order provides conditions which address, particularly, the matters raised by the psychiatrists as being flags for an early indication of a deterioration in the respondent's condition, such as to increase the risk of serious sexual offending against children in the future. The fact the respondent will be subject to those strict conditions and subject to careful supervision of those conditions, renders the risk of sexual reoffending in the future no longer unacceptable.
- [36] I order:

- (I) pursuant to section 30(1) of the Act, the decision made on 14 July 2006 that the respondent is a serious danger to the community in the absence of an order pursuant to division 3 of the Act is affirmed.
- (II) pursuant to section 30(5) of the Act, the continuing detention order made on 30 May 2016 is rescinded.
- (III) the respondent is released, subject to a supervision order, on the conditions set out in the draft order, the respondent to be subject to such conditions until 12 February 2026.

[37] I make orders in terms of the draft which I have initialled and placed with the papers.