

SUPREME COURT OF QUEENSLAND

CITATION: *A-G for the State of Qld v Black* [2018] QSC 29

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(Applicant)
v
STEPHEN ANTHONY BLACK
(Respondent)

FILE NO/S: BS No 10014 of 2015

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 26 February 2018

DELIVERED AT: Brisbane

HEARING DATE: 26 February 2018

JUDGE: Lyons SJA

ORDER: **The Court makes the Orders in terms of Schedule 1 attached to these reasons.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT SEXUAL OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent contravened a condition of a Supervision Order to not establish or maintain supervised or unsupervised contact with a child under 16 without prior written permission – where the respondent pleaded guilty to the contravention – where the contravention is proved – where the applicant applies for relief pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – whether the respondent has satisfied the onus in s 22(7) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – whether the Supervision Order should be rescinded and a continuing detention order made or whether the adequate protection of the community can be insured with the existing Supervision Order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) s 22, s 43AA

COUNSEL: Mr J. Tate for the Applicant
Mr J. Benjamin for the Respondent

SOLICITORS: Crown Law for the Applicant
Legal Aid Queensland for the Respondent

- [1] This is an application by the Attorney-General for the State of Queensland in relation to Stephen Anthony Black pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*. It is a contravention hearing.
- [2] On 8 February 2015 the respondent was released into the community. Byrne SJA was satisfied that the respondent was a serious danger to the community in the absence of a Division 3 Order but was satisfied that adequate protection of the community could be ensured if the respondent was released from custody pursuant to a supervision order with 40 conditions which expires on 16 February 2021.
- [3] The respondent first contravened that order in June 2016 and he was returned to custody under s 20 of the Act. The breaches related to Conditions 7 and 36 of the supervision order which involved non-compliance with a reasonable direction of a Corrective Services officer and the requirement that he obtain prior written approval before possessing any equipment that enabled him to take photographs or record moving images. On 4 August 2016 the respondent pleaded guilty and was sentenced to three months imprisonment wholly suspended for three years. The contravention hearing then came before Flanagan J for a final hearing on 21 November 2016 after which the respondent was released from custody subject to the existing supervision order.
- [4] The respondent's current and second contravention occurred in May 2017 and relates to Condition 28 that he not establish or maintain any supervised or unsupervised contact including undertaking any care of children under 16 years of age except with the written permission of the Corrective Services officer. The respondent was charged with the offence pursuant to s 43AA of the Act and on 14 June 2017 he pleaded guilty. He was sentenced to four months imprisonment and a cumulative term of three months was imposed in relation to the suspended sentence imposed in 2016.

The Issue

- [5] Pursuant to s 22 of the Act, if the court is satisfied that the prisoner has contravened a requirement of the supervision order, then the onus of proof passes to the respondent to satisfy the court that the existing supervision order, despite the contravention, provides adequate protection to the community. The respondent has pleaded guilty to the offence and the contravention is conceded by the respondent. Accordingly, pursuant to s 22 the court can either rescind the supervision order and make a continuing detention order or can release the prisoner on a supervision order with any amendments considered appropriate. The issue which arises in this contravention hearing is therefore whether the respondent has satisfied the onus on him to satisfy the Court that despite the contravention, he should be released subject to a supervision order.

22 Court may make further order

- (1) If the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, the supervision order or interim supervision order, the court may—
 - (a) amend the conditions of the supervision order or interim supervision order; or
 - (b) if the order is a supervision order and the court is satisfied as required under section 13(1), rescind the order and make a continuing detention order; or
 - (c) if the order is an interim supervision order, rescind the order and make an order that the released prisoner be detained in custody for the period stated in the order; or
 - (d) make any other order the court considers appropriate—
 - (i) to achieve compliance with the supervision order or interim supervision order; or
 - (ii) to ensure adequate protection of the community.
- (2) Subject to subsection (3), for the purpose of subsection (1)(b), section 13 applies as if the application under this section were an application for a division 3 order under that section.
- (3) For the purpose of deciding whether to make a continuing detention order under subsection (1)(b), the court may do any or all of the following—
 - (a) act on any evidence before it;
 - (b) make any order necessary to enable evidence of a kind needed to support an application for a division 3 order to be brought before it, including an order in the nature of a risk assessment order;
 - (c) suspend the supervision order and make an order that the released prisoner be detained in custody for the period stated in the order.
- (4) For subsections (1)(c) and (3)(c), the court may make an order that the released prisoner be detained in custody for the period stated in the order if it is satisfied as required under section 8(1).”

Background

- [6] In March 2013, the respondent pleaded guilty in relation to two indictments which charged him with four Commonwealth offences and one state offence including using a carriage service for child pornography material and using a carriage service to cause child pornography material to be transmitted to himself as well as the State offence of

knowingly possessing child exploitation material. He had previously been convicted of crimes over the internet concerning child pornography in Queensland, Victoria and South Australia. In relation to the offences for which he was sentenced in 2013, the respondent had access to hundreds of images of child pornography including videos. He was sentenced to a head sentence of five years imprisonment with a non-parole period of two years and six months.

- [7] A number of reports were prepared for the 2015 hearing. Byrne SJA concluded that the reports of Professor Nurcombe, Dr Grant and Dr Beech were in the following terms:

“Professor Nurcombe diagnosed the respondent with paraphilia. He referred to paedophilia, hebephilia, scoptophilia, non-exclusive, fixated, commenting that the respondent had an antisocial personality disorder with psychopathic traits. He concluded that the respondent’s risk of sexually reoffending was moderate to high.

He thought that, were the respondent to reoffend, the most likely outcome would be a return to accessing and distributing moving and still images of females aged between 11 and 13, although it was possible that he would again make internet contact with a female adolescent for the purpose of inducing her to forward erotic photographs to him. He considered that the risks of relevant offending by accessing or distributing child exploitation material could be reduced by a supervision order accompanied by individual psychotherapy. In short, his report would not support continuing detention.

Dr Donald Grant also assessed the risk of offending, most likely by what he characterised as internet child sexual offences against females, especially those aged 11 to 12. It would be motivated by the respondent’s paedophilia. He considered that, taking account of the instruments which he had used to assess risk and other information which he had obtained, including from an interview with the respondent, the risk of future internet offending, at least in the absence of a supervision order, would be high. Although the respondent claimed to have learned a lot from the high- intensity sexual offenders program, Dr Grant was not convinced that he had changed significantly or that the course had had a lasting effect upon the respondent’s propensity to return to internet offending.

He considered the risk to be high in the absence of a supervision order, in terms of accessing and distributing child pornography, as well as actions to engage with individual victims on the internet to persuade them to send photographic images to him. On the other hand, he considered that the risk of contact paedophilic offences with children would be relatively low. No such in-person contact offences had yet occurred, and the respondent was adamant that they would not. Dr Grant considered that the relevant risk could be reduced to moderate by a supervision order with suitable conditions. Those which he recommended have been incorporated into the draft order to which I shall come.

Dr Beech records that the respondent first became interested in child pornography in the mid-1990s and that this rapidly progressed to sexual interest in peripubescent females. He summarised the offending relevantly as involving the respondent having actively sought and collected the images,

which he had regularly traded. They were of young children. He described the respondent as experiencing paraphilia of paedophilia, adding that arguably it was hebephilia, an attraction to pubescent females.

But Dr Grant considers that there may, in fact, be a more paedophilic tendency than the restricted one described. He also considers that if the respondent does not suffer from an antisocial personality disorder, he does at least experience significant antisocial personality traits. Administering the usual battery of tests and concluding that the respondent has limited insight into his risk factors, he is concerned that on release, the respondent might quickly become idle and bored and regress. He considers that there is a moderate risk that the behaviour would again progress to an attempt to entice a young victim to send images to him. He considers that the risks of relevant reoffending in connection with child exploitation offences would be reduced to moderate by conditions calculated to mitigate the risk, including an embargo on the use of internet and further counselling.”

The first contravention hearing in 2016

- [8] The first contravention involved Conditions 7 and 6 of the supervision order. Condition 7 required that he comply with every reasonable direction of a Corrective Services officer and Condition 36 which required that he obtain prior written approval of a Corrective Services officer before possessing any equipment that enabled him to take photographs or record moving images. The reasonable direction stated that an example of an electronic device includes, but is not limited to a USB; camera; external hard drive; gaming consoles; television; mobile phone; computer/laptop; Satellite Navigations System and any other device with internet capability, Bluetooth, mass storage, data reading/viewing/downloading.
- [9] On 24 June 2016, officers from the Queensland Police Service executed a search warrant at the Respondent’s residence. They found no USB or other electronic devices. Of note however, they found in the Respondent’s possession a number of newspaper clippings of the details of sex workers. They also found handwritten notes detailing the private addresses of other sex workers. In addition, they found several handwritten web addresses for sites which host pornography.
- [10] In June 2016 he made admissions to having had in his possession and using a USB for which he had not been given prior permission. He admitted to using the USB to record television programs and that he had subsequently destroyed the USB. A search of his premises located several handwritten web addresses for sites which hosted pornography.
- [11] Flanagan J in his decision considered the circumstances of the breach, the index offences, the reports of the assessing psychiatrists at the initial hearing and further reports which had been prepared for the contravention hearing. Dr Beech stated that he believed that without a supervision order the respondent would be at high risk of reoffending. He considered the risk would most likely involve him engaging in internet related offences such as accessing and distributing child exploitation material. He also considered there was a moderately high risk he would seek out another victim online as he did before. He considered that there was a lower but not trivial risk that his behaviour would progress to seeking physical contact with a victim. Flanagan J noted

that at that stage there was no evidence of any such abuse. At that hearing Dr Beech recommended a continuing embargo on the use of the internet and ongoing treatment with a psychiatrist he had been referred to after his release from custody.

- [12] Dr Grant considered that the contravention of the supervision order in 2016 indicated the difficulties the respondent has in living with the supervision order. He considered that he had a drive to be secretive and to test limits. Dr Grant however was satisfied that there was no clinical reason why he should remain in custody and that the supervision order was effective in identifying his contravention at an early stage. He considered that he represents challenges in supervision but the order has been effective in reducing the risk in the community. Ultimately both psychiatrists considered that the respondent could be returned to the community on the same supervision order with continued individual therapy and continued efforts to encourage appropriate social rehabilitation. Accordingly, Flanagan J released the respondent to the community under a supervision order in the same terms.

The current contravention

- [13] The contravention arose in the context of the respondent attending at the Department of Housing for an appointment and whilst waiting for the Department of Housing to open he began communicating with an adult woman who had an infant child and another child with her. He confirmed to QCS staff that he had contact with the woman and the two male children. He denied however any form of direct or indirect contact with the children. He subsequently made an admission that he had contact with another adult female who had the care of a ten year old female child on the same date. He made admissions to spending time with the woman and her child on 4 May 2017 for almost three hours. The respondent spent a considerable amount of time in the Department of Housing waiting area talking to the mother and child and then he had travelled with both of them to the bakery across the road from the Department of Housing as well as McDonald's. He also visited a public toilet and used an ATM.
- [14] As a result of the contravention, the Respondent was charged with an offence under section 43AA in the Richlands Magistrates Court.¹ On 14 June 2017 the Respondent pleaded guilty before Magistrate Warfield and was sentenced to four months imprisonment.² A cumulative term of three months was imposed in relation to the suspended sentence imposed in 2016.³ The Respondent's custodial end date was 18 January 2018 with respect to this sentence.⁴
- [15] There can be no doubt that given the Respondent's criminal history and index offences,⁵ a contravention of 'Requirement 28' must be viewed as serious. The factual background

¹ The complaint and Summons is at Exhibit DB-3 to the Affidavit of Daniel Bear sworn 26 May 2017.

² Transcript of Proceedings, *R v Black* (Qld Magistrates Court, Magistrate Warfield, 14 June 2017) 1-2: Affidavit of Stephanie Nicole Hunter sworn 5 July 2017, Exhibit SNH-4, 10.

³ For the Verdict and Judgment Records, see the Affidavit of Stephanie Nicole Hunter sworn 5 July 2017, Exhibit SNH-2, 2.

⁴ Affidavit of Stephen Simmons sworn 5 February 2018, Exhibit SS-1, 1.

⁵ See the Respondent's criminal history: Affidavit of Kerry Ann Heenan sworn 16 June 2017, Exhibit KAH-2, 3-6.

to the contravention is set out in the Affidavit of Daniel Bear⁶ a supervisor with the Wacol Probation and Parole District Office:

[8] “On 4 May 2017, at approximately 8:00 am, Queensland Corrective Services (QCS) staff observed the respondent at 14 Wirraway Parade, Inala. The respondent was present for a Department of Housing (DOH) appointment. While waiting for DOH to open, the respondent was observed to be communicating with an adult female who had an infant child in a pram and another child standing nearby. The respondent entered the DOH office shortly after the observations.

[9] The respondent’s supervising case officer directed him to report to the Wacol Reporting Centre immediately following his DOH appointment.

[10] The respondent confirmed the observations of QCS staff in that he had contact with an adult female who had care of two male children while waiting for his DOH appointment. The respondent denied any form of direct or indirect contact with the children. When challenged, the respondent disclosed he was waiting for DOH to open and his conversation with the female was in respect to opening times and general conversation about rent appointments. The respondent denied any further contact with this person.

[11] The respondent made further admission to having contact with another adult female, who had care of a 10 year old female child. The contact occurred at the DOH office on the same date.

[12] The respondent made admissions to spending time with the adult female and the female child on 4 May 2017 from approximately 8:00 am to 10:45 am. The respondent stated that he spent a considerable amount of time in the DOH waiting area conversing with the mother and child, that he travelled with the both of them to the Inala Civic Centre (Kittyhawk Parade, Inala - across the road) in order to purchase food from a bakery, McDonalds, visit the public toilet and use an ATM.

[13] Disclosures of note included the respondent admitting to being alone with the child during the toilet stop at the Inala Centrelink office. The respondent also disclosed that the child had left the toilet door ajar- and that he could hear her mother saying to close the door. The respondent denied observing the child. When questioned how long he was alone with the child, the respondent responded with only “briefly”. The respondent went on to disclose the child directly asked him ‘ 101 questions’ and that he directly and freely engaged with the child and that the child was performing cart wheels. The respondent clarified he diverted his eyes away on this occasion so as to not see under the child’s dress.

[14] The respondent was questioned in respect to his supervision order requirements pertaining to contact or maintaining contact with children. The respondent stated he was “being nice” and he did not want to be rude or draw attention to himself. He acknowledged he had numerous opportunities to cease interaction, however he was just “being nice” and “wasn’t thinking”. He stated he was “trying to minimise interaction with the child as nicely as I could”. The respondent stated “he knew he was stuffed after talking to them” but “thought he

⁶ Sworn 26 May 2017

was just being friendly following general conversation". The respondent repeatedly denied engaging the child in conversation rather only admitted to engagement with the child when the child directly asked him a question.

[15] This information was passed on by QCS to detectives from the Serious Offender Team, Child Protection Offender Registry, the Queensland Police Service (QPS) for investigation. Detectives subsequently obtained CCTV footage from the DOH office taken on 4 May 2017 and passed this onto QCS. The footage depicts the respondent interacting with an adult female and a female child over a period of time.

[16] Detectives spoke with an adult female and her daughter on 24 May 2017. The adult female advised she is 25 years old and the female child is her daughter, who is 10 years old.

[17] She stated that she had struck up a conversation with a man she now knows as 'Steve' in the DOH office on 4 May 2017. She stated she had never met Steve before. They stayed together at the DOH waiting for their appointments. She believed they were together at this location for about one hour.

[18] As they were too early for their appointments, and her daughter "A" was hungry, she invited Steve to go to the bakery with them for something to eat. The three of them walked to the bakery together, and she purchased food for herself and her daughter. She said Steve did not buy anything because he did not have any money.

[19] After they had eaten the food, they walked back to the DOH office together for their meeting. They all sat together for about 15 minutes. She could not recall exactly what they were talking about other than houses.

[20] She was asked if Steve had spoken to her daughter and she replied words to the effect of, "yes a lot, in fact more than a lot". She stated that he spoke to her daughter more than he spoke to her. She actually stated that most of the communication was between her daughter and Steve.

[21] After finishing at the DOH, she went straight home in her own car and she believed Steve stayed at the DOH. She did not obtain any contact details for Steve and she did not give any to him, No arrangements were made to meet each other again. He was never left with her daughter "A" alone. She could not recall seeing any physical contact between Steve and her daughter "A".

[22] Steve asked her daughter questions about what school she attended, her age etc, she recalled Steve saying something similar to, "How old are you darling?" and she replied "10". He asked, "What's your name?" and she told him. She was shocked that her daughter gave out all her information and later told her not to tell strangers about personal details. She also recalled at some stage due to her daughter's friendliness towards Steve that her daughter suggested that Steve could live with them."⁷

⁷ Affidavit of Daniel Bear sworn 26 May 2017, 3-5 [8]-[25]. Also see the witness statement of Jenifer Shamima Ali dated 8 June 2017: Affidavit of Jenifer Shamima Ali sworn 9 August 2017, Exhibit JSA-1.

- [16] Dr Beech and Dr Aboud have now examined Mr Black in relation to the circumstances surrounding that contravention and have provided reports. Dr Beech's report is dated 31 August 2017 and Dr Aboud's report is dated 16 January 2018. Dr Beech took the respondent through the circumstances of the contravention and ultimately considered that his account of events was a glib, disingenuous and unconvincing explanation for what occurred. Dr Aboud also considered:

“His presentation during the clinical interview was at times suggestive of a man who was trying to deceive and manipulate information in order to minimise and externalise responsibility, and in keeping with a man with psychopathic personality traits. However he also at times presented as a rather socially clumsy and concrete thinking individual and in keeping with a man with mild autistic features. In my view, this unusual combination of traits and features appears to best explain Mr Black's overall presentation, interpersonal style and associated behaviour.”

Dr Aboud's Report

- [17] Dr Aboud diagnoses the Respondent as suffering from:
- **Paedophilia** (non-exclusive type and sexually attracted to females); possible additional **Hebephilia**;
 - **Antisocial Personality Disorder**, with **prominent psychopathic traits**;
 - Features consistent with **mild Autism Spectrum Disorder (or Asperger Disorder)**;
 - Historical evidence of **Pathological Gambling**; and
 - Historical evidence of **Polysubstance Abuse** (alcohol, cannabis, opiates).⁸
- [18] Dr Aboud assessed the Respondent on a number of risk assessment instruments shown to have validity in the prediction of risk of recidivism, with the following results:⁹
- **Static 99R**: the Respondent scored 8, placing him in the '**High Risk of reoffending group**';
 - **Risk Matrix 2000/S**: scored 4 for Step 1, with 2 aggravating factors for Step 2, placing him in the group regarded as '**Very High Risk of reoffending**' group;
 - **Risk Matrix 2000/V**: scored 2 placing him in the '**Medium Risk of reoffending**' group for violent recidivism;
 - **Psychopathy Checklist (PCL-R)**: scored 27/40 representing a **relatively high score but not above the cut-off** for diagnosing psychopathy;
 - **HCR-20**: scored 16/20 for Historical items, 6/10 for Clinical items and 6/10 for Risk Management items. His overall score was 28/40. Dr Aboud considered the Respondent's '**overall risk to be moderate- high, with a clear static loading, and ongoing areas of concern in respect of dynamic risk. This reflects his need of psychological support and supervision in the community**'; and
 - **Risk for Sexual Violence Protocol (RSVP)**: on this instrument Dr Aboud noted Mr Black to have a number of positive scores including chronicity of sexual violence, psychological coercion in sexual violence, extreme minimisation or denial of sexual violence, attitudes that support or condone sexual violence, problems with self-awareness, problems with stress or coping, problems resulting from child abuse,

⁸ Dr Aboud's Report dated 16 January 2018, 16.

⁹ Dr Aboud's Report dated 16 January 2018, 16-17.

sexual deviance, problems with intimate relationships, problems with non-intimate relationships, problems with employment, non-sexual criminality, problems with planning, problems with supervision

- [19] In Dr Aboud's opinion, the Respondent's likely scenario for reoffending is through this pathway:

"Should he reoffend, one would speculate that it would most likely take the form of offences involving possession or distribution of child pornography and it would involve use of the internet. There is a far lesser possibility that he might commit a contact sexual offence upon a minor. Such an offence would most likely be opportunistic and would rely on victim access and probable grooming behaviour, perhaps in the context of family friend or even partner of the child's mother. His victim profile, for either type of offending, would be a female child of pubescent or prepubescent physical development. His stated preference is for girls of age 11 to 13, but in actuality he would be attracted to females much younger and also older (as indicated by his choices in child pornographic material). He would be more vulnerable to offending when experiencing negative affective states, abusing alcohol or illicit drugs, gambling heavily (marker of negative affective state), lonely, frustrated or angry. At such times, he is more likely to resort to using sexual activity to regulate emotions, and may attempt to access pornographic material. He is prone to telling lies and playing games, so as to outsmart the system. Thus he has been known to derive satisfaction from using free wifi or to cleverly deceive supervising staff."¹⁰

- [20] Ultimately Dr Aboud considered that after taking into account all the various instruments, it was his view that the respondent's overall unmodified risk of sexual offending would be high and that the offending behaviour would most likely take the form of attempts to access, possess or distribute child pornographic material. He considered that his risk of escalating to a contact sexual offending is much lower but it cannot be discounted. He considered his risk of non-sexual violence would be low and his risk of general offending would be moderate. In coming to that conclusion he took into account "his deviant paedophile drive, his anti-social personality structure, his psychopathic traits, the extent of his general offending history, his previous vulnerability to alcohol and other disinhibiting substances, his poor adaptive coping and problem solving skills, his impulsivity, his demonstrated poor judgment, his tenancy to minimise and externalise responsibility and his underlying psycho-social difficulties associated with his mildly autistic features that frustrate his social and communication style."

- [21] Dr Aboud considered that the contravention occurred in the context of general stresses associated with his frustration at the restrictions placed on him, his lack of progress in finding alternative accommodation and his inability to control his urge to interact with a female minor. He considered that in theory the various stressors he was encountering could have provoked an escalation of risk and that risk was immediately de-escalated when he was removed and re-incarcerated. He considers it possible that if the

¹⁰ Dr Aboud's Report dated 16 January 2018, 17-18.

contravention had not been identified he would have rapidly escalated towards similar opportunities. Ultimately, Dr Aboud considered:

“It is my view that in the context of a supervision order he could again be released to the community. He will require careful support, inclusive of: stable accommodation; ongoing psychologist attendance, to focus on adaptive coping and problem solving, and in particular his underlying social and communication difficulties and core personality vulnerabilities; monitoring of associations; abstinence from alcohol and substances; prohibition from gambling; prohibition, or very stringent monitoring, of internet use.”

- [22] Ultimately Dr Aboud considered that if subject to a supervision order with similar requirements the risk of sexual reoffending would be moderate to low.

Dr Beech’s report

- [23] In his most recent report dated 26 November 2017, Dr Beech referred to his previous assessments and the respondent’s criminal history and antecedence. Dr Beech concluded:

“Mr Black has significant narcissistic dyssocial personality traits, although it is a fragile narcissism that often requires validation from others. He has taken umbrage at the notion that he is a "contact" sex offender, and sees no reason for conditions that restrict his access to children. In my opinion, it is more likely that Mr Black simply chose to flagrantly breach the condition, possibly because he thought it would go undetected. He may though have at the time prioritised his contact with the woman, and the sense of validation he obtained from the interactions whereby he was providing information to her and thus boosting his self-esteem. This does not easily reconcile with her account that Mr Black seemed more interested in her daughter and much of the conversation was with her daughter.”

- [24] Dr Beech also considered that it is difficult to know to what extent the respondent’s behaviour was a form of “predatory grooming”. He continued:

“Mr Black does not have any convictions for hands-on offences but I would see his manipulation of the young girl in 2013 as a "contact" offence, an interaction with an identifiable victim whom he coerced into sending images.”

Should the respondent be subject to a continuing detention order or a supervision order?

- [25] There can be no doubt that the respondent has contravened the supervision order, most recently in May 2017. In particular, he contravened Requirement 28 – that he not establish or maintain supervised or unsupervised contact with a child under 16 without prior written permission. I am satisfied that the contravention has been proved and indeed the respondent has previously pleaded guilty to the contravention of the conditions of the supervision order.

- [26] Pursuant to s 22, subsection 7 of the Act the onus is on the respondent to satisfy the court on the balance of probabilities that the adequate protection of the community, can despite the contravention, be ensured by a supervision order. Having considered the reports of Drs Beech and Aboud, I am satisfied that the respondent has satisfied the onus on him to establish that the adequate protection of the community can be ensured by the supervision order. Section 22 provides that the court on the hearing of the contravention proceedings may rescind a supervision order and make a continuing detention order or can return the respondent to the community under the supervision order, amended if appropriate.
- [27] I am satisfied that given the respondent's criminal history and index offences and his contravention, that the contravention is not minor and he has struggled to live within the terms of his supervision order. However, as Dr Beech and Dr Aboud make clear, the supervision order has been effective in detecting breaches. I am satisfied that whilst the respondent's unmodified risk of future re-offending is likely in the high range, that with a supervision order with the current conditions the risk is reduced to an acceptable level and is within the moderate to moderate to low range.
- [28] I am satisfied therefore that there is acceptable and cogent evidence to support the respondent's return to the community for treatment, care and control under the existing supervision order and I am satisfied that the current supervision order adequately manages the risk of future re-offending.
- [29] I am satisfied that there should be an order in the terms set out in the Schedule.

SCHEDULE ONE: ORDERS

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 10014/15

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

AND

Respondent **STEPHEN ANTHONY BLACK**

ORDER

Before: Lyons SJA

Date: 26 February 2018

Initiating document: Application filed 26 May 2017 (CFI No. 28)

THE COURT being satisfied to the requisite standard that the respondent, Stephen Anthony Black, has contravened requirement (28) of the supervision order made by Justice Byrne on 8 February 2016, ORDERS THAT:

1. Pursuant to s.22(2) of the *Dangerous Prisoner (Sexual Offenders) Act 2003*, the respondent be released from custody and continue to be subject to the supervision order made by Justice Byrne on 8 February 2016.
2. Upon the filing of the Anthony Arthur Heptinstall sworn 4 August 2017 and Jenifer Ali sworn 9 August 2017, they be placed in a sealed envelope and not opened without an order of a Judge of this Court.