

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Wilkes* [2018] QSC 69

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(applicant)  
v  
**HARLEY JAYMES WILKES**  
(respondent)

FILE NO: No 11697 of 2017

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 6 April 2018

DELIVERED AT: Brisbane

HEARING DATE: 19 March 2018

JUDGE: Ryan J

ORDER: **I order that the respondent be released from custody subject to the requirements of the order attached to these reasons.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – application pursuant to section 13 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* – where respondent prisoner convicted of sexual offences committed upon children – whether a “serious danger to the community” – whether Division 3 order required – supervision order

*Dangerous Prisoners (Sexual Offenders) Act 2003*, s 13  
*Attorney-General (Qld) v Sutherland* [2006] QSC 268  
*Attorney-General (Qld) v Pennington* [2016] QSC 146  
*Fardon v Attorney-General for the State of Queensland* (2004) 223 CLR 575

COUNSEL: J Tate for the applicant  
T Zwoerner for the respondent

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

### **Introduction**

- [1] The respondent is a prisoner at the Wolston Correctional Centre. He is serving a sentence for sexual offences committed upon children. His full-time release date is 9 April 2018.
- [2] The Honourable the Attorney-General applies for an order under division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the *DPSOA*) for the respondent's continuing detention or, in the alternative, his release from custody under supervision on strict terms.
- [3] The parties agree that the respondent's release on supervision (rather than his continuing detention) is appropriate, but disagree about the terms of the respondent's release, and in particular, whether he ought to abstain from the consumption of alcohol.

### **Overview of the provisions of the *DPSOA* concerning division 3 orders**

- [4] Under s 8 of the *DPSOA*, the Attorney-General may apply to the Court for a division 3 order in respect of a prisoner.
- [5] Orders under division 3 may be made when a court is satisfied that a prisoner is a serious danger to the community in the absence of a division 3 order: s 13(1).
- [6] A prisoner is a "serious danger to the community" if there is an unacceptable risk that the prisoner will commit a serious sexual offence if the prisoner is released from custody or if the prisoner is released from custody without a supervision order being made: s 13(2).<sup>1</sup>
- [7] A "serious sexual offence" is an offence of a sexual nature, whether committed in Queensland or outside of Queensland – (a) involving violence; or (b) against a child.
- [8] The orders which may be made under division 3 are –
- (a) an order that a prisoner be detained in custody for an indefinite term for control, care or treatment: s 13(5)(a) – known as a continuing detention order; or
  - (b) an order that a prisoner be released from custody subject to requirements which the Court considers appropriate: s 13(5)(b) – known as a supervision order.

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<sup>1</sup> See *Fardon v Attorney-General for the State of Queensland* (2004) 223 CLR 575, at [22] (per Gleeson CJ), [60] (per Gummow J), and [225] (per Callinan and Heydon JJ) as to the meaning of an "unacceptable risk".

- [9] The requirements of a supervision order must include those set out in s 16(1) of the *DPSOA* and any requirement the Court considers appropriate to ensure adequate protection of the community; or for the prisoner’s rehabilitation, care or treatment.
- [10] A court may find that a prisoner 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 justify the decision: s 13(3).
- [11] Section 13(4) sets out matters to which the court must have regard in deciding whether a prisoner is a serious danger to the community in the absence of a division 3 order. Those matters include, among other matters, reports prepared by psychiatrists under s 11 of the *DPSOA*; information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future; whether or not there is any pattern of offending behaviour on the part of the prisoner; the prisoner’s participation in rehabilitation programs; the risk that the prisoner will commit another serious sexual offence if released into the community and the need to protect members of the community from that risk.
- [12] In deciding whether to make a continuing detention order or a supervision order, the paramount consideration is the need to ensure adequate protection of the community: s 13(6)(a). Also, the Court must consider whether adequate protection of the community can be reasonably and practicably managed by a supervision order and whether the requirements of the order can be reasonably and practicably managed by corrective services officers: s 13(6)(b).
- [13] The onus is on the Attorney-General to prove that a prisoner is a serious danger to the community in the absence of a division 3 order: s 13(7).
- [14] In *Attorney-General (Qld) v Sutherland* [2006] QSC 268, his Honour Justice McMurdo (as his Honour then was) outlined the correct approach to these matters:<sup>2</sup>

“No order can be made unless the court is satisfied that the prisoner is a serious danger to the community. But if the court is satisfied of that matter, the court may make a continuing detention order, a supervision order or no order ...

The Court can be satisfied as required under s 13(1) only upon the basis of acceptable, cogent evidence and if satisfied “to a high degree of probability that the evidence is of sufficient weight to justify the decision.” Those requirements are expressed within s 13(3) by reference to the decision which must be made under s 13(1). They are not made expressly referable to the discretionary decision under s 13(5). The paramount consideration under [s 13(6)] is the need to ensure adequate protection of the community.

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<sup>2</sup> See also *Attorney-General v Pennington* [2016] QSC 146, in which Burns J explained that the assessment of whether a risk is unacceptable, or, alternatively put, what order is necessary to ensure adequate protection of the community, is a matter for judicial determination, requiring a value judgment as to what risk should be accepted as against the serious alternative of the deprivation of a person’s liberty.

Subsection 13(7) provides that the Attorney-General has the onus of proving the matter mentioned in s 13(1).

There is no express requirement that the Attorney-General prove any matter for the making of a continuing detention order, beyond the proof required by s 13(1). So s 13 does not expressly require, precedent to a continuing detention order, that the Attorney-General prove that a supervision order would still result in the prisoner being a serious danger to the community, in the sense of an unacceptable risk that he would commit a serious sexual offence. However in my view, such a requirement is implicit within s 13.

The paramount consideration is the need to ensure adequate protection of the community. But where the Attorney-General seeks a continuing detention order, the Attorney-General must prove that adequate protection of the community can be ensured only by such an order, or in other words, that a supervision order would not suffice. The existence of such an onus in relation to s 13(5) appears from *Attorney-General v Francis* [2007] 1 Qd R 396 where the Court allowed an appeal from a judgment which had made a continuing detention order upon the primary judge's view that the Department of Corrective Services would not provide sufficient resources to provide effective supervision of the prisoner upon his release. The Court found an error in that reasoning because of the absence of evidence that the resources would not be provided. The Court observed:

‘The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principal, be preferred to a continuing detention order on the basis that the intrusions of the act upon the liberty of the subject are exceptional, and the liberty of the subject should be constrained to no greater extent than is warranted by the statute which authorised such constraint.’

Thus the absence of evidence of the inadequacy of resources was important because that matter had to be proved as a step in persuading the Court that only continuing detention would suffice.

The Attorney-General must prove more than a risk of re-offending should the prisoner be released, albeit under a supervision order. As was also observed in *Francis*, a supervision order need not be risk free, for otherwise such orders would never be made. What must be proved is that the community cannot be adequately protected by a supervision order. Adequate protection is a relative concept. It involves the same notion which is within the expression “unacceptable risk” within s 13(2). In each way the statute recognises that some risk can be acceptable consistently with the adequate protection of the community.

The existence of this onus of proof is important for the present case. None of the psychiatrists suggests that there is no risk. They differ in their descriptions of the extent of that risk. But the assessment of what level of

risk is unacceptable, or alternatively put, what order is necessary to ensure adequate protection of the community, is not a matter for psychiatric opinion. It is a matter for judicial determination, requiring a value judgement as to what risk should be accepted against the serious alternative of the deprivation of a person's liberty."

### **The application by the Attorney-General**

- [15] The Attorney-General's application in this matter is in the alternative. She seeks either that the respondent be detained indefinitely, or that he be released subject to a supervision order.
- [16] However, while maintaining her application in the alternative, the Attorney-General acknowledges that the evidence presented by her supports a finding that the adequate protection of the community from the relevant risk posed by the respondent may be ensured by the making of a supervision order (a draft was provided), to remain in place for 10 years.

### **The response of the respondent**

- [17] The respondent concedes that the evidence supports the Attorney-General's application to the extent that she seeks a supervision order.
- [18] Having considered the supervision order proposed by the Attorney-General, the respondent raised concerns about some of its requirements, particularly the requirement that he abstain from the consumption of alcohol.
- [19] The respondent also took issue with the duration proposed – arguing first that the order ought only be made for five years, then later that it ought be for no longer than seven years. It was later conceded that there was no evidence presented which would support the imposition of an order of less than ten years.

### **The respondent's personal history and his offending**

#### ***Personal matters***

- [20] The respondent was born on 21 September 1994. He is now 23 years of age.
- [21] The following outline of his personal history is drawn from the reports of the psychiatrists who gave evidence in this matter – Drs Aboud, Phillips and Moyle.
- [22] The respondent and his twin brother were born to a drug-addicted mother. When their mother was imprisoned, the respondent and his brother were taken into the care of a great aunt, who did not want them.
- [23] At 10, he moved to Townsville with his mother (who was still addicted to drugs: ice and speed), stepfather and other children.
- [24] The respondent described his stepfather as abusive and neglectful. He was subjected to, and observed, harsh discipline including being knocked out by his stepfather's punch,

being choked, and being forced to eat chilli. He said his stepfather tried to drown him in the bath.

- [25] At 11, his mother decided she could not care for him and he was placed into foster care. He had several foster care placements until he was 15 and a half.

***Sexual behaviour***

- [26] When the respondent was eight (and living with his great aunt) he was sexually assaulted by two 16 year old boys: his cousin and his neighbour.
- [27] After promoting it as a “fun game” that “boys do”, the respondent’s neighbour performed oral sex upon him and he performed oral sex on his neighbour. Two weeks later, he and his cousin did the same thing. They boys continued with the “game” for months. The respondent’s cousin attempted to anally penetrate him. He bled and it hurt. He told Dr Aboud that he found the abuse to be a form of “acceptance, nurturing and love”.
- [28] Thereafter, he “took the lead” and committed sexual acts, including oral sexual acts, upon female children. He tried to “make out” with them, copying what he had seen on television or at school.
- [29] He turned 12 in his fourth foster home. He was then with his brother. That home included two girls, aged 11 or 12, who initiated sexual contact with him and his brother. The girls had been sexually abused by their father.
- [30] During a holiday at a “government farm”, a supervisor encouraged him to have sex with an 11-year-old girl.
- [31] In high school he attempted to involve others in sexual “game playing”.
- [32] When he was 13, he and his brother were sent to a respite carer for a weekend, every two weeks. With that carer, they were allowed and encouraged to watch pornography, shown sex toys, paid to swim naked and fondled but then it “became weird”. The carer masturbated to child pornography and provided the respondent and his brother with silicone vaginas for their use (which they rejected). The carer talked about sex constantly.
- [33] The carer was ultimately arrested, convicted and sentenced. The respondent was 14. He felt that everyone (e.g. the police, the courts) wanted a piece of him.
- [34] He was expelled from school at 15, having broken a boy’s jaw with a punch. The boy had called him a “faggot” after the carer’s court case was published and he (the respondent) was named.
- [35] At 15 and a half, the respondent was introduced to marijuana by his mother’s drug dealer.
- [36] He had a sexual relationship with his 16-year-old girlfriend.

- [37] At 15 and a half he left his last foster care home and dropped out of school. At 16, he was independent of the Department of Child Safety (DCS).

***Alcohol and substances***

- [38] He began drinking alcohol at 14 and engaged in binge drinking. He suffered alcoholic poisoning at 15. By 18, he was an alcoholic. He suffered the symptoms of withdrawal and blackouts. His first thought upon waking was of a drink. He drank daily to excess.
- [39] Over the years, he has been seen by psychologists, including after the Department of Child Safety learnt that he had been sexually abused. He said he had psychological problems. He has been treated in custody, including for PTSD.

***The respondent's offending***

- [40] Before he was 17, he was “caught” with his first victim. There were “three rounds” of offending. He was on bail for the first round of offending when he committed the second and third rounds of offending. He said he decided to do what he wanted – being caught was not going to stop him.
- [41] He said his offending was not spur of the moment offending. He groomed his victims, sometimes taking a week to find them. He was the babysitter for two of the victims.
- [42] On 19 February 2015, he pleaded guilty, in the District Court at Townsville, to the following offences:
- (a) procuring a young person for carnal knowledge;
  - (b) 11 x indecent treatment of a child under 16;
  - (c) three x indecent treatment of a child under 12, and as a lineal descendent/guardian/caregiver;
  - (d) 11 x indecent treatment of a child under 12;
  - (e) common assault; and
  - (f) damaging evidence with intent.

- [43] In sentencing the respondent, his Honour Judge Martin said:

“... There were seven victims, five female and two male. Two of the female victims were 13 years, and the others were aged 11 years, eight years, and six years. The males were aged nine years and 10 years. In relation to the bulk of the offending, you were in a position of trust. This offending generally involves a grievous breach of trust.

The period of offending was from about mid-2012, or a little earlier, to October 2013. You made threats to kill in relation to two victims should they tell anyone, and you told the six year old victim that should she tell anyone, her mother would be taken from her. The material also discloses that at times you ignored the pleas of children for you to stop the activity,

and, of course, the common assault offence results from your efforts to quieten the complainant when yelling out for you to stop.

... you committed all of the offences which were committed since June 2012 whilst on bail. On each of the two occasions that you were granted bail, you took the opportunity to commit further very serious offences of a similar nature. Indeed, you had already pleaded guilty to indictment 273 of 2013 and then [were] admitted to bail before committing the offences in counts 17 to 22 on indictment 415. The material also discloses that on occasions when accusations were raised by parents, you denied the offending and, at least on one occasion, even adopted the attitude that you were being victimised.”

- [44] The offending involved touching or playing with the genitals of the complainants, and touching the breasts and slapping the buttocks of a 13 year old complainant. The common assault was committed upon a nine year old boy. The respondent struck his head against a metal bedpost and pushed him towards a cupboard after the complainant called loudly for the respondent to stop sexually assaulting him.
- [45] The respondent committed the offences as a 17, 18 and 19 year old. He was 20 years old at sentence.
- [46] His Honour Judge Martin noted the respondent’s sad and difficult childhood and that he was sexually abused as a child. His Honour sentenced the respondent to four and a half years imprisonment, with 498 days of pre-sentence custody declared to be imprisonment already served and with parole eligibility fixed at 10 June 2015.
- [47] On 26 February 2016, the respondent pleaded guilty, before His Honour Judge Smith, to one offence of indecent treatment of a child under 12. This offence occurred during the same period as the offending dealt with by his Honour Judge Martin. The complainant was a nine year old girl. The respondent touched her on the vagina on the outside of her clothing. He was sentenced to six months imprisonment with immediate parole eligibility.

### **Conduct in prison**

- [48] The respondent’s recent conduct in prison has been of an acceptable standard. He is mostly compliant with staff and polite.
- [49] Over the years of his incarceration, he has been placed on numerous safety orders including because he was identified as a high risk of suicide or self-harm. There were six incidents of self-harm involving his swallowing a razor blade, bread, a screw, batteries and metal from a power cord. He had self-inflicted cuts, including one requiring 14 stitches.
- [50] He was breached for making threatening comments to corrective services staff in January 2015. There are 18 “violations”, including for self-harm, assaults on offenders (x 3), sexual assaults (x 2), the possession of prohibited articles (x 2), an indecent act and threatening another offender.

- [51] He has been studying for university degrees whilst in custody. He intends to complete a double degree in business and IT.

### **Treatment programs**

- [52] The respondent completed the Getting Started: Preparatory Program on 24 May 2016. His exit report notes his increasing insight into his sexual offending, his increasing acceptance of responsibility for his offending and his victim empathy. His level of engagement was described as “excellent”. It noted that he was supportive of fellow participants. However, he demonstrated significant minimisation of his offending, stating that he did not believe that he had caused any harm. It was noted that despite his saying that his offending was impulsive and without premeditation, he had engaged in grooming behaviours with some of the victims.
- [53] The respondent participated in the High Intensity Sexual Offenders Program (HISOP) between 3 August 2016 and 9 November 2017. The respondent’s exit report is exhibited to Hannah Cantwell’s affidavit, which was filed by the applicant. Ms Cantwell was one of two facilitators of the respondent’s HISOP.
- [54] The exit report notes that the respondent completed 353 hours of treatment across 137 sessions. He presented as a motivated and engaged participant although his level of participation fluctuated with his mood state.
- [55] Some passive-aggressive communication was observed and facilitators noted “undertones of control ... when discussions were not proceeding as he desired”. There were times when he became frustrated with other participants. It was noted that these issues did not persist for the duration of the program, however they indicated “areas of focus” for the respondent in terms of his emotional management and communication.
- [56] The report also included the following observations:
- (a) Consistent with someone diagnosed with borderline personality disorder, the respondent demonstrated boundary crossing, positive impression management and attempted manipulation of others, although his tendency to engage in manipulative behaviours lessened as the program progressed;
  - (b) Overall, the respondent was observed to make behavioural change and develop skills in various areas, including emotional expression and self-awareness, however, he struggled at times to challenge his own negative thoughts and internalise feedback. This appeared to be largely driven by his low self-esteem and tendency to engage in victim-stancing;
  - (c) He continued to present with a deviant sexual interest and deficiencies in communication, relationship skills and emotional management, in addition to low self-esteem. There were areas which would require ongoing management after his release;
  - (d) He spoke quite matter-of-factly about his offending and, although he presented as taking ownership of it, at times he appeared to minimise his offending behaviour;

- (e) At times, he demonstrated a level of general empathy, however struggled to demonstrate empathy in relation to his victims;
- (f) On occasion, he engaged in victim-stancing, however he did not externalise blame for his actions. He accepted full responsibility for his actions and the resulting consequences;
- (g) He was willing to explore how his distorted perceptions of sex, his limited intimate relationships and his fearful attachment style were linked to his offending;
- (h) He took ownership of deviant sexual interest as one of his high risk factors and identified sexual preoccupation and boundary pushing as areas he would need to be mindful of moving forward;
- (i) He demonstrated a level of dismissiveness towards the high risk factor of sex as coping and seemed to think it was inferior to the abovementioned factors;
- (j) The respondent was “transparent” throughout his presentation on intimacy, sexuality and attachment. He was willing to examine himself and his experiences in a detailed fashion, which highlighted his level of insight and self-awareness;
- (k) He made significant gains in emotional management but would benefit from additional support from a registered professional;
- (l) He outlined a realistic and motivational approach to his life following his release from custody.

[57] In its overall summary, the HISOP exit report noted the respondent’s outstanding treatment needs and provided recommendations for those supervising him, which I do not need to detail in these reasons.

#### **Psychiatric reports: Dr Andrew Aboud**

[58] Dr Aboud was asked to provide a risk assessment report about the respondent, to be considered by the applicant in making her decision about an application for a division 3 order.

[59] Dr Aboud was briefed with relevant materials, as outlined in his report. He interviewed and assessed the respondent on 9 December 2016 in a session lasting three and a half hours.

[60] In the course of the respondent describing his feelings after having been exposed by some of his complainants as having offended against them, the respondent said:

“... Then 10 minutes later I received another call, and it was [the mother of complainants]. She was very angry, and told me her kids had told her everything. She wanted to kill me for what I’d done. I felt guilty and scared ... a sick feeling like I’m going to be exposed.

So I took all my money out of my account and went to the casino ... I'm a really bad gambler ... pokies, blackjack ... I'd been going to the casino or to the Leagues Club two or three times per week ... my gambling got really bad when I was released on bail ... I now realise it was avoidant coping ... gambling and alcohol. When I was at work, as a bartender, I'd be drinking ... blind drunk. Again, this increased to daily when I was on bail ... drunk every day and gambling every other day. So I went to the casino with \$4000, and spent several hours gambling and drinking ... I was intoxicated, and had thoughts of wanting to kill myself ... I sent [the mother] a text saying sorry and a stupid immature comment about killing myself ... not considering the victims, just myself ...”

[61] He then described an unsuccessful suicide attempt.

[62] The respondent denied the common assault charge to Dr Aboud. He said he wanted to please the children and to make them feel the way he felt when he was abused. He said he would always stop when asked and never threatened the victims in any way.

[63] When asked about the relationship (as he saw it) between his offending, his substance use and his gambling, he said:

“I realise that I was using alcohol and gambling to cope with my emotions ... avoidant coping is what they call it ... and that was me ... when I was feeling low, I'd turn to those things ... when I didn't want to feel emotions, [I'd] turn to those things ... when I was offending, I'd turn to those things.”

[64] Dr Aboud offered the following opinion:

“From an early age he seems to have developed a coping strategy that involved putting on a ‘mask’ to hide his affective instability, low self-regard, poor self-esteem, and impulsive and reckless behaviour. This mask, to some extent, allowed him to create a superficial veneer that allowed others to find him trustworthy and dependable. Later, he developed avoidant emotional coping, including the regular and problematic use of alcohol, cannabis and also gambling behaviour. It would appear that these maladaptive strategies escalated at the time of his sexual offending.”

[65] Dr Aboud noted that the respondent's behaviour in custody improved after he was transferred from the Townsville Correctional Centre to the Wolston Correctional Centre. He continued:

“More recently, since early 2016, he has demonstrated increasing maturity in prison, and this has been reflected in significant improvements in his general behaviour, his participation in available therapy programs, and his commitment to further education. The evidence from the Getting Started: Preparatory Program completion report is of a man who has developed increased insight and self-awareness.

In my opinion, his psychiatric diagnoses would include: an atypical (or complex) Post Traumatic Stress Disorder (resulting from various traumatic childhood experiences); Mixed Personality Disorder (with prominent

Borderline, Antisocial and some Narcissistic traits); Alcohol Dependence; Cannabis Dependence and likely Pathological Gambling. He also, in my view, meets the criteria for a diagnosis of Paedophilia, non-exclusive type, sexually attracted to both males and females.

While I do not find evidence that he is, or was, suffering from a depressive disorder, I note that he is prescribed the antidepressant Venlafaxine. He appears to derive some benefit from this medication, and it would be accepted that his various mental health problems might lead to mood instability and anxiety that would reasonably warrant such treatment.”

- [66] After applying several risk assessment tools and, having considered their results, Dr Aboud was of the view that the respondent’s unmodified risk of sexual offending was high.
- [67] His risk of non-sexual violence was moderate. His risk of general offending was low.
- [68] Although it was clear to Dr Aboud that the respondent had matured in custody, he had at times attempted to improperly influence prison processes by threatening and engaging in self harm. He had offended whilst on bail, he was prone to minimisation and denial, he lacked self-awareness and he had, at times, demonstrated a “rather manipulative and deceptive interpersonal style”.
- [69] Dr Aboud expected the respondent’s completion of the HISOP to reduce his risk of sexual re-offending to between moderate and high. Dr Aboud expected the risk to be reduced to between moderate to low were he to be released under a supervision order in the community.
- [70] As to the requirements of such an order, Dr About recommended conditions which provided the respondent with support to –
- (a) establish stable and appropriate accommodation;
  - (b) ensure he had no contact with children;
  - (c) ensure that he remained abstinent from alcohol, cannabis and other substances;
  - (d) ensure his participation in a sexual offenders’ maintenance program;
  - (e) structure his time and engage in useful activity (such as education and employment); and
  - (f) engage with a psychological therapist to address issues related to his low self-esteem and self-regard, his childhood trauma history and associated trust issues, his intimacy problems, his sexual deviance, his maladaptive and avoidant coping style, and his tendency to wear a ‘mask’ and to potentially deceive people.

#### **Psychiatric Reports: Dr Jane Phillips**

- [71] Dr Phillips saw the respondent on 16 December 2017 for approximately four hours.

- [72] She was provided with relevant written materials, but did not receive a copy of the exit report about the respondent's performance at the HISOP.
- [73] The respondent told Dr Phillips that from the age of 17, he engaged in sexual fantasies involving underage girls whilst masturbating and he was engaged in those fantasies during the period of his offending.
- [74] In the context of discussing his offending with Dr Phillips, the respondent said that he wished he had been denied bail after his arrest for offending against a 13 year old girl (whom he procured for sexual intercourse via text message).
- [75] He admitted, having completed the HISOP, that his offending was "pre-meditated". He said he found the HISOP very beneficial.
- [76] He acknowledged that he still had occasional, fleeting, sexually arousing thoughts/fantasies involving underage children but was adamant that he could stop himself from engaging in the fantasies. He said he had no intention to offend in the future.
- [77] After describing his use of alcohol to Dr Phillips, he said that he was not intoxicated at the time of the offending, but was drinking a lot "before and after".
- [78] After he offended, he would ruminate, and turn to drinking and gambling, which in turn led to a deterioration in his mental state.
- [79] He told Dr Phillips that he planned to remain abstinent from drugs. He was more ambivalent about long term abstinence from alcohol – but said he planned to not drink alcohol for 12 months, and then only small amounts in social settings.
- [80] In providing her diagnostic opinion, Dr Phillips noted the respondent's markedly traumatic background and the early onset of sexualised behaviours.
- [81] Diagnostically, he met the criteria for PTSD; Dysthymia (and some anxiety); Alcohol and Cannabis Use Disorder; Borderline Personality Disorder and Anti-Social Personality Traits; Paedophilic Disorder (non-exclusive type); and Adjustment Disorder with Depressed Mood (after his incarceration).
- [82] Having administered several risk assessment instruments and tools, Dr Phillips concluded (in her written report) that the respondent's risk of future sexual offending fell in the moderate to high range if he were to be released without a supervision order. His risk would be reduced to moderate were he released upon such an order.
- [83] Dr Phillips considered that the respondent's risk of re-offending would increase were he to relapse to substance abuse or acute intoxication or to experience psychosocial stressors, placing him at risk of emotional collapse and returning to his long standing patterns of substance use or the use of sex as coping.
- [84] This risk of his sexually re-offending would increase in the setting of increased sexual preoccupation, or were he to reject supervision.

- [85] Dr Phillips recommended that risk management interventions focus on psychological interventions, supervision and monitoring as well as environmental measures, and multi-agency planning and information sharing. Dr Phillips considered that the respondent would benefit from individual psychological intervention by a forensic psychologist with experience in managing sexual offenders: his sexual deviance had to be addressed (it was not explored in the HISOP and continued to be an active problem). She thought the respondent might also benefit from the Sexual Offenders Maintenance Program. He required ongoing management of his PTSD.
- [86] Dr Phillips made other detailed recommendations about the respondent's future treatment and supervision. In her opinion, he ought not consume alcohol or use illicit drugs when in the community. She stated that frequent, random, testing for the consumption of alcohol or the use of drugs was required.
- [87] She recommended a supervision order of a minimum duration of five years. She added: "given the risk issues and the chronic nature of Paedophilic Disorder, a Supervision Order of 10 years duration would also be clinically appropriate".

#### **Psychiatric reports: Dr Robert Moyle**

- [88] Dr Moyle saw the respondent for six hours and 15 minutes on 6 January 2018.
- [89] In addition to the written material provided to him, Dr Moyle obtained, with the respondent's consent, more information from the Townsville and Wolston Correctional Centres about the respondent, including from the Prison Mental Health records and other Queensland Health records.
- [90] In Dr Moyle's opinion –

"Most of Mr Wilkes' difficulties in complying his behaviour to the law are explained in terms of a very deleterious developmental history, an absent father figure, and a drug-addicted, sexually promiscuous carnival worker mother, bearing children she had no intention to care for. Aunts have been in trouble with the law and tried to manage him initially, but, eventually, he was in various foster placements, where he was experiencing ... sexual abuse at the hands of both peers and people in positions of responsibility for his care, including at care facilities where he was placed. Foster placements broke down because of his highly emotional and highly aroused behaviours ... Drug and alcohol use was prevalent ...

He grew up seeing love and affection as being equated with sexual acts and initially failed to develop a sense of wrongfulness to such behaviours. When stressed, he would orgasm as stress relief; what we would call "sex as coping". He did not develop a sense of caring or concern for victims of his child sexual abuse, justifying his behaviours on the grounds of "What do you expect, when you've raised me this way?" He takes what he wants when he wants it, and such attitudes are also mirrored by a lack of caring towards adult females, indeed rage, when he fears let down by them. To this day, he still shows intense disgust and rage talking about his mother.

This ended up with a dyscontrolled young man, vulnerable to express himself emotionally, and to seek sexual pleasure when the opportunity arises, not just as signs of love and affection, but also stress relief. He states that all he intended was to have mutually enjoyable sex with children. Drugs and alcohol were involved. Both sex and drugs and alcohol are avoidant strategies he uses when emotionally overwhelmed masking the underlying distress.

...

In custody, he has recently received treatment with Prison Mental Health Services, assisting him to learn strategies to contain his emotions, to think through what he is really angry about, and deal with that, rather than seeking sexual release through sex with children to relax him.

He has gained from the Sex Offender Treatment Program but, with it, comes some regret for the behaviours he engaged in. He voices reasonable understanding of the effects of child sexual abuse on victims, not only from self-experience but, clearly, from the program ... I think that the program and the Prison Mental Health Services in combination have started the process of showing him that people do care and are wanting to help and, in such a context, he is less likely to reoffend and is learning to deal with anger appropriately ...”

- [91] Dr Moyle diagnosed the respondent with Borderline and Narcissistic and Anti-Social Personality Disorders, all cluster B; and Paedophilia Heterosexual Non-Exclusive “which in people with better developed personalities would not necessarily be acted on, but, in Mr Wiles’ impulsive, rage-filled life, is acted on, by using his intellect to con and manipulate and deceive both himself and others into trusting him”.
- [92] Dr Moyle’s clinical assessment was that the respondent, if distressed or let down, “may adopt a ‘don’t care’ attitude, consistent with his current personality and would be then at risk of conning vulnerable parents to get access to their children for sexual pleasure. I think the risk clinically would be high, but lowered if he could engage in appropriate treatment and, in a supported environment ...”
- [93] Dr Moyle explained that his opinion was informed by formal risk assessment processes that he had been trained to use.
- [94] Dr Moyle suggested that the respondent was at high risk of sexually reoffending were he to be released into the community unsupervised. His intellect and treatment to date with psychiatrists and in the HISOP has lowered his risk but to no lower than moderately high.
- [95] Dr Moyle considered a supervision order (with appropriate conditions) would be required for 10 years.

**Is a division 3 order required? And if so, what order is required?**

- [96] The evidence of the expert psychiatrists, considered in the context of the evidence about the respondent’s antecedents and the nature of the offending and patterns of offending

behaviour, provides evidence of the quality required by s 13(3) of the *DPSOA*. I am satisfied to a high degree of probability that the respondent is a serious danger to the community in the absence of a division 3 order. The risk the respondent poses of committing a sexual offence in the future were he to be released without a supervision order is in the high range.

- [97] However, on the evidence as outlined above, I am satisfied that that risk may be reduced to an acceptable one (and in the low to moderate range) were he to be released subject to a supervision order in the terms of the draft provided to me by the applicant (with minor amendment).

### **Contested conditions of the order**

- [98] The respondent's initial concerns about his requiring approval to go to shopping centres or access a computer or the internet were alleviated during the hearing and have been resolved by amendments to the draft order provided by the applicant which enable the respondent to obtain an ongoing approval for those activities.

- [99] The respondent maintained his opposition to a requirement that he abstain from alcohol, arguing, in effect, that such a requirement was "unduly onerous" and would affect his chances of rehabilitation to the extent to which it meant that he could not socialise by way of drinking alcohol with like aged peers. Counsel for the respondent informed the Court that the respondent would not contest a condition which permitted him to consume alcohol up to a "blood alcohol reading of no higher than .05" which would "allow him to re-engage socially with like aged peers".

### **Oral evidence**

- [100] Two of the three psychiatrists were called, primarily to give evidence about the need for the respondent to remain abstinent from alcohol.

### ***Dr Aboud***

- [101] Dr Aboud stated his opinion that 10 years was the appropriate duration for a supervision order –

“... because Mr Wilkes’ offending, and his future risk of offending, is underpinned by factors which are likely to remain somewhat chronic, and will only gradually ameliorate over time ... [T]he chronic long-standing vulnerability factors include his personality vulnerabilities, his tendency toward avoidant coping through substance use, alcohol use, gambling and also ... his deviant sexuality that is ... his paedophilia.”

- [102] On alcohol as a risk factor, Dr Aboud explained that the respondent's alcohol use was "both a marker of him becoming more vulnerable to sexual offending but also a moderating factor whereby it promotes his risk of sexual offending."

- [103] In Dr Aboud's opinion, the respondent would need to be totally abstinent from alcohol in the first instance, for three or four years. The point of his release was a high risk time. He had been alcohol dependent, binge drinking to intoxication and that was a risk factor.

[104] Dr Aboud was cross-examined about the risks associated with the respondent's drinking to excess and those associated with the moderate consumption of alcohol. He said –

“... although intoxication is a very clear and gross example of the disinhibiting and deleterious effects of alcohol consumption, one might not need to be intoxicated ... [it] could be at a much lower level of ... alcohol consumption for alcohol to be causing an individual to be feeling a little bit bolder, being prepared to take a risk.”

[105] Dr Aboud observed that the respondent was engaging in regular and heavy alcohol consumption during the period of his offending. The overall formulation of how the respondent became unable to control his illegal behaviour included his resort to “mind altering substances”. Alcohol and drugs were dynamic risk factors for the respondent, which, when managed, would reduce his vulnerability towards offending.

[106] Dr Aboud was concerned that, if alcohol consumption were permitted to any extent, it opened up the opportunity for the respondent to drink more than one glass.

***Dr Phillips***

[107] Dr Phillips considered it very important from a clinical and risk management perspective that the respondent abstain from alcohol consumption. The respondent's baseline level of risk was already high, and one would want to “avoid any additive risk on top of that”. The respondent was already prone to impulsive decision-making and his judgment was likely to be further impaired by the consumption of alcohol.

[108] The respondent had very little impulse control, and he was likely to find it difficult to stop after a first drink.

[109] She took the opportunity to clarify that having seen the HISOP exit report, in her opinion the respondent's risk of reoffending sexually fell at the high end of the moderate to high range.

**Submissions after oral evidence**

[110] Counsel for the respondent acknowledged that the weight of the evidence was against him, but maintained his submission that the respondent ought to be permitted to drink alcohol, in a modest amount, while he was under supervision.

**Conclusion about condition prohibiting alcohol consumption**

[111] It is plain on the evidence that alcohol intoxication is a risk factor for the respondent. Even if he were not intoxicated at the time of his offending, the overall formulation as to how he came to offend includes his resort to excessive alcohol consumption.

[112] Before his imprisonment, he had been a binge drinker. He has very little impulse control. The respondent is likely to find it difficult to stop after a first drink. He is a person prone to impulsive behaviour. His judgment is likely to be further impaired by the consumption of alcohol.

- [113] The highest risk time for the respondent will be the time of his release from custody. In my view it is critical, to ensure the adequate protection of the community, that, at least immediately after his release, and for some years thereafter, he abstain from alcohol consumption.

**Other matter**

- [114] I note that Bruce Tannock, the Acting Manager of the High Risk Offender Management Unit, has stated in his affidavit filed 14 March 2018 that “[i]t is envisaged there will be a vacancy at the Wacol precinct for the respondent should the Court order his release from custody onto a supervision order at the final hearing on 19 March 2018”.
- [115] I note also that the respondent raised concerns with the psychiatrists assessing him about being housed at the same precinct as a former inmate of the Townsville Correctional Centre.
- [116] That issue was not raised in the proceedings before me.

**Order**

- [117] I order that the respondent be released from custody subject to the requirements of the order attached to these reasons.

**SUPREME COURT OF QUEENSLAND**

**REGISTRY:** Brisbane  
**NUMBER:** BS11697/17

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

AND

Respondent **HARLEY JAYMES WILKES**

**SUPERVISION ORDER**

Before: Justice Ryan

Date: 6 April 2018

Initiating document: Originating Application filed 8 November 2017

THE COURT, being satisfied to the requisite standard that the respondent, Harley Jaymes Wilkes, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”), ORDERS THAT:

1. The respondent be subject to the following conditions until 9 April 2028.

The respondent must:

**Statutory Requirements**

1. report to a Corrective Services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 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 Corrective Services officer at such times and at such frequency as determined by Queensland Corrective Services;
3. notify a Corrective Services officer of every change of his name, place of residence or place of employment at least two (2) business days before the change occurs;
4. be under the supervision of a Corrective Services officer;
5. comply with a curfew direction or monitoring direction;
6. comply with any reasonable direction under section 16B of the Act given to him;
7. comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order;
8. not leave or stay out of Queensland without the permission of a Corrective Services officer;
9. not commit an offence of a sexual nature during the period of the order;

### **Employment**

10. seek permission, and obtain approval, from a Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
11. notify a Corrective Services officer of the nature of his employment, or offer of employment, the hours of work each day, the name of his employer and the address of the premises where he is, or will be, employed, at least two (2) days prior to the commencement of his employment or any change to his employment;

### **Accommodation**

12. reside at a place, within the State of Queensland, as approved by a Corrective Services officer by way of a suitability assessment and obtain the written approval of a Corrective Services officer for a change of residence prior to any change of residence;
13. if this accommodation is of a temporary or contingency nature, comply with any regulations or rules in place at this accommodation and demonstrate reasonable efforts to secure alternative, viable, long term accommodation to be assessed by Queensland Corrective Services;

14. not reside at a place by way of short term accommodation including overnight stays without the permission of the Corrective Services officer;

### **Activities and associates**

15. respond truthfully to enquiries by a Corrective Services officers about his activities, whereabouts and movements generally;
16. not have any direct or indirect contact with a victim of his sexual offences;
17. disclose to a Corrective Services officer the name of each person with whom he associates, and respond truthfully to requests for information from a Corrective Services officer about the nature of the association, the address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;
18. notify a Corrective Services officer of all personal relationships entered into by him;
19. notify a Corrective Services officer of the make, model, colour and registration number of any vehicle owned by, or generally driven by, him, whether hired or otherwise obtained for his use;
20. submit to, and discuss with, a Corrective Services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
21. if directed by a Corrective Services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by a Corrective Services officer who may contact such persons to verify the full disclosure has occurred;

### **Alcohol, Drugs and Gambling**

22. abstain from the consumption of alcohol and illicit drugs for the duration of this order;
23. submit to any form of drug and alcohol testing, including random urinalysis and breath testing, as directed by a Corrective Services officer;
24. disclose to a Corrective Services officer all prescription and over the counter medication that he obtains;

25. not visit premises licensed to supply or serve alcohol, without the prior permission of a Corrective Services officer;
26. not visit any licensed gambling premises without the prior permission of a Corrective Services officer;
27. not access any online gambling websites on a computer or on the internet without the prior written permission of a Corrective Services officer in consultation with the treating psychiatrist or psychologist;

### **Medical Treatment**

28. attend upon, and submit to, assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by a Corrective Services officer at the frequency and duration recommended by the treating intervention specialist;
29. permit any medical, psychiatric, psychological, social worker, counsellor or other mental health professional to disclose –
  - (a) details of the treatment or intervention provided by them to him; and
  - (b) their opinions relating to his level of risk of re-offending and compliance with this order,to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;
30. attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health professional where appropriate;
31. take prescribed drugs as directed by a medical practitioner and disclose details of all prescribed medication to a Corrective Services officer upon request;

## **Contact with children**

32. not establish or maintain any supervised or unsupervised contact, including by undertaking any care of children under 16 years of age, except with the prior written approval of a Corrective Services officer;
33. fully disclose the terms of this order and the nature of his offences to the guardians and caregivers of the children mentioned above before any supervised or unsupervised contact takes place;
34. permit Queensland Corrective Services to disclose information about him to guardians or caregivers of children with whom he has established or maintained supervised or unsupervised contact and external agencies (i.e. Department of Child Safety) in the interests of ensuring the safety of those children;
35. advise a Corrective Services officer of any repeated contact with a guardian or caregiver or parent of a child under 16 years of age; and, if directed by a Corrective Services officer, make complete disclosure of the terms of this order and the nature of his offences to any person nominated by a Corrective Services officer, who may contact such persons to verify that full disclosure has occurred;
36. not access a school or child care centre at any time without the prior written approval of a Corrective Services officer;
37. not visit, or attend upon, 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 Corrective Services officer;
38. not visit public parks without the prior approval of a Corrective Services officer;
39. obtain the prior approval, which may include ongoing written approval, of a Corrective Services officer before attending any shopping centre;
40. not join, affiliate with, attend upon 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 Corrective Services officer;

**Technology, telephones and devices**

- 41. obtain the prior approval, which may include ongoing approval, of a Corrective Services officer before accessing a computer or the internet;
- 42. supply to a Corrective Services officer any password or other access code known to him, to permit access to such computer or other device or to content accessible through such computer or other device, and allow any device on which or through which the internet is accessible, to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;
- 43. supply to a Corrective Services officer details of any email address, instant messaging service, chat room, or social networking site used by or accessed by him, including his user names and passwords;
- 44. allow any other device, including a telephone, to be randomly examined: If applicable, provide account details and/or phone bills are to be provided upon the request of a Corrective Services officer;
- 45. advise a 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 its connection or the commencement of its use;
- 46. report to a Corrective Services officer any changes to his mobile phone details within 24 hours of the change; and
- 47. not own, possess or regularly utilise more than one mobile phone, expect with the prior approval of a Corrective Services officer.

Signed: .....  
Registrar of the Supreme Court of Queensland