

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Cobbo* [2018] QSC 131

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
ADAM JOHN COBBO
(respondent)

FILE NO: BS 282 of 2014

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 28 May 2018, *ex tempore*

DELIVERED AT: Brisbane

HEARING DATE: 28 May 2018

JUDGE: Bowskill J

ORDER: **Supervision order made, as per the schedule 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 for review of a continuing detention order first made on 11 July 2014 – where a significant factor contributing to the respondent’s continued detention has been his refusal to undertake a sexual offender treatment program in custody – where there is evidence that requiring the respondent to continue to be detained for that purpose has the potential to be counter-therapeutic – whether the adequate protection of the community can be ensured by a supervision order
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)

COUNSEL: B Mumford for the applicant
L C Falcongreen for the respondent

SOLICITORS: Crown Law for the applicant
Fisher Dore Lawyers for the respondent

- [1] This is a review of the continuing detention order made in relation to Mr Adam Cobbo. The order was first made on 11 July 2014 by Daubney J: see *Attorney-General for the State of Queensland v Cobbo* [2014] QSC 150. It was continued by order of Burns J made on 13 June 2016: see *Attorney-General (Queensland) v Cobbo* [2016] QSC 156. It was continued again by order of Brown J made on 12 June 2017, for oral reasons given on that day.
- [2] Mr Cobbo has been in custody since late 2006 serving a sentence for offences including rape and unlawful carnal knowledge, of which he was convicted in August 2008. The factual context of these offences is summarised in the reasons of Daubney J at paragraphs [8] to [12]. Relevantly, at the time Mr Cobbo was aged 19. The female victim of the offences was 13 years of age at the time of the unlawful carnal knowledge offence, and 14 years of age at the time of the rape offence.
- [3] Mr Cobbo has at all times and continues to maintain his innocence of these sexual offences. On the basis of the psychiatrists' reports of what Mr Cobbo has told them he does not dispute the factual circumstances of the offences, but says that he did not know that the girl was 13 and also that the sexual contact between them was consensual. For that reason, whilst in custody he has refused to participate in any sex offender rehabilitation programs. That has been a significant factor, but not the only factor, in the Court's consideration of the original application by the Attorney-General for a continuing detention order and the subsequent confirmation of that order. For example, at the time of the review by Burns J, Mr Cobbo's continuing poor record in prison with episodes of aggression and behavioural disturbance were a matter of concern. However by the time of the review by Brown J there had, it seems, been fairly considerable improvement in that regard but there remained the issue about the rehabilitation programs. By the time of the review in June 2017 Mr Cobbo had completed the Pathways substance abuse program, which was a positive step in terms of his rehabilitation, given the link with alcohol abuse in particular.
- [4] Previously, the evidence of the psychiatrists, in particular Dr Sundin, was that Mr Cobbo should be required to participate in an appropriate sexual offender rehabilitation program prior to his release on supervision. However, in the context of the current review of the continuing detention order, the position has changed. Firstly, in terms of Mr Cobbo's conduct in prison, I note what Dr Sundin has said at pages 8 to 9 of her report. There do appear to have been some incidents, it seems, in the period from June to November 2017, but Dr Sundin also records that, by 4 November, Mr Cobbo's behaviour had settled and he was compliant with requirements of the unit.

- [5] She records his participation in the substance abuse management program from 12 May 2017 to 12 November 2017 and also that apart from various incidents referred to, Mr Cobbo's behavioural record was satisfactory. Of particular note, Dr Sundin records that on 17 September 2017 Mr Cobbo was characterised as having exhibited great leadership and behaviour within the unit. He assisted another prisoner to clean his cell which was in a poor state and was unhygienic to occupy, that he gave direction and assisted the cleaning of the cell, and then proceeded to ensure that all areas within the unit itself that came into contact with the soiled material from this room were thoroughly cleaned also.
- [6] There has been a recent alleged incident that is referred to in the material, which arose on 21 May this year. This is outlined in the exhibit annexed to the affidavit of Ms Monson. That material indicates that on 21 May prison officers observed some behaviour they regarded as suspicious in a yard, suspicious in the sense that it suggested drug use. Mr Cobbo was part of the group of people observed. He was requested to provide a urine sample for drug testing, and he refused to do so. I will come back to that in a moment.
- [7] Dr Sundin also notes in her report at page 11 that as a consequence of her recent interview with Mr Cobbo, she considers that he appears to have sustained the gains he previously made in the Pathways program and also that he demonstrated insight into his chronic battle with anger and could identify strategies for dealing with that. She refers to his strong family orientation and his gratitude for the continuing support he receives from his family. She says he has improved regarding his attitude towards alcohol and its adverse impact upon him, and noted that he was accepting that a supervision order would require the wearing of an ankle bracelet, GPS monitoring, participation in treatment with a psychiatrist or psychologist and a requirement for abstinence from drugs and alcohol.
- [8] In addition to what I have referred to as the improvement in terms of conduct in prison, subject to what one might speculate or otherwise about the recent event, Dr Sundin's opinion has altered from the opinion she expressed when the matter was last before Brown J. Whereas she has previously expressed the view that Mr Cobbo needs to participate in a sexual offenders treatment program within the prison, she says it is clear that he is not going to do so. She says at page 15 of her report that "[t]o continue to insist on him remaining in prison for such a purpose at this stage does have the potential to be counter-therapeutic".
- [9] She says that whilst she is concerned as to his risk for sexual offending, she now considers this could be adequately addressed by a combination of a supervision order which included monitoring, a requirement for abstinence from alcohol and other disinhibiting substances, requiring him to be transitioned to a curfew program and requiring him to engage in one on one therapy with an appropriately

qualified forensic psychologist. She notes that the order will need to pay close attention to Mr Cobbo avoiding any intoxicating substances, and also notes the advantages of the possibility of Mr Cobbo residing with his aunty, which has been one suggestion put forward.

- [10] The report of Dr Harden effectively confirms the opinion which Dr Harden had previously expressed. Dr Harden had expressed a more flexible opinion in June 2017, being of the view that Mr Cobbo could carry out appropriate rehabilitation programs either in custody or outside of custody. In his report, Dr Harden refers to Mr Cobbo's progress from 2017 to 2018, describing him as quite insightful, and noting that Mr Cobbo understands the major factor in him remaining in custody has been his refusal to undertake sexual offender treatment programs.
- [11] In terms of Dr Harden's opinion, he, like Dr Sundin, makes clear that there is no evidence of any paraphilic orientation towards young people. Dr Sundin expressly reiterated that today as well, that there is no suggestion that Mr Cobbo is a paedophile or has any paraphilias. Rather, Dr Harden says the offence is entitled and opportunistic and has more to do with him displaying no interest in the idea of sexual consent or sexual boundaries.
- [12] Dr Harden says that Mr Cobbo's prognosis has improved, but he continues to be limited by his refusal to comply with the required sexual offending treatment. He says Mr Cobbo has some strengths in his ability to communicate and his alleged strong relationships with family members. The diagnoses of Mr Cobbo are of antisocial personality disorder, together with significant psychopathic personality features, in particular, a significant lack of empathy towards others and a glib or grandiose approach to his interpersonal interactions. There is also a long history of polysubstance abuse.
- [13] Dr Harden identifies the unmodified risk of sexual reoffence as high. He says the greatest risk factors are Mr Cobbo's general antisocial attitudes and contempt for institutions and rules. He also says that Mr Cobbo's denial with regard to further risk of sexual and other offending is also a significant barrier to intervention. However his acceptance of his substance abuse difficulties and successfully undertaking an intervention program are described as reasons for hope of future compliance.
- [14] Both doctors have given evidence today. They did so concurrently, which I expressly record is a most appropriate and efficient and useful way for psychiatrists in a matter such as this to give their evidence, and it was of great assistance to the court today. Some things that I will note from their evidence today are that in terms of a supervision order both doctors consider that the appropriate duration is five years, given that Mr Cobbo is expected to mature over

the coming period of time, given his age now, and that if he can remain sexual offence free for a period of five years that will demonstrate a significant reduction in the risk that he poses.

- [15] Secondly, both doctors recommend removing a condition which requires that he not commit an indictable offence. This is on the basis that he does have a risk of general offending and, essentially, as I understood the psychiatrists' evidence, there is an inherent unfairness in linking that to the breach of this order which is directed to containing the risk of sexual offending. As Dr Sundin said, it is important that if he commits another indictable offence, that he is dealt with for that according to law, and not, in addition, dealt with for breach of this order, if it is unconnected in any way to sexual offending.
- [16] Both doctors spoke about the high desirability of Mr Cobbo being able to reside with a family member if that accommodation is considered suitable. I note that as at today that information is not available to the court in terms of a suitability assessment, but I would reiterate that if it is at all possible, the material strongly indicates that residence with a family member, if regarded as suitable, would be a great protective factor for Mr Cobbo.
- [17] Other conditions addressed in the evidence concerned the conditions that often appear, dealing with not having contact with children. Because Mr Cobbo is not regarded as a paedophile or showing any evidence of paraphilia, the doctors were agreed that conditions of the kind usually seen in these orders are not warranted, although they consider a condition requiring him to advise a Corrective Services officer of any repeated contact with a child under 16 is appropriate.
- [18] The order will contain an order requiring that he abstain from the consumption of alcohol or illicit drugs for the whole time and submit to random drug testing. In light of those, both doctors were agreeable to the condition prohibiting him from visiting licensed premises being removed for the pragmatic reason that it is in the community's interests and Mr Cobbo's interests that he be able to integrate and get on with his life in a normal way, which is hindered if he can't attend the many types of premises that are licensed to serve alcohol.
- [19] For similar reasons, as already articulated, conditions prohibiting access to schools or shopping centres will be removed, but the prohibition on visiting public parks will remain, for two reasons: one being that that was the location in which the sexual offending occurred, but also, as described by Dr Sundin, in the Townsville area, as being a risk factor for Mr Cobbo in terms of his need to abstain from alcohol consumption. Finally, there was discussion about the benefits of requiring Mr Cobbo to supply passwords and other access codes to

computers or electronic devices, but the practical benefit of that being required to occur “upon request”.

- [20] In answer to a question that I asked of the doctors in relation to the proposed treatment and counselling for Mr Cobbo upon his release, I note that Dr Sundin expressed the view that given the primary diagnoses of Mr Cobbo of antisocial personality disorder with elevated levels of psychopathy, he is likely to do better in one on one counselling with a psychologist. She expressed the view that there is little or no chance of forcing him into a sex offender rehabilitation program, but that in the course of one on one counselling with a psychologist it is to be hoped that he could develop a better understanding, insight and skills in relation to issues such as consent, healthy relationships and intimacy. In addition, that counselling ought to assist Mr Cobbo in relation to alcohol and drug rehabilitation. I note that Dr Harden agreed with that opinion, adding that there may also be a benefit to group programs in relation to the issue of alcohol and drugs.
- [21] I specifically record that, because of the significance that Mr Cobbo’s refusal to participate in the sex offender treatment programs in custody has taken on. Therefore, it is to be hoped that the decisions that are made by Corrective Services, consistent with orders 29 to 32 in the draft that has been handed up,¹ will take on board those recommendations, as I am sure they will, in terms of one on one counselling with a psychologist, so that, to put the matter simply, we are not within this system setting Mr Cobbo up to fail in his compliance with this supervision order.
- [22] I finally come back to the issue of the alleged breach which occurred on 21 May, by Mr Cobbo failing to supply a specimen. Both Dr Sundin and Dr Harden indicated that that matter did not alter their final conclusions already referred to. They both expressed the view that the failure to supply a specimen could equally be consistent with the fact that Mr Cobbo had used drugs, or consistent with his anti-authoritarian attitudes. They said in their opinions, respectively, that did not affect or raise his risk of sexual reoffending; that it is consistent with his primary diagnoses that I have already referred to, and more relevant to his general level of recidivism. So in the circumstances, I do not make any findings in respect of that recent alleged incident. It is noted, but on the evidence before me it does not have an impact on the proceeding today.
- [23] Under section 30 of the *Dangerous Prisoners (Sexual Offenders) Act*, on a review such as this the first thing to consider is whether, having regard to the required matters, that is the matters set out in section 13(4), it is appropriate to affirm the

¹ Orders 26 to 29 in the order as made today.

decision that the respondent is a serious danger to the community in the absence of a division 3 order. I note that in submissions on behalf of the respondent it is conceded that the material supports such a finding. That, in my view, is an appropriate concession to have made, demonstrating a cooperative approach to this proceeding. Having regard to the material I am satisfied it is appropriate to affirm that decision.

- [24] Having affirmed that decision, the court has two options: to make a further continuing detention order or to rescind the continuing detention order and make a supervision order. In that regard, the paramount consideration is the need to ensure adequate protection of the community, and I must consider whether adequate protection of the community can be reasonably and practicably managed by a supervision order, and that the requirements under section 16 can be reasonably and practicably managed by Corrective Services officers.
- [25] The Attorney-General, having regard to the change in position and the changed view of Dr Sundin, does not oppose the making of a supervision order and, in my view, having regard to all of the material, that too is an appropriate position to have taken. I am satisfied, having regard to the material, that in all the circumstances it is appropriate to rescind the continuing detention order and make an order that the respondent, Mr Cobbo, be released from custody under the terms of a supervision order which will be in terms of the document marked for identification A, but with the changes addressed during the hearing, and which are reflected in the order which is annexed to these reasons.
- [26] Conditions 13 to 15² dealing with residence simply require that Mr Cobbo reside at a place within Queensland approved by Corrective Services. It seems that in the short term that will be at the precinct in Townsville, but I reiterate the desirability, if at all possible, of Mr Cobbo being able to reside with the family members identified in the material, if that is considered suitable.

² Orders 12 to 14 in the order as made today.

SCHEDULE

SUPERVISION ORDER

Before: Bowskill J

Date: 28 May 2018

Initiating document: Application filed 16 February 2018 (CFI no. 66)

THE ORDER OF THE COURT IS THAT:

1. Pursuant to s 30(1) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”), the decision made on 11 July 2014, affirmed on 13 June 2016 and further affirmed on 12 June 2017, that Adam John Cobbo (“the respondent”) is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act be affirmed.
2. Pursuant to s 30(5) of the Act, the continuing detention order made on 11 July 2014 be rescinded.
3. Pursuant to s 30(3)(b) of the Act, the respondent be subject to the following conditions until 28 May 2023:

The respondent must:

General Terms

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 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 employment at least two business days before the change happens;
4. be under the supervision of a corrective services officer for the duration of this order;
5. comply with a curfew direction or monitoring direction;
6. comply with any reasonable direction under section 16B of the Act given to him;

7. comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of this order;
8. not commit an offence of a sexual nature during the period of this order;
9. not leave or stay out of Queensland, without the written approval of a corrective services officer;

Employment

10. seek permission and obtain written 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 offers 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 days prior to commencement or any change;

Residence

12. reside at a place within the State of Queensland approved by a corrective services officer by way of a suitability assessment and obtain written approval prior to any change of residence;
13. comply with any regulations or rules in place at the accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services, if such accommodation is of a temporary or contingency nature;
14. not reside at a place by way of short term accommodation including overnight stays without the permission of a corrective services officer;

Contact with victim(s)

15. not to have any direct or indirect contact with a victim of his sexual offences;

Requests for information

16. respond truthfully to enquiries by a corrective services officer about his activities, whereabouts and movements generally;

Disclosure of plans and associates

17. disclose to a corrective services officer upon request 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, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;
18. 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;
19. if directed by a corrective services officer, make complete disclosure of the terms of this order and the nature of his past offences to any person as nominated by the corrective services officer, who may contact such persons to verify that full disclosure has occurred;
20. advise a corrective services officer of any repeated contact, with a child under 16 years of age or with an adult that he knows has care of a child under 16 years of age;
21. notify a corrective services officer of all personal relationships entered into by him;

Motor vehicles

22. 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;

Alcohol & other substances

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

Treatment and counselling

26. 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 a frequency and duration which shall be recommended by the treating intervention specialist;

27. permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if a request is made for the purpose of updating or amending this order and/or ensuring compliance with this order;
28. 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 practitioners where appropriate;
29. develop a risk management plan in consultation with a treating psychologist or psychiatrist and discuss it, as directed with a corrective services officer;

Attendance at places

30. not visit public parks without the prior written approval of a corrective services officer;

Mobile phones and other devices

31. notify a corrective services officer of any computer or other device connected to the internet that he regularly uses or has used;
32. supply upon request to a corrective services officer any password or other access code known to him to permit access to such computer or other device or content accessible through such computer or other device and allow any device where the internet is accessible to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;
33. supply upon request to a corrective services officer the details of any email address, instant messaging service, chat rooms, or social networking sites, which he uses, including user names and passwords;
34. allow any other device including a telephone or camera to be randomly examined. If applicable, the respondent must provide to a corrective services officer his account details or phone bills, upon request;
35. 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 connection or commencement of use, and report any changes to mobile phone details;

36. not own, possess or regularly utilise more than one mobile phone, without the prior written approval from a corrective services officer.