

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Ellis* [2018] QSC 212

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
ANDREW CLIVE ELLIS
(respondent)

FILE NO: BS4389 of 2011

DIVISION: Trial Division

PROCEEDING: Review of continuing detention order

DELIVERED ON: 10 September 2018 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 10 September 2018

JUDGE: Mullins J

ORDER: **Order in terms of the draft initialled by Mullins J and placed with the file**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where a continuing detention order had been made in respect of the respondent – where fifth review of the continuing detention order required – whether decision that the respondent is a serious danger to the community in the absence of a division 3 order should be affirmed – whether respondent should continue to be subject to the continuing detention order or be released from custody subject to a supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 27, s 30

Attorney-General for the State of Queensland v Ellis [2012] QCA 182, related

COUNSEL: B H P Mumford for the applicant
K E McMahon for the respondent

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

HER HONOUR: On 29 June 2012, the Court of Appeal ordered that Mr Ellis be detained in custody for an indefinite term for control, care or treatment pursuant to the Dangerous Prisoners (Sexual Offenders) Act 2003 (**the Act**): Attorney-General for the State of Queensland v Ellis [2012] QCA 182. That detention order has been reviewed on four previous occasions and in each case the decision that Mr Ellis was a serious danger to the community in the absence of a division 3 order was affirmed and he was ordered to continue to be subject to a continuing detention order. This is the fifth annual review pursuant to section 27 of the Act.

Mr Ellis accepts the evidence supports a finding that he is a serious danger to the community in the absence of a division 3 order and an order that he continue to be subject to the continuing detention order. Mr Ellis has spent most of the last three years or so, and is currently, in the maximum security unit, due to his behavioural issues. He exhibits impulsive and aggressive behaviour, threatens staff, has problems with emotional dysregulation and engages in self-harm. As it is apparent that Mr Ellis has not moved any closer to being able to do programs that would enable him to work towards a release on supervision since the review by Justice Dalton on 4 September 2017, the hearing of the application focused on exploring what is being done, and can be done, in the prison environment about Mr Ellis' ongoing treatment and future management.

Mr Ellis is 35 years old. The index offences which brought him under the Act were committed on 12 August 2005. The description of the offences is set out in paragraphs 45 and 46 of the reasons of Justice White in the Court of Appeal decision. There were two counts of sexual assault committed against random female victims who were aged 17 years and 13 years respectively. Mr Ellis was sentenced to three years' imprisonment but, as the offences were committed while he was on a suspended sentence imposed in 2004 for property and drug offences, the balance of the suspended sentence of five and a half months was ordered to be served cumulatively on the three year head sentence.

His full-time release date became 12 January 2012. Mr Ellis was released under a supervision order made on 25 October 2011, but that order was set aside by the Court of Appeal decision. Mr Ellis had, in fact, been returned to custody before the appeal was heard on the basis of an alleged breach of the supervision order. The conduct for which he was returned to custody formed the basis of the offences for which he was convicted in the Magistrates Court on 23 July 2012. Those offences had been committed on 31 January 2012.

For the purpose of this review, Mr Ellis has been assessed by psychiatrists, Dr Josephine Sundin and Dr Michael Beech. Apart from their reports, the applicant also relies on reports from treating psychologist, Dr Lars Madsen, who prepared reports dated 23 April and 10 August 2018.

The report dated 23 April 2018 covers the eight sessions of treatment between 9 August 2017 and 20 March 2018 that occurred after the treatment sessions that were

the subject of an earlier report of Dr Madsen dated 26 August 2017. Dr Madsen's latest report of 10 August 2018 covers the six treatment sessions undertaken with Mr Ellis after the report of 23 April 2018. Dr Madsen gave oral evidence on the hearing today in which he expanded on the treatment that he has delivered and the opinions that he holds about the ongoing treatment and management of Mr Ellis. Short oral evidence was also given by Dr Sundin and Dr Beech.

Mr Ellis is being managed by Corrective Services in the maximum security unit with the focus being on his behaviour that has resulted in his being in the maximum security unit. There are a number of professionals who are treating him. Apart from Dr Madsen, there is the treating psychiatrist, Dr Griffin, through the Prison Mental Health Service and a psychologist/counsellor who is employed by Corrective Services and is attached to the Specialist Behaviours unit. The number of professionals treating Mr Ellis is problematic, according to Dr Madsen, although each of the professionals is treating Mr Ellis for a purpose. That is a matter that Dr Madsen has drawn to the attention of Corrective Services and endeavoured to address by the preparation of an integrated management plan that can assist all the treating professionals to work towards the same goals in a consistent therapeutic framework. It is apparent from the psychiatric assessments that have been provided for the purpose of today's review that this is ongoing work.

The treating psychiatrist has provided a treating doctor's letter for the purpose of updating the current medications administered to Mr Ellis. The treating psychiatrist's diagnosis, which is the basis of Mr Ellis' treatment, is that Mr Ellis has a primary mixed personality disorder and substance abuse, although the latter is presently in remission, in the sense that Mr Ellis is abstinent in the contained environment. Dr Griffin notes that there is a co-morbid recurrent depressive illness and a recurrent psychotic illness that she describes as better formulated as arising in the setting of his personality disturbance. In the past, Mr Ellis has been detained under the Mental Health Act, but his involvement with the Prison Mental Health service is, at present, on a voluntary basis and he is reviewed by Dr Griffin on a fortnightly basis.

Dr Madsen is of the opinion that addressing the needs of Mr Ellis in respect of a sexual offender treatment program will not be reached until his behaviour and his ability to manage his stress is under control. Dr Madsen is pessimistic about Mr Ellis' capacity to participate in the high intensity sex offender treatment program (HISOP), but considers that if the behavioural issues are able to be addressed then it may be that an individual sex offender treatment program could be prepared and delivered to Mr Ellis.

Dr Sundin confirms her previous diagnosis of anti-social personality disorder and a diagnosis of borderline personality disorder. She describes the anti-social personality disorder as being in the severe category. It is common ground amongst the treating and assessing professionals that Mr Ellis exhibits psychotic symptoms. Dr Sundin, however, does not attribute them to an underlying psychosis. That is in comparison to Dr Beech's provisional diagnosis of schizophrenia. Because of the overriding severity of the personality disorder, it is not necessary to endeavour to discern

amongst the opinions as to all of the diagnoses that should be made in respect of Mr Ellis.

5 Dr Sundin remains of the opinion that Mr Ellis has a very high unmodified risk for further sexual offending, if released from prison. He has elevated scores on the psychopathy ratings scale and demonstrates very poor capacity for emotional regulation and has a continuing pattern of acting out behaviour, both with respect to self-harm and aggression towards others.

10 Dr Sundin expresses the opinion that Mr Ellis needs to remain in prison for further treatment and containment of risk. Dr Sundin is further of the opinion that until Mr Ellis' behaviour can be improved to the point that he can be managed in a general prison population, the issue of a supervision order remains untenable. Dr Sundin supports the highly integrated approach that is suggested by Dr Madsen to the
15 treatment by the various professionals of Mr Ellis.

Dr Beech notes that during his incarceration Mr Ellis has displayed psychotic phenomena and that Mr Ellis has a significant history of substance misuse, although it is now in enforced remission. Apart from the provisional diagnosis of
20 schizophrenia, Dr Beech also diagnoses Mr Ellis with a severe mixed personality disorder with borderline and anti-social personality traits. Dr Beech notes that although Mr Ellis has shown a hostility towards women and some of the offences have involved minors, Dr Beech does not diagnose a paraphilia such as paedophilia or sadism.

25 Because of Mr Ellis' continuing behavioural disturbances and severe personality disturbance and mental illness, Dr Beech considers that Mr Ellis' risk of further sexual reoffending in a violent way is high. At this stage, Dr Beech cannot recommend that the risks of reoffending would be substantially reduced by a
30 supervision order, having regard to the history of behaviour in prison in recent years that has been characterised by erratic, impulsive and threatening behaviour, a level of self-harm and persecutory beliefs. Dr Beech does not anticipate that a supervision order would be observed by Mr Ellis.

35 Dr Madsen emphasised the need for the treatment that is presently being given to Mr Ellis to result in a settlement or regulation of Mr Ellis' behaviour before Dr Madsen would recommend embarking on a sexual offender treatment program. The material that is before the court is overwhelmingly against any finding that Mr Ellis, at that stage, is a candidate for release on a supervision order. The applicant has discharged
40 the onus under section 30 subsection (2) of the Act as the evidence is compelling that Mr Ellis is a serious danger to the community in the absence of a division 3 order. The evidence relied on by the applicant has also shown that a supervision order is not feasible at this stage to manage Mr Ellis' high risk of sexual reoffending and that he should continue to be subject to the continuing detention order.

45 The work that has been done for the purpose of preparing for this annual review, no doubt, will assist in informing Corrective Services of the matters that need to be kept under consideration for the purpose of working with Mr Ellis for his treatment whilst

under the detention order. I make an order in terms of the draft initialled by me and placed with the file.
