SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Griffin* [2018] QSC 260
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **PETER SCOTT GRIFFIN** (respondent)
FILE NO/S:	No 1774 of 2011
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	9 November 2018 Orders made 5 November 2018
DELIVERED AT:	Brisbane
HEARING DATE:	5 November 2018
JUDGE:	Davis J
ORDER:	**Orders made 5 November 2018:** **THE COURT, being satisfied to the requisite standard that the respondent has contravened requirements of his supervision order made under the *Dangerous Prisoners (Sexual Offenders)* Act 2003, ORDERS THAT:** **1. The respondent be released from custody to be subject to the supervision order of Martin J dated 29 October 2012, with the following amendments.** **(a) Insert the following additional requirements:** **28. disclose the name of each person with whom he associates and respond truthfully to requests for information 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;** **29. notify the supervising officer of all personal relationships entered into by him;** **30. obtain prior approval before attending the premises of any shopping centre;** **31. supply any details of any email address, instant messaging services, chat rooms or social networking site including user names and passwords;**

32. allow any device to be randomly examined and, if applicable, account bills are to be provided upon request;

33. not own, possess or regularly utilise more than one mobile telephone; and

34. abstain from the consumption of alcohol whilst subject to contingency accommodation and subsequently not exceed 0.05 alcohol breath reading.

(b) Amend requirement (xx) as follows:

20. Abstain from the consumption of ~~alcohol and~~ illicit drugs for the duration of this order;

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 supervision order was made with respect to the respondent under Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where it was alleged that the respondent had contravened a requirement of the supervision order – where a warrant was issued for the arrest of the respondent pursuant to the Act and the respondent was detained in custody – where the applicant sought orders with respect to the respondent under s 22 of the Act – where the contravention was partly admitted by the respondent – where the contravention, to the extent not admitted, was found to have occurred as alleged – where the applicant had not committed any further serious sexual offences – whether the adequate protection of the community could, despite the contravention of the order, be ensured by the existing supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) s 3, s 5, s 13, s 22
Attorney-General for the State of Queensland v Ellis [2012] QCA 182, cited
Attorney-General (Qld) v Fardon [2013] QCA 64, cited
Attorney-General v Francis [2007] 1 Qd R 396, cited
Attorney-General v Lawrence [2010] 1 Qd R 505, cited
Attorney-General (Qld) v Yeo [2008] QCA 115, cited
Attorney-General (Qld) v Yeatman [2018] QSC 70, followed
Fardon v Attorney-General (Qld) (2004) 223 CLR 575, cited
Kynuna v Attorney-General (Qld) [2016] QCA 172, cited
LAB v Attorney-General [2011] QCA 230, cited
Turnbull v Attorney-General (Qld) [2015] QCA 54, cited

COUNSEL: B Mumford for the applicant
K McMahon for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant

Legal Aid Queensland for the respondent

[1] The Attorney-General sought orders under s 22 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (the Act) consequent upon a breach by the respondent of a supervision order made by Byrne SJA on 8 November 2011 (the supervision order).

[2] On 5 November 2018, I made orders releasing the respondent on these terms:

> THE COURT, being satisfied to the requisite standard that the respondent has contravened requirements of his supervision order made under the Dangerous Prisoners (Sexual Offenders) Act 2003, ORDERS THAT:
>
> 1. The respondent be released from custody to be subject to the supervision order of Martin J dated 29 October 2012, with the following amendments:
>
> (a) Insert the following additional requirements:
>
> 28. disclose the name of each person with whom he associates and respond truthfully to requests for information 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;
>
> 29. notify the supervising officer of all personal relationships entered into by him;
>
> 30. obtain prior approval before attending the premises of any shopping centre;
>
> 31. supply any details of any email address, instant messaging services, chat rooms or social networking site including user names and passwords;
>
> 32. allow any device to be randomly examined and, if applicable, account bills are to be provided upon request;
>
> 33. not own, possess or regularly utilise more than one mobile telephone; and
>
> 34. abstain from the consumption of alcohol whilst subject to contingency accommodation and subsequently not exceed 0.05 alcohol breath reading.
>
> (b) Amend requirement (xx) as follows:
>
> 20. Abstain from the consumption of alcohol and illicit drugs for the duration of this order;

[3] After making those orders, I indicated that I would publish reasons at a later time. Such a course does not offend s 17 of the Act.[1]

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[1] *Attorney-General (Qld) v Yeatman* [2018] QSC 70 at [28]–[31].

Statutory context

[4] The Act provides for the continued detention or supervised release of "a particular class of prisoner".[2] The objects of the Act are twofold, namely the protection of the community and the control, care and treatment of certain prisoners to facilitate their rehabilitation.[3] The prisoners the subject of the Act are those serving a term of imprisonment for a "serious sexual offence"[4] which is "an offence of a sexual nature … involving violence" or "an offence of a sexual nature … against a child".[5]

[5] Part 2 of the Act provides that the Attorney-General may apply to the Court for either a continuing detention order[6] or a supervision order.[7] A continuing detention order requires the detention in custody of the prisoner beyond the date of expiry of the sentence which they are then serving. A supervision order provides for the release of the prisoner under supervision notwithstanding the expiry of the sentence.

[6] A critical provision is s 13. Section 13 has significance to the present application as the provisions which deal with breaches of supervision orders[8] adopt terms and concepts included in s 13. The section is in these terms:

> **"13 Division 3 orders**
>
> (1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a serious danger to the community).
>
> (2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence—
>
> (a) if the prisoner is released from custody; or
>
> (b) if the prisoner is released from custody without a supervision order being made.
>
> (3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied—
>
> (a) by acceptable, cogent evidence; and
>
> (b) to a high degree of probability;
>
> that the evidence is of sufficient weight to justify the decision.
>
> (4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following—

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2 *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) s 3.
3 Section 3 and see generally *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575.
4 Section 5(6).
5 Sections 2 and the Schedule (Dictionary).
6 Sections 13, 14 and 15.
7 Sections 13, 15 and 16.
8 Primarily ss 20 and 22.

(aa) any report produced under section 8A ;

(a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;

(b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;

(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;

(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;

(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;

(g) the prisoner's antecedents and criminal history;

(h) the risk that the prisoner will commit another serious sexual offence if released into the community;

(i) the need to protect members of the community from that risk;

(j) any other relevant matter.

(5) If the court is satisfied as required under subsection (1), the court may order—

(a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (continuing detention order); or

(b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (supervision order).

(6) In deciding whether to make an order under subsection (5)(a) or (b)—

(a) the paramount consideration is to be the need to ensure adequate protection of the community; and

(b) the court must consider whether—

(i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and

(ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers.

(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1)."

[7] Therefore:

(i) the test under s 13 is whether the prisoner is "a serious danger to the community"[9];

(ii) that initial question is answered by determining whether there is an "unacceptable risk that the prisoner will commit a serious sexual offence"[10] if no order is made;

(iii) if that conclusion is reached, then a supervision order (as opposed to a continuing detention order) can only be made where the adequate protection of the community can be ensured by the making of a supervision order;[11]

(iv) where "adequate protection of the community" can be ensured by a supervision order, then the making of a supervision order ought to be preferred to the making of a continuing detention order.[12]

[8] Breach of a supervision order has consequences under Division 5 of Part 2 of the Act. Section 20 provides, relevantly:

"20 Warrant for released prisoner suspected of contravening a supervision order or interim supervision order

(1) This section applies if a police officer or corrective services officer reasonably suspects a released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the released prisoner's supervision order or interim supervision order.

(2) The officer may, by a complaint to a magistrate, apply for a warrant for the arrest of the released prisoner directed to all police officers and corrective services officers to arrest the released prisoner and bring the released prisoner before the Supreme Court to be dealt with according to law.

(3) The magistrate must issue the warrant, in the approved form, if the magistrate is satisfied the grounds for issuing the warrant exist.

(4) However, the warrant may be issued only if the complaint is under oath.

(6) The warrant may state the suspected contravention in general terms…."

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9 Section 13(1).

10 Section 13(1) and (2).

11 Section 13(6).

12 *Attorney-General v Francis* [2007] 1 Qd R 396 at [39]; *Attorney-General (Qld) v Yeo* [2008] QCA 115; *Attorney-General v Lawrence* [2010] 1 Qd R 505; *LAB v Attorney-General* [2011] QCA 230; *Attorney-General for the State of Queensland v Ellis* [2012] QCA 182; *Attorney-General (Qld) v Fardon* [2013] QCA 64.

[9] Section 22 provides:

"**22 Court may make further order**

(1) The following subsections apply if the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the supervision order or interim supervision order (each the existing order).

(2) Unless the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by the existing order as amended under subsection (7), the court must—

(a) if the existing order is a supervision order, rescind it and make a continuing detention order; or

(b) if the existing order is an interim supervision order, rescind it and make an order that the released prisoner be detained in custody for the period stated in the order.

(3) For the purpose of deciding whether to make a continuing detention order as mentioned in subsection (2)(a), the court may do any or all of the following—

(a) act on any evidence before it or that was before the court when the existing order was made;

(b) make any order necessary to enable evidence of a kind mentioned in section 13(4) to be brought before it, including, for example, an order—

(i) in the nature of a risk assessment order, subject to the restriction under section 8(2); or

(ii) for the revision of a report about the released prisoner produced under section 8A;

(c) consider any further report or revised report in the nature of a report of a type mentioned in section 8A.

(4) To remove any doubt, it is declared that the court need not make an order in the nature of a risk assessment order if the court is satisfied that the evidence otherwise available under subsection (3) is sufficient to make a decision under subsection (2)(a).

(5) If the court makes an order in the nature of a risk assessment order, the psychiatrist or each psychiatrist examining the released prisoner must prepare a report about the released prisoner and, for that purpose, section 11 applies.

(6) For applying section 11 to the preparation of the report—

(a) section 11(2) applies with the necessary changes; and

(b) section 11(3) only applies to the extent that a report or information mentioned in the subsection has not previously been given to the psychiatrist.

(7) If the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by a supervision order or interim supervision order, the court—

(a) must amend the existing order to include all of the requirements under section 16(1) if the order does not already include all of those requirements; and

(b) may otherwise amend the existing order in a way the court considers appropriate—

(i) to ensure adequate protection of the community; or

(ii) for the prisoner's rehabilitation or care or treatment.

(8) The existing order may not be amended under subsection (7)(b) so as to remove any requirements mentioned in section 16(1)."

[10] Proceedings upon a contravention or likely contravention of a supervision order are commenced by the issue of a warrant under s 20. In practice, the Attorney-General files an application seeking orders under s 22. That has occurred here.

[11] By s 22, once a contravention is proved, the Court shall rescind the supervision order and make a continuing detention order[13] unless the prisoner satisfies the Court that their continuation on a supervision order will ensure the adequate protection of the community.[14] It is well established that the concept of "the adequate protection of the community" in s 22(7) has the same meaning as it bears in s 13.[15] Therefore, a prisoner facing an application under s 22 must prove that the supervision order will ensure adequate protection of the community by removing unacceptable risk that they will commit a serious sexual offence.

[12] The issue under s 22 of the Act is not whether there is an unacceptable risk that the respondent will breach the supervision order. The issue is whether there is an unacceptable risk that he will commit a serious sexual offence.[16]

Background to the present application

[13] The respondent was born on 1 April 1968. He is currently 50 years of age.

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[13] Section 22(2).
[14] Section 22(7).
[15] *Kynuna v Attorney-General (Qld)* [2016] QCA 172 at [60]; see also *Turnbull v Attorney-General* (Qld) [2015] QCA 54 at [36].
[16] *Attorney-General (Qld) v Francis* [2012] QSC 275 at [64]–[67].

[14] As a young man, the respondent committed various sexual offences of varying degrees of seriousness. Between 13 December 1988 and 14 February 1998 there was no recorded sexual offending by him. Between 14 February 1998 and 11 July 1998 he committed a number of sexual offences against three different women at night time. One of those offences was rape. On 8 February 2000, he was sentenced in the District Court at Rockhampton to various terms of imprisonment with an effective head sentence of 13 years.

[15] Towards the end of his sentence, an application was made against the respondent under the Act and on 8 November 2011, Byrne SJA made a continuing detention order.

[16] On 29 October 2012, Martin J reviewed the continuing detention order pursuant to Part 3 of the Act and released the respondent under the terms of a supervision order. Relevantly to the present application, the supervision order contains the following conditions requiring that the respondent:

> "(vii) comply with every reasonable direction of a Corrective Services Officer that is not directly inconsistent with a requirement of the order …
>
> (ix) not commit an offence of a sexual nature during the period of the order …
>
> (xv) not commit an indictable offence during the period of the order …
>
> (xxvi) obtain the prior written approval of a Corrective Services Officer before accessing a computer or the internet."

[17] After being released in October 2012, the respondent breached the supervision order and was returned to custody in January 2013 upon a warrant issued pursuant to s 20 of the Act. On 13 May 2013, the respondent was released back onto the supervision order. The details of that contravention are scant, but summarised briefly in a judgment of Daubney J upon a later breach. The conduct was described as "personal sexual activity … in a car park".[17]

[18] While in the community, the respondent became involved in an altercation with police and was returned to custody in October 2013. He was released pursuant to s 21(4) of the Act in November 2013 and was placed back onto the supervision order on 19 May 2014.

[19] In July 2014, the respondent was again returned to custody. He had not breached the supervision order but his behaviour was such that it was "likely" that he would contravene the order. On that occasion, the respondent had formed a relationship with a woman. That was not going well and those difficulties led to a deterioration in his mood and emotional state. He ceased using medication that was prescribed to him and he acted in a threatening manner to Queensland Correctional staff. He was released again into the community on the supervision order on 27 January 2015.

[20] In May 2016, the respondent was again taken into custody pursuant to a s 20 warrant. The proceedings were discontinued and he was released on 30 November 2016.

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[17] *Attorney-General for the State of Queensland v Griffin* [2015] QSC 31 at [4].

[21] The respondent was taken into custody on the present alleged breaches on 14 May 2018.

The present alleged breaches

[22] On 12 January 2017, the respondent was given a direction that he was not to attend any shopping centre or shopping complex that has an underground car park without prior approval. On 6 November 2017, the respondent received approval to attend a particular shopping centre at Rockhampton, but subject to conditions. He was permitted to attend the shopping centre between 9:00AM to 2:00PM on Fridays, Saturdays and Sundays but only in the company of his sister or niece.

[23] A young woman, age 15, who I shall refer to as "Miss A", was at the shopping centre on Friday, 11 May 2018. She noticed a male person who was looking at her while she was in the City Beach store.

[24] Miss A entered a changing room to try on some clothes that she was contemplating purchasing. She undressed to her underwear so she could try on the new clothes. While she was in a state of undress, a mobile telephone appeared under the door and was in camera mode. She dressed herself and then went back into the main area of the shop where she saw the man who she had seen previously looking at her. Miss A left the store and called her mother. She then returned to the store and spoke to a staff member and shop security before reporting the matter to police.

[25] Another young woman, Miss B, was working at City Beach as a shop assistant on 11 May 2018. She noticed a man who was staring at her in a way that made her feel uncomfortable. She noticed another young woman (by inference, Miss A) walking towards the back of the store and noticed that the man followed her.

[26] The presence of the respondent in the City Beach store at the shopping centre, unaccompanied, allegedly constitutes a breach of condition (vii) of the supervision order.

[27] Investigations revealed that the respondent had been communicating via the internet with women in Russia. Part of that communication was the receipt by him of naked photographs of them that had been sent to him. No consent had been obtained, it is alleged, to access a computer and use the internet in that way. That is alleged to constitute a breach of condition (xxvi).

The present application

[28] The application here alleges:

> "Supervision order requirements alleged to have been contravened:
>
> (viii) comply with every reasonable direction of a Corrective Services Officer that is not directly inconsistent with a requirement of the order; and
>
> (xxvi) obtain the prior written approval of a Corrective Services Officer before accessing a computer or the internet.
>
> Supervision order requirements alleged to be likely to be contravened:

(ix) not commit an offence of a sexual nature during the period of the order; and

(xv) not commit an indictable offence during the period of the order."

[29] The application then particularises the breaches in some detail which I summarise thus:

(i) The breach of condition (vii) is constituted by the incident in the City Beach store in the shopping centre; and

(ii) The breach of condition (xxvi) is constituted by the communication with the Russian women; and

(iii) From those breaches, it can be inferred that there is a likelihood that the respondent will breach conditions (ix) and (xv).

[30] The applicant has abandoned the allegations that the respondent is likely to contravene conditions (ix) and (xv). The respondent admits that he breached condition (vii) by attending the shopping alone and admits the breach of condition (xxvi).

[31] While the respondent admits the breaches of conditions (vii) and (xxvi), he denies that he pushed his mobile telephone under the door of the change room in the City Beach store.

[32] The primary position of the applicant is that the supervision order ought to be rescinded and the respondent be detained in custody pursuant to s 22(2)(a) of the Act. The applicant's alternative position is that the respondent ought to be released back onto the supervision order but the order amended to add further conditions enabling easier monitoring of his personal associations and internet use.

[33] Ms McMahon who appeared for the respondent, sought an amendment of condition (xx). That provided that the respondent abstain from consumption of alcohol and illicit drugs. Relying upon aspects of the psychiatric evidence to which I will later refer, Ms McMahon submitted that the alcohol ban should be removed. She relied on the principle laid down by the Court of Appeal in *Attorney-General (Qld) v Francis*,[18] where it was said that " …the liberty of the subject should be constrained to no greater extent than is warranted by the statute which authorised such constraint."[19]

[34] Ms McMahon conceded that abstinence from alcohol consumption was necessary while the respondent lived in the contingency accommodation known as "the Precinct" and also accepted that a condition ought to be imposed designed to avoid intoxication.

[35] Ultimately, the parties agreed that orders in terms of those which I made were appropriate in the event that I exercised the discretion conferred by s 22 of the Act to release the respondent onto the supervision order.

The factual dispute

[36] As observed, the respondent resists the applicant's contention that the respondent pushed his mobile telephone under the door of the change room.

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[18] [2006] QCA 324.
[19] At [39].

[37] It is not necessary for the applicant to prove this allegation in order to prove the contravention of condition (vii) of the supervision order. It is sufficient to prove that the respondent was at the shopping centre without either his niece or sister. The disputed allegation is relevant only, if at all, to the exercise of the discretion as to whether to release the respondent back to the community on the supervision order. On that question, the respondent bears the onus of proving "that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by a supervision order…".[20] However, there is no need to determine who bears the onus of proof in relation to the disputed fact.

[38] Miss A and Miss B have both sworn affidavits. Neither was required for cross-examination. The respondent has not sworn an affidavit disputing the allegations and Ms McMahon said in her written outline, and in oral submissions, that the respondent did not intend to place any evidence before the Court contesting the evidence of either Miss A or Miss B.

[39] The sworn evidence of Miss A and Miss B is not in any way inherently improbable. As the evidence is not contested, I can see no reason to dismiss it. The respondent accepts that he was at the shopping centre and in the City Beach store. Miss A and Miss B both gave descriptions of the man they saw and those descriptions are consistent with the respondent's appearance. The respondent was identified in closed-circuit television security footage taken outside the City Beach store.

[40] I find that the respondent did push his mobile telephone under the door of the change room while the telephone was in camera mode and thereby attempted to take images of Miss A while she was undressed.

The psychiatric evidence

[41] Dr Sundin prepared a report dated 16 September 2018 after her interview with the respondent on 23 July 2018 at the Capricornia Correctional Centre. Dr Sundin had previously provided reports in 2010, 2012, 2013 and 2014 for earlier proceedings.

[42] Dr Sundin noted her previous opinion that the respondent had a history suggestive of a Mixed Personality Disorder with Borderline Anti-Social Personality Traits. In her latest report, she opined that the "supervision order is serving the purpose of containing the risk that Mr Griffin potentially poses to the community" and recommended that he be released again under the supervision order. On the question of alcohol, Dr Sundin said this:

> "Given his history of decades of abstinence from alcohol and the conflict that it is [sic] created in his interactions with QCS staff over consumption of alcohol, I suggest that consideration could be given to deleting this clause from the supervision order."

[43] In a supplementary report of 16 October 2018, Dr Sundin said this:

> "Since I supplied my original report on this man dated 21 September 2018, I have been reflecting further on the alcohol abstinence clause of his supervision order.
>
> My advice recommending complete removal of this clause may be premature.

[20] Section 22(7).

> It is 25 years since Mr Giffin says he has consumed alcohol and he asserts that he is not interested in resuming consumption of alcohol.
>
> Rather than it being an all or nothing approach, I would prefer if QCS introduce a gradual easing of the abstinence requirement, in discussion with Mr Griffin. This could be a gesture of good will and an opportunity to practically demonstrate to Mr Griffin the benefits of more open disclosure with his case manager and psychologist."

[44] Dr Harden prepared a report dated 16 October 2018 after interviewing the respondent at Capricornia Correctional Centre on 23 August 2018. Dr Harden, like Dr Sundin, had previous contact with the respondent and had written reports for earlier proceedings.

[45] Dr Harden is of the view that the respondent meets the diagnostic criteria for the paraphilia of Sexual Sadism with Personality Disorder Not Otherwise Specified with Anti-Social Borderline and Narcissistic Features.

[46] Dr Harden noted that no violent sexual offence had been committed by the respondent while on supervision.

[47] Dr Harden's final recommendations were:

> "I recommend that he have ongoing individual therapy with the current therapist Dr Madsen.
>
> Psychological therapies and psychological containment are important in his management.
>
> If he is released again on a supervision order clearly emphasis must also be placed on issues around potential victim access given these recent allegations.
>
> He should have a consultation with a psychiatrist, possibly the previous treating psychiatrist Dr Arthur regarding the risks and benefits of reinstituting a testosterone lowering medication.
>
> Substance use has not in general been associated with his offences, however I would echo the previous advice that it would be best if he avoided intoxication as the associated disinhibition would be unhelpful. The history does not support a complete ban on alcohol use.
>
> His potential victim group is adult women; I see no need for specific restrictions on his contact with children and young people.
>
> In the longer term it is probably necessary for him to develop relationships with adult women, however he needs to continue to be scaffolded by supervision and therapy in the context of developing these relationships."[21]

Consideration

[48] As the breaches have been admitted,[22] the central question is whether the respondent has discharged the onus cast upon him by s 22(7) to prove " … that the adequate protection

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[21] Dr Harden's recommendation at 45 ll 3–26.

[22] And the disputed fact found against the respondent.

of the community can, despite the contravention or likely contravention of the existing order, be ensured by a supervision order …"

[49] That question comes down to one of whether there is an unacceptable risk that he will commit a serious sexual offence while on supervision. The issue is not one of risk of re-offending in general (or even offending violently), and not one of whether he will breach the supervision order, but a risk of re-offending in a particular way namely, the commission of "a serious sexual offence."

[50] The respondent has previously been on supervision and has been unable to comply with the terms of the supervision order. That has resulted in him being in custody for much of the time during which the supervision order has been in force.

[51] However, the respondent, while in the community, has not committed a serious sexual offence. The conduct towards Miss A was no doubt very upsetting for her and unacceptable. That conduct, if it were committed upon an adult, is not conduct which the Act primarily seeks to control.[23] The Act provides for quite extreme remedies to control serious violent sexual conduct and sexual offences against children. While Miss A was a child, the psychiatrists both opined that her youth was not a factor in the respondent's behaviour. He shows no tendency to offend against children.

[52] The evidence of the psychiatrists is to the effect that the supervision order is fulfilling its purpose in protecting the community against unacceptable risk of the commission of serious sexual offences by the respondent.

[53] It is clear, though, that the respondent's activity should be more carefully monitored. The additional conditions that I have imposed achieve this.

[54] As to the conditions prohibiting the respondent from consuming alcohol, both psychiatrists agree that a loosening of this requirement is appropriate. The psychiatrists are not at one as to how this ought to be achieved. The risk is not with the consumption of alcohol but the consumption of alcohol to the point of intoxication. While the respondent ought not consume alcohol whilst at the Precinct, moderate consumption of alcohol ought to be allowed. Consumption of alcohol which would not result in a blood alcohol content beyond that where a citizen may lawfully operate a motor vehicle is appropriate.

[55] For the reasons above, I made the orders which I did.

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[23] *Attorney-General (Qld) v Phineasa* (2012) 221 A Crim R 200 and *Tilbrook v Attorney-General (Qld)* [2012] QCA 279.