SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Valence* [2018] QSC 265
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **KERRY PATRICK VALENCE** (respondent)
FILE NO:	No 2941 of 2009
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	16 November 2018
DELIVERED AT:	Brisbane
HEARING DATE:	12 November 2018
JUDGE:	Davis J
ORDER:	**THE COURT, being satisfied to the requisite standard that the respondent, Kerry Patrick Valence, has contravened requirements 31 and 32 of the supervision order made on 21 November 2016, ORDERS THAT, pursuant to s 22(2) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003:** **1. The supervision order made on 21 November 2016 be rescinded.** **2. The respondent be detained in custody for an indefinite term for care, control and treatment.**
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 admitted by the respondent – 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
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:	J Rolls for the applicant V Trafford-Walker for the respondent
SOLICITORS:	G R Cooper, Crown Solicitor for the applicant Legal Aid Queensland for the respondent

[1] The Attorney-General seeks orders under s 22 of the *Dangerous Prisoner (Sexual Offenders) Act* 2003 (Qld) (the Act) consequent upon an alleged breached by the respondent of the supervision order made by Flanagan J on 21 November 2016 (the supervision order).

Statutory context

[2] The Act provides for the continued detention or supervised release of "a particular class of prisoner".[1] 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.[2] The prisoners the subject of the Act are those serving a term of imprisonment for a "serious sexual offence"[3] which is "an offence of a sexual nature … involving violence" or "an offence of a sexual nature … against a child".[4]

[3] Part 2 of the Act provides that the Attorney-General may apply to the Court for either a continuing detention order[5] or a supervision order.[6] 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.

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

[4] A critical provision is s 13. Section 13 has significance to the present application as the provisions which deal with breaches of supervision orders[7] 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—
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> (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—
>
> (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;
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> (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;

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[7] Primarily see section 22.

(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)."

[5] Therefore:

(i) the test under s 13 is whether the prisoner is "a serious danger to the community"[8];

(ii) that initial question is answered by determining whether there is an "unacceptable risk that the prisoner will commit a serious sexual offence"[9] if no order is made;

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8 Section 13(1).
9 Section 13(1) and (2).

(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;[10]

(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.[11]

[6] Breaches of a supervision order have consequences under s 22 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.…"

[7] 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).
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> (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

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[10] Section 13(6).

[11] 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.

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)."

[8] 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.[12] That has occurred here.

[9] 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.

[10] 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.

Background to the present application

[11] The respondent was born on 15 June 1957. He is therefore presently 61 years of age.

[12] The respondent has a criminal history both in New South Wales and Queensland. Serious offences of a sexual nature were committed in New South Wales in 1975 and again in 1980. His criminal history in Queensland commenced in 1996. Between 1996 and 2000 the respondent appeared in the Emerald Magistrates Court on three occasions and was dealt with for various offences: wilful and unlawful destruction of property in the night-time,[16] possession of a dangerous drug,[17] refusal to leave premises when required by the

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12 Attorney-General (Qld) v Sands [2016] QSC 225.
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 30 September 1996.
17 7 April 1997.

licensee and being drunk and disorderly.[18] Between 1999 and 2004, the respondent offended sexually against two young boys. Between September 2003 and March 2004, he was also convicted for various offences under the *Bail Act* 1980 (Qld) and fined in the Magistrates Court.

[13] The sexual offending in New South Wales and Queensland was described by White J (as her Honour then was) when making a continuing detention order,[19] against the respondent on 13 August 2009,[20] as follows:

> "It is convenient to start with the respondent's relevant prior criminal history. He is now aged 52. Some sexual offending occurred in New South Wales in 1975 and 1980 when the respondent was aged 18 and 23 respectively. The criminal history describes the offences as buggery and indecent assault on a male and assault with intent to commit buggery. He was bound over to be of good behaviour in 1975 and in 1980 sentenced to two years' imprisonment which was deferred on him entering into a recognisance and under supervision. In 1970 the victim was about 12 and in the 1980 offences, the victim eight years.
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> In the latter case, after an encounter in the caravan park showers, the respondent invited the boy back to his caravan. In both cases the respondent denied penetration but admitted physical contact with the boys to ejaculation. He has numerous other offences involving excessive consumption of alcohol and possession of illegal drugs. The history supports a long-existing problem with alcohol and unlawful drugs of various kinds. The current offences concern two boys aged about 10 years and the offences were separated by some years.
>
> The first offence occurred in 1999 and 2000 against a boy with whose family the respondent was friendly. On one occasion he grabbed the boy's penis through clothing. On the second, despite resistance, the respondent engaged in fellatio on the boy and threatened to kill him if he revealed the assault. The later offence occurred in 2004 when the respondent was on bail for the earlier offences when he was befriended by a family and when in the home fondled the boy's penis after pulling down his pants. The respondent tended to attribute initiating conduct to the boy."[21]

[14] As a result of the offending between 1999 and 2004, the respondent was charged with three counts of indecent treatment of children under 16 with the circumstance of aggravation that the child was under 12 years of age. On each of those charges, he was sentenced respectively to 2 years and 6 months imprisonment, 4 years imprisonment and 3 years imprisonment. Those terms were all ordered to be served concurrently. The respondent's bail had been revoked by the time he was sentenced and 193 days of pre-sentence custody between 30 August 2005 and 10 March 2006 was declared as time served.

[15] An application under the Act was filed by the Attorney-General and, as already observed, a continuing detention order was made by White J (as her Honour then was) on 13 August

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[18] 17 November 2000
[19] Section 13(5).
[20] Attorney-General for the State of Queensland v Valance [2009] QSC 255.
[21] At 4.

2009. The evidence before her Honour on that occasion included reports of consulting psychiatrists Dr Moyle, Dr Beech and Professor James. All doctors were of the view that the respondent was of a high risk of re-offending against young male children.[22] Dr Beech in his report said:

> "There are two outstanding features regarding his offending in my opinion. Firstly, it has been chronic, with offences occurring every decade since the 1970s. He has offended while on bail with a wanton recklessness and disregard for the consequences. Secondly, he has significantly distorted views about childhood sexuality, childhood consent, the wrongfulness of his behaviour and the effects on his victims. I believe that these act to facilitate his offending by almost allowing him to believe that the children have sought the acts and that they have enjoyed them."[23]

And further:

> "In my opinion, Mr Valence would be at a high risk of re-offending if he were to be released into the community at this time. He is an insightless recidivist sex offender with a poor attitude to treatment and no reasonable plan to limit his risk. He has very few supports and he has significant substance abuse problems. I have a limited understanding of his internal mental life and it is difficult to suggest at present what strategies would assist him."[24]

And further:

> "…his risk of re-offending could be reduced by his participation in a high intensity sexual offender programme with a subsequent development of a robust relapse prevention plan that could, with supervision, be monitored in the community."[25]

[16] Dr James and Dr Moyle shared Dr Beech's view that treatment through sexual offender treatment programs was necessary before the respondent's risk could be regarded as acceptable.

[17] The continuing detention order was reviewed pursuant to s 30 of the Act and affirmed on each of 8 September 2010,[26] 10 October 2011,[27] 8 October 2012,[28] 8 October 2013,[29] 29 September 2014,[30] and 9 November 2015.[31]

[18] On 21 November 2016, on the seventh review, the finding that the respondent was an unacceptable risk in the absence of an order made pursuant to Division 3 of Part 2 of the Act was affirmed, but the continuing detention order was rescinded. The respondent was released on supervision pursuant to an order effective until 21 November 2026.[32]

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22 Although Dr Moyle described the risk as "at least moderately high".
23 Attorney-General for the State of Queensland v Valance [2009] QSC 255 at 5.
24 At 5.
25 At 6.
26 Attorney-General for the State of Queensland v Valence [2010] QSC 335.
27 Attorney-General for the State of Queensland v Valence [2011] QSC 304.
28 Attorney-General for the State of Qld v Valence [2012] QSC 310.
29 Order of Jackson J, 8 October 2013.
30 Order of P Lyons J, 29 September 2014.
31 Order of Dalton J, 9 November 2015.
32 Order of Flanagan J, 21 November 2016.

[19] The supervision order contains conditions that the respondent:

> "31. not establish or maintain any supervised or unsupervised contact including undertaking any care of children under 16 years of age except with prior written approval of a Corrective Services officer. He is required to fully disclose the terms of the order and nature of offences to the guardians and caregivers of the male children before any such contact can take place; Queensland Corrective Services may disclose information pertaining to the offender to guardians or caregivers and external agencies (i.e. Department of Child Safety) in the interests of ensuring the safety of the children;
>
> 32. advise a Corrective Services officer of any repeated contact with a parent of a child under the age of 16. He shall 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 that full disclosure has occurred;"

[20] Upon release on supervision, the respondent resided at The Precinct at Wacol. In August 2017, the respondent left The Precinct and moved into accommodation in the Toowoomba region.

[21] Upon suspicion that the respondent had breached the supervision order, a warrant was issued pursuant to s 20 of the Act. On 22 December 2017, the respondent appeared before this Court and it was ordered that he be detained in custody until the hearing of the application for orders under s 22.[33]

[22] On 8 March 2018, the respondent pleaded guilty to one count of contravening the supervision order against s 43AA of the Act. He was sentenced to a period of 4 months imprisonment with an order that he be released on parole on the day of sentence namely, 8 March 2018. The offence to which the respondent pleaded guilty in the Magistrates Court was particularised as the same conduct as constitutes the present contravention.

[23] Consultant psychiatrists Dr Beech and Dr Aboud interviewed the respondent and prepared risk assessments for the present application.

The present contravention

[24] G and R lived near the respondent's Toowoomba residence with their children; J, an 8 year old boy; A, a 14 year old boy; and AN, aged about 10. Investigations revealed that the respondent had contact with the children. He had given them ice-cream. A had been to the respondent's house and J had been left with the respondent for about 10 minutes while his mother went to the shops. A, when interviewed by police, said that he was invited to the respondent's house to play Xbox and was alone with the respondent for about 2 hours. He said that the respondent asked if he could touch him but A refused. The respondent apparently did touch A on the leg but desisted when told to stop.

[25] The respondent was interviewed by police on 21 December 2017 and made admissions to having had contact with A and J. He said that A had come to his house to play Xbox

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[33] Order of Mullins J, 22 December 2017.

and he had rubbed A's back and may have touched his leg. He had no prior permission to have contact with the children and had not made the disclosures to G and K or a corrective services officer as required by conditions 31 and 32 of the supervision order.

The psychiatric evidence

[26] Dr Beech expressed the following opinions:

> "Kerry Valence is a 60-year-old single man who has three sentencing dates for sexual offences against male children. He was last convicted in 2006 on three charges of indecent treatment against two children in separate incidents. Mr Valence has paedophilia with an attraction to male children. He has been consistently assessed at being at moderate-high to high risk of re-offending: salient issues are the history of recidivism, the sexual deviance, and distorted thinking around children, consent and boundaries. Important dynamic factors include his lack of supports in the community and an earlier ambivalence about release. He had refused sexual offender therapy programs but had been involved in intensive individual therapy.
>
> His relapse prevention plan consisted mainly of avoiding contact with children.
>
> Mr Valence was released on a supervision order in November 2016. He went first to contingency accommodation at the Wacol precinct. In August 2017 he moved to live in sole accommodation in Toowoomba. By the end of December 2017 he had returned to custody following contraventions of the supervision order.
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> The contraventions involved him befriending the family of three children, two of whom were boys aged 14 and eight years. He gave them gifts. He went to their house on three occasions. The 14-year-old boy came to his residence alone on four occasions. The eight-year-old boy was left in his care alone on one occasion. The mother of the children has said that Mr Valence sought the company of her 14-year-old son. That boy has said that, in addition to providing gifts, Mr Valence sat close to him, came to his room unannounced, and touched his leg. Mr Valence attempted to provide a massage to the boy, and may in fact have massaged the boy.
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> Mr Valence has said he did not report these contacts, as he was required, because he knew that he would be in trouble. He offers as explanation, and in mitigation, that he allowed the contact because they were initiated by the others, he was simply being friendly, and refusal would have been suspicious. He says that there was no risk because he had no sexual urges or indecent intentions.
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> In my opinion, Mr Valence's explanations and excuses are at the very least insightless. I believe it is highly likely that his behaviour represented predatory grooming and as Justice Cosgrove[34] mentioned, his actions could be seen as a precursor to other behaviour.
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> In my opinion, for a sexual offender whose central plank of re-offending prevention was to "*avoid a situation where a situation can happen*", the

[34] A reference to Cosgrove SM.

contraventions represent egregious behaviour that occurred within a few months of being given the opportunity to establish and maintain contact with children.

In my opinion, Mr Valence remains at high risk of further sexual offending against children. It is very difficult now to say to what extent, if any, a supervision order could reduce that risk. If he were to be released to the Wacol precinct, and supervised closely there, I think the opportunity for offending could be significantly reduced, particularly if there was stringent monitoring and surveillance. This would provide a moderate reduction in the short and perhaps medium term. In the longer term, I think that this risk reduction would start to dissipate as he moved through various curfews and restrictions, moved about the community, and was able to find opportunities to offend.

Realistically, as in this case, once he moved from the precinct the risk would escalate again. To the extent that a supervision order could substantially reduce the risk, I think it would have to amount to some form of house arrest, monitoring and escorted movements.

Mr Valence has eschewed intensive group therapy, probably the most effective form of treatment for recidivist offenders. The individual intensive therapy has explored the paedophilia, but the central strategy has failed. He has refused anti-libidinal medication.

In my opinion, it is probably now time to return to the advice of Professor James[35] in 2009 who said:

> "*…in my opinion, the generally high risks are demonstrated by the dynamic considerations, and should be considered valid. I consider it unlikely that Mr Valence will make any progress or act in any way to reduce the risk of reoffending, unless he completes the appropriate SOTP*[36] *prior to his discharge from prison.*"

In my opinion, the risk now could be reduced by Mr Valence's participation in a high intensity sexual offender treatment program augmented possibly by anti-libidinal medication."

[27] Dr Aboud, after describing the behaviour which breached the supervision order, said:

> "It is thus my view that at the time of his return to custody, Mr Valence's risk for sexual re-offending had significantly escalated to high. The risk was clearly no longer manageable in a community setting. While he did not actually re-offend, he had placed himself in a high risk situation, and one that he had effectively lost control of and did not know how to extricate himself from. He had obtained access to 2 prospective victims, brothers aged 14 and 8, and appeared to be in the initial stages of grooming behaviour as regards the former. He evidently did not have sufficient trust in his case manager or in his psychologist to alert them at an early stage and use them for support and guidance. Once he had allowed the situation to develop, he realised that

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[35] Who examined the respondent for the application for Division 3 orders in 2009.
[36] A reference to sexual offender treatment programs.

he would likely be breached in any case and he simply continued on his pathway of escalating risk behaviours.

Taking into consideration the various actuarial and dynamic assessments of future violence and sexual violence risk that have been applied, combined with the recent events associated with the contravention of the supervision order, **it is now my opinion that Mr Valence's overall risk would currently be moderate to high in respect of sexual re-offending and low in respect to general (non sexual) violence**. In coming to this conclusion I take into account the chronicity of his sexual offending, his sexual deviance, his problems with self awareness, his lack of personal supports, his failure to participate recommend [sic] group therapy, his refusal to consider medication as part of risk management. I also take into account his relatively successful participation in individual sexual offender treatment, his abstinence from illicit substances and alcohol (notwithstanding the uncertainty presented by the positive BAC on 29 September 2017).

Unfortunately, I am unclear whether he could now be safely managed in the community, subject to a supervision order. He has shown a capacity for duplicity, whereby he has engaged in high risk associations with children, despite all that was in place to supervise, monitor and support him. He remains adamant that he will not engage in group sexual offender therapy, and also that he will not consider medication to reduce libido or sexual preoccupation (ie antilibidinal hormonal medication or high dose SSRI antidepressant medication). At very least, it is my recommendation that he be engaged in individual psychological therapy (in custody) to specifically: assist him in understanding the pathway by which he has returned to custody; identify the junctions in that pathway where he might have made a different decision; help him understand how he might have trusted the professional staff to obtain support and guidance at an early stage; plan for how he might behave differently in any future similar situations. Given his tendency towards becoming defensive and defeatist, a motivational style of therapy may be required. I believe that there should be an exit report, provided by the psychologist, which can be reviewed, prior to any consideration of release to the community. If he is then subsequently released, I suggest he is again closely monitored and supervised, while accommodated in contingency accommodation at the precinct. It is unlikely, in my view, that his risk for escalating risk would be apparent in such a setting. Rather, such risk would likely reveal itself once he is transferred to a more independent residence, where he has more freedom. The most likely determinant of risk escalation appears to have been that of (potential) victim access, as learnt from the recent experience. It is thus this time, when transfer from the relatively restricted environment of the precinct is being considered, that important risk management decisions will need to be made in respect of: the location of his residence; the proximity of the residence to families with children; the frequency of contact with his psychologist; the nature of his relationship with his psychologist and case manager, which ideally should involve sufficient trust that he would be able to raise any concern."

The position of the parties

[28] Mr Rolls, who appeared for the applicant, submits that the contravention has been proven and the respondent has not proved that adequate protection of the community can be ensured by a supervision order.[37] He therefore submits that the supervision order ought to be rescinded and that a continuing detention order be made.[38] Ms Trafford-Walker, who appeared for the respondent, admits the contravention of the supervision order and concedes that the respondent cannot discharge the onus placed on him under s 22(7) of the Act to demonstrate that notwithstanding the contravention of the supervision order, adequate protection of the community can be ensured by his release on a supervision order.

Discussion

[29] I have not seen the need to describe the treatments which the respondent received in prison. Individual therapy was undertaken by the respondent with psychologists. However, it is now almost 9 years since the respondent was first made the subject of an order under the Act. Notwithstanding various opinions being expressed by consultant psychiatrists over that period that the respondent should undertake group sexual offender treatment programs, he refuses to do so. While it might be unfair to describe the respondent as totally untreated, the weight of the psychiatrists' opinions is that he has not undertaken effective treatment.

[30] From the time of his release pursuant to the supervision order made 21 November 2016 until August 2018, the respondent was under relatively strict control at The Precinct. By 12 December 2017, a mere 3 months after leaving The Precinct, the respondent had acquainted himself with a family which included two young sons and had begun grooming at least one of them.

[31] The conduct which constituted the breach of the supervision order went undetected by those supervising the respondent and was not disclosed to the psychologist who was treating him over that period. Future treatment of the respondent is problematic and there is some difference of opinion as to how that can be achieved. Dr Beech considers that participation by the respondent in group sexual offender treatment programs is necessary. Dr Aboud thinks that there may be some benefit in the respondent undergoing further individual counselling.

[32] In any event, it is clear that at this stage a supervision order will not provide adequate protection of the community against the respondent committing a serious sexual offence.

[33] Pursuant to s 22(2) of the Act, I rescind the supervision order made on 21 November 2016 by Flanagan J; and I make a continuing detention order.

[34] THE COURT, being satisfied to the requisite standard that the respondent, Kerry Patrick Valence, has contravened requirements 31 and 32 of the supervision order made on 21

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[37] Section 22(7).
[38] Section 22(2)(a).

November 2016, ORDERS THAT, pursuant to s 22(2) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003:

1. The supervision order made on 21 November 2016 be rescinded.

2. The respondent be detained in custody for an indefinite term for care, control and treatment.