

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Schultz*
[2018] QSC 275

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
WILLIAM FREDERICK SCHULTZ
(respondent)

FILE NO: BS 4451 of 2018

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 26 November 2018

DELIVERED AT: Brisbane

HEARING DATE: 26 November 2018

JUDGE: Bowskill J

ORDER: **The Court, being satisfied to the requisite standard that the respondent, William Frederick Schultz, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, orders that, pursuant to section 13(5)(a) of the Act, the respondent be detained in custody for an indefinite term for control, care or treatment**

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 continuing detention order
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)

COUNSEL: J B Rolls for the applicant
P Richards for the respondent

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

- [1] Mr Schultz is currently serving a term of imprisonment for multiple convictions of indecent treatment of children. He was sentenced in the District Court at Brisbane on 6 November 2014 to four years and 10 months' imprisonment. With the time he had spent in custody since 14 December 2013 taken into account, the full time discharge date on that sentence was 13 October 2018.
- [2] In April 2018 the Attorney-General brought the present application, for an order under section 13(5)(a) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* that Mr Schultz be detained in custody for an indefinite term for care, control or treatment.
- [3] Interim orders have been made, on 8 October, 26 October and 16 November 2018, for Mr Schultz to be detained in custody until 26 October 2018, pending determination of the present application.
- [4] The Public Guardian has been appointed as the guardian for Mr Schultz, for decisions about personal matters and legal matters not relating to his financial or property matters. The Public Trustee of Queensland has been appointed as administrator for Mr Schultz for all financial matters.
- [5] The making of a continuing detention order is not actively opposed by Mr Schultz, although he does not consent to it. Having considered the material on which the Attorney-General relies, for the following reasons, I am satisfied it is appropriate to make the order.
- [6] An order may only be made under section 13(5) of the Act if the court is satisfied the prisoner is a serious danger to the community in the absence of such an order. Under s 13(2), a prisoner is a serious danger to the community:
- “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.”
- [7] As defined in the Act, a “serious sexual offence” includes an offence of a sexual nature involving violence or against a child.
- [8] I am satisfied to the requisite high degree of probability, based on the evidence which has been placed before the court, that Mr Schultz is a serious danger to the community for the purposes of section 13(1).

- [9] Mr Schultz is 71 years of age. Although there is some confusion in the material, it appears he was originally from Tasmania, and is reported to have been placed in a foster home at a very early age, raised by and then subsequently adopted by the foster family, with whom he moved to Queensland. He left school aged about 14, having only completed grade 6 or 7. He was subsequently employed in unskilled or semi-skilled positions in rural industries, including working on his foster parents' rural property.¹ He reports having been sexually abused himself, as a child.²
- [10] Mr Schultz has a serious and concerning criminal history of sexual offending against children, comprising convictions on five separate occasions for multiple sexual offences against children.³
- [11] His earliest conviction was in 1986, for one charge of indecent dealing with a boy under 14 and two charges of indecent dealing with girls under 14, for which he was sentenced to two years and 6 months imprisonment. He was 38 years old at the time.⁴ It seems the children were aged four, seven and nine. The dealing included performing oral sex on the four year old boy, and placing his tongue on the area of the seven and nine year old girls' vaginas.⁵
- [12] He was next convicted in 1995 of indecent dealing with a child under 12. That conviction was overturned on appeal.⁶ The alleged offending the subject of this proceeding was said to have occurred between January 1991 and November 1992. Although a retrial was ordered, it would appear from the material that did not occur.
- [13] He was then convicted in 1996, of indecent dealing with a child under 12, between January and July 1994. He was aged 48 at the time of conviction. He was sentenced to imprisonment for three and a half years. The victim of this offending was a nine year old boy, whose mother Mr Schultz had befriended. Mr Schultz was looking after the child at the time. The dealing again involved

¹ See, for example, Dr Sundin's report of 1 November 2017 at pp 9 and 10-11; and Dr Andrews' report of 7 June 2018 at p 4.

² See, for example, Dr Andrews' report at p 4.

³ See the criminal history annexed to the affidavit of Ms Murphy, filed 27 April 2018.

⁴ See the exhibits to the affidavit of Ms Berry, filed 27 April 2018, at p 2 (sentencing remarks of Judge Dodds).

⁵ See the reference at p 442 of the exhibits to Ms Berry's affidavit (in the context of the prosecutor's submissions on a later conviction).

⁶ See the Court of Appeal's decision, made on 14 December 1995, commencing at p 367 of the exhibits to Ms Berry's affidavit.

Mr Schultz performing oral sex on the child, but the sentencing judge observed it was probable he sexually abused the boy more than once.⁷

- [14] A psychologist's report from 1995, relied upon at the sentence, placed Mr Schultz in the borderline category, only just above those characterised as intellectually handicapped.⁸
- [15] There was then a gap of some 14 years before the next conviction, in 2010, for two sets of offending, involving indecently dealing with the same girl, first, when she was six years of age (in a date between December 1978 and September 1980) and, next, when she was 11 (on a date between December 1982 and January 1985). So this was some 25 to 31 years before the conviction (which was on a plea).⁹ Both the circumstances in which the offending occurred – Mr Schultz having befriended the mother – and the nature of the offending itself, were the same as previously. Taking into account how long ago the offences were committed, and that it was prior to his first conviction in 1986, and the time that had passed since the conviction in 1996, Mr Schultz was sentenced to 18 months' imprisonment, wholly suspended.
- [16] Then in 2014 Mr Schultz was convicted of seven charges of indecent treatment of children under 12, between January 2006 and June 2010 and in July 2013; a further eight charges of indecent treatment of a child under 12 of which he was the carer, also between January 2006 and June 2010; a further 2 charges of indecent treatment of a child under 12 of which he was the carer between June 2010 and December 2012; and of breaching the suspended sentence earlier imposed. He pleaded guilty to all of those charges. He was aged 58 to 65 at the time of the offences, and 67 at the date of sentence. The offending was against two complainants, boys who were cousins. Mr Schultz had befriended the family. The first complainant, who was the victim of all but one of the offences, was aged between eight and 14 during the offending against him; the other was nine years old at the time of the offending against him.¹⁰ In sentencing Mr Schultz, Judge Devereaux SC observed that the offending was much more serious than his previous offending, saying that "what is concerning and serious is that you persisted in your behaviour and that there was a degree of force, not physical force, but that you persisted in your behaviour after the child said no on

⁷ See the exhibits at p 442 and pp 448-449 to Ms Berry's affidavit (prosecutor's submissions on sentence; Judge Nase's sentencing remarks).

⁸ See Dr Sundin's report at p 10.

⁹ See the sentencing remarks of Judge Irwin, at p 466 of Ms Berry's affidavit (of the criminal history, annexed to Ms Murphy's affidavit, which only shows the date range between 1982-1985).

¹⁰ See the prosecutor's submissions, at p 486 of the exhibits to Ms Berry's affidavit.

more than one occasion”.¹¹ His Honour also referred to Mr Schultz’s predatory conduct, involving a betrayal of trust. His Honour observed that “it’s doubtful that you have real prospects of rehabilitation”. Some of the offending was committed in breach of the suspended sentence imposed in 2010. The sentencing judge considered five years an appropriate starting point for the 17 offences. With the 18 month suspended sentence to be activated in full that would be six and a half years. Mr Schultz was given the benefit of his guilty plea by a reduction in the sentence to four years and 10 months’ imprisonment, with no other order regarding parole eligibility.

- [17] In custody, Mr Schultz is assisted by another prisoner as carer. Mr Schultz has no support system outside of prison.¹²
- [18] Mr Schultz has not completed any sex offender programs whilst in prison. A note made in 2015, which forms part of his offender file indicates he did not wish to participate in group therapy, as he did not want to risk having a nervous breakdown through group participation and talking about his offences. A note made in 2016 records that he is not comfortable completing the program in prison.¹³ It appears he did try to attend the Getting Started: Preparatory Program in October 2017, but was not able to participate due to problems with his memory and cognitive limitations, which were considered to be indicative of the presence of dementia.¹⁴
- [19] That is consistent with the findings of Dr Michele Andrews, a clinical neuropsychologist, who assessed Mr Schultz on 31 May and 8 June 2018. I will refer to her report shortly.
- [20] Mr Schultz was interviewed by Dr Josephine Sundin, psychiatrist, on 26 October 2017. Dr Sundin provided a report dated 1 November 2017. At the beginning of her report, Dr Sundin notes that although she tried to explain the nature and purpose of her interview to Mr Schultz, she was not confident that he understood. On the basis of her objective examination of Mr Schultz, she said he demonstrated “quite profound cognitive deficits”. On the basis of his score on the Mini Mental State examination, she described him as having severe cognitive impairment, suggesting dementia. She notes this is against the background of an earlier diagnosis of borderline intellectual impairment. Dr Sundin diagnoses Mr Schultz as having a major neurocognitive disorder, as well

¹¹ See the sentencing remarks, commencing at p 499 of the exhibits to Ms Berry’s affidavit.

¹² See, for example, Dr Andrews’ report at p 6.

¹³ See the exhibits to Mr Simmons’ affidavit, filed 27 April 2018, at pp 35 and 43.

¹⁴ See the notes at pp 151 and 152 of the exhibits to Mr Simmons’ affidavit.

as paedophilia (sexually attracted to both males and females).¹⁵ On the basis of application of the various actuarial instruments and guidelines, Dr Sundin considered Mr Schultz to be at moderate to high risk of future sexual offending.¹⁶

[21] In concluding her report, at pp 13-14, Dr Sundin said the following:

“He is not a man who is now capable of living independently.

He has not developed any form of plan to protect against potential risk factors for future sexual offending. Indeed the disinhibition that can be associated with dementia may increase his risk for future sexual offending. He does minimise his offences to some degree, focusing on his own victimisation and stating that he did not harm any of the children. He does not appear to have any appreciation of the profound adverse psychological sequelae for victims.

He has been offered participation in the Getting Started Preparatory Program in 2015 and 2016 but on both occasions declined. In my opinion, he is now so cognitively impaired that he could not meaningfully participate in any form of sexual offender treatment program.

Mr Schultz is yet another individual who has a prolonged history of multiple counts of sexual offending against children but who has now developed substantial cognitive impairment. He cannot be relied upon to not act upon his paraphilic cognitions.

He could not be relied upon to be compliant with the conditions of a supervision order. I would have great hesitancy in believing that Mr Schultz is capable of understanding the conditions of any potential supervision order.

He is a man who will need to be detained in some appropriate supervised facility; but unfortunately, as has been evidenced by a number of other prisoners, it is going to be extremely difficult to find a suitable locked residential care facility that would take this man.”

¹⁵ See Dr Sundin’s report at pp 12 and 13.

¹⁶ See Dr Sundin’s report at p 14.

- [22] Dr Andrews, the clinical neuropsychologist, prepared a report dated 7 June 2018. Dr Andrews also said Mr Schultz did not appear to fully understand the nature of the assessment. She describes him as having “an obvious cognitive impairment and likely dementia”, demonstrating impairments in language comprehension/reception and expressive language, significant memory difficulties and significant impairments across all aspects of executive functioning (see pp 3, 8, 9-10, 11-12 and 13). Based on the assessments Dr Andrews was able to carry out, limited by his degree of impairment, she found him to fall within the severe intellectual impairment range (pp 8-9).
- [23] Dr Andrews says that Mr Schultz meets the diagnostic criteria for Major Neurocognitive Disorder due to Vascular Disease with associated Parkinsonian features (p 14). She says that, in line with his deteriorating cognition, Mr Schultz demonstrates a significant lack of insight into his cognitive difficulties and into his offending and circumstances surrounding his offending, impairment in social graces, some socially inappropriate behaviour and impairment in moral judgment (p 15). Dr Andrews says (at pp 15-16):

“In combination with his diagnosed Paraphilia, this places him at increased risk of further sexual offending by proxy of stimulus bound responses (ie, sexual behaviour toward children) with significantly diminished capacity to consider consequences or insight into his offending. Although he has slowed movement and has some balance difficulties he is still able to independently mobilise. This sustains his risk in terms of physical capacity to engage in offending. Additionally, he is able to communicate in a simplified manner. As such, it is estimated that Mr Schultz remains capable of approaching and communicating with possible victims, albeit within a reduced language ability. Review of his individual neuropsychology and consideration of a vascular dementia diagnosis collectively in the context of a previous child sex offences, predicts that if exposed to children, Mr Schultz will be unable to inhibit inappropriate sexual responses, irrespective of context, and that he will do so in a more impulsive manner. His offending is likely to be less sophisticated, but the implication of frontal lobe region and amygdala can predict that behaviour, inclusive of sexual behaviour, becomes more aggressive in nature, also.”

- [24] Dr Andrews expresses the opinion that Mr Schultz would not be capable of residing in either independent or semi-independent accommodation. He requires fully supported accommodation, and would be best managed in a secure residential aged care facility, with safeguarding of other residents receiving

visits from grandchildren. She says that, by virtue of his cognitive impairment, he does not have the capacity to make lifestyle, health, financial or legal decisions and will require substitute decision makers in all areas (p 16).

- [25] Two further psychiatrists were appointed by the court to examine Mr Schultz for the purpose of this application: Dr Harden and Dr Timmins.
- [26] Dr Timmins interviewed Mr Schultz on 5 July 2018, and prepared a report dated 29 July 2018. She also diagnoses paedophilia, as well as major neurocognitive disorder, against the background of mild intellectual disability. She expresses the opinion that he poses an above average, or a moderate to high risk of reoffending sexually if released into the community without a supervision order in place. Dr Timmins says, at p 21 of her report:

“Mr Schultz’s plans for release are unrealistic and he is likely to not cope with his release with the plans he currently has in mind. He is not capable of living independently. Mr Schultz is also likely to find it difficult to be compliant of a community order and will need a high level of supervision to decrease his risk. He appears to have been approved for residential care. This placement would need to be a locked facility as he is at risk of wandering and thus raise the risk of re-offending.

It may be difficult to find an appropriate facility with the capacity to manage Mr Schultz across many areas. At this stage in order to mitigate the risk Mr Schultz poses to the community it may be best to continue with his current detention until such time as an appropriate locked facility is found.”

- [27] Mr Schultz was most recently seen by Dr Harden, who prepared a report dated 19 September 2018. Dr Harden’s opinion is very clear. In summary, he says:

“He clearly suffers from Paedophilia.

His future risk of sexual reoffence is high (well above average) if he were released into the community with no restrictions.

A supervision order will not reduce the risk unless he can be placed in a suitable locked aged care facility as he will not be able to comprehend the provisions of the order in order to comply with them.

I do not see how he can be safely released into the community without a combination of a suitable secure aged care facility and supervision and monitoring.

He must never have any unsupervised contact with children.

His risk to children will not improve in his lifetime unless he is so incapacitated that he poses no physical risk.”

- [28] There have been substantial and comprehensive efforts made to find a suitable secure dementia unit in an aged care facility for Mr Schultz. These are outlined in the affidavit of Ms Woolnough, a delegate of the Public Guardian, filed on 27 September 2018; and updated in the affidavits of Ms Meacham, another delegate of the Public Guardian, filed on 26 October 2018 and 22 November 2018. As summarised by Ms Meacham in her most recent affidavit, applications have been made on Mr Schultz’s behalf to 21 aged care providers since the end of August. To date, no aged care provider has approved a placement for Mr Schultz. Mr Schultz remains on the waiting list with three aged care facilities, which have accepted his application for a placement, but there are no current or pending vacancies.
- [29] Having regard to all of the material, I am satisfied that Mr Schultz presents an unacceptable risk of committing a serious sexual offence, being a sexual offence against a child, if released from custody without an order under s 13 of the Act. Further, I am satisfied that the adequate protection of the community could not be ensured by the release of Mr Schultz subject to a supervision order under s 13(5)(b), unless he was to be released to a secure dementia unit. As there is no such secure unit available to take Mr Schultz, I am satisfied that it is appropriate to order that Mr Schultz be detained in custody for an indefinite term for his control, care or treatment. Although the medical evidence seems to indicate that treatment is not a realistic possibility for Mr Schultz, I accept that it is appropriate to make the order in the broadest, and most flexible terms contemplated by the Act.
- [30] The court has been informed that enquiries will continue to be made to try to find a place for Mr Schultz in a suitable secure facility, by the State Reintegration Coordinator within the High Risk Offender Management Unit of Queensland Corrective Services Unit. Counsel for the Attorney-General also indicated that, should a place become available for Mr Schultz, such that release subject to a supervision order may be a viable option, an application would be made in a timely way under s 27 of the Act, for review of the continuing detention order made today. It is noted that whilst s 27(1A) provides a

maximum time period, during which the hearing of the first review must be completed, that section provides no minimum time before an application for review could be made.