

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney General for the State of Queensland v FJA* [2018] QSC 291

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

FILE NO: 10200 of 2018

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 6 December 2018

DELIVERED AT: Brisbane

HEARING DATE: 26 November 2018

JUDGE: Applegarth J

ORDER: **The Court, being satisfied to the requisite standard that the respondent is a serious danger to the community in the absence of a Division 3 Order, orders that pursuant to s 13(5)(a) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, 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 – where the respondent has served terms of imprisonment for two sets of sexual offences against early to mid-adolescent boys – where the respondent concedes that the evidence is sufficient to satisfy the court that he is a serious danger to the community in the absence of a Division 3 order – where the psychiatric evidence is that the respondent should undertake a high intensity sexual offenders program (“HISOP”) prior to release from custody – where the respondent has not been approached to undertake any sexual offender treatment program, despite being in custody since June 2017 – where the next projected vacancy in a high intensity sexual offenders program was estimated to be in November 2019 –

where the Court concluded that such a delay in treatment was unacceptable and adjourned the matter – where new information is that the respondent can undertake a Getting Started: Preparatory Program in January 2019 and will be offered a HISOP place in about April 2019 – whether the court can be satisfied that a supervision order will provide adequate protection of the community – whether a continuing detention order should be made

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)
s 9A, s 13

Attorney-General (Qld) v Beattie [2007] QCA 96 cited
Attorney-General (Qld) v DBJ [2017] QSC 302 cited
Attorney-General (Qld) v Fardon [2011] QCA 111 cited
Attorney-General (Qld) v Lawrence [2009] QCA 136; [2010] 1 Qd R 505 cited
Nigro v Secretary to the Department of Justice (2013) 41 VR 359; [2013] VSCA 213 cited
Yeo v Attorney-General (Qld) [2012] 1 Qd R 276; [2011] QCA 170 cited

COUNSEL: J Rolls for the applicant
K Prskalo for the respondent

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

- [1] The applicant seeks an order under Part 2 Division 3 (s 13) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, and submits that adequate protection of the community can only be ensured at this stage by the making of a continuing detention order under s 13(5)(a) of the Act.
- [2] The respondent’s counsel conceded prior to the hearing that the evidence is sufficient to satisfy the Court that the respondent is a serious danger to the community in the absence of a Division 3 order. Prior to the hearing, the issue of contention identified by the respondent’s counsel was whether adequate protection of the community can be ensured by the respondent’s release on a supervision order. Each of the three psychiatrists who gave evidence was of the opinion that the respondent should undertake the High Intensity Sexual Offenders Program (“HISOP”) prior to his release from custody. Their opinions in this regard were explored at the hearing. At the conclusion of the hearing, counsel for the respondent fairly acknowledged that she could not advance on the state of the evidence any submission for release on supervision. That concession was properly made, in my view.
- [3] Unfortunately, and despite the fact that the respondent has been in custody since June 2017 (when his parole was suspended), he has not been approached to undertake a sexual offender treatment program, and during that lengthy period he has not been offered a placement on the HISOP. The affidavit material filed by the respondent for the hearing on 26 November 2018 indicated that all anticipated vacancies for the HISOP for 2018 had been allocated to other offenders, with the next projected vacancy

estimated to be in November 2019. The HISOP takes about 39 weeks, with participants required to attend three sessions per week of three hours duration.

- [4] I remarked at the hearing on 26 November 2018 that it was completely unsatisfactory that the respondent had not been offered a place on the HISOP long ago, and that it was simply not acceptable for this Court to order his continuing detention so as to undergo treatment by way of a HISOP, but then for the respondent to have to wait one year for that program to begin. In the circumstances, I made an order under s 9A of the Act to enable inquiries to be made as to whether the respondent might commence on the HISOP as soon as possible.

Overview of the facts

- [5] The facts are not in contest, and because the respondent accepts the accuracy of the summary of facts contained in the applicant's written submissions, I will draw extensively upon it in these reasons. By way of overview, the respondent was born in early 1990, and so is currently aged 28. He committed two sets of sexual offences against early to mid-adolescent boys. The first was against a 14 year old friend of his brother. These offences were committed in September and October 2010. The respondent pleaded guilty and was sentenced to 18 months imprisonment on 21 February 2013.
- [6] Not long after his release for custody he offended again. This was in late 2015 and early 2016 when he offended against two 12 year old boys. The offending involved grooming, use of rewards and threats and attempts to conceal his offending.
- [7] The respondent pleaded guilty and was sentenced on 2 December 2016. He received head sentences of three years' imprisonment, suspended after 12 months, and was placed on three years' probation for other offences. Due to 305 days of pre-sentence custody being declared, he obtained release in early 2017 and during this time attended some individual sessions with a psychologist in the community. However, he failed to comply with reporting conditions and he was returned to custody in June 2017.
- [8] Apart from those few sessions with a psychologist in the community, the respondent has not undertaken any treatment intervention for his sexual offending. As Dr Harden notes, the respondent has "early and developing insight into the psychological factors relevant to his offending and has good insight into the effect of his offending on victims".
- [9] Each of the psychiatrists assesses his unmodified risk of re-offending sexually as high.

Criminal History

- [10] The respondent's relevant criminal history is as follows:

Date	Description of offence	Sentence
21/02/13 Maryborough District Court	<ul style="list-style-type: none"> Unlawful sodomy – person under 18 years (2 charges) 	On each charge Conviction recorded

		<p>Sentenced imprisonment: 18 months to be served concurrently with each other but cumulative upon term of imprisonment currently being served</p> <p>Parole eligibility date: 25/02/13</p>
<p>2/12/16</p> <p>Maryborough District Court</p>	<ul style="list-style-type: none"> • Indecent treatment of children under 16 (4 charges) • Grooming child under 16 years with intent to procure engagement in a sexual act – domestic violence offence • Grooming child under 16 years with intent to expose child to indecent matter – domestic violence offence • Fail to comply with reporting • Contravention of domestic violence order (3 charges) 	<p>On all charges:</p> <p>Conviction recorded</p> <p>Sentenced imprisonment: 3 years to be suspended for 4 years after serving 12 months</p> <p>Conviction recorded</p> <p>Sentenced imprisonment: 18 months to be suspended for 4 years after serving 12 months</p> <p>Order conviction to be a DV offence</p> <p>Conviction recorded</p> <p>Sentenced imprisonment : 12 months</p> <p>Probation period 3 years</p> <p>Order conviction to be a DV offence</p> <p>Conviction recorded</p> <p>Sentenced imprisonment: 12 months</p> <p>On all charges</p> <p>Conviction recorded</p> <p>Sentenced imprisonment: 1 month</p> <p>All terms of imprisonment to be served concurrently</p> <p>Declare that time served in pre-sentence custody be deemed as time already</p>

		served under this sentence: 305 days
12/06/17 Bundaberg Magistrates Court	<ul style="list-style-type: none"> • Fail to comply with reporting (on 02/05/2017) • Fail to comply with reporting (on a date unknown between 08/03/2017 and 05/05/2017) 	On all charges conviction recorded not further punished
27/06/17 Bundaberg District Court	<ul style="list-style-type: none"> • Breach of suspended sentence imposed on 02/12/2016 (re: indecent treatment of children under 16 x4) • Breach of suspended sentence imposed on 02/12/2016 (re: Grooming child under 16 years with intent to procure engagement in a sexual act domestic violence offence) • Breach of probation order imposed on 02/12/2016 (re: grooming child under 16 years with intent to expose to indecent matter-domestic violence offence) 	<p>Breach(es) proven suspended sentence partly invoked on all charges conviction recorded sentenced imprisonment: 8mo</p> <p>Breach(es) proven balance of suspended sentence invoked conviction recorded sentenced imprisonment: 6mo all terms of imprisonment to be served concurrently parole eligibility date: 26/02/2018</p> <p>Breach(es) proven no action taken order to continue</p>

- [11] The respondent has been convicted of other offences, such as breaking and entering and stealing. He has also been convicted of various driving and traffic offences. On 27 June 2017, during the course of his imprisonment, he was re-sentenced for a breach of the suspended sentences in respect of offences of a sexual nature imposed in 2016. His full time release date was 11 October 2018.

Offences of a Sexual Nature

- [12] On 21 February 2013, the respondent was convicted of two counts of unlawful sodomy of a person under 18 years and sentenced to 18 months' imprisonment on each charge to be served concurrently with each other but cumulatively on a sentence he was already serving.
- [13] The offending occurred between 1 September 2010 and 21 October 2010. The victim, CQ, was aged 14 at the time and had met the respondent through the respondent's brother with whom he went to school. After becoming friends with the respondent's brother, CQ would often visit the respondent's house. CQ would often attend the house and consume alcohol. He recalled that, at some stage, the respondent showed a sexual interest in him.

- [14] The first offence occurred in the respondent's bed after he told CQ that he wanted to "do him in the arse". The respondent put himself in a position to penetrate CQ which he said hurt him. The respondent did not fully penetrate CQ. The respondent told him that it would not hurt once his penis went fully into him but CQ told him to stop, which he did.
- [15] The second offence occurred when, sometime after the first offence, CQ was showering with the respondent in the upstairs part of the house. The respondent suggested that they "do stuff", like the last time. He told CQ to bend over, which he did. He tried unsuccessfully to enter CQ. He then put soap on CQ's anus and tried again. CQ said that it stung. When penetration couldn't occur the activity stopped.
- [16] The offending came to light in May 2011 when CQ wrote an essay at school about it. A complaint was then made to police and CQ was interviewed.
- [17] The respondent was interviewed by police in March 2012. He denied the offending. But, the respondent later pleaded guilty when the statements were obtained from other witnesses at the house.
- [18] On 2 December 2016, in the District Court at Maryborough, the respondent was convicted on his plea of guilty to two counts of grooming a child under 16 with intent to procure engagement in sexual act, four counts of indecent treatment of a child under 16, three charges of contravention of domestic violence order and one charge of fail to comply with reporting (under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPORA)).
- [19] For each of the four counts of indecent treatment of children under 16, he was sentenced to terms of three years' imprisonment, suspended for four years after serving 12 months. In relation to one count of grooming a child under 16 years with intent to procure engagement in a sexual act (domestic violence offence), the respondent was sentenced to 18 months' imprisonment, suspended for four years after serving 12 months. In relation to the other count, the respondent was sentenced to 12 months' imprisonment and probation for three years. The offences were declared to be domestic violence offences. The respondent was sentenced to 12 months imprisonment for the offence of failing to report on 2 January 2016 and one month imprisonment for the three offences of contravening a domestic violence order. All terms of imprisonment were ordered to be served concurrently and a period of 305 days pre-sentence custody was declared.
- [20] The victims, in relation to these offences, were two males both aged 12 at the time: the respondent's younger brother (L), and L's friend, S. This offending occurred between 24 December 2015 and 31 January 2016.
- [21] The respondent told L that he wanted to see him naked and asked him to send naked photos of himself. He also asked to perform oral sex on L. The respondent told L that he would give him money, credit cards, photos of naked girls, toys, games and an X-box game, if he sent the photos and let him perform oral sex on him. The respondent also told him that if he did not comply, he would physically hurt him or tell his mother that he had been misbehaving. The respondent made these requests weekly in person, by phone or online. He also sent L an explicit picture of a female.

- [22] The respondent massaged S and performed oral sex on him on four separate occasions. The respondent told S that he was practising for a massage course and needed to practise. S stated that the respondent would suck and masturbate his penis during the massages.
- [23] The offending was discovered when L's mother checked his Facebook messages from the respondent as she sensed something was wrong. She asked L about it and then made a complaint to police.
- [24] The respondent was also sentenced for failing to comply with his reporting obligations under CPORA for not reporting his contact with S, and for a summary charge of contravening a domestic violence order. His mother was named as the aggrieved on a temporary protection order. The respondent wrote three letters to her from the correctional centre where he was incarcerated in breach of that order.
- [25] In 2016, the sentencing judge remarked about the respondent's conduct:

“So when you got out of prison having served your time from last time, and you went to live with your mum and then used that as an opportunity to, as counts 1 and 2 show, groom L, and then, of course, to commit serious sex offences against S, you betrayed every bit of trust that your mother had put in you.

...

Now, you were in jail for serious sex offences so you know intellectually – you know in your head that any offending by you whatsoever, but particularly if it involves sex offences, is inevitably going to see you go back to jail for a long time. I've got no doubt that you need help and that you need supervision, and your barrister very appropriately, in my view, concedes that there should be a substantial jail sentence – his argument is really how I structure that – to give you a prospect of being released, but only if that gives you and of course, the community, some comfort that you will start to do something about what's been driving your sex offending. Because believe me, if you continue in this way, you will spend not just your 20s in jail, but your 30s, your 40s, your 50s and however long your life is.

There are also laws now that enable orders to be made that may see you remain in prison past the end of a jail sentence if you show no signs of being able to change your behaviour when it comes to sexual offending against other people. So that's the reality of it. You have to find a way, and I'll give you the assistance. Part of this requires your consent so I'm going to take you very carefully through the conditions. If you accept the conditions, then that will enable me to structure a sentence that will see you released at a fixed date, that will see you able to take up the offer from your dad of going to live with him, so long as that still applies.

...

At the end of the day, we are all precious human beings; you included. But you have behaved in a way by offending particularly against L and S that is just appalling, despicable and is incompatible with being allowed to continue living in the community if that's how you're going to behave. And I know you've spent a large part of your life already in jail – about six years or more. You're going to spend, I can tell you, another – from when you back into custody, at least another year – then if you accept the deal I'm going to offer you, you'll have an opportunity.

...

So you pleaded guilty to two counts of grooming – sorry – one count of grooming a child under 16 years with intent to procure engagement in a sexual act, one count of grooming a child under 16 years with intent to expose to indecent matter, four counts of indecent treatment of a child under 16, one count of failing to comply with reporting obligations, and three breaches of a domestic violence order. I take into account your plea of guilty. I accept what your barrister says, that this was a matter that was complicated in terms of getting it finalised by the fact that you were in jail, the Circuit was taking place here in Maryborough – it's always difficult to get instructions in those circumstances. But to your credit, it did resolve just before the legal argument, and, importantly, it didn't involve cross-examination of either L or of S.

And I've got no doubt, because they were 12 year old boys at the time that they would have found that particularly distressing and even more so for L, of course, because he's related to you. And you have betrayed that relationship. You've betrayed your mum's trust in you and you did that very quickly. You have a dad who despite everything is still prepared to give you an opportunity to live with him, and as I say repeatedly to people standing where you're standing, that's extraordinary.”

- [26] On 12 June 2017, the respondent was dealt with for breaching the suspended sentence which had been imposed on 2 December 2016. The respondent had had contact with a three year old and a six month old child who were the children of his then girlfriend. He had not reported this contact as required. The respondent was charged with offences related to these omissions and he entered a plea of guilty on 12 June 2017 in the Bundaberg Magistrates Court but was not further punished. However, this conduct also gave rise to proceedings for a breach of a suspended sentence.
- [27] These breach proceedings were heard in the Bundaberg District Court by Shanahan DCJ on 27 June 2017. Shanahan DCJ regarded the breaches as “significant”. It was also noted that the respondent had been dealt with for three counts of disqualified driving on 12 June 2017 and had been sentenced to imprisonment in respect of those offences for a period of 16 months. The full time discharge date arising from that sentence was 11 October 2018.
- [28] Shanahan DCJ considered that part of the outstanding 2016 sentence ought be activated. In total, a period of eight months was activated of the sentence imposed on 2 December 2016 arising from the indecent treatment and grooming offences. This activated sentence, being a “term of imprisonment” for a serious sexual offence, was part of the

“period of imprisonment” served by the respondent arising from the disqualified driving offences for which he is also presently incarcerated.

- [29] An application was made under the Act on 20 September 2018 and an interim order was made on 5 October 2018.

Family history

- [30] The respondent reports that he was born in Bundaberg. He is one of a sibship of eight with one older sister and three younger siblings. He has a younger half-brother and two younger stepsisters.
- [31] The respondent’s father has always been employed in the rural industry. His mother was not employed outside the home. His parents separated when he was 10 years of age. Prior to their separation, the respondent recalls their being high levels of domestic violence. His father was a heavy drinker who assaulted his mother when intoxicated.
- [32] The respondent’s father was sometimes violent to him and his siblings. He slapped the respondent a couple of times and locked him in a cupboard on one occasion.

Sexual history

- [33] The respondent describes two periods of sexual abuse during his childhood after his parents separated. The first occurred when a friend of his father sexually molested both him and his younger sister which involved genital touching and anal penetration. He was uncertain as to how long the abuse occurred but said that it stopped by the time he went to high school and the family moved.
- [34] The family moved to Maryborough when the respondent was 12. At this time, a neighbour, “Bob”, solicited the respondent and another boy in the street to perform oral sex on him. He would also pay them \$50 – \$100 at a time to “do stuff to another.” The respondent said that this occurred two to three times a week and that “Bob” was “not really making us. He was paying us. To me it was a normal thing.” The family moved to Howard and the offending abated but “Bob” would visit and take the respondent back to Maryborough for sleepovers, ostensibly so that he could see his friends. “Bob” moved to Victoria when the respondent was 13 and the offending stopped.
- [35] The respondent did not tell his mother about either period of abuse until he was incarcerated in 2016.
- [36] Between the ages of 13 and 15, when he was consuming large amounts of alcohol, the respondent and several male peers would regularly engage in oral intercourse. It appears to have been transactional sexual interaction.
- [37] During his most recent period in the community, the respondent became involved in his first heterosexual relationship, with a woman who had two children in foster care, daughters aged eight months and four years. She regained custody of the children during their first three months together but he neglected to notify police in accordance with his reporting obligations. He was, therefore, in breach of the relevant reporting condition. This matter was before Shanahan DCJ on 27 June 2017.

Educational history

- [38] The respondent attended a primary school in Bundaberg from grades one to four, and a second primary school in Maryborough from grades five to seven. He repeated grade seven. The respondent describes frequent refusal to attend school from the earliest grades. The respondent would often avoid the classroom by sitting behind a toilet block. The respondent said he was bullied for being overweight.
- [39] The respondent did not do well academically. He found it hard to concentrate and comprehend within the classroom. By the time he completed grade seven he could read and spell but had not attained numeracy. His mother attempted to enrol him in a local high school at the age of 13 but he refused to go after two days.
- [40] He did not seek employment or undertake any further education.

Drug and alcohol history

- [41] By the time he was 15, the family had returned to Maryborough, the respondent was regularly abusing alcohol and cannabis. He was consuming 15 to 20 cones of cannabis per day and sharing a four litre cask of wine over two days with another.
- [42] The respondent commenced using amphetamines at the age of 20 which started shortly after his release from custody. In the short time he was in the community, he stated that he would have had six to seven injections which would cause him to be awake for a week. He would then sleep for three to four days and have another injection. His cannabis and alcohol use abated during this time. He was using amphetamines when involved in a car accident that injured another driver.

Medical and psychiatric history

- [43] The respondent has no significant medical history.
- [44] The respondent recalls having two to three brief contacts with community psychiatric services at about the age of 14 as his mother was concerned about his alcohol consumption and suicidal ideation. He did not attend any follow-up.
- [45] The respondent states that at the age of 14, he made a serious suicide attempt by jumping in front of a moving car while intoxicated. He was deliberately suicidal as he was upset about the sexual abuse he had experienced. He was taken to the Maryborough Mental Health Unit but refused follow-up.
- [46] The respondent reported three to four subsequent suicide attempts by trying to hang himself and by cutting his wrists. He had never had counselling prior to his engagement with Mr John Glanville as he “never asked for help” and tried to “deal with stuff myself.”
- [47] The respondent had contact with the Prison Mental Health Service at one time and was prescribed a brief course of anti-depressant medication and a sleeping medication. He has not been prescribed further medication.

Events in prison

- [48] The respondent has completed some training courses in prison including Responsible Service of Alcohol and Gambling, Certificates and Certificates II and III in Cleaning and a hospitality training course. He did not complete Year 10 but is now literate and numerate.
- [49] The respondent has been employed as a unit cleaner, in the kitchen, as a landscaper, in a metalshop and in woodshop.
- [50] The respondent has four major breaches recorded against him for acting in a way contrary to the security and good order of a corrective services facility, altering his appearance and possessing or concealing something for which he was not given approval. He also has recorded eight incidents for matters such as assault, offensive behaviour and self-harm.

Parole

- [51] By application dated 9 May 2018, the respondent made an application for parole. On 14 August 2018, that application was considered. After deeming two proposed places of accommodation unsuitable, the Board deferred making a decision regarding the application, until a suitable accommodation risk assessment was obtained.

Psychological and psychiatric reports

Report of Dr Ken Arthur, Consultant Psychiatrist, dated 19 January 2011

- [52] Dr Arthur's report was prepared at the request of the respondent's lawyers to be relied on at his sentence for the offences including dangerous operation of a motor vehicle causing grievous bodily harm.
- [53] Dr Arthur considered that the respondent met the criteria for diagnoses of Polysubstance Abuse in remission in a controlled environment, Borderline Personality Traits and a previous diagnosis of Conduct Disorder. Dr Arthur did not support a defence of unsoundness of mind. The respondent denied to Dr Arthur that he was under the influence of alcohol or substance at the time of the offence.
- [54] Dr Arthur was provided with minimal material. Much of his report is based on the respondent's self-report.

Report of Dr James Freeman, Consultant Psychologist, dated 24 June 2014

- [55] Dr Freeman prepared a report at the request of the Parole Board to assess the respondent's suitability for Board-ordered parole. The respondent reported to Dr Freeman that he was intoxicated with amphetamines at the time of the motor vehicle offence. Dr Freeman noted the respondent's history of substance and alcohol abuse on leaving high school. He also noted that the respondent had breached multiple community-based orders, had committed property offences and had, on release to a parole order, resumed alcohol consumption and had become dependent on amphetamines.
- [56] Dr Freeman did not consider that the respondent appeared an 'ideal candidate' for parole due primarily to his:
- poor community supervision history; and
 - limited release plan;
- [57] Further, he needed to seek assistance to identify:
- appropriate accommodation;
 - treatment for his on-going mental health and substance needs;
 - clear strategies to avoid high risk situations (e.g. both sexual and non-sexual); and
 - general living support, including assistance in both finding and maintaining employment.

Report of John Glanville, psychologist, dated 15 February 2017

- [58] In treatment with Mr Glanville, the respondent appeared to engage well and be sincere in his disclosure and desire to better himself. He gave Mr Glanville the impression that he is cognisant of the need to use therapy for personal development and sincere in his desire for change.
- [59] Mr Glanville noted that the respondent's risk is a circumstantial one, in that if the situation arose to tempt him sexually at that time, he would find it difficult to resist. He was considered to be a threat to males within the 13 – 16 age bracket.

Report of Dr Josephine Sundin, Consultant Psychiatrist, dated 29 August 2018

- [60] Dr Sundin's report was prepared for the purpose of a risk assessment in relation to a potential application under the Act. She made the following diagnoses:
- a provisional diagnosis of Mixed Personality Disorder-borderline and anti-social features using the DSM-V classificatory system;
 - Dr Sundin noted that his record suggests a diagnoses of Hebephilia, i.e. sexually attracted to adolescent males. She noted his assertion that these cognitions are no longer present and did not describe any attraction to pre-pubescent males;
 - he meets criteria for a Substance Use Disorder – alcohol, cannabis and amphetamines, in sustained remission whilst incarcerated; and
 - Dr Sundin found no evidence of any major mood or anxiety disorder and no report of symptoms of Post-traumatic Stress Disorder.
- [61] Dr Sundin assessed the respondent on a range of risk assessment instruments.
- [62] On the Hare Psychopathy Rating Scale (PCL-R 20), Dr Sundin scored him 24/38 which does not meet the cut-off criteria for the diagnosis of psychopath but this score is elevated within the Australian prison population.
- [63] On the Sexual Violence Risk Scale-20, a physician's guideline used in assessing the risk for future sexual recidivism, Dr Sundin considered that the respondent was at moderate to high risk for future sexual recidivism.
- [64] On the STATIC-99R, an actuarial instrument used to assist clinicians in identifying the risk of sexual recidivism for males over the age of 18. Based on historical risk factors which do not change over time, Dr Sundin gave the respondent a score of 7 which places him in a group of offenders considered to be at high risk for future sexual recidivism compared to other sex offenders.
- [65] Dr Sundin noted the respondent's significant history of juvenile offending and his failure of community orders. Dr Sundin also noted inconsistencies in the account the respondent has given to various assessors regarding his childhood.
- [66] Dr Sundin noted the respondent's mismatch of descriptions of his offences, and also considered that in his interview, he minimised the level of threat he had posed.
- [67] In her recommendations, Dr Sundin expresses a preference that the respondent undertake the High Intensity Sexual Offenders Program (HISOP), but notes he could do the Medium Intensity Sexual Offenders Program (MISOP).

Report of Dr Scott Harden, Consultant Psychiatrist, dated 15 November 2018

- [68] Dr Harden interviewed the respondent for the purpose of this report on 20 July 2018. Dr Harden expressed the view, after his assessment of the respondent and consideration of the material, that the respondent met a diagnosis of alcohol and polysubstance abuse. This condition is in remission due to incarceration. The respondent also met the diagnostic criteria for a personality disorder (not otherwise specified) with mixed features of antisocial, borderline and dependent traits with some evidence of psychopathy.
- [69] Dr Harden concluded that the respondent has a sexual preference of post pubertal males in the form of hebephilia.
- [70] Dr Harden also administered a number of risk assessment instruments.
- [71] On the STATIC-99, Dr Harden scored the respondent at 7. This places him in the high risk category relative to other adult male sex offenders.
- [72] On the Stable 2007, the respondent achieved a score of 16/26 which placed him in the “high needs” group in terms of a sexual offender’s dynamic risk. Areas where the respondent scored highly were the areas of capacity for relationship stability, lack of concern for others, impulsiveness, poor problem solving skills, possible deviant sexual preference and cooperation with supervision.
- [73] On the Sex Offender Risk Appraisal Guide, the respondent achieved a score of 32 which Dr Harden describes as a “very high score”. He was placed in category 9. In general, people in this category in the static populations had a 100 per cent rate of violent reoffending at seven years. This score will not change.
- [74] On the Hare Psychopathy Checklist, the respondent had an overall score of 28.4 which was elevated to 30 which is “arbitrarily regarded” as the cut off for a diagnosis of psychopathy.
- [75] On the SVRS-20, the respondent achieved a score which placed him in the moderate high risk category.
- [76] Dr Harden’s overall assessment was that the respondent’s future risk of sexual re-offence is high, in the absence of a supervision order.
- [77] Dr Harden described the respondent as an “untreated recidivist sex offender”. He has a preference for early, mid-adolescent, post pubertal boys. He has an associated personality disorder. He has substance abuse features which increase any risk. Dr Harden noted:
- “Risk reduction on a community supervision order will be much more effective if he has completed an appropriate rigorous high intensity treatment program such as the High Intensity Sexual Offending Program in custody.”
- [78] Supervision under a supervision order would reduce the risk to moderate by decreasing the capacity for use of substances, monitoring activities and enforcing further treatment interventions.

- [79] Dr Harden noted that the respondent has committed two tranches of sexual offences against 14 and 12 year old boys. The offending was characterised by grooming, use of rewards, threats and attempt at concealment of the offending behaviour. The offending paralleled the respondent's own sexual abuse.
- [80] The respondent has effectively not undertaken any treatment intervention for his sexual offending. He has what Dr Harden described as "early developing insight in the psychological factors relevant to his offending". He has insight into the effect of his offending on victims.
- [81] Dr Harden noted a history of polysubstance abuse which, while not central to his sexual offending, is a significant factor.
- [82] Ultimately, Dr Harden recommended that the respondent undertake a High Intensity Sexual Offender Treatment program prior to release from custody. On any release, pursuant to a supervision order, that order should be for a "minimum period of 10 years", the respondent would need to be abstinent from alcohol and drug use.
- [83] Dr Harden also recommended the respondent undertake psychological therapy both in group and individual context to further address his treatment needs.
- [84] The respondent should not have any contact with males under the age of 16 years.

Report of Dr Andrew Aboud, Consultant Psychiatrist, dated 16 November 2018

- [85] Dr Aboud interviewed the respondent on 5 November 2018. Dr Aboud expressed the opinion that the respondent has features consistent with mixed personality disorder with borderline and antisocial traits. His misuse of alcohol and illicit substances are such as he is likely to be considered to be dependent on alcohol, cannabis, opioids and stimulants. He meets the criteria for polysubstance dependence, currently in forced abstinence.
- [86] Dr Aboud considered whether the respondent is suffering from hebephilia or paedophilia is "hard to ascertain". This difficulty arises from the respondent being keen to minimise any potential deviance to assessors. Whatever the category is, Dr Aboud observed that it "represents a paraphilic sexual deviance". Accordingly, it appears that he has an attraction for pubescent boys as young as 12.
- [87] Dr Aboud recorded that the respondent identified as bisexual. Despite various hallucinatory experiences, which Dr Aboud considers may be fabricated, the respondent does not suffer, in Dr Aboud's opinion, from any mental illness, such as a psychotic disorder or mood disorder.
- [88] Dr Aboud considered that the respondent may be of low intelligence but not at such a level as to be considered to be intellectually impaired.
- [89] Dr Aboud administered a number of risk assessment instruments.
- [90] On the STATIC-99R, the respondent was scored by Dr Aboud at 7. This placed him in the group regarded at high risk of sexual reoffending.

- [91] On the Risk Matrix 2000/S, the respondent was placed in the group regarded at a very high risk of sexual reoffending.
- [92] On the Risk Matrix 2000/V, the respondent achieved a score of 4, placing him in the high risk of violently reoffending.
- [93] On the Psychopathy Checklist, the respondent achieved a score of 26/38 which is only just below the cut off for a diagnosis of psychopathy to be made.
- [94] On the HCR-20, Dr Aboud considered the respondent's overall risk to be high with a static loading. Clear areas of concern relating to risk management items indicated the need for support and supervision in the community. Dr Aboud noted that the future risk for offending may involve a number of destabilising factors, such as contextual triggers, associated with victim access, emotional congruence with pubescent males, associated isolation and loneliness, alcohol and substance misuse and psychological stressors. The respondent needs to maintain personal and professional supports, remaining engaged with formal therapy and supervision and not succumbing to negative thought patterns.
- [95] Dr Aboud considered that future offending would take the form of a planned sexual interaction with an underaged male. The victim would likely be a pubescent or post-pubescent boy around 12 to 15 years of age. Offending would involve grooming behaviour. However, matters may progress very quickly in association with opportunity and victim access. Grooming may involve normalising sexual touching and enticing his victim by showing him pornographic imagery. Matters may escalate quickly to quite brazen explicit requests for sexual activity. Any victim may be offered inducements, such as money, bribes, alcohol or drugs. Threats may be made. Physical violence is less likely. Offending will occur in the context of social isolation, loneliness, boredom, negative effective states and when intimacy needs are not being met. Times of increased sexual preoccupation are relevant to risk. Alcohol or illicit substances will disinhibit the respondent.
- [96] Ultimately, Dr Aboud considered that the unmodified risk of sexual reoffending would be high.
- [97] Dr Aboud expressed the view that completion of the High Intensity Sexual Offender Program and the Pathways (Substance Misuse) Program would reduce the respondent's risk of sexual reoffending to between moderate and high.
- [98] Dr Aboud considered that the respondent's high risk of sexual reoffending will be manageable in the context of a supervision order, but only after the respondent has completed a substance misuse program and group sexual offender program. This latter program ought be completed in custody prior to release.

Treatment programs

- [99] The oral evidence at the hearing on 26 November 2018 explored whether the respondent might undertake a Medium Intensity Sexual Offending Program (MISOP), either in custody or in the community. Two issues arose. The first is whether the respondent would be admitted into the MISOP. The second is whether, assuming that he could undertake such a program either in custody or in the community, it would reduce the risk of his re-offending sexually sufficiently. Ms McKinnon, who is the Principal

Advisor, Offender Intervention Unit, gave the following affidavit evidence about the MISOP:

- “14. The Medium Intensity Sexual Offending Program (“MISOP”) is a medium intensity treatment program for men who have been assessed as being at low to moderate risk of sexually re-offending. It is a group-based program which assists participants to identify thoughts, feelings and behaviours associated with their offending behaviour, and develop skills and strategies to avoid re-offending.
15. The MISOP is offered in both the custodial environment and community setting in both rolling and closed formats. The MISOP is delivered in a continuous rolling format at both Wolston Correctional Centre and Townsville Correctional Centre. The MISOP is also delivered in a continuous rolling format in the community in the Brisbane and Southern and South Coast regions.
16. The length of the MISOP will vary for different individuals depending on their treatment needs. The program is delivered over a period of three to five months, equating to between 78 and 132 treatment hours. There are two sessions per week, with each session being three hours in duration.
17. Given the respondent has been assessed by QCS as being at a high risk of sexual recidivism, the MISOP is not deemed suitable to meet his level of risk. Research shows that high risk offenders require longer and more intensive programs, such as the Crossroads: High Intensity Sexual Offending Program (“HISOP”), in order to change behaviour and make treatment gains.”

[100] Under cross-examination, Ms McKinnon accepted that the content of MISOP and HISOP was essentially the same and that the real difference was one of duration and intensity.¹ The MISOP lasted three to five months with two sessions per week for three hours, whereas HISOP lasted 39 weeks or almost 10 months with three sessions per week.

[101] Dr Aboud gave oral evidence that the severity of the respondent’s risk warranted the more intensive group program, and that the program that he should attend should occur in custody regardless on the basis that “his sexual offending risk remains high and it would be high at the point where he goes into the community if he had not already completed the course”.²

[102] Dr Aboud’s view was that if the respondent was simply released to the community on a supervision order the risk of his offending would be “above moderate”, but would not be high because the supervision order would itself moderate the risk. However, the risk would remain “above moderate” because of the respondent’s many risk factors. These include his proclivity to sexually re-offend, his sexual deviance, some psychopathic personality traits, his capacity to deceive others, his emotional congruence with

¹ Transcript 26 November 2018, 1-6135.

² Transcript 26 November 2018, 1-14145 – 1-1511.

children, his propensity to abuse substances and his long-standing polysubstance dependence.³

[103] In her oral evidence Dr Sundin also favoured the “high dosage of the HISOP compared to the MISOP”.⁴ Like Dr Aboud, she thought the respondent might benefit from a substance misuse program such as the Pathways Substance Misuse Program. She also agreed that the HISOP program should be undertaken whilst he was in custody. Dr Sundin explained that he should undertake a treatment program prior to release because otherwise he would be released into the community without having completed any form of treatment program. Without a treatment program prior to release, one would have no information about his likely satisfactory participation level and compliance, and one would be relying, essentially, on the supervision order alone. This was a case in respect of an individual who committed the second round of offending not long after his release from the first period of imprisonment. With those issues in mind, as well as the respondent’s personality pathology and his poor history, Dr Sundin was strongly of the view that the respondent needed to complete a sex offenders’ treatment program in prison before he is released.

[104] Dr Harden, in his oral evidence, expressed the same view. He explained that the respondent should undertake the HISOP. The HISOP would enable him to address some of the issues relating to substance misuse as well. Dr Harden explained that the MISOP is a group program which is not indicated for someone who is high risk, such as the respondent. He noted that the respondent had re-offended rapidly before, had a clear target group, and has a personality disorder, with some psychopathic elements to his personality.

The statutory scheme

[105] The first enquiry is whether or not the respondent is a serious danger to the community in the absence of a Division 3 Order. The statutory test is whether there is an unacceptable risk that the respondent will commit a serious sexual offence if released without a Division 3 order.⁵ That matter must be proven by sufficient cogent evidence, and the Court is required to consider each of the matters stated in s 13(4). If satisfied to the high degree of probability required that, if released without a Division 3 order there is an unacceptable risk that the respondent will commit a “serious sexual offence”, then the second inquiry is as to the kind of s 13 order to be made. In considering these matters, the paramount consideration is to ensure adequate protection of the community.

[106] It is for the applicant to establish that adequate protection of the community cannot be ensured by the adoption of a supervision order.⁶

[107] In considering whether a risk is unacceptable it is necessary to take into account, and balance, the nature of the risk and the degree of likelihood of it eventuating, with the

³ Transcript 26 November 2018, 1-17 ll 30-45.

⁴ Transcript 26 November 2018, 1-20 l 19.

⁵ *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (“The Act”) s 13 (2).

⁶ *Attorney-General for the State of Queensland v Lawrence* [2010] 1 Qd R 505 at [38] – [39]; see also *Yeo v Attorney-General for the State of Queensland* [2012] 1 Qd R 276 at [73].

seriousness of the consequences if the risk eventuates.⁷ There must be a sufficient likelihood of the occurrence of the risk which, when considered in combination with the magnitude of the harm that may result and any other relevant circumstance, makes the risk unacceptable.⁸

[108] A relevant consideration is whether the respondent is likely to comply with the requirements of a supervision order. If the respondent is unlikely to comply with the requirements of a supervision order, and the result of such non-compliance would present an unacceptable risk of the commission of a serious sexual offence, then a supervision order is most unlikely to be made. Ultimately, the Court must be satisfied that adequate protection of the community can be reasonably and practicably ensured by a supervision order. However, this does not entail proof that a supervision order is unlikely to be contravened, even in some trivial way. Many supervision orders contain numerous and exacting requirements which are designed to reduce risk and encourage positive behaviour by the respondent. Non-compliance with a particular provision may not, in itself, signal that the respondent has become an unacceptable risk of committing a serious sexual offence. Instead, it may alert the authorities supervising the respondent to a problem which needs to be addressed. Therefore, whilst I do not have to be satisfied to a high degree that every requirement in the supervision order is likely to be complied with over a period of many years, I have to consider whether the respondent is likely to comply with it.

[109] In summary, the applicant bears the onus of demonstrating that a supervision order affords inadequate protection to the community.⁹ Before a supervision order, rather than a continuing detention order is made, the Court should be satisfied that it will be “efficacious in constraining the respondent’s behaviour by preventing the opportunity for the commission of sexual offences”¹⁰ or, to put it another way, that its likely effect will be to reduce the risk of sexually offending to an “acceptably low level.”¹¹

Disposition

[110] Having regard to each of the matters stated in s 13(4) and, in particular the risk assessments to which I have referred, I am satisfied to the high degree required that the respondent presents an unacceptable risk of committing a serious sexual offence if released from custody without an order being made under s 13. The evidence is cogent and satisfies me to a high degree of probability.

[111] The respondent suffers from a paraphilia, namely hebephilia, being an attraction to pubescent males. The unmodified risk of offending has been assessed by the psychiatrists who prepared reports for the purposes of this application as high.

⁷ *Attorney-General for the State of Queensland v DBJ* [2017] QSC 302 at [13] following *Attorney-General for the State of Queensland v Beattie* [2017] QCA 96 at [19].

⁸ *Nigro v Secretary to the Department of Justice* (2013) 41 VR 359 at [6] cited in *Attorney-General for the State of Queensland v DBJ* [2017] QSC 302 at [14].

⁹ Section 13(7) of the Act; *Attorney-General for the State of Queensland v Lawrence* [2010] 1 Qd R 505 at [28].

¹⁰ *Attorney-General for the State of Queensland v Fardon* [2011] QCA 111 at [29].

¹¹ *Attorney-General for the State of Queensland v Beattie* [2007] QCA 96 at [19].

- [112] The respondent's pattern of offending and the fact that he has not engaged in any sexual offender treatment program places him at a high risk of committing a serious sexual offence. A strict supervision order would reduce the level of risk somewhat. However, his past non-compliance with reporting conditions and lack of treatment provides limited assurance that he would comply with a supervision order sufficiently to reduce the risk of re-offending to an acceptably low level. Moreover, he would need to be subject to effective detention and curfews at a place such as The Precinct and would not receive the benefit of the HISOP group program.
- [113] The evidence is clear that participation in that program will better equip the respondent and those who supervise him upon his release to manage risk. Whilst the respondent retains the support of some family members, he has a limited number of pro-social relationships. As Dr Harden observed, the respondent is "effectively untreated and a recidivist sexual offender with a very rapid period of reinstatement associated probably with substance abuse". The recommendation of each psychiatrist that the respondent undertake the HISOP prior to release from custody was well-explained in their evidence.
- [114] The evidence establishes that the applicant has discharged the onus of demonstrating that a supervision order will not adequately protect the community at this stage. Participation in the HISOP prior to release will assist the respondent to develop insight into the factors which led to his sexual offending in the past and to develop an individualised risk reduction plan, including counselling and treatment in the community.
- [115] The respondent's developing insight into the psychological factors relevant to his offending and the consequences of his offending on his victims should be built upon as soon as possible in a HISOP. Any delay in the respondent receiving the required treatment by way of a HISOP may jeopardise his progress and the objective of community protection.
- [116] In the light of the psychiatric evidence about the need for the respondent to undertake the HISOP prior to release from custody, counsel for the respondent correctly conceded that she could not advance on the state of the evidence a submission for release on supervision at this time.
- [117] The respondent is a serious danger to the community in the absence of a s 13 order. At this time, adequate protection of the community can only be ensured by a continuing detention order under s 13(5)(a) of the Act. The respondent is detained in custody for an indefinite term for control, care or treatment.
- [118] This order is made on the basis that the respondent will be offered a place on the "Getting Started: Preparatory Program" commencing January 2019, and that if he completes it and is willing to participate in the HISOP, a HISOP place will be offered in April 2019.
- [119] It is unfortunate, to say the least, that the respondent was not offered, and did not undertake, sex offender programs in the second half of 2017 and throughout 2018. If he had completed them satisfactorily he might have been paroled in 2018 or subject to a

supervision order in late 2018. Instead, he must be detained in custody for treatment he should have received during his term of imprisonment.

- [120] If he does not receive the treatment which is anticipated in early 2019, then the matter should be listed for review before me or another judge. If, through no fault of the respondent, he is unable to complete a HISOP by late 2019, the matter should be reviewed to consider the early making of a supervision order with intensive, individualised treatment for his needs.
- [121] Given the history of this matter, his annual review should be listed for an early hearing, so that he is released on a supervision order, if appropriate, once he has completed the HISOP.
- [122] If the system had offered the respondent a much-needed HISOP place over the last 18 months and he had completed the program satisfactorily, he probably would have been released in late 2018 on a supervision order. The system having failed the respondent and the community in this way, regrettably he must be detained in custody for treatment.