

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v SRD* [2019] QSC 52

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

FILE NO/S: BS No 6851 of 2018

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 25 February 2019

DELIVERED AT: Brisbane

HEARING DATE: 25 February 2019

JUDGE: Jackson J

ORDER: **The order of the court is that:**

- 1. Pursuant to s 8(2) of the *Supreme Court of Queensland Act 1991* (Qld), any report of today’s proceeding not identify the respondent by name.**
- 2. Access to the court file by any member of the public be restricted until the completion of the trial of the proceedings upon indictment 2938/18 in the District Court at Brisbane.**
- 3. 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 was subject to examination by psychiatrists for the purposes of the application – whether the respondent, if released without a Division 3 Part 2 *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (“the Act”) order, presents

an unacceptable risk of committing a serious sexual offence – whether adequate protection of the community can only be ensured at this time by the making of a continuing detention order under s 13(5)(a) of the Act

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 5, s 8, s 13, s 30

COUNSEL: J Tate for the applicant
C Martinovic for the respondent

SOLICITORS: Crown Law for the applicant
Grasso Searles Romano for the respondent

JACKSON J:

- [1] The Attorney-General applies for an order under Part 2, Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”) that the respondent either be detained in custody for an indefinite term for control, care or treatment or be released from custody subject to the mandatory statutory requirements and the conditions considered appropriate by the court. The applicant’s case is, primarily, that the adequate protection of the community can only be ensured, at this time, by making a continuing detention order.
- [2] The opinions of the expert psychiatrists are that the nature of the respondent’s identified unmodified risk of future, serious sexual recidivism is high with a diagnosis of paedophilia and personality structure disorders.
- [3] At this point the opinions of Dr Phillips, Dr Timmins and Dr Aboud are that the respondent requires a comprehensive risk management intervention, including completion of recommended sexual offender programs prior to further consideration being given to his release into the community under a supervision order.
- [4] For the following reasons I accept those opinions and the applicant’s primary submission.
- [5] The respondent was born on 15 May 1979. He is 39 years of age. He has a significant history of sexual offending. In 2001 he was convicted of offences against four young boys all under the age of 12. He pleaded guilty to each offence and received a head sentence of seven years imprisonment.
- [6] In 2011 the respondent was convicted of two offences of indecent treatment of a child under 16 and received sentences of four years imprisonment for each offence.
- [7] On 17 September 2014 he was found guilty of one count of rape and sentenced to a term of imprisonment of four years and six months, following a long process of trials and appeals that began in 2011 at the time of the indecent treatment convictions.

- [8] The sentencing judge in 2014 considered that a nominal head sentence of eight and a half years' imprisonment would have been appropriate had the rape and two indecent treatment offences been dealt with at the same time. The respondent had then served the four year term imposed in 2011 and was sentenced to a further period of four and a half years' imprisonment. This is the sentence he was serving when this application was filed. The respondents' full time release date was 11 November 2018. He is currently subject to an interim detention order.
- [9] The applicant's primary contentions are that the respondent was convicted of serious sexual offences on 17 September 2014 and, until recently, was serving a period of imprisonment for an offence of a sexual nature with violence.
- [10] Second, the respondent, as a prisoner, is defined by s 5, ss 6 of the Act. When this application was filed he was serving a term of imprisonment for a serious sexual offence which, by the schedule, includes an offence of a sexual nature involving violence or an offence against a child or an offence against a person including a fictitious person representing to the prisoner as a real person whom the prisoner believed to be a child under the age of 16 years.
- [11] Dr Phillips opines that the respondent's psychiatric diagnoses includes:
- (a) paedophilic disorder of a non-exclusive type, attracted to males and females;
 - (b) a vulnerable personal structure characterised by cluster 'B' personality traits: narcissistic, borderline anti-social;
 - (c) an elevated psychopathy score on the PCL-R but below the criteria for formal diagnosis of psychopathy; and
 - (d) cannabis use disorder in remission in a controlled environment.
- [12] Dr Timmins' opinion does not differ substantially from Dr Phillips' as to the respondent's suffering from paedophilic disorder, "not-exclusive type, attracted to males and females... and substance use disorder, mainly cannabis, in sustained remission in a controlled environment." Her preferred categorisation of his personality pathology is a mixed personality disorder; anti-social, narcissistic and borderline personality traits. Dr Timmins' diagnostic formulation differs in that she considers the respondent meets the diagnostic criteria for psychopathy.
- [13] Dr Aboud's opinion does not differ substantially either. From the perspective of psychiatric diagnosis, it is his opinion that the respondent has features consistent with a mixed personality disorder, with borderline anti-social and narcissistic traits. He has significantly misused cannabis in the past and would likely meet criteria for cannabis dependence, currently in enforced abstinence and in his view, the respondent also suffers from paedophilia, where his clear attraction is for boys.
- [14] As to the risk presented by the respondent, Dr Phillips says as follows:
- "Taking into account the results of the above risk assessment tools, it is my opinion that [the respondent's] risk of future sexual re-offending falls in the high range. His risk of physical violence is also in the high range. It is my

opinion that intensive interventions targeting dynamic risk factors for sexual and physical violence, assertive monitoring and environmental restrictions will be necessary to reduce the risk of re-offending.

The risk of sexual re-offending would increase in the setting of increased sexual pre-occupation, rejection of supervision, psychosocial stresses such as relationship breakdowns or perceived rejections, or a lapse to cannabis abuse. He has limited adaptive coping skills to manage psychosocial stresses and would be at risk of emotional collapse and returning to his long standing maladaptive patterns of cannabis use or use of sex as coping in the context of psychosocial stresses. The victim of future offending would likely be a male. Either pre-pubescent or post-pubescent adolescent. Although vulnerable adult males may also be a target. Given the seriousness of the previous sexual offending, including anal – forced anal intercourse against a number of males of varying ages and at least one occasion of use of previous threats of violence, there is the potential for future sexual offending to be of a serious nature.”

[15] Dr Timmins’ opinions are as follows:

“In summary, I am of the opinion that [the respondent’s] risk of sexual reoffending is high if released into the community without a supervision order in place.

He is likely to return to sexual offending in the near future given his history of sexual re-offending after his previous release. This appears to have occurred within 12 months of release from his previous incarceration in 2008.

His history shows that he has difficulties coping in the community and he may return to substance use as a way to cope. He has poor insight into his offending pathway and has no clear ideas of how to manage his emotions or sexual drives, even after completing a sex offender treatment program in 2004.

At some point after release he is likely to offend against a young male child aged from pre-pubescent age upwards. He may use a position of trust and groom the child or offend impulsively. He is likely to use substances in order to gain the child’s compliance. He may resort to rape if the victim is an adolescent or adult. There would be physical and psychological coercion involved in the offending and a high degree of harm to the victim.”

[16] Dr Aboud’s views are as follows:

“In summary, it is my opinion that [the respondent] currently presents a high risk of sexual re-offending and that this risk would be considered manageable in the context of a supervision order once he has completed a substance misuse program and a group sexual offender program. I believe the latter should be completed in custody prior to his release. Should he be made subject to a supervision order I recommend that it be in place for at least 10 years, given his combination of risk factors, vulnerability factors, poor previous record and his relatively young age.

He has poor insight into his offending. He maintains his innocence for his previous and current rape charges. He uses minimisation, rationalisation and externalisation of blame. He has engaged in a short-term substance program and cognitive skills and sex offender programs in the earlier incarceration, which appear to have had little impact on his offending. He has refused to attend any further substance or sex offender programs during this incarceration.

Ideally, he should engage and complete the recommended sex offender programs in custody prior to his release into the community.

There is also a current QCS risk assessment and management plan as discussed in the report prepared by Dr Lars Madsen on 19 December 2018, entitled "Institutional Violence Risk Assessment and Case Formulation Report".

- [17] The Attorney-General submits that the respondent clearly represents a serious danger to the community in the absence of a Division 3 order and that the respondent's risk of serious sexual reoffending is unacceptable. She submits that in considering whether to impose a Division 3 order, the paramount consideration is to ensure the adequate protection of the community, having regard to the factors set out in s 13(4) of the Act.
- [18] She relies on the psychiatrists' comments on the risk reduction that flows from the imposition of a supervision order under Division 3 of the Act. In Dr Phillips' opinion, the respondent will require comprehensive risk management interventions prior to it being clinically appropriate that he be managed in the community. For Dr Timmins, ideally, he should engage and complete the recommended sex offender programs in custody, prior to his release into the community and as I have already said, in Dr Aboud's opinion, ideally, he should engage and complete the recommended sex offender programs prior to release.
- [19] The respondent's relevant criminal history is set out in a table, which I will not read out now, but will include in the revised reasons:

Date	Description of Offence	Sentence
District Court Brisbane 03/04/2001	<ul style="list-style-type: none"> • Indecent treatment of a child (under 12) • 2 x Unlawful sodomy of a child (under 12) • Unlawful sodomy of a person under 18 • Indecent treatment of a child (under 12) • 3 x Indecent treatment of a child under 16 • Fraud • Unlawful use of a motor vehicle dangerous operation of a motor vehicle • Burglary 	Conviction recorded 3 years imprisonment On all charges: Conviction recorded 7 years imprisonment On all charges: Conviction recorded 3 years imprisonment On all charges: Conviction recorded 12 months imprisonment Disqualified from holding a driver's licence for 6 months Conviction recorded 12 months imprisonment

	<ul style="list-style-type: none"> • Fraud with a circumstance of aggravation (over \$5000) • Breach of Probation Order imposed on 20/06/97 (re: UUMV with circumstance of aggravation, 2 x UUMV, wilful set fire to motor vehicle, stealing) • Breach of Suspended Sentence imposed on 06/05/97 (re: 2 x breach of bail, found in yard without lawful excuse, possession of dangerous drug, UUMV, 2 x stealing) <p>Summary offences dealt with under s651:</p> <ul style="list-style-type: none"> • Fail to appear • 2 x Unlicensed driving • Stating false name/address 	<p>Conviction recorded 2 years imprisonment Breach proven Convicted and not further punished</p> <p>Breach proven Ordered to serve the whole of the suspended period of imprisonment, namely 4 months</p> <p>Convicted and not further punished</p> <p>Eligible for parole after serving 3 years imprisonment</p>
District Court Bundaberg 16/09/2011	<ul style="list-style-type: none"> • Indecent treatment of a child • Indecent treatment of a child in care • Possess utensils • Unauthorised dealing with shop goods 	<p>On each charge: Conviction recorded 4 years imprisonment Conviction recorded 2 months imprisonment Convicted and not further punished. All terms of imprisonment to be served concurrently 490 days presentence custody declared as time already served</p>
District Court Brisbane 17/09/2014	<ul style="list-style-type: none"> • Rape 	<p>Conviction recorded 4 years 6 months imprisonment Parole eligibility date fixed at 17/09/2014</p>

[20] They include the convictions which were recorded on 3 April 2001 and those relating to the indecent treatment of a child and indecent treatment of a child, in care, in the District Court at Bundaberg on 16 September 2011, plus some other minor convictions and the conviction recorded on 17 September 2014, in the District Court at Brisbane, of the offence of rape that I have already mentioned.

[21] The Attorney-General submits the respondent's longitudinal pattern of offending demonstrates a significant and high-risk of future reoffending.

[22] The respondent's relevant criminal history began in 1996 when he was a child, aged 16, and continued throughout his life and continues and includes further unresolved charges of a sick, sexual nature, allegedly committed during his current incarceration.

[23] The respondent's criminal history also discloses an extensive record of breaches of bail undertakings and probation orders and other offences, which are not related to sexual offending.

- [24] As to the sexual offences, the respondent pleaded guilty, as I have mentioned, on 3 April 2001, to counts on two indictments, charging him with sexual offences committed against four young boys.
- [25] The respondent was then 19 to 20 years of age when he committed the offending. One of the victims was a young male, identified as QC, aged 11, known to the respondent through his older sister. On the night of the offence, the victim was asleep on a mattress in the lounge room of a family home. His sister arrived home at about 3:00AM with the respondent and another friend. They went to sleep on single mattresses on either side of the victim. The victim woke during the night to the respondent trying to pull down his pants. He attempted to move away, but the respondent succeeded in rubbing his hands between the victim's buttocks on the outside of his shorts. The victim moved further away before going to the bathroom. At the time, he attempted to tell his mother, but she was too drowsy. After the respondent left the following morning, the victim disclosed the offending to his mother, who had a vague recollection of being told by the victim that the respondent touched him on the bottom.
- [26] There were three other male victims in the 2001 convictions, identified as SC, PC and MA. SC was seven years old, PC was eight or nine years old, and MA was 12 years old. The respondent was involved with a cultural centre that travelled to schools, teaching young Aboriginal children traditional dance. It was through this association that the respondent befriended the victims. On each occasion, the respondent was in a position of trust when the victim was in his care.
- [27] The offending towards SC occurred in early 1999. He had gone to the respondent's house to play with a friend. While his friend slept, the respondent took him to his bedroom and sodomised him. The pain made the victim cry. The respondent threatened to hurt the victim with his killer boomerang if he told his mother. The victim left and ran home. A second offence against SC occurred sometime around February 1999, when he went to the respondent's house with his brother, PC. While playing a Nintendo wrestling game, the respondent touched the victim in the genital area.
- [28] During the course of the game, the respondent offended against PC. He pulled the victim onto the bed and sodomised him as well.
- [29] The first offence towards MA occurred sometime between January and July 1999, at the respondent's house. The offending involved the respondent masturbating the victim, despite resistance, until he ejaculated. The remaining offences all arise from the same incident on 19 September 1999. On this occasion, the respondent had pre-arranged for the victim to stay at his house on the pretence that he was going to take the victim and others to Stradbroke Island for an Aboriginal cultural dancing weekend. After being dropped at the respondent's house on 18 September 1999, the respondent took the victim to Lake Manchester for a swim. They slept that night in the rear of the respondent's van. The victim woke during the night to the respondent masturbating him and giving him oral sex. The respondent instructed the victim to perform oral sex on him. The respondent then sodomised the victim before masturbating the victim until he ejaculated. The victim fell asleep after the incident. The following morning, while showering, the respondent instructed the victim to wash him. The victim called his

mother and had been instructed by the respondent to tell her that they were staying at another address. He eventually disclosed the offending to his mother on 23 September 1999. SC and PC made a complaint to police after the offending towards MA.

- [30] When interviewed, the respondent made general admissions but denied the specific particulars for each of the offences.
- [31] In sentencing the respondent, the District Court judge noted the serious breach of trust involved in the offending.
- [32] The 2011 and 2014 convictions for relevant sexual offences have a lengthy history through the criminal justice system. The offending was alleged to have occurred between 2008 and 2009.
- [33] On 16 September 2011, the respondent pleaded guilty to counts on two indictments, charging him with sexual offences against two young males, identified as CR and DB. The other alleged victim was another young male, JR. It is unnecessary to recount the full history of the proceedings brought against the respondent, in respect of JR.
- [34] CR was a 14 year old male who had known the respondent for about two weeks before the sexual conduct occurred on 13 January 2009. At the time, the respondent was staying with the victim and his family. The offending involved the respondent massaging the victim's bottom and penis, during a back massage. This conduct lasted for about five seconds before the victim said he needed to go to the toilet. He subsequently told his mother.
- [35] During the offences that are the subject of the 2011 and 2014 convictions, the respondent was a reportable offender.
- [36] DB was a 14 year old male. On 11 May 2010, he was to stay over at the respondent's house with a friend. The victim was awoken at 2:30AM when he felt his penis being touched. The respondent was masturbating him under his pants. The victim thought he was dreaming but realised that he was awake, and he became scared. The offending ceased when the victim got up and went to the toilet.
- [37] The respondent admitted to this offending during a police interview. He stated that he had an urge to make the victim's penis erect, so masturbated him for about 10 to 15 minutes. He knew that the conduct was wrong and at that time, he was on bail for the alleged offending committed against JR, that I will mention below.
- [38] In sentencing the respondent for the offences committed towards CR and DB, the judge noted that whilst in custody for the 2001 convictions, the respondent participated in a sexual offender program and remarked that:
- “Clearly that course did not change your perverted attitude to sexual matters. In my view, you represent a significant danger to young males in particular, and you probably are a genuine paedophile.”

- [39] On 12 August 2014, a fresh indictment was presented charging the respondent with a single count of rape alleged to have occurred between 1 June 2008 and 9 April 2009, against JR. JR was a 17-year-old male. The respondent was found guilty and sentenced on 17 September 2014.
- [40] The offending occurred shortly after they – that is, the respondent and JR – met and in the bedroom they were sharing. On the night of the offence, the victim woke to find the respondent lying on his back and restraining his hands. He removed the victim’s pants and rubbed his penis against the victim’s bottom in order to achieve erection. He lubricated his penis before sodomising the victim until he ejaculated. After he pulled his penis out, he used his clothes to clean the victim’s anus and his own penis. The victim knew the respondent was a professional boxer and was scared. He was threatened by the respondent not to tell anyone about the incident, otherwise he would get hurt. The victim went back to sleep and the following morning, had a shower and went to school. He and the respondent continued to share a room.
- [41] When interviewed by police, the respondent stated that he had only been in a consensual sexual relationship with the victim once he was over the age of 18. He admitted to staying in the same room as the victim but denied ever being in the same bed as him.
- [42] When sentencing the respondent, the District Court judge remarked that:
- “The offending was opportunistic, protractive and forceful. The victim had been homeless and was a vulnerable person.”
- [43] The judge noted the respondent’s history of sexual offending and that this offence was not an isolated aberration. She said:
- “You pose a risk to the safety of vulnerable members of the community.”
- [44] In determining the appropriate sentence for the offence, the judge considered the effect of the sentence imposed on 16 September 2011, with respect to CR and DB, stating as follows:
- “You interfered with the boys as I said, in the same time period under consideration for the rape. The total period of imprisonment for those combining offences will be unbroken, effectively a cumulative sentence. Therefore, totality is an issue. The combined sentence for the acts against the boys and the rape of J must be proportionate to the combined level of offending. Normally, I would identify a sentence in the order of six to seven years imprisonment. To that must be factored in the offending against the masturbation of the two boys. A proportionate response would be a sentence in the order of eight and a half years, taking into account the four years already served. That means today, the sentence will be four and a half years imprisonment.”
- [45] Whilst in custody, up to the present time, the respondent has been charged with five offences of stupefying in order to convict an indictable offence and five offences of rape. The offending is alleged to have occurred on 19, 20, 21 and twice on 22 March

2017. The alleged victim was the respondent's cell mate. However, these charges have not been dealt with and do not form a basis for any finding under the terms of the Act on this application.

[46] On 9 November 2018, the respondent was referred to Dr Lars Madsen by the QCS state wide manager of the serious offender's unit following his placement in the maximum-security unit, as a result of two alleged sexual assault incidents, firstly, that I have mentioned and another on 13 September 2018.

[47] Dr Madsen prepared a comprehensive risk assessment report and institutional management plan dated 19 December 2018. Dr Madsen provided this clinical information within an institutional setting:

“[The prisoner] refused to answer specific questions regarding the reasons and historical allegations and charges against him for sexually abusive behaviour. He also appeared evasive or vague, with regard to his personal history and seemed to hold the view that there was some type of conspiracy against him to keep him in custody. He did not consider himself a risk of reoffending, described unrealistic future goals and seemed remarkably calm considering his current predicament. As regards to his institutional conduct more generally, the [prisoner's] behaviour is largely unexceptional, with only a small number of adverse incidents recorded in his current custodial episode.

Of concern, however, are the number of allegations relating to him sexually abusing other prisoners. Without his cooperation, it is obviously difficult to make sense of these incidents and prior charges and convictions in terms of his thinking and/or decision-making processes. On the face of it however, if the allegations are considered to have occurred and taking into account prior charges and convictions, it indicates that the prisoner has engaged in sexually abusive behaviour dating back to about 2008 or 2009 and continued.

His victims have all been male and included adolescents and adults. He appears to have exploited opportunities to offend through a process whereby he firstly isolates the victim and then uses intimidation, threats of violence and occasionally drugs to gain their compliance. The more recent reported incidences suggest the behaviour has been, at times, frequent...”

[48] I mention these observations and considerations not to directly rely upon the report referred to but to indicate its contents, which was shown to the reporting psychiatrists for the purpose of this application. However, I do not consider that the report in any way invalidly affects the opinions of the other reporting psychiatrists.

[49] As for those reports, Dr Phillips' report was prepared on instructions from Crown Law to assess the respondent's risk of sexual recidivism, in relation to the present application, which was then being contemplated. Dr Phillips undertook an examination and interviewed the respondent on 30 January 2018 at the Capricornia Correctional Centre. The report is based on the interview, as well as the respondent's criminal history, extracts from the files of the Office of the Director of Public Prosecutions and

Queensland Corrective Services and transcripts of relevant proceedings. Dr Phillips provided a comprehensive account, detailing the respondent's psychological and psychiatric history, sentencing comments, prison conduct, family history, education and vocation history, social history, sexual history, the offences, the respondent's participation in treatment programs and his plans upon release. Those factors informed her assessment of the respondent's risk of sexual recidivism.

- [50] Dr Phillips' diagnoses of the respondent was that he is suffering from paedophilic disorder, non-exclusive type, attracted to males and females, vulnerable personality structure characterised by cluster B personality traits, borderline antisocial and narcissistic traits, an elevated psychopathy score on the PCL-R but below the criteria for formal diagnosis and cannabis use disorder and remission in a controlled environment, as I set out earlier in these reasons. Her assessment was made by reference to a number of the risk assessment tools shown to have validity in the prediction of sexual recidivism, with the following results:
- (a) Static 99-R, the respondent scored eight, placing him in the high-risk category for sexual reoffending;
 - (b) Risk of Sexual Violence Protocol ("RSVP"), the respondent is at high risk of sexual reoffending;
 - (c) Historical Clinical Risk HCR-20, rates him in the high range for future physically violent reoffending; and
 - (d) Hare Psychopathy Checklist PCL-R, the respondent's score was elevated but below the criteria for a formal diagnosis of psychopathy.
- [51] On the question of risk, Dr Phillips opined as previously stated.
- [52] Given the seriousness of previous sexual offending, including forced anal intercourse against a number of males of varying ages and, at least one occasion of use of previous threats of violence, there is potential for future sexual offending to be of a serious nature as I previously indicated in these reasons.
- [53] Dr Phillips continued as follows:
- "From a diagnostic perspective, the respondent meets the criteria for a diagnosis of paedophilic disorder, nonexclusive type, attracted to males and females. He describes a long history of recurrent intense sexually arousing fantasies, urges and behaviours involving sexual activity with prepubescent children. He has disclosed these previous sexually deviant thoughts during my assessment, during his previous engagement in the sexual offender treatment program in 2004, and also during a previous police interview in May 2010. While at my assessment, the respondent forwarded that he has not experienced any sexually deviant thoughts involving children, but in the previous two to three years, it is considered that this is unlikely given the chronic nature of the paedophilic disorder. Even if the thoughts are in abeyance at present in custody, there is the high likelihood they would recur in the future, given the natural history of the condition and the respondent's

refusal to engage in any sexual offender treatment program during the current incarceration.”

- [54] At the preliminary hearing on 31 July 2018, Dr Timmins was appointed by the Court under s 8 to undertake a risk assessment in relation to the respondent. Dr Timmins assessed the respondent on 15 August 2018 at the Brisbane Correctional Centre and reported on 19 September 2018. I have previously set out her diagnosis.
- [55] Dr Timmins’ actuarial assessment was made of the respondent on a number of the risk assessment tools. Her results were consistent with those achieved by Dr Phillips. Dr Timmins continued that she considered the respondent to have positive scores for the following relevant items (for the risk of sexual violence protocol): chronicity of sexual violence, perversity of sexual violence, escalation of sexual violence, physical coercion and sexual violence, psychological coercion and sexual violence, extreme minimisation and denial of sexual violence, attitudes that support or condone sexual violence, problems with stress or coping, problems with self-awareness, sexual deviance, psychopathic personality disorder, problems with intimate relationships, problems with non-intimate relationships, problems with employment, non-sexual criminality, problems with planning, problems with treatment and problems with supervision. In her opinion, he had partial scores for problems resulting from child abuse and problems with substance abuse. However, he did not have evidence of major mental illness or violent or suicidal ideation.
- [56] Dr Timmins’ opinions on the question of risk are broadly consistent with those of Dr Phillips. Included in her views, she said as follows:
- “In summary, I am of the opinion that the respondent’s risk of sexual reoffending is high if released into the community without a supervision order in place. He is likely to return to sexual offending in the near future, given his history of sexual reoffending after his previous release. This appears to have occurred within 12 months of release from the previous incarceration in 2008. His history shows that he has difficulties coping in the community and he may return to substance use as a way to cope. He has poor insight into offending pathways and he has no clear idea of how to manage his emotions or sexual drives, even after completing a sex offender treatment program in 2004.”
- [57] Also, at the preliminary hearing on 31 July 2018, Dr Aboud was appointed by the Court under s 8 to undertake a risk assessment of the respondent. His summary opinion has already been set out above. Dr Aboud’s diagnostic formulation is consistent with the clinical opinion provided by Dr Phillips and Dr Timmins. Dr Aboud diagnoses paedophilia where his clear attraction is for boys, mixed personality disorder with borderline antisocial and narcissistic traits and cannabis dependence, currently in enforced abstinence.
- [58] Dr Aboud assessed the respondent on a number of the risk assessment instruments with the following results:

- (a) Static 99-R, the respondent scored 7, placing him at the high risk category of reoffending;
- (b) Risk matrix 2000/S, the respondent scored for step 1 with three aggravating factors, for step 2, he has placed in the high risk group for reoffending;
- (c) Risk matrix 200/V, the respondent scored 3, placing him at medium risk of violent reoffending;
- (d) SOC psychopathy checklist PCL-R, the respondent scored 22 out of 38, falling below the clinical cut-off for a formal diagnosis;
- (e) HCR-20, the respondent scored 17 out of 20 for historical items, 6 out of 10 for clinical items and 9 out of 10 for risk management items, a total of 17 out of 20.

from which, Dr Aboud considered the respondent's overall risk to be high with an obvious static loading and clear errors of concern pertaining to risk management items, indicating the need for support and supervision in the community.

[59] As for the risk of sexual violence protocol, Dr Aboud noted on that instrument that he considered the respondent to have positive scores for the list of items, broadly corresponding to those assessed by Dr Timmins.

[60] On the question of risk, Dr Aboud says:

“Taking into consideration the various instruments used to assess risk, it is my view that [the respondent's] overall unmodified risk of sexual offending would currently be regarded as high. His risk of nonsexual violence would be moderate, in my opinion, while his risk of general offending would be high. I take into account his antisocial and impulsive personality structure, his worrying psychopathic traits, his vulnerability to poor adaptive coping whereby he uses substances, avoidance, isolation and sexual preoccupation, his sexual deviance, his intimacy deficits and emotional congruence with boys, his deceptive and manipulative self-presentation that has allowed him to win the confidence of others including, potentially, professionals. One is also aware that he has breached criminal justice orders in the past and he has sexually offended when subject to a criminal justice order. He has demonstrated significant minimisation and denial, lack of self-awareness and a rather manipulative and deceptive interpersonal style. His current future plans are not well considered, and his self-appraisal of risk is unrealistic.”

[61] The first question to be decided 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 prisoner will commit a serious sexual offence if released without a Division 3 order. The psychiatric assessments undertaken, plus the history, indicate the respondent's unmodified risk of serious sexual re-offence without a Division 3 order is at the high range for Dr Phillips, Dr Timmins, and Dr Aboud.

[62] There is sufficient cogent evidence, considering the matters required to be taken into account under s 13(4) of the Act, to satisfy me to the high degree of probability

necessary that if released without a Division 3 order, the respondent presents an unacceptable risk of committing a serious sexual offence as defined by the Act.

- [63] There are no factors which would cause the court to permit the unsupervised release of the respondent in the present case. This is not one where the protection of the community would be assured by the court exercising its discretion to make no order.
- [64] The second question for the court in the Division 3 context is what form of order should be made under s 13 of the Act. The order that is to be made must be made having regard to the paramount statutory consideration to ensure adequate protection of the community. The applicant bears the onus of demonstrating that in a continuing case, a supervision order affords inadequate protection to the community.
- [65] The ongoing treatment and management of the respondent, whether in jail or in the community, was discussed in the reports of Dr Phillips, Dr Timmins, and Dr Madsen. The views they expressed assume some importance in this case given the respondent's paedophilia, psychopathy, pathological personality structure, and his refusal, in 2016 at least, to undertake available sexual offender programs.
- [66] Dr Phillips says this:

“The respondent will require comprehensive risk management interventions prior to it being clinically appropriate that he be managed in the community. The respondent would benefit from engagement in a high-intensity sexual offender treatment program.

It is noted that the group sexual offender programs do not address sexual deviance, and therefore, in addition to a group program, the respondent would also benefit from individual psychological interventions targeting sexual deviance from a forensic psychiatrist with experience in managing sexual offenders. He would benefit from further psychological interventions targeting adaptive coping mechanisms, problem-solving, affect regulation, and relapse prevention planning.

From a clinical perspective, it may be appropriate for the respondent to consider augmentation of psychological interventions with biological interventions aimed at reducing the risk of sexual reoffending prior to his unsupervised release to the community.”

- [67] Dr Timmins expressed the following views, among others:

“He has poor insight into his offending. He maintains his innocence for his previous and current rape charges. He uses minimisation, rationalisation and externalisation of blame. He has engaged in a short-term substance program, cognitive skills and sex offender programs in the earlier incarceration which appeared to have little impact on his offending. He has refused to attend any further substance or sex offender programs during his incarceration.

Ideally, he should engage and complete the recommended sex offender programs in custody prior to his release into the community. His risk may be modified by a community supervision order under the Act. He would most likely fall into the moderate to high risk category.

The respondent is a relatively young man and has a long history of sexual offending, difficult personality structure, chaotic lifestyle and poor insight into his sexual offending. It is likely to take a considerable period of time to learn how to manage himself more appropriately such that his risk towards the community is lowered further.”

- [68] The index offences, the clinical opinions of the reporting psychiatrists and the longitudinal evidence provide acceptable and cogent evidence of sufficient weight to justify the imposition of an order under Part 2, Division 3 of the Act. The clear clinical opinions of Dr Phillips, Dr Timmins, and Dr Aboud are that the respondent’s release to the community under a supervision order is not clinically indicated to ensure the adequate protection of the community.
- [69] In my view, in this case the adequate protection of the community can only be ensured at this time by the making of a continuing detention order under s 13(5)(a) of the Act.
- [70] I will make an order in terms of the draft, which is that pursuant to s 13(5)(a) of the Act, the respondent be detained in custody for an indefinite term for control, care, or treatment.