

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Hunter*
[2019] QSC 64

PARTIES: **Attorney-General for the State of Queensland**
(Applicant)
v
Benjamin Anthony-Lee Hunter
(Respondent)

FILE NO/S: BS No 9584 of 2016

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 18 March 2019

DELIVERED AT: Brisbane

HEARING DATE: 18 March 2019

JUDGE: Lyons SJA

ORDER: **The court, being satisfied to the requisite standard that the respondent, Benjamin Anthony-Lee Hunter, has contravened the requirements of the supervision order made by Justice Douglas on 6 March 2017 and as amended by Justice Davis on 18 May 2018 orders that:**

- 1. The respondent continue to be subject to the supervision order made by Justice Douglas on 6 March 2017, and as amended by Justice Davis on 18 May 2018.**

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 a supervision order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* – where the respondent has contravened a condition of that order by consuming a non-prescription medication - where the proceedings were brought under Division 5 of Part 2 of the Act - where the respondent has been assessed by psychiatrists – whether the adequate protection of the community can be ensured by the existing supervision order

*Dangerous Prisoners (Sexual Offenders) Act 2003, s 13, s 22,
s 27*

COUNSEL: B Mumford for the Applicant
J Benjamin for the Respondent

SOLICITORS: Crown Solicitor for the Applicant
Legal Aid Queensland for the Respondent

This Application

- [1] The respondent is currently subject to a supervision order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* ("the Act"). He was initially released on a supervision order of 10 years duration by Douglas J on 6 March 2017. That was amended by Davis J on 18 May 2018 after contravention proceedings were heard on 14 May 2018.
- [2] The current application is brought pursuant to Division 5 of Part 2 of the Act. The Attorney-General seeks orders that the orders of Douglas J and Davis J be amended to require the respondent be detained in custody for an indefinite term for control, care or treatment pursuant to s 22(2)(a) of the Act or in the alternative, pursuant to s 27(7) he be released on a supervision order subject to such amended conditions as the court considers appropriate.
- [3] It is alleged that the applicant has contravened Requirement (22) of the supervision order which requires that he abstain from the consumption of alcohol and illicit drugs for the duration of the order and Requirement (25) which provides he can only take prescription drugs prescribed by and at the dosage and frequency directed by his general practitioner or other specialist.
- [4] The respondent concedes he has contravened Requirement 25 and the contravention of Requirement 22 is no longer pursued by the Attorney General.
- [5] Pursuant to s 22(2) of the Act the onus now falls on the respondent to satisfy the Court, on the balance of probabilities, that the adequate protection of the community can be ensured by the existing supervision order, despite the contravention of the existing order. Section 22 is in the following terms;

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

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

- (a) if the [existing order](#) is a supervision order, rescind it and make a continuing detention order; or
- (b) if the [existing order](#) is an interim supervision order, rescind it and make an order that the released prisoner be detained in custody for the period stated in the order.

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

- (a) act on any evidence before it or that was before the court when the [existing order](#) was made;
- (b) make any order necessary to enable evidence of a kind mentioned in section 13(4) to be brought before it, including, for example, an order—
 - (i) in the nature of a risk assessment order, subject to the restriction under section 8(2); or
 - (ii) for the revision of a report about the released prisoner produced under section 8A ;
- (c) consider any further report or revised report in the nature of a report of a type mentioned in section 8A .

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

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

- (6) For applying section 11 to the preparation of the report—
 - (a) section 11 (2) applies with the necessary changes; and
 - (b) section 11 (3) only applies to the extent that a report or information mentioned in the subsection has not previously been given to the psychiatrist.

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

- (a) must amend the [existing order](#) to include all of the requirements under section 16 (1) if the order does not already include all of those requirements; and
- (b) may otherwise amend the [existing order](#) in a way the court considers appropriate—
 - (i) to ensure adequate protection of the community; or
 - (ii) for the prisoner’s rehabilitation or care or treatment.

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

- [6] The respondent was examined by two psychiatrists for the purposes of the hearing. Dr Josephine Sundin has prepared a report dated 17 January 2019 and Dr Andrew Aboud has prepared a report dated 25 February 2019.

Background

- [7] On 7 August 2009 the respondent pleaded guilty in the District Court Rockhampton to one count of grievous bodily harm with intent to do grievous bodily harm, one count of rape and one count of attempted rape. All of those offences occurred on 29 February 2008. He was 20 at the time of the offences and 20 at the time of sentence. He was subject to a head sentence of nine years imprisonment and a serious violence offence declaration was made in relation to the grievous bodily harm count and the rape.
- [8] The complainant had been found unconscious in a carpark. She had an intracerebral haemorrhage and bleeding on the brain, spinal fractures at C6, C7 and T1, a fractured hyoid bone, laceration about the right eye, a haematoma of the right pinna and bilateral periorbital haematoma. She also had significant bruising to the face and neck as well as lacerations to her labia and vaginal injuries. She was in intensive care for three days and then hospitalised for a further two weeks. The fracture of the hyoid bone could only have been caused by severe compression to the throat.

- [9] When initially spoken to, the respondent completely denied he had been involved in the matter and lied about his own injuries. In his third and final interview which was some eight hours after the initial interview, the respondent admitted some knowledge of the attack.

The history of the respondent's contraventions

- [10] The respondent had previously contravened the supervision order after his initial release on 17 March 2017 and was returned to custody on 21 September 2017 for possession of methylamphetamine, possessing a laptop computer without permission and possessing a mobile phone without permission as well as devices to access Facebook and other social media dating sites. He also faced further charges of possessing dangerous drugs in respect of the methylamphetamine and driving without due care and attention and failing to leave particulars in relation to a motor vehicle crash where he hit a fence and then drove away. He was ultimately sentenced in the Richlands Magistrates Court for those offences. Contravention proceedings were initiated and he was released on 18 May 2018 subject to an amended supervision order.
- [11] On 17 November 2018 the respondent provided a urine sample for analysis which was positive to morphine and buprenorphine. Whilst he denied using illicit or non-prescription medication, he stated he had used Suboxone.
- [12] On 22 November 2018 results from the Sullivan Nicolaides Laboratory indicated that the urine sample contained Buprenorphine at a level of 171 ug/L – the Australian cut off is 2ug/L, as well as Pregabalin at a level greater than 10,000 ug/L, the Australian cut off is 150 ug/L. The respondent is not prescribed any medication consistent with the results in the urine sample.
- [13] A warrant was issued by a Magistrate pursuant to s 20 of the Act and the respondent has been detained in custody since 26 November 2018.

Psychiatrists' reports

Dr Josephine Sundin

- [14] Dr Sundin also prepared a report which is dated 17 January 2019. Dr Sundin noted the history of substance abuse and criminal history as well as past history of transient insecure lifestyle and escalating abuse of alcohol and cannabis. She considered he has a pre-existing pattern of aggressive behaviour which has been present since middle childhood. She has made an earlier diagnosis of a substance use disorder together with an anti-social personality disorder with elevated scores for psychopathy. She did not consider there was evidence of paraphilia or that he had features consistent with post-traumatic stress disorder.
- [15] Dr Sundin considered the respondent's risk for sexual recidivism was moderate to high as was the risk for violent recidivism. Dr Sundin considered that a sexual assault was most likely to occur in a setting where the respondent had decompensated and regressed back into alcohol abuse or abuse of prescription medications for illicit substances. She considered that the resumption of substance abuse was likely to flag a decompensation and increasing risk for serious sexual offences. She noted the previous breach where he

tested positive for methylamphetamine as well as very high levels of tramadol above the therapeutic range.

- [16] Dr Sundin noted his regular attendances with Dr Nick Smith, a psychologist in 2018 as well as his referral to Dr Greg Appel, a specialist in addiction psychiatry. His general practitioner was Dr Andrews who noted that he had a medical history of rheumatoid arthritis. Dr Sundin noted the history of difficulties the respondent experienced towards the end of 2018 particularly with officers who were managing him and he was formally given notices of contravention in relation to his failure to abide particularly by curfew conditions. The respondent was ultimately placed on the Suboxone program and attended the Ipswich Dosing Clinic regularly through 2018. She also noted concerns that he had formed a relationship via attendance at this clinic with a known female offender. It was considered that she was negatively impacting his progression towards a pro-social lifestyle and handicapping his capacity to remain abstinent from substance use. He also drove a vehicle without disclosing the registration details to his supervising officers.
- [17] Dr Sundin also had regard to the report of Dr Smith who noted he had been placed on Subutex under the care of Dr Appel in an effort to try and better manage his cravings in the community. He considered that the respondent identified a lack of capacity to say no to substances when offered them. Dr Smith considered that the respondent was genuinely attentive and engaged with their sessions and that there had been a number of emotional and situational difficulties that had contributed to the respondent's relapse into substance abuse. Dr Sundin concluded that the respondent's risk of recidivism had not been substantially altered because he had been in the community for too short a period for that to be manifested. She therefore considered that her previous opinions in relation to assessments stand and she considers that the respondent's risk for future sexual recidivism remains moderate to high.
- [18] Dr Sundin stated that in her opinion the respondent's pattern of "violations, breaches and resumption of substance misuse whilst in the community in this most recent period is entirely consistent with his personality disorder. She considers it reflects his proclivity to regress into abusive substances at times of emotional difficulties" and that his response to supervision reflected his poor frustration tolerance and his view that he should be progressed more rapidly through the curfew phases which was consistent with entitled attitudes which were inherent within his personality structure.
- [19] She noted that the significant efforts that Drs Smith, Appel and Andrews as well as his supervising case managers had made. They were yielding some results. Overall, Dr Sundin considered that her clinical impression was that the supervision order had been serving its purpose in adequately providing protection to the community however she considered that the respondent was likely to be a "frequent flyer" through the system by way of likely violations until he matures and gains greater insight.
- [20] Dr Sundin concluded however that the respondent could be returned to the community under the existing supervision order.

Dr Andrew Aboud

- [21] Dr Andrew Aboud stated that the index offences were committed in the context of alcohol and substance abuse and also in the context of displaced anger. Prior to his

initial release from custody, he had completed the Getting Started Preparatory Program in 2004, and the High Intensity Sexual Offender program in 2016.

- [22] Dr Aboud noted that the respondent had a prejudicial childhood and developmental history and that he had suffered childhood behavioural problems consistent with diagnosis of conduct disorder. He was an early on-set substance abuser and criminal offender and accrued convictions as an adolescent and spent time in juvenile detention. Dr Aboud considers his substance abuse is a long-standing problem.
- [23] Dr Aboud considers that the respondent meets the criteria for a diagnosis of mixed personality disorder (with predominantly anti-social and borderline traits) and polysubstance dependence noting prior daily cannabis and regular use of amphetamine, opiates and sedatives together with binge drinking of alcohol. He also considers there is the possibility of gender identity disorder as well as a concern about some sadistic elements associated with the index offence and the possibility that there is some sexual sadism.
- [24] In terms of the instruments which are used to underpin the assessment of reoffending risk, Dr Aboud stated that essentially the assessments remain unchanged and noting that the actuarial assessments of sexual recidivism such as STATIC-99R and Risk Matrix 2000 indicate that he represents a high risk. He also considers that the dynamic assessments, such as components of the HCR-20 and the RSVP also indicate his risk is high. Overall he considered that taking into consideration the various actuarial and dynamic assessments of future violence and sexual violence risks that have been applied, the respondent's overall risk "would currently be high in respect of sexual violence and moderate in respect of general (non-sexual) violence".
- [25] In Dr Aboud's view the most worrying aspects of his offending behaviour includes anti-social personality structure, his psychopathic traits, his broad psycho-social difficulties, his significant history of alcohol and substance abuse and the ongoing underlying gender identity confusion and conflict. He also noted his long-standing maladaptive coping style and his complex anger issues. Reference was also made to the sadistic elements of the respondent's behaviour and to his "displaced aggression, his impulse discharge of that aggression and the use of extreme and unnecessary physical violence that fractured his victim's vertebrae (among other injuries) and could well have killed her."
- [26] Dr Aboud stated that it is of concern that he has previously misused substance while in custody and previously breached his supervision order by injecting methylamphetamine. He has now again breached the order by consuming a non-prescription medication, Pregabalin and prior to that an illicit drug, cannabis.
- [27] Dr Aboud considered that when he was returned to custody on 23 November 2018 his risk of re-offending was escalating and the early warning signs such as substance misuse, general hostility and non-compliance with conditions had become evident. He considered that he was struggling with the necessary restrictions that have been placed on him and was pursuing antagonistic and subversive behaviour. Dr Aboud noted the positive relationship with his counsellor Dr Smith who appears to have a sound understanding of his vulnerabilities and risks.

- [28] Dr Aboud considered that whilst he was clearly engaged in a range of worrying behaviours, in his opinion his risk of re-offending would again be reduced to below moderate in the context of a supervision order.
- [29] Dr Aboud considered that if he was to be released to the community he should be closely monitored and supervised, be housed at the precinct accommodation in the first instance and that he continue to be attended to by a psychologist who could assist with adaptive coping and problem solving skills. He also considered there needed to be a further exploration of his gender identity issues and anger management, impulse control problems as well as obtaining motivational support to remain abstinent from substances. He also considered that the respondent should remain abstinent from alcohol, illicit drugs and prescribed drugs that might cause him to become disinhibited and that random drug testing should be employed. He stated that it would be important for him to find employment and to broaden his personal support network including re-kindling relationships with his family.

Has the respondent satisfied the onus?

- [30] Section 22 provides that once a contravention is proved, the Court shall rescind the supervision order and make a continuing detention order unless the prisoner satisfies the Court that their continuation on supervision in the community will ensure the adequate protection of the community. The term “the adequate protection of the community” in s 22(7) has the same meaning as it bears in s 13 of the Act and a prisoner facing an application under s 22 must prove that the supervision order will ensure adequate protection of the community by removing unacceptable risk that they will commit a serious sexual offence.
- [31] The issue under s 22 of the Act is not whether there is an unacceptable risk that the respondent will breach the supervision order in the future but whether there is an unacceptable risk that he will commit a serious sexual offence.
- [32] Having considered the reports of the psychiatrist I am satisfied that the evidence indicates that there has been no demonstrable increase in his risk levels and the original assessments essentially remain the same. It would also seem clear on the material before me that the supervision order has in fact been operating effectively. As both psychiatrists have stated in their reports that the supervision order is serving its purpose in identifying early warning signs such as substance misuse, general hostility and non-compliance with the conditions of his supervision order.
- [33] I am therefore satisfied that the respondent has satisfied the onus on him that the adequate protection of the community can be ensured by his release on the existing supervision order.

Orders

The court, being satisfied to the requisite standard that the respondent, Benjamin Anthony-Lee Hunter, has contravened the requirements of the supervision order made by Justice Douglas on 6 March 2017 and as amended by Justice Davis on 18 May 2018 orders that:

The respondent continue to be subject to the supervision order made by Justice Douglas on 6 March 2017, and as amended by Justice Davis on 18 May 2018.