

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v KBM* [2019] QSC 154

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

FILE NO/S: No 2785 of 19

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 20 June 2019

DELIVERED AT: Brisbane

HEARING DATE: No oral hearing

JUDGE: Davis J

ORDER: **The respondent be released subject to the requirements set out in the Schedule to these reasons until 26 July 2029.**

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 – where the applicant conceded that adequate protection of the community could be ensured by a supervision order under Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (the *DPSOA*) – where the respondent conceded the need for a supervision order under Division 3 of Part 2 of the *DPSOA* – where the length of the order under Division 3 of Part 2 of the *DPSOA* was not contested – whether the applicant presents a serious danger to the community in the absence of a supervision order under Division 3 of Part 2 of the *DPSOA* – whether such an order should be made – whether an oral hearing is mandated

*Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld), s 3, s 5, s 8, s 9A, s 11, s 12, s 13, s 13A, s 16, s 18, s 19D, s 44, s 46, s 49

*Attorney-General for the State of Queensland v KAH* [2019] QSC 36, followed

*Attorney-General for the State of Queensland v Kanaveilomani*  
 [2013] QCA 404, cited  
*Attorney-General for the State of Queensland v Newman* [2018]  
 QSC 156, cited  
*Attorney-General for the State of Queensland v PCO* [2019] QSC  
 44, followed  
*Attorney-General for the State of Queensland v Yeatman* [2018]  
 QSC 70, cited

COUNSEL: J Tate for the applicant  
 J Grehan for the respondent

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

- [1] The respondent is presently serving a term of imprisonment for serious sexual offences committed against children (the index offences<sup>1</sup>). There were five complainants against whom he offended, who were aged between three and thirteen years at the time of the offending.
- [2] The Attorney-General applied for orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) (DPSOA)*. Dr Sundin examined the respondent and prepared a risk assessment report.<sup>2</sup> On 2 April 2019, Burns J, on a hearing pursuant to s 8 of the *DPSOA* held that there were reasonable grounds for believing the respondent is a serious danger to the community in the absence of an order under Part 2 Division 3 of the *DPSOA* and:
1. appointed consultant psychiatrists, Dr Scott Harden and Dr Ken Arthur to prepare risk assessment reports;<sup>3</sup>
  2. set the hearing date of the application for final orders as 8 July 2019.<sup>4</sup>
- [3] The date for the final hearing was later moved to 17 June 2019.
- [4] The current application by the Attorney-General is for final orders under s 13 of the *DPSOA*.

### **Statutory scheme**

- [5] Section 3 of the *DPSOA* identifies the objects of the legislation as follows:

#### **“3 Objects of this Act**

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<sup>1</sup> Subject to what is said at paragraph [49] of these reasons.

<sup>2</sup> Dated 20 June 2018.

<sup>3</sup> *Dangerous Prisoners (Sexual Offences) Act 2003*, ss 8, 11 and 12.

<sup>4</sup> Section 8.

The objects of this Act are—

- (a) to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community; and
- (b) to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.”

[6] The objects of the *DPSOA* are fulfilled by a scheme providing for the detention of prisoners beyond the expiry of their sentences, or alternatively their release upon supervision.

[7] By s 5, the Attorney-General may apply for both an order under s 8 of the *DPSOA* and also an order under Division 3 of Part 2.<sup>5</sup> Division 3 of Part 2 provides for the making of final orders. Applications can only be brought under s 5 against a “prisoner”.

[8] Section 5, which authorises the application for orders and which contains the definition of “prisoner”, is as follows:

**“5 Attorney-General may apply for orders**

- (1) The Attorney-General may apply to the court for an order or orders under section 8 and a division 3 order in relation to a prisoner.
- (2) The application must—
  - (a) state the orders sought; and
  - (b) be accompanied by any affidavits to be relied on by the Attorney-General for the purpose of seeking an order or orders under section 8; and
  - (c) be made during the last 6 months of the prisoner’s period of imprisonment.
- (3) On the filing of the application, the registrar must record a return date for the matter to come before the court for a hearing (preliminary hearing) to decide whether the court is satisfied that there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a division 3 order.
- (4) The return date for the preliminary hearing must be within 28 business days after the filing.
- (5) A copy of the application and any affidavit to be relied on by the Attorney-General must be given to the prisoner within 2 business days after the filing.
- (6) In this section—

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<sup>5</sup> In which s 13 is located.

**prisoner** means a prisoner detained in custody who is serving a period of imprisonment for a serious sexual offence, or serving a period of imprisonment that includes a term of imprisonment for a serious sexual offence, whether the person was sentenced to the term or period of imprisonment before or after the commencement of this section.”

- [9] The definition of “prisoner” in s 5(6) introduces the concept of “a serious sexual offence”. That term is defined as follows:

**“serious sexual offence** means an offence of a sexual nature, whether committed in Queensland or outside Queensland—

- (a) involving violence; or
- (b) against a child; or
- (c) against a person, including a fictitious person represented to the prisoner as a real person, whom the prisoner believed to be a child under the age of 16 years.”

- [10] Section 8 provides for a preliminary hearing. It is in terms:

**“8 Preliminary hearing**

- (1) If the court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a division 3 order, the court must set a date for the hearing of the application for a division 3 order.
- (2) If the court is satisfied as required under subsection (1), it may make—
  - (a) an order that the prisoner undergo examinations by 2 psychiatrists named by the court who are to prepare independent reports; and
  - (b) if the court is satisfied the application may not be finally decided until after the prisoner’s release day –
    - (i) an order that the prisoner’s release from custody be supervised; or
    - (ii) an order that the prisoner be detained in custody for the period stated in the order.”

- [11] The term “prisoner”, as used in s 8 is defined differently to the definition in s 5(6). In s 8, the term “prisoner” has the same meaning as that defined for the purposes of the *Corrective Services Act 2006*.<sup>6</sup> The distinction is, though, not relevant here.<sup>7</sup>
- [12] Section 8 introduces the notion of “serious danger to the community”. This term is defined in s 13 which is the pivotal section in Division 3 of Part 2. Section 13 is in these terms:

**“13 Division 3 orders**

- (1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (**a *serious danger to the community***).
- (2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence—
  - (a) if the prisoner is released from custody; or
  - (b) if the prisoner is released from custody without a supervision order being made.
- (3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied—
  - (a) by acceptable, cogent evidence; and
  - (b) to a high degree of probability;
 that the evidence is of sufficient weight to justify the decision.
- (4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following—
  - (aa) any report produced under section 8A;
  - (a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;
  - (b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;
  - (c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

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<sup>6</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) s 2 and the dictionary which is the Schedule to the Act.

<sup>7</sup> See *Attorney-General for the State of Queensland v Newman* [2018] QSC 156.

- (d) whether or not there is any pattern of offending behaviour on the part of the prisoner;
  - (e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;
  - (f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;
  - (g) the prisoner's antecedents and criminal history;
  - (h) the risk that the prisoner will commit another serious sexual offence if released into the community;
  - (i) the need to protect members of the community from that risk;
  - (j) any other relevant matter.
- (5) If the court is satisfied as required under subsection (1), the court may order—
- (a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (***continuing detention order***); or
  - (b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (***supervision order***).
- (6) In deciding whether to make an order under subsection (5)(a) or (b)—
- (a) the paramount consideration is to be the need to ensure adequate protection of the community; and
  - (b) the court must consider whether –
    - (i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and
    - (ii) requirements under section 16 can be reasonably and practicably managed by Corrective Services officers.
- (7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1).”

[13] Orders which can be made under s 8 include orders that a prisoner undergo psychiatric examination. The evidence so obtained is then relied upon by the Attorney-General on the application brought under s 13. Relevant to examinations ordered under s 8, are ss 11 and 12 which are in these terms:

**“11 Preparation of psychiatric report**

- (1) Each psychiatrist examining the prisoner must prepare a report under this section.
- (2) The report must indicate—
  - (a) the psychiatrist’s assessment of the level of risk that the prisoner will commit another serious sexual offence—
    - (i) if released from custody; or
    - (ii) if released from custody without a supervision order being made; and
  - (b) the reasons for the psychiatrist’s assessment.
- (3) For the purposes of preparing the report, the chief executive must give each psychiatrist any medical, psychiatric, prison or other relevant report or information in relation to the prisoner in the chief executive’s possession or to which the chief executive has, or may be given, access.
- (4) A person in possession of a report or information mentioned in subsection (3) must give a copy of the report or the information to the chief executive if asked by the chief executive.
- (5) Subsection (4) authorises and requires the person to give the report or information despite any other law to the contrary or any duty of confidentiality attaching to the report.
- (6) If a person required to give a report or information under subsection (4) refuses to give the report or information, the chief executive may apply to the court for an order requiring the person to give the report or information to the chief executive.
- (7) A person giving a report or information under subsection (4) or (6) is not liable, civilly, criminally or under an administrative process, for giving the report or information.
- (8) Each psychiatrist must have regard to each report or the information given to the psychiatrists under subsection (3).
- (9) Each psychiatrist must prepare a report even if the prisoner does not cooperate; or does not cooperate fully, in the examination.

**12 Psychiatric reports to be given to the Attorney-General and the prisoner**

- (1) Each psychiatrist must give a copy of the psychiatrist’s report to the Attorney-General within 7 days after finalising the report.
- (2) The Attorney-General must give a copy of each report to the prisoner on the next business day after the Attorney-General receives the report.”

[14] Section 16 deals with the contents of supervision orders:

**“16 Requirements for orders**

- (1) If the court or a relevant appeal court orders that a prisoner’s release from custody be supervised under a supervision order or interim supervision order, the order must contain requirements that the prisoner—
- (a) report to a Corrective Services officer at the place, and within the time, stated in the order and advise the officer of the prisoner’s current name and address; and
  - (b) report to, and receive visits from, a Corrective Services officer as directed by the court or a relevant appeal court; and
  - (c) notify a Corrective Services officer of every change of the prisoner’s name, place of residence or employment at least 2 business days before the change happens; and
  - (d) be under the supervision of a Corrective Services officer; and
  - (da) comply with a curfew direction or monitoring direction; and
  - (daa) comply with any reasonable direction under section 16B given to the prisoner; and
  - (db) comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order; and

Example: If the only requirement under subsection (2) contained in a particular order is that the released prisoner must live at least 1km from any school—

- 1 A proposed direction to the prisoner would be directly inconsistent if it requires the released prisoner to live at least 2km from any school.
- 2 A proposed direction to the prisoner would not be directly inconsistent if it requires the released prisoner to live at least a stated distance from something else, including, for example, children’s playgrounds, public parks, education and care service premises or QEC service premises.
- 3 A proposed direction to the prisoner would not be directly inconsistent if it requires the released prisoner not to live anywhere unless that place has been approved by a Corrective Services officer.

- (e) not leave or stay out of Queensland without the permission of a Corrective Services officer; and
  - (f) not commit an offence of a sexual nature during the period of the order.
- (2) The order may contain any other requirement the court or a relevant appeal court considers appropriate—
- (a) to ensure adequate protection of the community; or
    - Example:
      - a requirement that the prisoner must not knowingly reside with a convicted sexual offender
      - a requirement that the prisoner must not, without reasonable excuse, be within 200m of a school
      - a requirement that the prisoner must wear a device for monitoring the prisoner's location
  - (b) for the prisoner's rehabilitation or care or treatment."

[15] Section 13A deals with fixing the term of the supervision order. Section 13A provides:

**"13A Fixing of period of supervision order**

- (1) If the court makes a supervision order, the order must state the period for which it is to have effect.
- (2) In fixing the period, the court must not have regard to whether or not the prisoner may become the subject of—
  - (a) an application for a further supervision order; or
  - (b) a further supervision order.
- (3) The period cannot end before 5 years after the making of the order or the end of the prisoner's period of imprisonment, whichever is the later."

**The Procedure Here**

[16] On 13 June 2019 the application was mentioned before me. By that point relevant material had been filed, as had outlines of submissions. Both parties had, subject to the final exercise of discretion by the Court, agreed that the outcome should be:

- 1. a finding that the respondent is a serious danger to the community in the absence of an order under Division 3 of Part 2 of DPSOA;

2. a finding that adequate protection of the community can be ensured by the making of a supervision order to operate upon the release of the respondent;
3. release of the respondent on a supervision order, the terms of which were agreed, for a period of ten years.

[17] By 13 June 2019, I had taken the opportunity to read and consider the material and the outlines, and I informed the parties that:

1. subject to any further submissions, I was of a mind to make the findings, and the supervision order on the terms which had been agreed between the parties.
2. the orders would not be made until I was in a position to deliver reasons.<sup>8</sup>

[18] I then inquired of counsel whether, on 17 June 2019 either of them:

1. wished to examine or cross examine any witness; or
2. make further submissions.

[19] As both counsel made negative responses to both questions, I inquired as to whether orders could be made:

1. vacating the hearing date of 17 June 2019.
2. directing that the application be determined without oral hearing.
3. listing the matter for judgment on 20 June 2019.
4. continuing the respondent's detention<sup>9</sup> until 4pm on 20 June 2019.

[20] Both parties supported the making of these orders but Mr Tate of counsel for the applicant drew my attention to ss 44 and 46. They provide:

**“44 Hearings on the papers**

- (1) The court may decide whether it is satisfied as required under section 8(1), 18 or 19D(2) entirely or partly from a consideration of the documents filed, without the prisoner or witnesses appearing or the prisoner consenting to, or being heard on, the matter being decided in that way.
- (2) In making its decision, the court may receive in evidence the following documents—

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<sup>8</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003*, s 17; *Attorney-General for the State of Queensland v Yeatman* [2018] QSC 70.

<sup>9</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003*, s 9A(2)(b); and see paragraph [49] of these reasons.

- (a) the prisoner's antecedents and criminal history;
- (b) anything relevant to the issue contained in the certified transcription of, or any medical, psychiatric, psychological or other report tendered in, any proceeding against the prisoner for a serious sexual offence.

#### **46 Court may give directions**

The court may give directions in relation to the conduct of a proceeding under this Act on its own initiative or on an application."

[21] Also of some relevance is s 49 which is:

#### **"49 Appearance at hearings**

- (1) The prisoner is entitled to appear at a preliminary hearing under section 8 or at a hearing under section 13, 18, 19D, 22, 27 or 28.
- (2) Subsection (1) does not limit the court's power under section 44 to deal with an application under section 8, 18 or 19D if the prisoner does not appear at the hearing of the application."

[22] The hearing before me was one under s 13 not any of ss 8(1), 18 or 19D(2). Therefore s 44 does not expressly empower the Court to make orders without oral hearing.

[23] It follows that if either the applicant or respondent insisted on an oral hearing, the Court could not decide the current s 13 application on the papers.

[24] However, in the current application, if the hearing date was maintained, the matter would be called on, the parties would inform the Court that no examination or cross examination of witnesses was required and no oral submissions would be made. The applicant though, would have a right to be present.<sup>10</sup> Both parties (including counsel for the respondent) submitted that the application should be heard on the papers and urged me to make the orders as described in paragraph [19] above.

[25] In circumstances where neither party sought an oral hearing and both consented to the matter being decided without oral hearing, s 46 gives ample power to make the orders which were contemplated. Those orders were made.

#### **The Index Offending**

[26] The respondent was born on 18 March 1963. He is now 56 years of age. At the time of the offending, the respondent was aged 43 to 44 years and was sharing custody of two of his children, a daughter aged 10 and a son aged 6. He was employed as a truck driver.

[27] Other than the index offences, the respondent has no criminal history for offences of a sexual nature. Earlier in his life he suffered convictions for driving under the influence of alcohol and

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<sup>10</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003, s 49.*

other traffic offences, as well as other convictions associated with break and enter of dwellings, theft, wilful damage and possession of a silencer.<sup>11</sup> He was first incarcerated at 17 years of age on remand for three months following an alleged assault, however that assault does not appear in his criminal history.<sup>12</sup>

[28] The respondent pleaded guilty to the index offences which were:

1. two counts of indecent treatment of children under 16 with circumstances of aggravation;
2. five counts of indecent treatment of children under 16 with circumstances of aggravation;
3. three counts of rape;
4. two counts of involving children in making child exploitation material;
5. two counts of indecent treatment of a child under 16 (take photograph etc.) child under 12 years; and
6. one count of possessing child exploitation material.

[29] There were five complainants for the offences: CKW, 13 years old; BK, three years old; KAJ, three years old; KLB, four years old: and NDS, eight years old.

[30] Two counts of indecent treatment of children under 16 related to CKW. CKW was a friend of the respondent's daughter and often slept over at the respondent's residence.

[31] When police executed a search warrant at the respondent's residence they located seven photographs on his computer which had been taken of CKW whilst she was sleeping and the focus was on her underwear, legs and genitals. A further 22 images were located which focused on the victim's body, legs and underwear. In an interview with police the respondent admitted to taking the photographs of CKW whilst she was asleep in his home and that the photographs were taken for his own personal gratification.

[32] Four counts of indecent treatment of children under 16, child under 12 years, involved BK, who was aged three at the time of the offending and who was the respondent's niece. The offending took place while BK was in the respondent's care for a period of four days whilst her father, who was the respondent's brother, was in hospital. Police located a computer disc containing numerous images that had been taken of BK's genital area.

[33] Some of the images taken of BK included:

1. BK with the respondent naked and positioned behind her with his erect penis placed against BK's buttocks and anus;
2. BK with the respondent naked behind her with his penis positioned beside BK's vagina;

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<sup>11</sup> Report of Dr Harden, pages 12-13.

<sup>12</sup> Report of Dr Harden, pages 6-7.

3. BK sitting on the respondent's lap and holding his erect penis;
4. BK with the respondent's tongue touching BK's vagina;
5. The respondent pulling BK's outer vaginal lips apart;
6. BK positioned on all fours with the respondent's penis touching her vagina;
7. BK sitting backwards on the respondent with his penis positioned up against her vagina without him holding his penis; and
8. BK laying on her back and holding the respondent's penis.

[34] In an interview with police, the respondent admitted to placing BK in various positions and taking photographs of himself with her for his own sexual gratification.

[35] Two of the counts of rape also involved BK. A number of images located by police showed the respondent's penis penetrating BK's vagina. BK was wearing different clothing in the photographs therefore indicating that rape occurred on two separate occasions. Medical evidence supported the fact that penetration had occurred.

[36] One count of making child exploitation material, also related to BK. There were approximately 40 images located of BK.

[37] One count of indecent treatment of a child under 16 (take photograph etc.) child under 12 years, involved KAJ who was aged three at the time of the offending. KAJ lived with her mother next door to the respondent. KAJ's mother identified her daughter in the photographs taken by the respondent. Four images had been taken of KAJ whilst she was playing in the front and back yards of her house with some of the images showing KAJ naked from the waist down and other images where she was fully naked. In an interview with police the respondent admitted to taking these photographs from his bedroom and stated that the photographs were for his own sexual gratification.

[38] The other count of indecent treatment of a child under 16 (take photograph etc.) child under 12 years, involved KLB who was aged four at the time of the offending. KLB was staying with relatives who live next door to the respondent. KLB's mother identified her daughter in the photographs taken by the respondent. The photographs had been taken whilst KLB was playing in the backyard of her relative's residence and she was not wearing a shirt. In an interview with police the respondent admitted to taking these photographs at his home and stated that the photographs were for his own sexual gratification.

[39] The further count of indecent treatment of children under 16, child under 12 years, involved a victim, NDS who was aged eight at the time of the offending. The respondent was planning to drive his truck from Townsville to Cairns and arrangements had been made for NDS to travel with him along with his own two children. During the trip NDS became ill and vomited. The respondent gave her 'happy pills' which he had been given by a fellow truck driver. After taking the pills NDS started to hallucinate. Upon arriving in Cairns NDS was still unwell. The respondent bathed her, gave her some Panadol and put her to bed whilst she was naked. Subsequent to the respondent's children going to sleep he committed various sexual offences upon NDS during a 4 hour period.

- [40] Photographs taken by the respondent depicted:
1. NDS naked with the respondent's penis near her vagina;
  2. NDS naked with two of the respondent's fingers placed either side of her vagina;
  3. NDS naked sitting on top of the respondent who was also naked with his penis next to her vagina;
  4. NDS wearing underpants and the respondent's hand inside her underpants, near her vagina;
  5. NDS wearing underpants and a top which was unbuttoned and the respondent pulling her underpants to the side exposing her vagina;
  6. NDS wearing underpants whilst sitting on the respondent's legs, one image showing his hand inside her underpants;
  7. NDS naked with the photograph focusing on her bottom and vagina, covered in lubricant;
  8. NDS naked with the photograph focusing on her vagina;
  9. NDS with the photograph focusing on her rear.
- [41] The further count of making child exploitation material, related to NDS being depicted in these photographs.
- [42] In an interview with police NDS told police that throughout the night she had weird dreams involving her hands and mouth being bound with sticky silver tape and a fairy spreading fairy dust and cream over her tummy. The police found on the floor in the respondent's bedroom sticky silver tape. In an interview with police, the respondent admitted that he had bound NDS' hands above her head and put tape across her mouth. NDS stated to police that in her dreams there were puppets with fake boobs and a strap on penis. She described the fairy as having very short balding hair with a small beard or goatee and bad teeth.
- [43] Upon NDS returning to her father the next day she was still hallucinating. Her father took NDS to her mother who immediately took her to the Mareeba Hospital at which time a urine sample was collected. The urine sample tested positive for benzodiazepine, amphetamines and methamphetamines.
- [44] In addition to the photographs described above, NDS told police that when the respondent was drying her after giving her a bath he put her on his knee and used his hand to rub her privates.
- [45] In an interview with police, the respondent agreed that whatever he had given to NDS had caused her to hallucinate but denied he gave the pill to her for this purpose. The respondent admitted to taking the photographs for his own sexual gratification.
- [46] The further count of rape also involved NDS. In the photographs described above there were three photographs which clearly depicted the respondent's erect penis penetrating NDS' vagina.

- [47] The count of possessing child exploitation material relates to the material seized by police. This included 59 compact discs, a hard drive, Fuji digital camera and a Motorola phone. Police found 20,242 images on the hard drive, 46,442 images on the compact disc, 165 video films and 100 child exploitation links. Thirty-three of the compact discs contained images showing young to very young girls performing sexual acts or posing in provocative positions.
- [48] On 28 August 2009, the respondent was sentenced to 12 years imprisonment with a full time release date of 26 July 2019.
- [49] On 13 June 2019 I was informed by the parties that application was being made to Everson DCJ to reopen the sentences which his Honour imposed upon the respondent for the index offences. Apparently there has been an error in some calculation of time served in pre-sentence custody. Depending upon the outcome of that application, the respondent's full time release date may be prior to 20 June 2019. For that reason I made an interim detention order detaining the respondent until 4pm on 20 June 2019.

### **The Psychiatrists' evidence**

#### *Diagnoses*

- [50] Dr Sundin diagnosed the respondent with Voyeuristic disorder; Paedophilic Disorder, non-exclusive type, sexually attracted to females, not limited to incest; Narcissistic Personality Disorder.
- [51] Dr Arthur diagnosed the respondent with Paedophilia, non-exclusive type, heterosexual and not incestuous, voyeurism; Mixed Cluster B Personality Disorder with antisocial and narcissistic traits.
- [52] Dr Harden diagnosed the respondent with Paedophilia, non-exclusive, attracted to females; mixed personality traits, antisocial, avoidant, narcissistic, but unclear if meets criteria for personality disorder.

#### *Risk*

- [53] Dr Sundin in her report summarised risk as:

“In summary using the RSVP, [the respondent] is a person to whom I would give a high level of prioritisation for supervision and management within the community. Whilst acknowledging that there is a low risk of physical harm to his victims, his victims are likely to be young, vulnerable, prepubescent females for whom the risk of psychological harm is profound.

I do not consider that [the respondent] would be at risk for imminent sexual re-offending upon release into the community but is more likely a person who may revert to sexual offending in the setting of emotional collapse. Loneliness, isolation, dysphoric mood or increasing reliance on sex as a coping mechanism are substantive risk factors.

Using the Sexual Violence Risk Scale (SCR-20) I noted the following items to be present:

- Sexual deviation.
- Victim of child abuse.
- Substance use problems, in sustained remission whilst incarcerated.
- Past suicidal ideation.
- Relationship problems.
- Past non-violent offences.
- Past supervision failures.
- High density sex offences.
- Multiple sex offence types.
- Escalation in frequency/severity of sex offences.

On this physician's guideline, I consider that [the respondent's] risk for future sexual violence is in the moderate to high zone."

[54] Dr Arthur in his report described risk as:

"Despite the gains he has made in regard to his own intellectual understanding of emotional vulnerabilities, [the respondent] continues to present with a number of outstanding treatment needs in regard to the presence of sexual deviancy, self-awareness and emotional regulation.

Utilising structured clinical judgement, I would estimate his unmodified risk of sexual reoffending to be moderately high."

[55] Dr Harden in his report described risk as:

"The actuarial and structured professional judgement measures I administered in combination with my clinical assessment would suggest that his future risk of sexual reoffence is above average (Moderate to High) and this would be the case at the time of his putative release from custody on 26 July 2019.

If he were to reoffend it would be likely to be either the viewing of child exploitation material or hands-on sexual offending against a prepubertal girl involving grooming. The risk of physical harm is low and the risk of psychological harm is significant.

My assessment of this risk is based on the combined clinical and actuarial assessment.

The critical risk issue for this man is his deviant sexual attraction to prepubertal girls.

Supervision and intervention consistent with a supervision order in my opinion will reduce the risk to low. This would be the case at the date of his release from custody on 26 July 2019.”

### **Period of Risk**

[56] Section 13A of DPSCA provides that the Court shall fix the term of the supervision order. As a supervision order ensures the “adequate protection of the community”,<sup>13</sup> the supervision order must subsist while the respondent remains an unacceptable risk<sup>14</sup> if in the community when not subject to a supervision order. The term of the supervision order must extend to that point when the respondent ceases to be an unacceptable risk of committing a serious sexual offence.<sup>15</sup>

[57] After referring to various aspects of the case Dr Sundin opined:

“Taking all these factors globally, I consider that [the respondent] is an individual who represents an unmodified moderate to high risk for future sexual offending.

Historically, he was very successful in hiding his offending behaviours from others, exploiting and manipulating the situation to pursue his deviant sexual gratification. He did not feel he could stop the offending himself.

He is therefore a person whom I consider could only be safely managed in the community under the auspices of a supervision order combined with requirement to engage in treatment with a suitably qualified forensic psychologist or psychiatrist. He is also an individual whom may benefit from the prescription of an anxiolytic SSRI antidepressant which has the capacity to further dampen his libido. Paroxetine would be an ideal medication for this man both because of its benefit in reducing anxiety and for its antilibidinal effect. This is relevant given the link between his use of sex as a coping mechanism to relieve anxiety.

If suitable follow up treatment can be arranged in the community, I do not consider that [the respondent] needs to be detained in prison for further treatment but do consider that he is an individual who needs to be managed under a supervision order with appropriate curfews and disclosure clauses.

Given that there are still uncertainties around several atypical features in [the respondent’s] history and uncertainties arising out of his tendency to positive impression management; he is not a person in whom I would have great confidence as to make frank admissions within the community.

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<sup>13</sup> Section 13(6)(b)(i).

<sup>14</sup> Section 13(2).

<sup>15</sup> Section 13(1) and (2) and the Schedule; definition of “serious sexual offence”; and see *Attorney-General for the State of Queensland v PCO* [2019] QSC 44 at [68]-[70] and *Attorney-General for the State of Queensland v KAH* [2019] QSC 36 at [53]-[54].

I would recommend that if at some stage in the future a Court is minded to place him on a supervision order, I would recommend that such order should be in place for 10 years.”

[58] Dr Arthur expressed these views:

- “286. If released into the community on a supervision order, I believe his risk would be reduced to low.
287. [The respondent] would benefit from long-term individual therapy with a skilled Forensic Psychologist to address issues pertaining to sexual deviancy, self-awareness and the emotional/behavioural consequences of his underlying personality disorder.
288. Whilst he currently reports low sexual interest, he has previously experienced high levels of sexual preoccupation. As such, he may be a candidate for libido lowering medications. He would benefit from a referral to a Forensic Psychiatrist to further explore this avenue of treatment. Whilst anti-androgen medication may not be indicated, he might yet gain some benefit from the use of other psychotropic agents (such as SSRI antidepressants) to improve his affect regulation and lower libido.
289. There should be restrictions placed on [the respondent’s] access to victims. He should not have unsupervised access to female children under the age of 16. His movements in the community should be monitored, particularly in relation to places where children are likely to congregate such as sports grounds and parks.
290. [The respondent’s] use of the internet should also be monitored. Particularly at the beginning of his order, it would be prudent for him not to have access to devices such as compact cameras or mobile phones with a camera embedded.
291. It is important that [the respondent’s] adult relationships are also monitored.
292. Given the association between his use of amphetamines and sexual preoccupation, he should abstain from all illicit drugs and undergo regular urine analysis. Whilst alcohol does not appear to have been involved in the commission of his offences, he does have a past history of alcohol abuse which has led to criminal charges. Given the potential negative effects of alcohol on emotional regulation, I would recommend that he also remain abstinent from alcohol.
293. [The respondent] should be encouraged in employment and to develop pro-social adult intimate and nonintimate relationships. Given the association with substances and social isolation, I would not recommend that he return to working as a truck driver.
294. Due to the pervasive nature of his personality pathology, I believe he will require longer than a 5 year order in order to establish enduring changes to

his lifestyle and interpersonal functioning sufficient to maintain a low risk of reoffending. I would recommend a supervision order of 10 years.”

[59] Dr Harden, after expressing the views set out at paragraph [55] of these reasons, opined:

“The supervision order should in my opinion be in place for at least 10 years. There should be substance abuse conditions in the supervision order.”

### **Conclusion/Orders**

[60] I accept the evidence of the psychiatrists.

[61] I find the evidence of the psychiatrists to be acceptable cogent evidence<sup>16</sup> which proves to a high degree of probability that the respondent now<sup>17</sup> is an unacceptable risk of committing a serious sexual offence if released into the community without an order made under Division 3 of Part 2 of the DPSOA.<sup>18</sup>

[62] I am satisfied that a supervision order containing appropriate conditions will ensure adequate protection of the community by removing any unacceptable risk that the prisoner will commit a serious sexual offence.<sup>19</sup>

[63] The parties have agreed to the terms of the supervision order and I accept that the draft order that has been provided to me contains all appropriate terms and conditions.

[64] The parties accept that the supervision order should be in place for a period of ten years. I agree. That conclusion is well supported by the evidence of the psychiatrists.

[65] I make an order that the respondent be released subject to the requirements set out in the Schedule to these reasons until 26 July 2029.

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<sup>16</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003*, s 13(3).

<sup>17</sup> *Attorney-General in the State of Queensland v Kanaveilomani* [2013] QCA 404, [118]-[120].

<sup>18</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003*, s 13(1) and (5).

<sup>19</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003*, s 13(2) and (6).

**SCHEDULE**

**SUPREME COURT OF QUEENSLAND**

**REGISTRY:** Brisbane

**NUMBER:** 2785/19

Applicant

**ATTORNEY GENERAL FOR THE STATE OF QUEENSLAND**

AND

Respondent

**KBM**

**SUPERVISION ORDER**

Before: Davis J

Date: 17 June 2019

Initiating document: Originating Application filed 13 March 2019

THE COURT, being satisfied that there are reasonable grounds for believing that the respondent, KBM, is a serious danger to the community in the absence of an Order made under Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the Act), ORDERS THAT:

1. The respondent be subject to the following requirements until 26 July 2029:

The respondent must:

### **Statutory Requirements**

1. report to a Corrective Services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 9:00am and 4:00pm on the day of his release from custody and, at that time, advise the officer of his current name and address;
2. report to, and receive visits from, a Corrective Services officer at such times and at such frequency as determined by Queensland Corrective Services;
3. notify a Corrective Services officer of every change of his name, place of residence or employment at least two (2) business days before the change happens;
4. be under the supervision of a Corrective Services officer for the duration of the order;
5. comply with a curfew direction or monitoring direction;
6. comply with any reasonable direction under section 16B of the Act given to him;
7. must comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order;
8. not leave or stay out of Queensland without the written permission of a Corrective Services officer;
9. not commit an offence of a sexual nature during the period of the order;

### **Employment**

10. seek permission and obtain approval from a Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
11. notify a Corrective Services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of

the premises where he is or will be employed at least two (2) business days prior to commencement or any change;

### **Accommodation**

12. reside at a place within the State of Queensland as approved by a Corrective Services officer by way of a suitability assessment and obtain written approval prior to any change of residence;
13. if this accommodation is of a temporary or contingency nature, you must comply with any regulations or rules in place at this accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services;
14. not reside at a place by way of short term accommodation including overnight stays without the permission of the Corrective Services officer;

### **General Terms**

15. not commit an indictable offence during the period of the order;

### **Activities and Associates**

16. respond truthfully to enquiries by a Corrective Services officer about his activities, whereabouts and movements generally;
17. not to have any direct or indirect contact with a victim of his sexual offences;
18. disclose to a Corrective Services officer the name of each person with whom he associates and respond truthfully to requests for information from a Corrective Services officer about the nature of the association, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;
19. notify a Corrective Services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;

20. submit to and discuss with a Corrective Services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
21. if directed by a Corrective Services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by a Corrective Services officer who may contact such persons to verify that full disclosure has occurred;
22. notify the supervising Corrective Services officer of all personal relationships entered into by him;

### **Alcohol and Drugs**

23. abstain from the consumption of alcohol for the duration of this order;
24. abstain from illicit drugs for the duration of this order;
25. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Corrective Services officer;
26. disclose to the Corrective Services officer all prescription and over the counter medication that he obtains;
27. not visit any hotels, clubs and/or nightclubs licensed to supply or serve alcohol, without the prior written permission of a Corrective Services officer;

### **Treatment and Intervention**

28. attend upon and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed and approved by a Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;
29. permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health practitioner to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;

30. attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by an Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;

### **Contact with Children**

31. not establish or maintain any supervised or unsupervised contact, including undertaking any care of female children under 16 years of age except with prior written approval of a Corrective Services officer.
32. if directed to do so by a Corrective Services officer, fully disclose the terms of the order and nature of offences to the guardians and caregivers of the children before any such contact can take place;
33. advise a Corrective Services officer of any repeated contact with a parent, guardian or caregiver of a child under the age of 16;
34. not to be within 100 metres of schools or child care centres, without a reasonable excuse, without the prior written approval of a Corrective Services officer;
35. not access a school or child care centre at any time without the prior written approval of a Corrective Services officer;
36. not to visit or attend on the premises of any establishment where there is a dedicated children's play area or child minding area without the prior written approval of a Corrective Services officer;
37. not to visit public parks without the prior written approval of a Corrective Services officer;
38. notify a Corrective Services officer before attending on the premises of any shopping centre, including the times in which he wishes to attend;
39. not join, affiliate with, attend on the premises of or attend at the activities carried on by any club or organisation in respect of which there are reasonable grounds for believing there is either child membership or child participation without the prior written approval of a Corrective Services officer;

40. notify a Corrective Services officer of the collection of material that contains images of children and dispose of such material if directed to do so by a Corrective Services officer;

#### **Technology, Telephones and Other Devices**

41. obtain the prior written approval of the Corrective Services officer before accessing a computer or the internet;
42. supply to a Corrective Services officer any password or other access code known to him to permit access to such computer or other device or content accessible through such computer or other device and allow any device where the internet is accessible to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;
43. supply to a Corrective Services officer details of any email address, instant messaging service, chat rooms, or social networking sites including user names and passwords;
44. not access child exploitation material on the internet or in any other format;
45. obtain prior written approval of a Corrective Services officer before possessing any equipment that enables him to take photographs or record moving images;
46. allow any other device including a telephone or camera to be randomly examined. If applicable, account details and/or phone bills are to be provided upon request of a Corrective Services officer;
47. advise a Corrective Services officer of the make, model and phone number of any mobile phone owned, possessed or regularly utilised by you within 24 hours of connection or commencement of use, including reporting any changes to mobile phone details;
48. except with prior written approval from a Corrective Services officer, not own, possess or regularly utilise more than one mobile phone.