

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Riley* [2019] QSC 166

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

FILE NO: BS2356 of 2019

DIVISION: Trial Division

PROCEEDING: Application for division 3 order

DELIVERED ON: 1 July 2019 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 1 July 2019

JUDGE: Mullins J

ORDER: **Order in terms of the draft initialled by Mullins J and placed with the file.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – GENERALLY – where respondent currently serving a term of imprisonment for sexual offences involving children – application for orders pursuant to s 13 *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – whether the respondent is a serious danger to the community in the absence of a division 3 order – whether a supervision order rather than a continuing detention order can ensure adequate protection of the community – whether the appropriate period for the supervision order is five years or seven years

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

COUNSEL: M A Maloney for the applicant  
C Reid for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant  
Legal Aid Queensland for the respondent

HER HONOUR: Mr Riley is 23 years old. He is currently serving a sentence of four years' imprisonment, which was imposed on 1 September 2015 for maintaining an unlawful relationship with a child. On the same date, he was sentenced to shorter concurrent sentences for five counts of carnal knowledge of children under 16 years and attempts, two counts of indecent treatment of children under 16 years, two counts of indecent treatment of a child under 16 (procure to commit), one count of use a carriage service to solicit child pornography material, one count of use a carriage service to cause child pornography material to be transmitted to self, one count of possessing child exploitation material and one count of grooming child under 16 years with intent to procure engagement in a sexual act. Mr Riley's full-time discharge date is 11 July 2019.

The applicant seeks orders pursuant to section 13 of the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act) and relies for that purpose on psychiatric assessments of Mr Riley undertaken by Dr Timmins, Dr Arthur and Dr Beech. Each of those psychiatrists is of the view that Mr Riley's unmodified risk of sexual re-offence in the community is high, but that the imposition of a supervision order would reduce that risk. The psychiatrists vary in their opinions as to where the level of the reduction of the risk is between low and moderate. The applicant acknowledges appropriately that the evidence in this case supports the finding that the respondent is a serious danger to the community in the absence of a division 3 order under the Act and that the adequate protection of the community can be ensured by the making of a supervision order. Mr Riley accepts that the Court could be satisfied he is a serious danger to the community in the absence of a division 3 order. A decision is required, however, on the length of the supervision order. The parties are otherwise in agreement as to the terms of the supervision order.

It is submitted on behalf of Mr Riley the period of the order should be no less than five years, which is the statutory minimum for a supervision order. Dr Beech considered that a supervision order of five years would be sufficient, as if Mr Riley was going to reoffend against age-inappropriate girls, it would occur early after release. Dr Timmins was originally of the view that the order should be for 10 years, but ultimately accepted that it should be longer than five years and that seven years would be sufficient. Dr Arthur is of the view that an order for seven years would be appropriate. Ms Maloney of counsel, on behalf of the applicant, therefore submits that the term of the supervision order should be at least seven years.

The details of the sexual offending that is the subject of the sentences presently being served by Mr Riley are set out at length in the material relied upon by the applicant for the purpose of this application. The hallmark of the offending is that the female victims ranged in age between 12 and 14 years old. Even though Mr Riley did have age-appropriate relationships at times, it appears he preferred the power and control he could exercise over younger girls.

A negative aspect of this sexual offending was that it commenced soon after he had been dealt with in the Children's Court on 30 January 2014 for sexual offending that he committed whilst a child himself, involving the use of social media to contact 13

and 14 year old girls and requesting them to provide photographs of themselves. He was given a probation order of three years. On the same date, he was also sentenced for one offence committed as an adult, namely, attempted procure sexual act by intimidation, for which a wholly suspended term of imprisonment of 12 months was imposed. The operational period for that sentence was three years. The offences for which Mr Riley is presently imprisoned is presently imprisoned for were therefore committed in breach of the probation order and the suspended sentence.

Mr Riley has maintained appropriate relationships with his parents throughout his upbringing, even though his parents had separated when he was five years. There is a diagnosis that was made while he was a child that he suffered from attention deficit hyperactivity disorder. At the age of 15 years, Mr Riley suffered a head injury that left him with some cognitive impairment and behavioural problems.

Whilst in custody, Mr Riley has completed the medium intensity sexual offending program, which involved 179 hours of treatment over 61 sessions. That was completed on 4 May 2017. He subsequently undertook and completed the sexual offending maintenance program. That was completed on 27 April 2018.

Dr Timmins assessed Mr Riley for the purpose of a possible application under the Act. Her report is dated 27 August 2018. She diagnosed Mr Riley with an unspecified paraphilic disorder on the basis his offences suggested sexual deviance of some kind, with a sadistic quality, given his desire for power and control over his younger victims.

Dr Timmins scored Mr Riley at 7 on Static 99R, which is well above average for the prison population of sexual offenders. Applying RSVP, Mr Riley would be considered a high risk of reoffending. The presence of psychopathic traits was not indicated by the application of the psychopathy checklist by Dr Timmins.

Dr Arthur interviewed Mr Riley for three and one-half hours on 5 April 2019. Dr Arthur is of the opinion that despite completing sexual offender treatment programs in prison, Mr Riley displays limited insight into the nature of his sexual offending and does not consider himself a sex offender. Dr Arthur also got similar results to Dr Timmins in applying the tests used by psychiatrists in assessing sexual offenders.

Dr Arthur considers that Mr Riley is best classified as having an unspecified paraphilic disorder and that his clinical history is consistent with a diagnosis of mixed cluster B personality disorder with borderline and antisocial features. His history is consistent with a substance misuse disorder, alcohol and cannabis, that is currently in remission in the controlled environment of the prison. Dr Arthur notes that Mr Riley also fulfils the criteria for a mild neurocognitive disorder, secondary to traumatic brain injury.

Dr Beech interviewed Mr Riley on 26 April 2019. Dr Beech considers that the risk of sexual re-offending by Mr Riley remains high, notwithstanding the programs he has undertaken in prison. Dr Beech also assessed Mr Riley with the instruments usually applied by psychiatrists in predicting sexual reoffending and had similar results to the other psychiatrists.

Dr Beech notes that it is a matter of concern that Mr Riley recently committed a breach of prison regulations by deceitfully seeking to have contact with a female prisoner. On the one hand, it is positive that the female prisoner is at least age appropriate, but on the other hand, it is of concern about the deceit that Mr Riley used in sending letters to the female prisoner and continuing to do so after the inappropriateness of that conduct was brought to his attention by the prison authorities. Dr Beech considers that if Mr Riley were to reoffend, it would be likely to involve a young, adolescent girl whom he would befriend and use psychological coercion.

The material from corrective services shows that Mr Riley has a residence to which he can be released that has been approved by corrective services and that psychological counselling and other necessary treatment would be made available to Mr Riley under a supervision order in the community. Mr Riley has the support of his parents in relation to his release, which puts him in a better position than many other offenders who are brought under this regime.

It is of concern that a man who is still relatively young will be the subject of a supervision order, but the regime under the Act dictates that outcome in the light of Mr Riley's history of sexual offending and his particular limitations as a result of his acquired brain injury. Each of the psychiatrists commented on Mr Riley's high sex drive, which is something that he has to learn to manage in order to avoid reoffending and has been the focus of the sexual offender treatment programs that he has undertaken. And no doubt, will be the focus of the continued counselling and treatment he will receive upon release from prison.

The evidence relied on by the applicant and, in particular, the evidence of the three psychiatrists, is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act, that Mr Riley's high risk of sexual reoffending, unless appropriately supervised, is an unacceptable risk in terms of section 3, subsection (2) of the Act. In light of the psychiatric evidence, I am satisfied that appropriate conditions can be formulated for a supervision order that will address the need to ensure the adequate protection of the community.

On the issue of the length of the supervision order, I consider that as Mr Riley suffers from a mild neurocognitive disorder which has consequences for his insight into his offending, and the recent breach of prison rules by Mr Riley by attempting to hide the fact that he was sending letters to a female prisoner that shows his deceit and propensity for manipulation and, in all the circumstances, a supervision order should be made for a period of seven years. I therefore make an order in terms of the amended draft, which is initialled by me and placed with the file.

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