

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Yeatman* [2019] QSC 230

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

FILE NO/S: No 187 of 2014

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 13 September 2019

DELIVERED AT: Brisbane

HEARING DATE: 13 September 2019

JUDGE: Davis J

ORDER: **THE COURT being satisfied to the requisite standard that the respondent, Trent Thomas Yeatman, has contravened a requirement of the supervision order made by Justice Philippides on 30 June 2014, ORDERS THAT:**

1. The respondent, Trent Thomas Yeatman, be released from custody and continue to be subject to the supervision order made by Justice Philippides on 30 June 2014.

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where a supervision order was made with respect to the respondent under Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – where it was alleged that the respondent had contravened a requirement of the supervision order – where a warrant was issued for the arrest of the respondent pursuant to the Act and the respondent was detained in custody – where the applicant sought orders with respect to the respondent under s 22 of the Act – where the contravention was admitted by the respondent – where the applicant had not committed any further serious sexual offences – whether the adequate protection of the community could, despite the contravention of the order, be ensured by the existing supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) s 3, s 5, s 13, s 22

Attorney-General v Francis [2007] 1 Qd R 396, cited
Attorney-General v Lawrence [2010] 1 Qd R 505, cited
Attorney-General for the State of Queensland v Ellis [2012] QCA 182, cited
Attorney-General (Qld) v Fardon [2013] QCA 64, cited
Attorney-General (Qld) v Yeo [2008] QCA 115, cited
Fardon v Attorney-General (Qld) (2004) 223 CLR 575, cited
Kynuna v Attorney-General (Qld) [2016] QCA 172, cited
LAB v Attorney-General [2011] QCA 230, cited
Turnbull v Attorney-General (Qld) [2015] QCA 54, cited

COUNSEL: B Mumford for the applicant
 K Bichel for the respondent

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

- [1] The Attorney-General sought orders under s 22 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (the Act) consequent upon a breach by the respondent of a supervision order made by Philippides J on 30 June 2014 (the supervision order).

Statutory context

- [2] The Act provides for the continued detention or supervised release of “a particular class of prisoner”.¹ The objects of the Act are twofold, namely the protection of the community and the control, care and treatment of certain prisoners to facilitate their rehabilitation.² The prisoners the subject of the Act are those serving a term of imprisonment for a “serious sexual offence”³ which is “an offence of a sexual nature ... involving violence” or “an offence of a sexual nature ... against a child”.⁴
- [3] Part 2 of the Act provides that the Attorney-General may apply to the Court for either a continuing detention order⁵ or a supervision order.⁶ A continuing detention order requires the detention in custody of the prisoner beyond the date of expiry of the sentence which they are then serving. A supervision order provides for the release of the prisoner under supervision notwithstanding the expiry of the sentence.
- [4] A critical provision is s 13. Section 13 has significance to the present application as the provisions which deal with breaches of supervision orders⁷ adopt terms and concepts included in s 13. The section is in these terms:

¹ *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 3.

² Section 3 and see generally *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575.

³ Section 5(6).

⁴ Sections 2 and the Schedule (Dictionary).

⁵ Sections 13, 14 and 15.

⁶ Sections 13, 15 and 16.

⁷ Primarily see section 22.

“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;
 - (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).”

[5] Therefore:

- (i) the test under s 13 is whether the prisoner is “a serious danger to the community”⁸;
- (ii) that initial question is answered by determining whether there is an “unacceptable risk that the prisoner will commit a serious sexual offence”⁹ if no order is made; and
- (iii) if that conclusion is reached, then a supervision order (as opposed to a continuing detention order) can only be made where the adequate protection of the community can be ensured by the making of a supervision order;¹⁰ but

⁸ Section 13(1).

⁹ Section 13(1) and (2).

¹⁰ Section 13(6).

- (iv) where “adequate protection of the community” can be ensured by a supervision order, then the making of a supervision order ought to be preferred to the making of a continuing detention order.¹¹

[6] Breach of a supervision order has consequences under Division 5 of Part 2 of the Act. Section 20 provides, relevantly:

“20 Warrant for released prisoner suspected of contravening a supervision order or interim supervision order

- (1) This section applies if a police officer or corrective services officer reasonably suspects a released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the released prisoner’s supervision order or interim supervision order.
- (2) The officer may, by a complaint to a magistrate, apply for a warrant for the arrest of the released prisoner directed to all police officers and corrective services officers to arrest the released prisoner and bring the released prisoner before the Supreme Court to be dealt with according to law.
- (3) The magistrate must issue the warrant, in the approved form, if the magistrate is satisfied the grounds for issuing the warrant exist.
- (4) However, the warrant may be issued only if the complaint is under oath.
- (6) The warrant may state the suspected contravention in general terms....”

[7] Section 22 provides:

“22 Court may make further order

- (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

¹¹ *Attorney-General v Francis* [2007] 1 Qd R 396 at [39]; *Attorney-General (Qld) v Yeo* [2008] QCA 115; *Attorney-General v Lawrence* [2010] 1 Qd R 505; *LAB v Attorney-General* [2011] QCA 230; *Attorney-General for the State of Queensland v Ellis* [2012] QCA 182; *Attorney-General (Qld) v Fardon* [2013] QCA 64.

- (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)."
- [8] Proceedings upon a contravention or likely contravention of a supervision order are commenced by the issue of a warrant under s 20. This occurred here. In practice, the Attorney-General then files an application seeking orders under s 22.¹² Again that is what occurred here.
- [9] By s 22, once a contravention is proved, the Court shall rescind the supervision order and make a continuing detention order¹³ unless the prisoner satisfies the Court that their continuation on supervision in the community will ensure the adequate protection of the community.¹⁴ It is well established that the concept of "the adequate protection of the community" in s 22(7) has the same meaning as it bears in s 13.¹⁵ Therefore, 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.
- [10] The issue under s 22 of the Act is not whether there is an unacceptable risk that the respondent will breach the supervision order. The issue is whether there is an unacceptable risk that he will commit a serious sexual offence.¹⁶

The respondent's criminal history

- [11] Between 1996 and 1999, the respondent was convicted of various offences of dishonesty and minor offences of violence.
- [12] On 16 July 1999, the respondent was convicted of rape, three counts of entering a dwelling to commit an indictable offence, assault occasioning bodily harm while armed with a weapon and deprivation of liberty. At this point, the respondent¹⁷ was 20 years of age. The offending occurred when he was 19.
- [13] The complainant was a 15 year old girl who had been in a relationship with the respondent. He abducted her at knifepoint from a party where he raped her. He received a sentence of seven years imprisonment.
- [14] In April 2000, the respondent was convicted of rape and common assault. That offending occurred in 1998.

¹² *Attorney-General (Qld) v Sands* [2016] QSC 225.

¹³ Section 22(2).

¹⁴ Section 22(7).

¹⁵ *Kynuna v Attorney-General (Qld)* [2016] QCA 172 at [60]; see also *Turnbull v Attorney-General (Qld)* [2015] QCA 54 at [36].

¹⁶ *Attorney-General (Qld) v Francis* [2012] QSC 275 at [64]-[67].

¹⁷ Date of birth: 17 March 1979.

- [15] The complainant was a 14 year old girl who he pushed into a public toilet and tried to push his penis into her mouth. Subsequently, he pushed her to the ground and vaginally raped her. He received a term of imprisonment of eight years.

History under the *Dangerous Prisoners (Sexual Offenders) Act 2003*

- [16] The supervision order was made on 30 June 2014.
- [17] Since that time, he has been the subject of various breach proceedings but has been released back into the community on the supervision order.¹⁸

The current breach

- [18] On 4 June 2019 the applicant filed an application for orders under s 22 of the Act alleging that the respondent was likely to contravene requirements (xv) and (xvi) of the supervision order, which are respectively:

- He “not commit an indictable offence during the period of the order”;¹⁹ and
- He “not commit an offence of a sexual nature during the period of the order.”²⁰

- [19] An amended application was filed which alleges that the respondent has contravened requirement (xv)²¹, and the other allegations have been abandoned.

- [20] The alleged contravention arises from an incident on 30 May 2019 at a shopping centre. The respondent was at the shopping centre with his partner. The incident was captured on CCTV which shows the respondent assaulting her and attempting to take a backpack from her. The conduct of the respondent is quite aggressive and includes pushing her in the face.

The psychiatric evidence

- [21] For the purposes of the current proceedings, the respondent was examined by Dr Scott Harden and Dr Andrew Aboud.

- [22] Dr Harden formed the following diagnosis:

“In my opinion he still meets²² criteria for **Antisocial Personality Disorder**. He also has some psychopathic personality features.

In my opinion he would still meet a diagnosis of **Alcohol Abuse, in remission because of incarceration**, it is not clear whether he has ever met criteria for alcohol dependence. The alcohol abuse is significant because of the disinhibiting effect of intoxication which has been intimately involved in facilitating his committing offences.

¹⁸ Burns J, 13 April 2015 CFI 48, *Attorney General (Qld) v Yeatman* [2016] QSC 187; Burns J, 8 May 2017, *Attorney General (Qld) v Yeatman* [2018] QSC 70; [2019] 1 QdR 89.

¹⁹ Condition (xv).

²⁰ Condition (xvi).

²¹ That he not commit an indictable offence.

²² Dr Harden had previously examined the respondent.

It is likely that he would also meet criteria for **Marijuana Abuse, In Remission Because Of Incarceration.**

Although the rapes were violent in nature and the victims were under 18, they were not prepubertal and there are no features to suggest that he has a paraphilia such as sexual sadism or paedophilia.”

[23] Dr Aboud made the following diagnosis:

“From the perspective of psychiatric diagnosis, I fully concur with the previous assessing psychiatrists, Dr Harden, Dr Grant and Dr Moyle,²³ who diagnosed: **Antisocial Personality Disorder (with Borderline Traits); prominent features of Psychopathy; Alcohol Dependence, currently in remission; Cannabis Dependence, currently in remission.** Similarly, I also do not believe there is evidence of other mental illness, or of a paraphilic drive. With respect to the latter, it is my view that the young ages of his two victims of rape (15 and 14, respectively) reflect instead his own emotional immaturity at the time, rather than a particular and enduring interest in female minors.”

[24] On assessment of risk, Dr Harden opined:

“This is my opinion that on the basis of the information available **his future risk of sexual reoffence continues to be moderate — high/above average.**

Issues in this man in my opinion continue to be substance intoxication, violation of social rules and laws, lack of empathy for other people and lack of vocational and social structure in the community. These are exacerbated by his interpersonal coping style, his strong desire for an intimate relationship, his relative lack of skills in choosing an appropriate partner and maintaining the relationship.

In my opinion the monitoring, supports and abstinence from substances associated with a supervision order continue to reduce his risk of recidivism to moderate/average in the community.

In the absence of supervision in the community, he will rapidly return to substance abuse and unregulated dysfunctional interpersonal relationships with a high likelihood of development of domestic violence.”

[25] On the topic of risk, Dr Aboud said:

“Taking into consideration the various actuarial and dynamic assessments of future violence and sexual violence risk that have been applied, **it is my view that Mr Yeatman's current overall unmodified risk of reoffending through sexual violence and nonsexual violence would be between moderate and high.** In coming to this conclusion I take into account: the more worrying aspects of his offending behaviour, including the impulsive, opportunistic and predatory nature of his sexual violence; his use of physical coercion and threats to control his victims; his sense of sexual entitlement, leading to a direct link between a fractured intimate relationship, and a maladaptive reaction using sexual violence; the historical problems he has

²³ Doctors who had previously diagnosed the respondent.

had with anger management, and coping with stress, frustration, and relationship conflict and jealousy; his significant history of alcohol and cannabis misuse, both implicated in his sexual offending, and their potential relationship with maladaptive coping; his previous and current relationship and intimacy difficulties; his Cluster B (Antisocial and Borderline) personality traits (including emotional lability and reactivity, with poor frustration tolerance and adaptive coping skills) together with his prominent Psychopathic traits. It is noteworthy that he has breached orders on more than one occasion. It is also noteworthy, however, that prior to his release on a supervision order in 2014, he participated in recommended group sexual offender treatment programs, and recommended substance abuse programs. There is some evidence that he has undergone some limited maturation over the years.

His pattern of repeatedly breaching the supervision order is very concerning. His risk of sexual offending is associated with cannabis use and also with emotional instability, relationship conflict and sexual entitlement. These were all issues that pertained to his recent period of community supervision, and some of which were in the process of escalation. However, it does not appear that there was evidence of him becoming sexually preoccupied during this time, and it does seem that his partner, 'C', to some extent acted somewhat aggressively towards him in the lead up to his assault of her on 30 May 2019. At the time of his return to custody, on 31 May 2019, Mr Yeatman was progressing toward a potentially escalated risk for both sexual violence and physical violence toward 'C'. It was an appropriate decision, therefore, that he be returned to custody at that time.

He has now been in custody for over 3 months. **In my opinion his risk of reoffending sexually would be reduced to below moderate in the context of the supervision order (unamended).** If and when he is released to the community, I highlight the following issues as important considerations for future management: access to stable accommodation; abstinence from alcohol and substances; enhancement of prosocial personal and family supports; management of associations with criminogenic peers and peers who misuse alcohol and substances; management of isolation and discretionary time; efforts to enhance structured prosocial daily activities and routine, and if possible by way of employment; continued provision of professional support from a psychologist in the community (to assist with adaptive coping, broad problem solving skills, emotional regulation, ongoing motivational work regarding alcohol and substance abuse vulnerabilities, and relationship stability); referral for specialist relationship counseling and domestic violence counseling; ongoing efforts 'to ensure effective communication, in view of his deafness (which is a genuine problem, for the most part). His relationship with 'C' is likely to present an ongoing challenge for risk management, and the strategy of dynamically review and reaction to its level of stability/instability is appropriate."

[26] Dr Harden made specific recommendations as follows:

"I would recommend that he continue on the supervision order if released into the community.

I have no suggestions for additional conditions for the supervision order.

Close monitoring of the relationship with C should continue if he is released into the community.

If she continues to be committed to the relationship then couple therapy should be attempted by either the treating psychologist or another agency such as relationships Australia.

Psychological therapy should continue if he is released into the community.

I recommend that he be actively supported to seek appropriate training and/or employment.

It is critical that his hearing aids continue to be functional.”

The respective parties’ contentions

- [27] The respondent admits the contravention.
- [28] The applicant submits that while the onus is upon the respondent to demonstrate that adequate protection of the community is able to be ensured by his release onto the supervision order, she accepts that the psychiatric evidence points to that being the case.
- [29] The applicant accepts that the respondent has discharged the onus cast upon him by the Act. The respondent presses for his release on the supervision order.

Determination

- [30] The respondent committed serious sexual offences which led to him being sentenced to lengthy terms of imprisonment. He has not performed well under supervision in that he has committed several contraventions of the order. However, the respondent has not recently committed an offence of a sexual nature.
- [31] Despite the contraventions of the supervision order, the order is providing adequate protection to the community against the commission of serious sexual offences. The psychiatric evidence supports the respondent’s submission that he has discharged the onus.
- [32] I accept the psychiatric evidence and I find that the respondent has satisfied the onus cast upon him by s 22(7) of the Act, namely that “the adequate protection of the community can, despite the contravention, ... of the [supervision order], be ensured” by him being released back into the community on the supervision order.

Orders

- [33] The court being satisfied to the requisite standard that the respondent, Trent Thomas Yeatman, has contravened a requirement of the supervision order made by Justice Philippides on 30 June 2014, orders that:
 - (1) The respondent, Trent Thomas Yeatman, be released from custody and continue to be subject to the supervision order made by Justice Philippides on 30 June 2014.