SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Sampton* [2020] QSC 40
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **HOSEA SAM SAMPTON** (respondent)
FILE NO/S:	BS No 4597 of 2016
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	Order made on 6 March 2020, reasons delivered on 13 March 2020
DELIVERED AT:	Brisbane
HEARING DATE:	6 March 2020
JUDGE:	Davis J
ORDER:	**The respondent be released from custody and continue to be subject to the requirements of the supervision order of Applegarth J dated 17 October 2016.**
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 (the Act) – 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 respondent has previously been the subject of proceedings for breach of the supervision order – where the applicant sought orders under s 22 of the Act – 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 2,

s 3, s 5, s 13, s 14, s 15, s 16, s 20, s 21, s 22, s 43AA

Attorney-General for the State of Queensland v Ellis [2012] QCA 182, cited
Attorney-General (Qld) v Fardon [2013] QCA 64, cited
Attorney-General v Francis [2007] 1 Qd R 396, followed
Attorney-General (Qld) v Francis [2012] QSC 275
Attorney-General v Lawrence [2010] 1 Qd R 505, cited
Attorney-General for the State of Queensland v Sampton, unreported, Applegarth J, 17 October 2016
Attorney-General (Qld) v Sands [2016] QSC 225, 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, followed
LAB v Attorney-General [2011] QCA 230, cited
Turnbull v Attorney-General (Qld) [2015] QCA 54, followed

COUNSEL: BH Mumford for the applicant
JB Horne for the respondent

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

[1] The respondent is a prisoner the subject of a supervision order made under *Dangerous Prisoners (Sexual Offenders) Act* 2003 (the Act) by Applegarth J on 17 October 2016[1] (the supervision order). The Attorney-General sought orders under s 22 of the Act alleging breaches of the supervision order.

[2] The respondent admitted the breaches alleged but submitted that he ought to be released back into the community subject to the supervision order without the supervision order being amended. The applicant agreed that was the appropriate outcome.

[3] On 6 March 2020, I made the following order:

> "The respondent be released from custody and continue to be subject to the requirements of the supervision order of Applegarth J dated 17 October 2016."

[4] These are the reasons for making that order.

Statutory context

[5] The Act provides for the continued detention or supervised release of a "particular class of prisoner".[2] 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.[3] The prisoners the subject of the Act are those serving a term of

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1 *Attorney-General for the State of Queensland v Sampton*, unreported, Applegarth J, 17 October 2016.
2 *Dangerous Prisoners (Sexual Offenders) Act* 2003 s 3.
3 Section 3 and see generally *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575.

imprisonment for a "serious sexual offence"[4] which is "an offence of a sexual nature … involving violence" or "an offence of a sexual nature … against a child".[5]

[6] Part 2 of the Act provides that the Attorney-General may apply to the Court for either a continuing detention order[6] or a supervision order.[7] A continuing detention order requires the detention in custody of the prisoner beyond the 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.

[7] Central to the scheme of the Act is s 13. Section 13 has significance to the present application, as the provisions which deal with breaches of supervision orders[8] adopt terms and concepts included in s 13. The section 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;

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4 Section 5(6).
5 Sections 2 and the Schedule (Dictionary).
6 Sections 13 and 14.
7 Sections 13, 15 and 16.
8 Primarily see section 22.

(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)."

[8] Therefore:

(a) The test under s 13 is whether the prisoner is "a serious danger to the community".[9]

(b) That initial question is answered by determining whether there is an "unacceptable risk that the prisoner will commit a serious sexual offence"[10] if no order is made.

(c) 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.[11]

(d) Where the "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.[12]

[9] 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.[13]

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9 Section 13(1).

10 Section 13(1) and (2).

11 Section 13(6).

12 *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.

13 There is no subsection (5).

(6) The warrant may state the suspected contravention in general terms … ."

[10] 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

(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)."

[11] Proceedings upon a contravention or likely contravention of a supervision order are commenced by the issue of a warrant under s 20 of the Act. In practice, the Attorney-General files an application seeking orders under s 22.[14]

[12] By s 22, once a contravention is proved, the Court shall rescind the supervision order and make a continuing detention order,[15] unless the prisoner satisfies the Court that their continuation on supervision in the community will ensure the adequate protection of the community.[16] 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.[17] Therefore, a prisoner facing an application under s 22 must prove

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

15 Section 22(2).

16 Section 22(7).

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

that the supervision order will ensure adequate protection of the community, by removing unacceptable risk that they will commit a serious sexual offence.

[13] 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.[18]

Background

[14] The respondent was born in 1964. He is an Indigenous man who is now 55 years of age.

[15] The respondent has a lengthy criminal history commencing in 1983. He has been convicted of a variety of offences involving drugs, violence and dishonesty. In July 1992, as a 28 year old, the respondent was sentenced in the District Court at Cairns to four years' imprisonment for the rape of a young woman who was unknown to him. He came across her on a walking track, overpowered and raped her.

[16] In November 2007, the respondent beat a woman with a paling and then raped her. At the time of that offending, he was under the influence of alcohol and cannabis. In May 2010, he was sentenced in the District Court at Cairns to nine years' imprisonment with a serious violent offence declaration.

[17] The 2010 conviction was the basis of the application made for orders under the Act. That culminated in Applegarth J making the supervision order.

[18] Relevantly here, are requirements 7, 8 and 23 of the supervision order. They are in these terms:

> "The respondent must:
>
> (1) …
>
> (7) comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order;
>
> (8) comply with every reasonable direction of a Corrective Services officer which is intended to reduce the risk of interpersonal violence, aggression or intimidation of any person in which the respondent is in a personal or intimate relationship;
>
> …
>
> (23) abstain from the consumption of alcohol and illicit drugs for the duration of this order."

[19] In July 2018, after the respondent had been in the community on the supervision order for about 20 months, it was alleged that he contravened each of conditions 7, 8 and 23. He was returned to custody.[19]

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

19 *Dangerous Prisoners (Sexual Offenders) Act* 2003, ss 20, 21.

[20] An application under s 22 of the Act was heard by Mullins J (as her Honour then was) on 27 November 2018. Her Honour found that the respondent had breached condition 23, evidenced by drug tests which were positive for cannabis and methylamphetamine. Her Honour found requirements 7 and 8 of the supervision order had also been contravened, as the respondent had entertained a woman at his residence on numerous occasions without prior written permission of a corrective services officer.

[21] Her Honour noted that there was no suggestion of further sexual offending. Her Honour considered the evidence of two psychiatrists, Dr Sundin and Dr Timmins, and then concluded that the respondent ought to be released back into the community on the supervision order. Her Honour made orders accordingly.

[22] After being released from custody, the respondent lived at The Precinct in Townsville.

[23] On numerous occasions between 30 November 2018 and 17 September 2019, the respondent tested positive to cannabis. The ingestion of cannabis constituted a breach of condition 23 of the supervision order. The respondent admits this and some of those instances have been the subject of charges of breaching the supervision order.[20] On 29 November 2019, the respondent pleaded guilty in the Townsville Magistrates Court to those charge and was sentenced to one month imprisonment with parole release on 6 December 2019.

[24] A warrant alleging the breaches was issued against the respondent[21] and he has been in custody since late September 2019.

Current psychiatric evidence

[25] Doctors Sundin and Timmins again examined the respondent. Both doctors made diagnoses.

[26] Doctor Sundin opines that:

> "Using the classificatory system of the American Psychiatric Association, DSM-V, I remain of the opinion that Mr Sampton's primary diagnoses are:
>
> 1. Antisocial personality disorder with elevated psychopathy traits;
> 2. Substance use disorder - cannabis; and
> 3. Alcohol use disorder, in sustained remission."

[27] Dr Timmins opines that:

> "Mr Sampton has evidence of a Mixed Personality Disorder with Antisocial and Narcissistic personality traits. He has a PCL-R scoring of 30 which indicates the presence of psychopathic traits.

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20 Pursuant to *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 43AA.

21 Pursuant to *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 20.

> He also has a Substance Use Disorder - mainly Alcohol and Cannabis (in sustained remission in a controlled environment). He has a history of extensive alcohol use and his cannabis use is likely more than he is admitting to. He has admitted to harmful use of other substances including amphetamines, opioids and inhalants at intermittent times.
>
> I am of the opinion that he does not meet the criteria for a sexual paraphilia.
>
> He does not currently have an Axis 1 psychotic illness or a major mood disorder."

[28] As to risk, both doctors identified alcohol abuse as a significant risk factor. Doctor Sundin did not regard cannabis use as a risk which was as serious as alcohol abuse. Doctor Sundin observed:

> "With respect to the issue of risk of sexual recidivism, I am of the opinion that without the benefit of a supervision order, Mr Sampton's risk of future sexual recidivism is moderate to high. His risk would escalate incrementally if he reverted to abuse of alcohol. His risk would principally be to an intimate partner, but stranger females would be at risk, although at fess risk than an intimate partner.
>
> The question of the contribution of cannabis to his risk for future sexual violent recidivism is less clear."

and later:

> "In my opinion, Mr Sampton's risk for future sexual recidivism is principally related to his abuse of alcohol, with cannabis a lesser but not insignificant contributor."

and later:

> "Taking all of these factors globally, I consider that the supervision order is serving its purpose in moderating the risk for future sexual recidivism posed by Mr Sampton.
>
> It remains of prime importance for him to remain abstinent from alcohol and for any intimate partner relationship to be closely monitored.
>
> I would prefer him to abstain from cannabis but, as indicated above, I consider that cannabis is a less serious risk factor for future sexual offending when compared to alcohol, which has been the principal disinhibitor."

and later:

> "I therefore respectfully advise that in my opinion, the existing supervision order is serving its purpose in protecting the community and Mr Sampton could be released back into the community under the auspices of the existing supervision order."

and later:

> "Central to any discharge plan there would need to be an understanding there is no flexibility in the Department's approach to any use of substances. Hopefully with that in mind, then together with ongoing treatment and support, this will have the desired effect of having him maintain his abstinence.
>
> In the future and to minimise risks, providing Mr Sampton does remain:
>
> - compliant with his Supervision Order and Reasonable Directions;
> - remains under effective Case Management;
> - stays connected with a suitably qualified mental health professional;
> - remains completely abstinent from substances including alcohol;
> - resides within a stable home;
>
> then his risks of reoffending/breaching are likely to be manageable and within a Moderate range of risk.
>
> If this plan were to be departed from then his risk of re-offending or at least breaching his Order would escalate significantly with further breaches likely."

[29] Doctor Timmins' views generally accord with those of Dr Sundin although Dr Timmins thought that the ingestion of cannabis and the abuse of alcohol were both significant risk factors.

Consideration

[30] The central consideration under the Act is the protection of the community from an unacceptable risk of the commission of serious sexual offences. While the respondent has shown an unfortunate tendency to breach the supervision order by ingestion of cannabis, he has not, during his time in the community subject to supervision, committed any sexual offence.

[31] Both alcohol and cannabis have a disinhibiting effect. It is the common human experience that the ingestion of substances with a disinhibiting effect by someone prone to abhorrent behaviour increases the likelihood of that person reverting to the abhorrent behaviour.

[32] Both doctors opine that the risk of the respondent committing a serious sexual offence is reduced by him being subject to a supervision order.

[33] In my view, that risk is reduced to an acceptable level and for that reason I made the order releasing him back into the community on supervision.