

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v T* [2020] QSC 179

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

FILE NO/S: BS5545 of 2020

DIVISION: Trial

PROCEEDING: Application on the papers

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 17 June 2020

DELIVERED AT: Brisbane

HEARING DATE: 17 June 2020 (on the papers)

JUDGE: Wilson J

ORDER: **The Court being satisfied that there are reasonable grounds for believing that the respondent is a serious danger to the community in the absence of an Order made under Division 3 of the *Dangerous Prisoner (Sexual Offenders) Act 2003 (Qld)* (the Act), orders that:**

- 1. The application for a Division 3 Order be set for hearing on 9 November, 2020.**
- 2. Pursuant to s 8(2)(a) of the Act, the respondent undergo examinations by two psychiatrists named by this Court, being Dr Michael Beech and Dr Evelyn Timmins, who are to prepare independent reports, which are to be prepared in accordance with s 11 of the Act.**
- 3. Being satisfied that it is in the interests of justice, pursuant to s 39PB(3) of the *Evidence Act 1977 (Qld)*, the Court directs that Dr Scott Harden, Dr Michael Beech and Dr Evelyn Timmins, may give oral evidence to the Court other than by audio visual link or audio link.**
- 4. Liberty to apply granted.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR

DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – where the applicant seeks orders pursuant to s 8 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* that the respondent be subject to assessment by two psychiatrists

Child Protection (Offender Reporting) Act 2004 (Qld)

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) s 8

COUNSEL: M Maloney for the applicant
C Smith for the respondent

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

Overview

- [1] The Attorney-General seeks orders pursuant to s 8 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* (the Act). The effect of those orders is to subject the respondent (a prisoner) to assessment by two psychiatrists. The Attorney-General will seek, in due course, orders for the respondent's continued detention or release subject to a supervision order under the Act.
- [2] The respondent does not oppose the making of the orders in the terms of the draft proposed by the applicant.

Background

- [3] The respondent was born in 1983, and is presently 36 years of age. He has a lengthy history, over three separate episodes, of serious sexual offending. In total, the respondent has acquired five victims, four of whom were children.
- [4] On 28 August 2013, the respondent was convicted following his guilty plea in the District Court at Hervey Bay to one count of rape that was committed by him against a young female child. Additionally, the respondent pleaded guilty to some other 57 offences, involving indecent treatment of a child under 12 years of age, possessing child exploitation material and using a carriage service to transmit, make available, publish, distribute, advertise or promote child pornography. He was also dealt with for two breaches of a suspended sentence imposed on 9 December 2010 with respect to earlier sexual offending.
- [5] On 17 January 2014, the respondent was sentenced by Judge Botting to a period of nine years imprisonment for the rape. He received lesser, concurrent periods of imprisonment for the other offences. The breaches were proven, and the respondent was ordered to serve the balance of the term of the suspended imprisonment, being a period of 21 months. A period of pre-sentence custody in the order of 785 days was declared as time already served. A parole eligibility date was fixed at 24 November 2014.
- [6] On present calculation, the respondent is due for release on 22 November 2020.

- [7] Upon his release from custody, the respondent will be a Reportable Offender within the meaning of the *Child Protection (Offender Reporting) Act 2004 (Qld)* for a period of 15 years.
- [8] The applicant's outline sets out the summary of the evidence and statutory scheme.
- [9] The respondent accepts as accurate the summary of the evidence and statutory scheme as provided in the applicant's written outline of submissions.
- [10] I have considered all of the material, in particular the psychiatric reports from Dr Arthur and Dr Harden.

Statutory scheme

- [11] The objects of the Act are to provide for continued detention or supervision of a particular class of prisoner and to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.¹
- [12] The Act permits the Attorney-General to apply for interim orders that a prisoner undergo psychiatric examinations (a risk assessment order) and for their detention or supervision for a limited period (an interim order or interim supervisions order).² A risk assessment order requires the prisoner to be examined by two psychiatrists to assess the level of risk that the prisoner will commit another serious sexual offence and for reports to be prepared.³ The reports must be given to the Attorney-General and to the respondent.⁴
- [13] The person subject to the orders must be a "prisoner", being someone who is serving a period of imprisonment for a serious sexual offence.⁵ A serious sexual offence is an offence of a sexual nature involving violence or against children.⁶
- [14] The respondent accepts that he is a "prisoner" as defined by s 5(6) of the Act.
- [15] The Court must be satisfied there are reasonable grounds for believing the prisoner is a "serious danger to the community" in the absence of orders made under the Act for the prisoner's ongoing detention or supervision.⁷ A belief is something more than a suspicion but something less than proof on the balance of probabilities. Belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition and the grounds which can reasonably induce that inclination of the mind may leave something to surmise or conjecture.⁸
- [16] The subject matter of the belief is that the prisoner is a serious danger to the community in the absence of a Division 3 Order. At the preliminary hearing, the Court does not have to be satisfied the respondent is a serious danger to the

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

² *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* s 8.

³ *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* ss 9, 11.

⁴ *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* s 12.

⁵ *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* s 5(6).

⁶ *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* sch 1, s 2.

⁷ *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* s 8(1).

⁸ *George v Rockett* (1990) 170 CLR 104 at 116.

community.⁹ The question is whether the Court is satisfied there are reasonable grounds for believing the respondent is a serious danger to the community.¹⁰

- [17] The relevant test under s 8 of the Act has been reviewed by the Court of Appeal in *Attorney-General (Qld) v Fardon* [2018] QCA 251.¹¹ The observations of the Court are germane to the consideration of the task, and the discretion, at the Preliminary Hearing stage of an Application for a Division 3 Order under the Act.¹² Relevantly:

“[11] The practical effect of s 8 is to provide a threshold to be met by applicants for Division 3 orders, as a pre-requisite for being able to seek those orders at a final hearing. If the threshold is passed, it allows the application to proceed to a final hearing and, in the meantime, s 8 allows the court to make orders, including that the prisoner undergo a psychiatric examination. It can be seen that there is limited occasion for any exercise of discretion under s 8. If the court is satisfied that reasonable grounds for the prescribed belief are shown, a hearing date must be set; the discretion is confined to deciding whether orders for psychiatric examination and further supervision or custody pending the final hearing should be made. In contrast, s 13 confers a complete discretion as to whether and which orders are made once the requisite satisfaction for the purposes of that provision is reached.

[...]

- [17] The test for a preliminary hearing is not as demanding as the test for a final hearing. Whereas the final hearing test requires satisfaction the prisoner is a serious danger to the community in the absence of a further order, the preliminary hearing test requires satisfaction there are reasonable grounds for believing that to be so.

- [18] The distinction between the tests is an important one, all the more so by reason of the likely alteration of the evidentiary picture between the stages at which the tests are to be applied. The Act contemplates that by the time of the final hearing there will likely be evidentiary material before the court additional to that before the court at the time of the preliminary hearing. This may include the written submission of a victim and the independent reports of two psychiatrists named by the court to examine the prisoner and report on their assessment of the prisoner’s level of risk of committing another serious sexual offence. Thus, the evidence before the court by the time of the final hearing might be more compelling, one way or the other,

⁹ *Attorney-General for the State of Queensland v Gibson* [2017] QSC 102 at [21] per Boddice J.

¹⁰ *Attorney-General for the State of Queensland v Gibson* [2017] QSC 102 at [21] per Boddice J.

¹¹ *Attorney-General (Qld) v Fardon* [2018] QCA 251 (Holmes CJ, Gotterson JA and Henry J).

¹² The QCA appeal related to an application for a further Supervision Order, following the expiration of the respondent’s existing Supervision Order.

than the evidence before the court at the time of the preliminary hearing.

[19] The fact that without more evidentiary material an application would likely fail to meet the s 13 test is not part of the s 8 test. It is also irrelevant because at the preliminary hearing the court is not to know the force of any additional evidentiary material which may be put before the court by the time of the application of the s 13 test at the final hearing.”¹³

- [18] The subject matter of the belief is that the prisoner is a serious danger to the community in the absence of a Division 3 Order. A prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody or released without a supervision order being made.¹⁴ In deciding whether a prisoner is a serious danger to the community for the purposes of the preliminary hearing under s 8, the matters in s 13(4) may be considered. There is no specific definition of serious danger to the community contained in s 8 of the Act, however a definition is included in s 13 for the purposes of the final determination of the application for a Division 3 Order. It is submitted that the matters in s 13(4), with necessary changes, provide some guidance for the Court in determining the preliminary hearing.
- [19] I have considered s 13(4) of the Act in the context of the circumstances of this matter.
- [20] The respondent is a 36 year old man currently serving a nine year period of imprisonment for 58 separate counts of sexual abuse against children, one of which includes rape. When sentencing the respondent for the index offences, Botting DCJ referred to the respondent’s offending as ‘horrific’.
- [21] Despite his relatively young age, the respondent has a lengthy history, over three separate episodes, of serious sexual offending. In total, the respondent has acquired five victims, four of which were children. While his most serious offending involved rape, his offending is varied, including viewing child exploitation material from about 13 years of age (by his account), and more recently, involving the international transmission and sharing of such material.
- [22] In his report, Dr Harden reported that ‘it seems likely that [the respondent’s] own experience of sexual abuse initially sensitised him to sexual issues’. Unfortunately, to date, the respondent has resisted engaging in any offence specific treatment targeting his sexual offending.
- [23] Dr Harden was engaged by the applicant to assess the respondent for the purpose of this application. Dr Harden assesses the respondent’s risk of sexual reoffending to be high (well above average). Dr Harden opines that the respondent’s critical issues are his deviant sexual arousal and lack of sexual offence treatment. Ultimately, Dr Harden recommends that the respondent complete the HISOP prior to release from custody.

¹³ *Attorney-General (Qld) v Fardon* [2018] QCA 251 at 5 [11], 6 [17]-[19].

¹⁴ *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) s 13(2) of the Act.

- [24] To make such an order pursuant to s 8(1) of the Act, the Court has to be satisfied only that there are reasonable grounds for believing that the prisoner is a serious danger to the community (that there is an unacceptable risk that the prisoner will commit a serious sexual offence), not that the prisoner is a serious danger.
- [25] The respondent does not resist a finding, pursuant to s 8(1) of the Act, that there are reasonable grounds for believing he is a serious danger to the community in the absence of a Division 3 order.
- [26] After considering the material, in particular, Dr Harden's report, I am satisfied that there are reasonable grounds for believing that, if released without the making of an order pursuant to Part 2 Division 3 of the Act, there is an unacceptable risk that the respondent will commit further serious sexual offences.
- [27] I notice that the respondent does not oppose the making of orders in terms of the draft proposed by the applicant.
- [28] After considering the material and relevant statutory scheme I will make the orders in terms of the draft prepared by the applicant.

Orders

- [29] The Court being satisfied that there are reasonable grounds for believing that the respondent is a serious danger to the community in the absence of an Order made under Division 3 of the *Dangerous Prisoner (Sexual Offenders) Act 2003 (Qld)* (the Act), orders that:
1. The application for a Division 3 Order be set for hearing on 9 November, 2020.
 2. Pursuant to s 8(2)(a) of the Act, the respondent undergo examinations by two psychiatrists named by this Court, being Dr Michael Beech and Dr Evelyn Timmins, who are to prepare independent reports, which are to be prepared in accordance with s 11 of the Act.
 3. Being satisfied that it is in the interests of justice, pursuant to s 39PB(3) of the *Evidence Act 1977 (Qld)*, the Court directs that Dr Scott Harden, Dr Michael Beech and Dr Evelyn Timmins, may give oral evidence to the Court other than by audio visual link or audio link.
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