SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Holroyd* [2020] QSC 196
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **JEFFREY CHARLES HOLROYD** (respondent)
FILE NO/S:	BS No 10567 of 2016
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	26 June 2020
DELIVERED AT:	Brisbane
HEARING DATE:	23 June 2020
JUDGE:	Williams J
ORDER:	**THE COURT, being satisfied to the requisite standard that the respondent, Jeffrey Charles Holroyd, has contravened the order of Flanagan J dated 20 February 2017, amended by the order of Davis J made on 19 February 2019, ORDERS THAT:** **1. The respondent be released from custody to continue to be subject to the requirements of the supervision order of Flanagan J dated 20 February 2017, as amended, and to remain subject to those requirements until 19 February 2024.**
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 contravened the supervision order made on 20 February 2017 under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (the DPSO Act) by consuming cannabis – where both psychiatrists assess the respondent's risk on the existing supervision order as low to moderate and manageable – where neither psychiatrist gives an opinion which would justify the continuing detention of the respondent – where the only issue remaining in contention is whether the supervision order ought to be extended – where

the psychiatrists disagree as to whether the order ought to be extended – whether the Attorney-General has satisfied the Court on the balance of probabilities that the respondent has contravened the supervision order – whether the respondent has satisfied the Court on the balance of probabilities that the adequate protection of the community can, despite the contravention, be ensured by the supervision order in its current form or as amended – whether the current supervision order should be amended to extend the period of the supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003, s 13, s 13A, s 16, s 20, s 21, s 22

Attorney-General for the State of Queensland v Holroyd [2019] QSC 39, cited
Attorney-General v McKellar [2019] QSC 92, cited
Attorney-General for the State of Queensland v KAH [2019] QSC 36, applied

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

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

Application

[1] The Attorney-General has brought an application pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (the DPSO Act) consequent upon a breach by the respondent of a supervision order made by Flanagan J on 20 February 2017, as amended by Davis J on 19 February 2019 (the supervision order).

[2] The respondent was arrested on a warrant issued on 22 November 2019 under s 20 of the DPSO Act. He came before North J sitting in Townsville on 27 November 2019 and his Honour ordered the respondent be detained pending final hearing of the contravention application.[1]

[3] Two psychiatrists, Dr Scott Harden and Dr Karen Brown, were engaged by the applicant to prepare risk assessment reports for the purpose of the contravention application. Doctor Harden's report was received by the applicant on 8 June 2020 ("Harden report") and Dr Brown's on 11 June 2020 ("Brown report").

[4] The respondent has admitted the alleged contraventions.

[5] The psychiatric evidence of Dr Harden and Dr Brown supports the release of the respondent on a supervision order. On the basis of this, the applicant submits that the Court could be satisfied that the adequate protection of the community could be ensured by the respondent's return to a supervision order.

---

1 *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 21(2)(a).

[6] On 15 June 2020, Davis J made the following orders:

> "1. order (2) of the order of North J made on 27 November 2019 be rescinded;
>
> 2. pursuant to ss 21(2)(b) and 21(4) and 21(6) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003, the respondent be released from custody subject to the supervision order of Flanagan J made 20 February 2017, as amended, until the application filed 27 November 2019 is finally decided."

[7] On 22 June 2020, David J published his reasons for making these orders.[2]

[8] The application pursuant to s 22 of the DPSO Act was heard by me on 23 June 2020. The issue that remained in contention was whether the duration of the supervision order ought to be extended.

[9] On the basis of their reports, there was a difference of opinion between Dr Harden and Dr Brown on this issue. Doctor Brown and Dr Harden gave further evidence and were cross-examined in respect of their opinions on this issue at the hearing on 23 June 2020.

History

[10] The respondent was born on 14 March 1975 and is now 45 years of age.

[11] The respondent is an Indigenous man and lived in the community of Pormpuraaw on the coast of the Gulf of Carpentaria.

[12] In 2012, the respondent was convicted in the Cairns District Court of rape and common assault.[3] It was that offending which led to an application being made under the DPSO Act.

[13] The respondent was released on a supervision order in February 2017. One of the conditions of the supervision order is:

> "24. Abstain from the consumption of alcohol and illicit drugs for the duration of this order."

[14] There have been previous contraventions of the supervision order as described in the 2019 decision of Davis J in *Attorney-General for the State of Queensland v Holroyd.*[4] Consequently, the respondent was released back into the community on 19 February 2019 after a period in custody and the supervision order was extended until 19 February 2024.

[15] The respondent was intoxicated when he committed the rape and common assault for which he was convicted in 2012. Condition 24 is important to the management of risk of the respondent.

---

2 *Attorney-General for the State of Queensland v Holroyd* [2020] QSC 187.

3 The particulars of that offending are explained in *Attorney-General for the State of Queensland v Holroyd* [2019] QSC 39 at [16].

4 [2019] QSC 39 at [18]-[21].

[16] Condition 24 was breached in September 2017 which led to the respondent being detained from 25 September 2017 to 11 June 2018 when Atkinson J ordered his release back into the community on the supervision order. Condition 24 was also contravened in October 2018 which led to the respondent being detained from 11 October 2018 until Davis J made an order on 19 February 2019 releasing him back to the community on the supervision order.

[17] The current application under s 22 of the DPSO Act concerns alleged breaches of condition 24 as follows:

> "The respondent is subject to a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ('the Act') made by Justice Flanagan on 20 November 2017, as amended by Justice Davis on 29 February 2019 ('the supervision order').
>
> The supervision order contains requirement (24) which requires the respondent to abstain from the consumption of alcohol and illicit drugs for the duration of the supervision order.
>
> On 10 June 2019, 18 June 2019, 27 June 2019, 2 July 2019 and 10 July 2019, the respondent provided urine samples for testing. Confirmatory results were received which indicated cannabis was detected at a level of 111ug/L, 157ug/L, 50ug/L, 97ug/L and 379ug/L respectively. The respondent was subsequently charged under s 43AA of the Act, and was convicted in Townsville Magistrates Court on 8 August 2019 and ordered to perform 80 hours of community service.
>
> On 18 July 2019 and 24 July 2019, the respondent provided urine samples for testing. Confirmatory results were received which indicated cannabis was detected at a level of 212ug/L and 55ug/L respectively. Due to the reduction in levels since test completed on 10 July 2019, no further action was taken by Queensland Corrective Services ('QCS').
>
> On 31 July 2019, 9 August 2019, 12 August 2019 and 22 August 2019, the respondent provided urine samples for testing. Confirmatory results were received which indicated cannabis was detected at a level of 65ug/L, 45ug/L, 107ug/L and 436ug/L.
>
> On 27 August 2019, the respondent was directed to Show Cause to QCS as to why he should be permitted to remain in the community. On 3 September 2019, the respondent provided his Show Cause Letter as directed. The Director, High Risk Offender Management Unit responded on 6 September 2019 advising of an intention to review his case management by 4 October 2019 and that if he continued to use illicit substances contravention action would be taken which could result in his return to custody.
>
> During the period of Show Cause, the respondent provided three further urine samples which were positive to cannabis, namely on 3 September 2019, 12 September 2019 and 19 September 2019, however the confirmatory results demonstrated a decrease in levels of cannabis.

> On 3 October 2019, 8 October 2019 and 15 October 2019, the respondent provided urine samples for testing. Confirmatory results were received which indicated cannabis was detected at a level of 518ug/L, 54ug/L and 27ug/L respectively.
>
> On 15 October 2019, the respondent was subject to a Disciplinary Interview with the District Manager in relation to his continued substance use. It was made explicitly clear that any further noncompliance with the supervision order would result in a return to custody. The respondent verbalised his understanding of this warning and articulated his goals, both short and long term to maintain his supervision in the community.
>
> On 30 October 2019, the respondent was subject to a urinalysis test and provided a sample which was presumptive positive to cannabis. Confirmatory reports confirmed the presence of cannabis with a level of 63ug/L. The respondent did not make admissions to smoking cannabis.
>
> On 12 November 2019, the respondent was subject to a urinalysis test and provided a sample which was presumptive positive to cannabis. It is noted that whilst the sample was valid, it appeared to be diluted and watery in appearance. Confirmatory reports confirmed the presence of Cannabis with a level of 17ug/L. The respondent did not make admissions to smoking cannabis.
>
> The respondent has been afforded opportunities to engage in treatment regarding his illicit substance use. He has attended Alcohol, Tobacco and Other Drugs Service ('ATODS') on a weekly basis since 2 July 2019. He also engaged with attend [sic] Queensland Injectors Health Network ('QuIHN') and attended sessions from March 2019 through to July 2019. The respondent was referred again to QuIHN and attended his appointment as directed on 13 November 2019.
>
> Despite the respondent being provided the opportunities to address his chronic substance use he has repeatedly breached requirement 24 of the supervision order. Given the ongoing misuse of illicit substances and his history of offending behaviour whilst under the influence of an intoxicating substance, it is assessed by QCS that he can no longer be managed in the community."[5]

[18] As previously indicated, the respondent has admitted the contraventions.

Statutory scheme

[19] Section 22 of the DPSO Act 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

---

5 See particulars of application filed 27 November 2019.

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)."

[20] Justice Davis in his reasons in *Attorney-General v McKellar* summarised the steps involved under s 22 of the DPSO Act as follows:[6]

> "[12] By s 22, once a contravention is proved, the Court shall rescind the supervision order and make a continuing detention order[7] unless the prisoner satisfies the Court that continuation on supervision in the community (either on the supervision order as it stands, or with amendment) will ensure the adequate protection of the community.[8] 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.[9] Therefore, prisoners 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.

---

6 See *Attorney-General v McKellar* [2019] QSC 92 at [12].
7 Section 22(2) DPSO Act.
8 Section 22(7) DPSO Act.
9 *Kynuna v Attorney-General (Qld)* [2016] QCA 172 at [60]; see also *Turnbull v Attorney-General (Qld)* [2015] QCA 54 at [36].

[13] Section 22 authorises the variation of a supervision order by extending its duration where that is necessary for the adequate protection of the community.[10]

[14] 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.[11]"

[21] The key provision of the DPSO Act is s 13 which states as follows:

"**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;

---

10 *Attorney-General v Van Dessel* [2007] 2 Qd R 1 at [31]; *Attorney-General (Qld) v Foy* [2014] QSC 304 at [14].

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

(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)." (Emphasis in original)

[22] Davis J, in his reasons dated 22 June 2020 in respect of the respondent, summarised the central relevance of s 13 as follows:[12]

> "[19] Section 13 operates this way:
>
> (a) the test under s 13 is whether the prisoner is a 'serious danger to the community';[13]
>
> (b) that initial question is answered by determining whether there is an 'unacceptable risk that the prisoner will commit a serious sexual offence'[14] 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;[15]
>
> (d) 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.[16]"

[23] Further, s 16 of the DPSO Act sets out certain requirements that must be contained in any supervision order. Section 16(1) states as follows:

> "**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

---

12 See *Attorney-General v Holroyd* [2020] QSC 187 at [19].

13 Section 13(1) DPSO Act.

14 Section 13(1) and (2) DPSO Act.

15 Section 13(6) DPSO Act.

16 *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.

(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

(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."

[24] Section 13A of the DPSO Act concerns the duration of supervision orders and states as follows:

"**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 can not end before 5 years after the making of the order or the end of the prisoner's period of imprisonment, whichever is the later."

[25] Under the statutory scheme, a supervision order should be in place whilst supervision is necessary to ensure the adequate protection of the community. The operation of s 13A has been further considered in the decision of Davis J in *Attorney-General for the State of Queensland v KAH.*[17]

The psychiatric evidence

[26] Dr Harden has diagnosed the respondent in these terms:

"In my opinion he meets criteria for Alcohol Abuse and Dependence In Remission Because Of Incarceration. He has now engaged in marijuana abuse as well.

It is still my opinion that he has a Personality Disorder Not Otherwise Specified with antisocial features."[18]

[27] Dr Brown's diagnoses are:

---

17 [2019] QSC 36 at [53]-[72].

18 Harden report at page 22.

> "Mr Holroyd meets criteria for a diagnosis of mixed antisocial and emotionally unstable personality disorder as evidenced by his profound disregard for rules, lack of empathy, irresponsible attitude (particularly with regards to the criminal justice system), low tolerance to frustration (associated in the past with impulsive violence), tendency to externalise blame for his situation onto others and inability to profit from punishment or rehabilitation. He presents with longstanding anxious dysphoric and angry affect, feelings of emptiness, impulsive engagement in idealised but superficial relationships (which are subsequently devalued), and a tendency to use substances in order to seek immediate reward and to relieve the afore mentioned symptoms with associated disinhibition and violent behaviours.
>
> He also has a diagnosis of substance use disorder (alcohol and cannabis) which is currently in enforced remission in a custodial environment.
>
> I do not consider that he meets criteria for sexual sadism disorder or any other paraphilic disorder."[19]

[28] As to risk and recommendations, Dr Harden states in his report:

> "The actuarial and structured professional judgement measures I administered would suggest that his future risk of sexual reoffence is Moderate to High.
>
> My assessment of this risk is based on the combined clinical and actuarial assessment. This assessment takes into account all information made available to myself.
>
> The critical issues in this man are substance intoxication (particularly alcohol), his poor problem-solving, negative emotional reactions, failure to cooperate with supervision and lack of stable accommodation and pro-social networks.
>
> His risk would still be decreased significantly by guaranteeing abstinence from alcohol use. I am most concerned about alcohol use, although he should abstain from all intoxicating substances.
>
> In my opinion a supervision order would still reduce his risk of sexual reoffending in the community to moderate to low.
>
> **Recommendations**
>
> If he is released on a supervision order I recommend that the current conditions be maintained.
>
> I recommend that he continue to have individual psychological treatment focusing on his sexual offending and substance misuse.
>
> I recommend that he continue to be required to be abstinent from alcohol and drug use and undergo an appropriate random testing regime if he is on a supervision order.

---

19 Brown report at page 25.

> He should have support in obtaining further training or employment."[20]

[29] On the same topic, Dr Brown states in her report:

> "His sexual offending risk is complicated by his impulsive involvement in relationships which he tends to initially idealise, but then devalues over time when his partner is unable to meet his expectations. In these circumstances there is a risk that he would engage in controlling, jealous behaviours and potentially violent or sexual violent behaviours. Although he appears to have understood the basic principles of a successful relationship (eg honestly, openness etc), he remains insightless into his personality vulnerabilities and the cycle of impulsive involvement in relationships to which he is prone.
>
> Despite psychological support, Mr Holroyd has very little ability to self manage and utilise internal risk reduction strategies. As such, almost all of his current risk management is external and secondary to the supervision order, which he has now breached on three occasions (and twice breached when on parole). On this occasion he breached repeatedly by using cannabis and did not cease, despite clear and repeated warnings that he would be returned to custody. Overall he appears to view the order as an inconvenience that he must endure, rather than a genuine opportunity to learn skills that will allow him to reduce his risks to others and stay out of jail.
>
> Whilst Mr Holroyd may not have made much progress in recent psychology sessions I consider that individual therapy remains a useful tool to explore risk and provide opportunity for his improvement in a range of identified areas. I particularly recommend that therapeutic work should address his borderline personality vulnerabilities, specifically his history of disrupted and insecure attachment, the death of his mother, his low self esteem and dysphoric affect, his proneness to feelings of emptiness and boredom, his impulsive engagement in idealised relationships and his repeated use of substances in order to manage these personality difficulties. Future claims that he has used substances because of external circumstances should be robustly viewed in therapy as externalising blame and a failure to take responsibility for his actions, secondary to his personality disturbance.
>
> I do note however, that despite the contraventions, Mr Holroyd has not been convicted of a sexual (or violent) offence since the supervision order was made in 2017. It could therefore be reasonably argued that the order is working as it should and serves to manage the identified risks adequately.
>
> Overall in my opinion, the detention of Mr Holroyd in custody for long periods serves very little purpose other than removing him from the community, to which he will eventually return, arguably

---

20 Harden report at page 22-23.

even more deskilled, disengaged and institutionalised. However, particularly give his long period of cannabis use, I am inclined to suggest that it would be preferable (although not essential) if Mr Holroyd were to be engaged by his psychologist and case manager to a satisfactory standard prior to his release.

Ultimately a return to the community with restrictions, appropriate monitoring and offender treatment would reduce Mr Holroyd's risk to a low-moderate and manageable level. Progress through the various stages of supervision should be linked to his achievement of clear goals and full compliance with the order (including zero tolerance of substance use) as anything less than this is taken by Mr Holroyd as implied consent to continue his contravening behaviour/s.

His sexual preoccupations and relationship seeking behaviour should be monitored in more detail, recognising that he tends to minimise and underreport. If available, a more intensive substance misuse group program may also be of use, although I suspect that the individual therapy will be more successful in addressing his various cognitive distortions about his substance use and his risks to others.

It may be helpful to refer Mr Holroyd to a psychiatrist for further assessment of his persistent dysphoria, personality difficulties and ongoing substance misuse. He may respond to antidepressant medication and there may be a role for other medications to manage his cravings or limit his use of substances.

I therefore respectfully recommended that the Supervision Order is inclusive of the following.

1 Electronic monitoring.

2. Referral to a forensic psychiatrist.

3 Therapy with a forensic psychologist.

4 Abstinence from alcohol and illicit drugs and regular urine drug testing.

5 Monitoring of relationships and appropriate disclosure of offending history to potential sexual partners.

6 Development of a daily routine and support to find work (or other structured activity).

With regard to the length of the supervision order, I agree with Dr Moyle that, given Mr Holroyd's high score on the PCL-R and his longstanding treatment resistance, a change in his core understanding about relationships, substance use and his risks to others will take a considerable period of time. I also note Dr Harden's view in 2018, that should Mr Holroyd contravene the order again he may need a longer period of supervision. As supervision is currently the only risk reduction strategy that is

effective, I recommend that the supervision order is extended to a period of five years from the date of release."[21]

[30] Based on the psychiatric reports, the applicant submits as follows:

> "43. The psychiatric evidence in these proceedings is clear and supports the contention that the respondent's risk of sexual recidivism can be managed by the existing supervision order. However, the evidence on the issue of the duration of the supervision order varies. Dr Harden does not discuss the term of the supervision order however from the judgment of the previous contravention before Davis J where a period of 5 years from that hearing was put in place, Dr Harden provided an addendum report which canvassed the possibility of a further period of the respondent further contravened by the use of alcohol. The alleged contravention is not for the consumption of alcohol but for a prolonged period of cannabis use despite warnings from his supervising officers. Dr Harden, in his current report, also has concerns for the use of any illicit substances. Dr Brown is of the view in her final paragraph of her report, that the supervision order should be in place for a period of 5 years from the date of the respondent's release back to the supervision order.
>
> 44. It is submitted that the supervision order should be in place for a period of 5 years from the determination of the contravention proceedings and the respondent's release back on the order. The respondent has been unable to demonstrate a period of 5 years contravention free since his most recent contravention proceedings before Justice Davis."

Further psychiatric evidence from hearing

[31] Dr Brown's evidence in chief at the hearing was consistent with her view expressed in her written report.

[32] Dr Brown was cross-examined by Counsel for the respondent on the issue of the duration of the supervision order as follows:

> "Yes. On the topic of the duration of the order, I note your observation in the final paragraph of your report, Dr Brown, that it will take a considerable period of time, effectively, to achieve a change in Mr Holroyd's risk. Now, I note also that you've come to that view having considered the views expressed by Dr Moyle and Dr Harden in relation to a previous contravention proceeding against Mr Holroyd; that's so?---Yes.
>
> Yeah. If I might just take you to each of those opinions. And I'm doing this, Dr Brown, really, only just to better understand the way in which you rely upon the previous opinions of those two doctors. In terms of what Dr Moyle had said in his report of the 4th of

---

21 Brown report at page 28-29.

February 2019, he had indicated – and this is at paragraph 126 of – of his report:

> *I think a five-year order will be the minimum required, as change tends to be slow with uncommitted violent men who have some psychopathic traits than those who can be reflective and question their motives.*

Am I correct in assuming that that's the part of Dr Moyle's report that you've placed some reliance upon; his view there about the five-year period being the minimum required?---I – I wouldn't say I've relied upon it. I agreed with it.

You agree with it?---Yes. If that makes more sense. Yes.

Okay. Would you agree that that's a view that he was expressing – I withdraw that. If I can say you would agree, though, that that view needs to be taken in the context in which it arose, which is that it was the respondent's second breach as a result of alcohol use and, at that point, the respondent had only three years left to run on his order?---Well, yes, I accept those were the circumstances at the time, but, as I said already, I'm not – I'm not convinced that the fact he used cannabis this time versus alcohol last time makes a huge amount of difference to the overall risk assessment.

Okay. And in terms of Dr Harden's report for that same hearing, I note you quoted a significant part of that report at pages 10 and 11 of your report for this court. And you're aware that Dr Harden's view at the time was that it was a finely balanced question. And this is, of course, after it was his original position that the existing conditions would be adequate. And he expressed, then:

> *Upon review, a slight preference for an additional period of supervision to make the total period of supervision yet to be had five years.*

And that his reasoning for that was that:

> *A minimum period of two or three years of highly compliant alcohol-free prosocial behaviour would be required.*

?---Yes. I accept that was the case. I – I accept that was the case, but I – but I also am not, as I said previously, of the view that just because this has been cannabis rather than alcohol that means the risks are any different.

Okay. And I guess this – this passage of Dr Harden's report probably gets to the [heart] of the issue that we're looking at today, which is really what difference three years or – or four years or five years might make. Doctor Harden had noted in that section of his 2019 report that:

> *Three years is possibly a long enough period for this to occur.*

That is, for the respondent to be better integrated into the community and be more compliant, but that five years would give him more confidence and that:

> *If he continues to contravene by consuming alcohol, then he may require even more time on supervision for the same effect.*

So in light of that observation, Dr Brown, what I wanted to ask you is is there any real appreciable difference between a period of supervision of three years and eight months or a period of five years?---Well, I would agree with the statement made by Dr Harden in his previous report. It would give me more confidence.

Okay?---I think it could be – I think it could be argued that it doesn't and that almost four years is sufficient without any further breaches, but it would give me more confidence.

Okay. So in a situation where the respondent was to submit to the existing conditions of the order and be subject to supervision for further three years and eight months, would that, in your view, be adequate for the protection of the community?---Well, my view is that, really, at the moment, the only successful moderator of his behaviour is the order. So he doesn't have, in my opinion, any real internal moderators of his behaviour. And so – and at the moment, the order isn't preventing him from using substances. So [indistinct] if he was able to have a reasonable period breach-free, which has not happened, hence my conclusion that the order should effectively start again. And I – my view is that that's a logical conclusion to make. I think it could be argued that a shorter period is adequate, but my view is that that remains to be seen, because Mr Holroyd has not actually had any significant time where he's not used substances, and my view is that because he doesn't have any internal moderators – and I think he needs to learn some internal moderators through therapy – and so whether he does or not, again, remains to be seen. And I would conclude that I would have a lot more confidence if the order was for longer. That would be my view.

So please correct if what I'm about to put to you is an incorrect statement of your view, but would it be fair, then, to say that a period of three years and eight months would be adequate but that a period of five years would give you more confidence?---I wouldn't say it would be adequate. I don't think at the moment there's anything to say, in the absence of the order, that Mr Holroyd would remain substance-free.

Right. And I'm sorry, again - - -?---So I would - - -

Sorry to interrupt, Doctor, but I just wanted to be clear. There's no proposition that he would be without the supervision of an order. The proposition is – that I'm asking you to comment on is whether a further period on the order of three years and eight months would be adequate?---Yes, I understand that he would be subject to an order.

> What I'm saying is that I don't think that I can conclude that that would be adequate. I think the minimum, in my opinion, would be five years, and if he breaches again, then my view would be that there should be subsequent review of whether he needs even longer on the order."[22]

[33] Consistent with the identification of the assistance that the psychiatrists can give to the Court in the consideration of the legal question in *Attorney-General for the State of Queensland v KAH,*[23] I asked Dr Brown her view as follows:

> "So one of the questions that the court needs to consider is the adequate protection of the community, and you have expressed your view that without a supervision order, that you consider that Mr Holroyd's unmodified risk of violent reoffending is high and his unmodified risk of sexual reoffending is moderate to high. So my - - -?---Yes.
>
> - - - question is, without a supervision order in place, what is your prediction as to when the risk of that sexual reoffending, when would that be reduced to low?---So if – if it wasn't in place, sorry?
>
> That's right. No supervision order in place?---Well, I couldn't conclude it would be reduced to low in the absence of a supervision order at any time."[24]

[34] Dr Harden's evidence in chief at the hearing was consistent with his view expressed in his written report.

[35] Counsel for the applicant asked Dr Harden a number of questions, including about Dr Brown's view, and relevantly he stated his view as follows:

> "Yes. Now, your – in your report, your recommendations, you recommended that if he's released back to a supervision order, which has occurred, it should be on the current conditions, that the current conditions be maintained. Is it – does that view include the duration which is currently ending in February of 2024?---Yes.
>
> Can you explain for the court why you think that period is sufficient to address the risk presented by Mr Holroyd?---Yes. My previous report contained within the report of Dr Brown, I think, summarised previously my view. To get – now, I'm not saying that this is what Mr Holroyd will do, right. But as we approach it now, he has three and a bit years still to go on the order. Three – over three and a half. It takes two or three years of compliant behaviour, abstinence from problematic substance misuse, abstinent – and not sexually reoffending to produce what we'd be – in general, what I would be professionally happy with in terms of a lasting change. His – if his aggregate time in the community is five years, we know that – if you're not on a supervision order, what we know from the follow-up studies is that roughly halves your risk of sexual reoffending if

---

22 T1-8 line 15 to T1-10 line 25.
23 [2019] QSC 36.
24 T1-10 line 33-44.

you haven't committed another offence. We don't really know that with supervision orders because of the nature of the strictures of the orders. It probably changes all that. Corrective Services do actually have data suggesting that on supervision orders, it's much reduced while you're on the order. But we're certainly – we're not seeing a spree of offences as soon as people come off the orders, in my experience. So I do suspect – Mr Holroyd starts out as a moderate to high risk only, because he's only committed one offence. His offending is alcohol-associated domestically violent in nature of the sexual offending, which is why his risk of violence is higher than his risk of sexual violence. If he can be abstinent from alcohol, his risk would – would drop into the low range as long as he was abstinent from alcohol. What I envisaged in the previous contravention was that he might yet again use alcohol. And if he yet again used alcohol, I'd be quite concerned, because if you look at the previous contravention, not only did he use alcohol, he then went out and associated with other people, including a woman, in an unstructured environment, which starts to replicate the circumstances of his offending. So that's much more worrying. I do understand – and Dr Brown's view that intoxicants of any kind, like marijuana, are, in effect, a gateway, probably, to other things and possibly to alcohol use, but he didn't use alcohol this time. So in my view, should he have two to three years now where he doesn't use substances on the order, then in my view, the risk will have reduced into that low range by the end of, say, three years. Three, three and a half years.

You say 'substance' there. So does that include cannabis?---I mean, it's complicated, isn't it? Because the use of cannabis is noncompliance and it's an intoxicant, so it's a failure to obey the rules and it is also the use of intoxicants to deal with your life situations. So does it predispose you to using other substances? Yes, it does. Will that necessarily happen? I don't know.

And we're talking here about a prolonged use of cannabis over months - - -?---Yes.

- - - where he was being managed – tentatively managed – by Corrective Services through counselling, through discussions with him around - - -?---Yes.

- - - that he contravening the order. He needs to cease use. He kept indicating that he would – would cease. But he continued, didn't he?---Yeah. It was really persistent. It was quite interesting, though, because in four – for four months after his release, he didn't use anything. And I'm a bit disappointed in his treating psychologist's reports, because they throw no light at all on why, after four months, this man then started heroically using cannabis. You know, not just here and there, but, you know, he was positive every urine sample. I don't understand. Well, he can't explain to me what happened. He's – I mean, he can – he's a little reflective at times, but not that reflective. But I'm a bit disappointed in the

people who were looking after him at the time, in the stuff I can read, doesn't seem to show any curiosity about why I've got this sudden change in pattern. So I don't understand that. But, yes, he used it consistently for months. He didn't, then, graduate to alcohol and he didn't go and commit an offence, which actually makes me happier with the remaining period of his supervision order.

Can I take you, then, back to your comment saying that the likelihood of risk, whether you're on an order or you're not, that there are restrictions placed on you by being on supervision order. Those months that he was returning positive cannabis results, he was being closely monitored, wasn't he? Does that have any impact on whether he would have returned or was capable of returning to use of alcohol at that time?---It hasn't stopped him in the past, on two previous occasions. You know, in reality, particularly even if you're in the precinct, I mean, you can just walk out the door.

But in light of the fact that he was being monitored over months - - -?---Yeah.

- - - for continuous positive cannabis results?---Yes. But that, in people who had out-of-control substance abuse, you'd – you'd expect it to kind of get worse and worse and more and more out of control. So I don't quite understand what was going on.

Now, you've heard the evidence of Dr Brown and you've had an opportunity to read her report. You've seen Dr Brown's view that she would like to see – she would think she had greater confidence if he showed five years of substance – of compliance, so compliance with the supervision order. Do you agree or disagree with that view? Clearly, you've said the current duration would be sufficient?---I'm – my view is I understand that, if he's comply – that if he's – really, if he doesn't use alcohol and get into strife in the next, say, three years, his risk will decline significantly. He'll also be in his late 40s. I don't know about five years. I don't know whether it will make further difference. Look, if you ask me pragmatically, right, Mr Holroyd struggles to comply. So it's not at all unlikely that we might be back here in about two and a-half years having a similar conversation. But we're not at that point. And, as I said, what I envisage when I wrote my comments about the order at the previous time was when there was less order left to run and he has just used alcohol in a way in which mirrored his initial offending.

Okay. So you're of the view - - -?---No, that's right. I'm not – I'm not supporting the five-year view at this point.

No?---Yes.

You're of the view that the remaining period, up until the 19th of February 2024, would be sufficient to address the risk that he currently presents - - -?---At - - -

- - - assuming he's compliant?---At this point in time. Yes. On the knowledge we have today."[25]

[36] Dr Harden was cross-examined by Counsel for the respondent on the issue of the duration of the supervision order as follows:

"Yes. And it's your view, Dr Harden, that some lasting change is still achievable within this remaining period of three years and eight months?---Yes. I'm not – very carefully, I'm not saying that will occur.

No. But it's possible?---But I said it's definitely achievable in that period. Yes, that's a timeframe it can happen."[26]

[37] Similarly to Dr Brown, I asked Dr Harden his view as follows:

"HER HONOUR: Dr Harden, you were in court when I asked Dr Brown the question previously. As I indicated previously, the issue for the court to consider is the adequate protection of the community. And you have expressed a view as to the future risk of Mr Holroyd's sexual reoffending is moderate to high without a supervision order. When do you predict that that risk would be reduced to low?---Your Honour, I think I may have answered that in a previous question. I think the remaining period of the order is sufficient if he were to not use alcohol and to be compliant, in general, with his supervision order.

Is your view that, without the supervision order, though, that he would continue to not use alcohol? See, that's the question - - -?---At – at this - - -

- - - it's without the supervision order?---At this point in time, your Honour, would he use alcohol if he was not on the supervision order?

Yes?---I think the chances are reasonably high.

So – so the question – as I said, the question that I need to grapple is when would he become an acceptable risk without a supervision order?---Yes.

And that's the real issue that is being grappled with today from a number of different angles. And the question, then, is without a supervision order, when would his risk be reduced to low?---Okay. So when would he come off a supervision order and have a low risk is the question you're asking, as I understand it.

Well - - -?---At what point in time?

Yes?---Okay.

So - - -?---And – and, to be clear, when we say "low", we mean below average - - -

---

25 T1-12 line 6 to T1-14 line 13.

26 T1-15 line 41-46.

> I appreciate that?--- - - - for a recidivism risk for sexual offenders. I think, in a – you know, given the other caveats, right, of not going back to abuse of alcohol, around about the three year mark.
>
> And that's - - -?---Because that'll be about five years. He's got about 22 months in the community currently. He's got about – that would be another three years on top of nearly two years. It's about five years. So that, as far as we know, that kind of roughly drops his risk by about half.
>
> And in your previous report, I think – or maybe it was Dr Moyle who said that, given his personality traits, that change was likely to be slow or to require some – take some time to reach that point. What's your view on that?---I've taken that into account, your Honour. Yes. It's – that's slow. As I said, he's – he is, what, 44, I think. So his risk will already be declining in his 40s, in statistical terms. By the time he finishes the current order, he'll be just short of 48. His risk will be declining. I'm saying that, particularly, because of the group of offenders he's in, which is the alcohol or substance associated rapists, which have that decline in their 40s."[27]

Determination

[38] It is necessary for me to determine the following issues:

(a) Whether the Attorney-General has satisfied the Court on the balance of probabilities that the respondent has contravened the supervision order.

(b) Whether the respondent has satisfied the Court on the balance of probabilities that the adequate protection of the community can, despite the contravention, be ensured by the supervision order in its current form or as amended.

(c) If the answer to (a) and (b) above are in the affirmative, then consideration needs to be given as to whether the current supervision order should be amended to extend the period of the supervision order.

[39] On the evidence before the Court, I am satisfied on the balance of probabilities that the respondent has contravened the supervision order.

[40] Further, on the evidence before the Court, and upon a consideration of the psychiatric evidence presented to the Court, I am satisfied on the balance of probabilities that the adequate protection of the community can, despite the contravention, be ensured by a supervision order.

[41] As part of that consideration of the appropriate terms of the supervision order, I am to give consideration to the duration of the supervision order.

[42] Davis J in *Attorney-General for the State of Queensland v KAH*[28] considered s 13A of the DPSO Act and the relevant considerations when faced by various opinions by psychiatrists in respect of the length of the supervision order. At [56], his Honour stated:

---

27 T1-16 line 3 to T1-17 line 3.

28 [2019] QSC 36.

> "The correct legal consideration is 'when will the respondent reach a point at which he/she is an acceptable risk without a supervision order?' Assessment of the risk as 'acceptable' or otherwise is a matter for the Court not the psychiatrists, but the psychiatrists can, and do, express risk in terms of degree; high, moderate or low. The psychiatrists should be requested to report (if they can) on their predictions as to when the risk will reduce to low, for instance. That evidence will then be directly relevant to the determination under s 13A."

[43] Further at [68] his Honour stated:

> "It follows then at setting a period of supervision under s 13A must involve an assessment now [sic] of the prisoner's current state but predicting when he will be an acceptable risk in the community without a supervision order."

[44] As outlined above, there is a difference in the psychiatric evidence as to when the "risk will reduce to low".

[45] In oral submissions, Counsel for the applicant submitted:

> "The evidence remains at somewhat of a variance as to whether or not – or, at least, what point the respondent would no longer be an unacceptable risk to the community, so on the assumption of compliance with terms of the order. It's certainly open to the court on that material to not extend the order; that the order remain as it is. It is a matter of where certainly Dr Harden is very clear and firm in his opinion that, at that point in time, there would be a reduction. Dr Brown certainly also suggests that his risk would reduce short of the five year period she's talking, but she is of the view that five years would give her some greater confidence that would be a lasting – a more lasting change in his behaviour and conduct.
>
> I don't know whether I can assist your Honour any further than that because there is still that variance and it's a matter of applying the test as set out in section 22(7) of the Act whether your Honour is satisfied at what point that adequate protection of the community is met."[29]

[46] Further, in oral submissions, Counsel for the respondent submitted:

> "The main submission that I wish to make orally following all of that evidence is that the bar was never set at five years contravention-free. The test to be applied, as your Honour has clearly identified, is at what point the risk posed by the respondent could be reduced to low. I note that arising from the oral evidence today, Dr Brown has expressed the view – and I am paraphrasing, but has effectively expressed the view that the three years and eight months could be described as adequate but that a five-year period would give her more confidence. And she plainly took a different view of the

---

29 T1-17 line 35 to T1-18 line 2.

> significance of cannabis use as opposed to alcohol use in that she was similarly concerned by the respondent's cannabis use as a breach of the conditions of his order and as a risk – or an elevation of his risk, I should say.
>
> In relation to the evidence of Dr Harden, which I would submit that your Honour would prefer, it is noted that it was Dr Harden's view that a lasting change is still achievable within the three years and eight months left to run on the order and that if the respondent is abstinent from alcohol, his risk reduces to the low range. And that Dr Harden rooted those observations in data as it relates to the risk posed by offenders in a similar category to Mr Holroyd. And that, further, Dr Harden, having had the benefit of assessing the respondent on four occasions now, would provide your Honour with some confidence of Dr Harden's ability, perhaps, to distinguish between the relative risk offered by cannabis use as opposed to alcohol use.
>
> But in my submission, given the evidence before your Honour, it is plain that alcohol intoxication, given its direct contribution to the respondent's index offending, does offer considerably more concern than the cannabis intoxication, which was observed and addressed in the community by Queensland Corrective Services for some considerable period of time before Mr Holroyd was eventually formally breached and returned to custody on the order.
>
> Taking into account all of those factors and the factors upon which I've already addressed in my written outline, my submission is that your Honour would be satisfied that the existing conditions of the order in which the respondent would be subject to the order for a further three years and eight months would be adequate for the protection of the community."[30]

[47] Under s 22(7) of the DPSO Act the respondent has the onus of satisfying the Court that the adequate protection of the community can, despite the contravention, be ensured under the current supervision order or as amended as the Court considers appropriate under s 22(7)(b).

[48] As I have previously identified, the question that is to be determined by the Court is as to a current prediction of when the "risk will reduce to low" in the absence of a supervision order. Doctor Harden answered that question directly and with some confidence. Doctor Brown was not confident that the risk would ever be reduced to low. I accept the evidence of Dr Harden.

[49] On balance, I am satisfied that the supervision order in its current form, expiring on 19 February 2024, is adequate for the protection of the community.

---

30 T1-18 line 5-38.

[50] Accordingly, I order that:

THE COURT, being satisfied to the requisite standard that the respondent, Jeffrey Charles Holroyd, has contravened the order of Flanagan J dated 20 February 2017, amended by the order of Davis J made on 19 February 2019, ORDERS THAT:

1. The respondent be released from custody to continue to be subject to the requirements of the supervision order of Flanagan J dated 20 February 2017, as amended, and to remain subject to those requirements until 19 February 2024.