SUPREME COURT OF QUEENSLAND

CITATION:	*R v Neumann; ex parte A-G (Qld)* [2005] QCA 362
PARTIES:	**R** **v** **NEUMANN, Mark Anthony** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 186 of 2005 SC No 87 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by A-G (Qld)
ORIGINATING COURT:	Supreme Court at Cairns
DELIVERED ON:	30 September 2005
DELIVERED AT:	Brisbane
HEARING DATE:	23 August 2005
JUDGES:	McPherson and Jerrard JJA and Fryberg J Separate reasons for judgment of each member of the Court, McPherson JA and Fryberg J concurring as to the order made, Jerrard JA dissenting
ORDER:	**Appeal dismissed**
CATCHWORDS:	CRIMINAL LAW – Jurisdiction, practice and procedure – Judgment and punishment – Sentence – Factors to be taken into account – Miscellaneous matters – Abnormal mental condition – Protection of community – Relevance and affect on sentence imposed – Whether sentence below was manifestly inadequate *Mental Health Act* 2000 (Qld) *R v Channon* (1978) 20 ALR 1, noted *R v Chivers* [1993] 1 Qd R 432, referred to *R v Dunn* [1994] QCA 147; CA No 29 of 1994, 13 May 1994, referred to *R v Elliot* [2000] QCA 267; CA No 38 of 2000, 11 July 2000, referred to *R v Engert* (1995) 84 A Crim R 67, cited
COUNSEL:	M J Copley for the appellant B G Devereaux for the respondent

SOLICITORS: Director of Public Prosecutions (Queensland) for the appellant
Legal Aid Queensland for the respondent

[1] **McPHERSON JA**: I have read and agree with the reasons of Fryberg J for dismissing this sentence appeal by the Attorney-General. Without repeating all that his Honour has said in those reasons, I agree that there was no evidence on sentencing that further violent offending by the respondent was likely to occur other than the evidence of his rapidly degenerating mental condition.

[2] At the time of sentencing, the respondent was and is now subject to an involuntary treatment order, with the consequence that he will not be released at the expiration of his sentence unless his mental condition has improved dramatically in the meantime.

[3] I would dismiss the appeal.

[4] **JERRARD JA**: In this appeal I have read the reasons for judgment of Fryberg J, and while I agree with his analysis of the law, I respectfully disagree with the result of its application in this case. The judgment of the Mental Health Court, which was an exhibit put before the learned sentencing judge, reveals that Mr Neumann used a bayonet to smash the window of the house in Edmonton on 19 October 2002, from which he stole the .22 rifle. He used that rifle later that day in an unsuccessful attempt to hold up a vehicle. Later he hid the rifle, and returned to Cairns the next day and then went south, first to Gordonvale and then the picnic spot at the Little Mulgrave River where he apparently intended to abandon his vehicle and take another. He was carrying the bayonet, and he used it in the attempt to kill the two year old child.

[5] From what Mr Neumann told Dr Stones, as recorded in the reasons for judgment of the Mental Health Court, Mr Neumann had planned to steal a car at the picnic spot, using the bayonet to hold its owner up. He had been startled by the child. The reason for stealing a car was because he thought the police would be on the lookout for his car.

[6] On any view of that behaviour, Mr Neumann was attracted to weapons, willing to use them, and extremely dangerous. The fact that he is now diagnosed as suffering from schizophrenia did not persuade the Mental Health Court that he suffered from a psychosis on 20 October 2002, and that view was rejected by the Government Medical Officer, Dr Bennett, who examined him on that date.

[7] It is very likely that Mr Neumann's mental heath was deteriorating in October 2002, although schizophrenia then could not confidently be diagnosed. That does not make him any less dangerous; on the appeal the court heard no information about the prognosis for his future mental health. I accept that the 12 year sentence imposed suggests a head sentence in the range of 16 years, had there been a trial, and that the 12 year head sentence was generally consistent with the sentence of 14 years (after a trial) upheld in *Reeves* [2001] QCA 91, where that appellant had an extremely lengthy criminal history; with the sentence of 12 years in *Byers* [1995] QCA 44, upheld after a trial for an attempted murder which involved quite determined planning; and it was more than the nine years imposed on the unsuccessful applicant in *R v Lester* [2004] QCA 34. It was consistent with the

cases relied on by the appellant in that matter and discussed at [42] by Davies JA, and likewise those relied on by the respondent in that appeal, listed at [49] in that judgment, and discussed in more detail thereafter.

[8] I also acknowledge the proposition enunciated in this Court in *R v Dunn* [1994] QCA 147 at p 6 that (relevantly) diminished responsibility falling short of insanity will (if otherwise relevant) operate on a sentence as a mitigating factor. Nevertheless, as observed by Brennan J in *Channon v R* (1978) 20 ALR 1 at 4, the problem for a sentencing court is that a psychiatric abnormality falling short of insanity may reduce an offender's moral culpability, yet mark that offender as a more impracticable subject for reform or as likely to offend again.

[9] I think the latter situation applies here. Mr Neumann stole one weapon and used it on 19 October 2002, and intended to use the bayonet as a weapon to assist in stealing a car on 20 October 2002. Instead he used it to attempt to kill a child. That observation of Brennan J in *Channon v R*, quoted by this Court in *R v Elliott* [2000] QCA 267 at [11], allows a sentencing court to recognise that a person with a psychiatric condition falling short of insanity may be less morally culpable for criminal conduct but nevertheless a great danger to others. The review in *R v Chivers* [1993] 1 Qd R 432 at 436-437, by Thomas J, of the applicable sentencing principles recognises that the punishment to be inflicted must be proportionate to the crime, and this was a terrible crime. A crime in which a lethal cutting instrument is used in a determined and utterly unjustifiable attempt to kill is one of the most serious of all. When that is done where mental health is deteriorating, and for no rational or understandable motive, it reveals the offender as a genuine danger to society. When the victim is a defenceless toddler, previously unknown to the offender, the necessity to protect the community is made stark.

[10] This offence to me is on a par with the deliberate setting fire to a child which attracted a sentence of life imprisonment, upheld by this Court, in *R v Streeton* [1997] QCA 178. Thomas J also remarked in *Chivers* that the protection of the community from violence is a very important factor to be taken into account on sentence; and that there were cases in which the mental condition of a convicted person would render that person dangerous if at large, and in some cases sentences of life imprisonment might have to be imposed to ensure that society was protected.

[11] I have the view that this is such a case, because of the absence of any evidence about Mr Neumann's future mental health or how he could (ever) be returned safely to the general community. There is nothing in the material before this Court to suggest confidence in psychiatric rehabilitation or that, if he can be successfully managed on medication, he would take it if unsupervised in the community. The dearth of information about his treatment for mental illness includes a complete absence of information about whether, if his condition when he is eligible for parole is the same as it was on 20 October 2002 – with signs of disturbance to his thought processes but not enough for a diagnosis of mental illness – he would remain an involuntary patient. There was no information about his treatment plan, or in what circumstances he could expect the involuntary treatment order to be revoked. He would cease to be a classified patient when his sentence ended, or if paroled (s 99 of the *Mental Health Act* 2000), but could still be otherwise and independently continued under an involuntary treatment order. This Court did not even learn when or why he was placed under an involuntary treatment order, or where he was detained when sentenced and where he is now detained, or what treatment is being

administered. There was just not enough put before the sentencing judge or this Court to justify confidence that reliance on the mental health system would provide the plainly necessary protection for the community.

[12] Accordingly, I would allow the appeal and substitute a sentence of life imprisonment.

[13] **FRYBERG J**: On 22 June this year Mark Anthony Neumann was sentenced to imprisonment for 12 years for attempted murder and to two terms of imprisonment for five years each for burglary and stealing, and attempted armed robbery. A serious violent offence declaration was made. The Attorney-General now appeals against the sentence for attempted murder. To set the context it is necessary to refer to the circumstances of all three offences.

[14] At about 11:00 am on 19 October 2002 the respondent broke into a house at Edmonton, North Queensland and stole a rifle which he knew was there. He then went to a nearby shopping centre where he used his vehicle to block the exit. He left the vehicle taking the rifle with him and went to a car whose driver was attempting to leave the car park. He pointed the rifle at the driver and demanded he surrender the car. The driver refused. The demand was repeated until another car drove up. The respondent then returned to his own vehicle and drove away. His registration number was observed by witnesses and he was later identified from photographs. He was not, however, immediately apprehended by police. On the following day, he disposed of the rifle and ammunition under a log near Millaa Millaa because, as he later told police, "They're not legal. And it's no good to me, really." He returned to Cairns, then drove to a popular picnic and swimming place on the Little Mulgrave River, west of Gordonvale, intending, it seems, to abandon the car because it had been identified as associated with the previous day's events.

[15] At the picnic area Georgia Brown aged two, her brother aged four and their grandmother had finished their picnic lunch. The children ran ahead of their grandmother to their vehicle. There is a suggestion that Georgia startled the respondent. For no apparent reason he stabbed her with a bayonet which he had acquired from a disposal store some time previously. When the grandmother reached the scene a few seconds later, she saw the respondent kneeling over the child and saw him remove the bayonet from her back. He was heard to say, "I've just got to do this" and "I'm sorry I had to do it". Other evidence suggested that he was not expressing any particular emotion but that his words were, in effect, rather mechanical. The grandmother seized the children and returned to the river to obtain help. The respondent went to his vehicle, where he lingered and watched what happened. After he and his vehicle were photographed he left, but he was apprehended by police later that afternoon. The bayonet, which was in his vehicle, was 22 cm long and 2.5 cm wide.

[16] Georgia had been stabbed twice. One blow was to the lower left abdomen; the wound penetrated her body and exited on the opposite side. The other went through her chest into the pulmonary cavity but did not penetrate her lung. Either could have been fatal and each carried a high risk of contamination because of the state of the ground and the bayonet. Fortunately that did not eventuate. Physically the child recovered completely and she was discharged from hospital after four days.

[17] The respondent was examined by a government medical officer at 8:40 pm that evening. The doctor subsequently reported that he had normal affect, was not delusional and was not distant or difficult to communicate with or withdrawn. His speech and behaviour were normal. There was no evidence of drugs or drunkenness, either recently or in the past, although about a fortnight later the respondent told a psychologist that he had drunk a couple of beers. There was no evidence of any psychiatric disease. The respondent told interviewing police that he had been depressed, but declined to answer any questions about the knifing. He admitted the burglary and stealing the rifle. He said initially that he stole it for self-defence but later said he wanted it to kill someone with it.

[18] He was seen by a psychologist at Townsville Correctional Centre on 4 November 2002. He said he was feeling depressed. His account of the stabbing led the psychologist to record, "An incident of anger. I've always been a safe person – I've always loved children." He remembered the incident and said that he knew it was wrong at the time. He said, "The power of self destruction took over." In relation to the other offences, he said he was possessed by his anger. "It was like someone else was driving the car. Stealing the gun was like a release." A note on his prison file about a fortnight later recorded that his sister when contacted stated that he had not dealt with his mother's death and had rejected her (his sister) for the past 2½ years; and that he had become more withdrawn, aggressive, unreasonable and intolerant since an accident in 2001, when he had suffered a near drowning.

[19] He was seen by Dr Fama, a psychiatrist, on 9 January 2003. In describing the events of 20 October he told Dr Fama that he had no sense of compulsion other than panic. Dr Fama saw no symptoms of schizophrenia or other psychosis. He diagnosed neurasthenic personality, which he explained as "encompassing, among other things, an inadequacy in response to stress and an inability to communicate stress" and a mild depressive episode.

[20] For reasons which were not explained, the question of his mental health was not referred to the Mental Health Court until 23 June 2004. It heard the matter on 3-4 May 2005. It found that the respondent was not deprived of any of the relevant capacities by unsoundness of mind on 20 October 2002 and that he was at the date of the hearing fit for trial, although suffering from schizophrenia. He remained schizophrenic at the time of sentencing and was subject to an involuntary treatment order. The court's reasons for judgment were placed before the sentencing judge and were referred to extensively by him. They showed that five psychiatrists gave evidence in that court. A major difficulty in identifying the respondent's condition at the relevant time was his current schizophrenia, which could have been inducing a delusional memory of events. On the whole, Dr Fama thought the respondent was at the relevant time experiencing a pre-psychotic condition. Dr Kingswell thought his behaviour might have represented the prodrome to schizophrenia or it might have been unconnected. Dr Richards thought the respondent was suffering a psychosis at the relevant time as a result of schizophrenia. Dr Reilly also made a diagnosis of schizophrenia and psychotic behaviour at the relevant time. Dr Stone's opinion was that at the relevant time the respondent was experiencing a delusional mood as part of the early stages of schizophrenia, and on the balance of probabilities there was a connection between the illness and the events. On the evidence the judge held that "to find unsoundness at the relevant time, one has … to accept a view of events in which the existence of schizophrenia producing at least one episode of psychosis was not detected for almost two years after the events in

question, but nonetheless the defendant suffered from that illness for the entire period, unrecognised by psychologists or psychiatrists". That she was unable to do.

[21] The sentencing judge referred to information provided in the context of the Mental Health Court proceedings by members of the respondent's family. This was apparently a reference to information gathered by Dr Byrnes, a psychiatric registrar at the Townsville hospital, in December 2004. Some of this information dated back to 2000 or 2001, but some of it was more recent. In the latter court it was described in these terms:

> "Probably the most significant of the collateral histories taken by Dr Byrnes was that from the defendant's grandfather, whom the defendant visited in Melbourne in the weeks before the alleged offences. He said that when he saw the defendant, he had "pinpoint pupils" and was driving, uncharacteristically, very slowly and cautiously. He asked him if he had been taking drugs or alcohol; the defendant denied having done so. At one point when they were in a car park, the defendant had touched a woman's shoulder although he did not appear to know her. He recalled his grandson making what Dr Byrnes has recorded as "odd religious themed statements", but these are not detailed. His grandson left Melbourne and drove to Cairns in about 24 hours."

[22] The respondent was 29 years old at the time of the offence. He had no relevant criminal history. His plea of guilty was in the circumstances a timely one. He had been particularly affected by the death of his mother in 1999 and the breakup of a long-standing relationship in 2001. Following his mother's death there was a disintegration of his relationship with his siblings. The sentencing judge observed that there was little in the evidence before him which might have indicated the type of conduct involved in the offences. There was evidence to support the judge's decision that the respondent had displayed an element of remorse. His Honour referred to the difficulty of finding a rational explanation for his actions. He observed that the theft of the rifle might have involved anger but it was not rational anger. There was no evidence of any premeditation and no evidence that the respondent went searching for someone to attack, a factor which, on his Honour's view, differentiated the case from many others. There were no rational or irrational perceptions of the relationship between the respondent's conduct and the victim to explain what happened.

[23] Counsel for the appellant submitted that this offence fell "into the worst case category of attempted murder". He submitted that but for the plea of guilty the appropriate penalty would have been life imprisonment. Taking the plea into account a sentence in the vicinity of 20 years imprisonment should have been imposed. He referred to and relied upon *Veen v The Queen [No 2],*[1] *R v Streeton,*[2] *R v Bird and Schipper*[3] and *R v Chivers.*[4] If it be correct that this offence falls into the worst case category of attempted murder, there is much force in the appellant's submission that the sentence imposed below was manifestly inadequate. The question is whether this was such a case. The answer to that question depends upon

---

1 (1988) 164 CLR 465.
2 [1997] QCA 178.
3 (2000) 110 A Crim R 394.
4 [1993] 1 Qd R 432.

whether the respondent was mentally impaired at the time of the offence, whether any impairment was relevant to his conduct and how any impairment should affect the sentencing process.

The existence and contribution of mental impairment

[24] The possible existence of relevant mental impairment was suggested by the bizarre circumstances of the case, the absence of a rational explanation for the respondent's conduct, the opinions of the psychiatrists in the Mental Health Court and the subsequent onset of schizophrenia. Unfortunately that possibility was not directly addressed by the evidence below. As counsel for the Attorney-General pointed out, the Crown prosecutor was not unaware of the possibility: he tendered the reasons for judgment of the Mental Health Court. A major purpose of the Crown's tender of those reasons appears to have been to place (very brief) summaries of the psychiatric, psychological and other relevant evidence before the sentencing judge. A problem with this approach is that there may also have been other relevant material in the evidence given by those witnesses. It is difficult to determine with any reliability whether and to what extent such evidence existed in the absence of the reports and oral evidence. More importantly, the issues in that court were different from those which arose at the time of sentencing. In the Mental Health Court the questions were whether the respondent fell within s 27 of the *Criminal Code* and whether he was fit for trial, and the evidence and opinions were framed accordingly. Those issues did not arise on sentence, but the issues referred to at the end of the preceding paragraph did arise. They should, if it was at all possible, have been addressed by at least some of the psychiatrists who gave evidence in the Mental Health Court.

[25] I have considered whether for this reason the matter ought to be remitted to the Trial Division to enable the question of mental impairment at the relevant time to be properly investigated, a course which was taken in *R v S*.[5] I have come to the conclusion that this course is unnecessary in the present case. I have done so because I have been able to reach a conclusion on the balance of probabilities based on the existing evidence. The parties, not this court, have the primary responsibility for determining what evidence is placed before the sentencing court. Doubtless the Crown would endeavour to comply with any suggestions which the court might make, but the absence of information renders it difficult to make precise suggestions. Moreover, I think the outcome of a further hearing would be unlikely to be different from what we can decide on the available material.

[26] I have referred to the evidence of psychiatric opinions above.[6] The sentencing judge made findings, with which I completely agree, as to the irrationality of the respondent's conduct. His behaviour on the day of the offence and on the previous day was bizarre, and was consistent with the subsequent onset of schizophrenia. True, there is no evidence of the precise effect which his condition would have upon his behaviour generally or upon any of the three capacities referred to in s 27 of the *Criminal Code* in particular. However on the basis of the available evidence and what is generally known of the characteristics of schizophrenia, I am satisfied that the respondent was probably suffering a mental impairment at the relevant time, one of such a nature as to reduce his responsibility for what he did. I am also satisfied

---

5 [1998] QCA 313.

6 Paragraph [20].

that his condition contributed to the conduct constituting the offence. I reject the proposition that the respondent should have been sentenced as an ordinary, unimpaired person.

The effect of mental impairment

[27] In *R v Dunn*[7] this court cited with approval the statement of Bray CJ in *R v Kiltie*,[8] approved in *R v Masolatti*,[9] that "low intelligence and diminished responsibility falling short of insanity will (if otherwise relevant) operate on sentence as a mitigating factor." It diminishes the moral culpability of the offender.[10] Further, as was observed in *R v Elliott*[11] by Davies and Thomas JJA (McPherson JA concurring), "Mental abnormality falling short of insanity may be a significant mitigating factor. Apart from the question of culpability, it makes it difficult for the court to apply a factor such as general deterrence." That reflected (albeit without direct reference) what was written by Gleeson CJ in *R v Engert*:[12]

> "The circumstance that an offender suffers from a mental disorder may well be of considerable significance in a number of respects to the sentencing task. One of those respects depending upon the facts and circumstances of the individual case may relate to the matter referred to by this Court in the case of *R v Scognamiglio* (1991) 56 A Crim R 81. At 86 the passage in a judgment of the then Chief Justice of Victoria was cited with approval. That passage was in the following terms:
>
> > 'In sentencing generally, it is necessary to balance personal and general deterrence on the one hand with rehabilitation on the other, but in the case of an offender suffering from a mental disorder or abnormality, general deterrence is a factor which should often be given little weight.
> >
> > …
> >
> > General deterrence should often be given very little weight in the case of an offender suffering from a mental disorder or abnormality because such an offender is not an appropriate medium for making an example to others.'"

That decision also demonstrates that it is not essential that there be a causal relationship between the abnormality and the commission of the offence; although causation must be taken into account in assessing the circumstances of the case.

[28] On the other hand mental abnormality may be an aggravating factor in sentencing. A passage in a judgment of Brennan J, sitting in the Federal Court on appeal from the Supreme Court of the Northern Territory, has frequently been cited:

> "Psychiatric abnormality falling short of insanity is frequently found to be a cause of, or a factor contributing to, criminal conduct. The sentencing of an offender in cases of that kind is inevitably difficult. The difficulty arises in part because the factors which affect the sentence give differing significance to an offender's psychiatric

---

7 [1994] QCA 147.
8 (1974) 9 SASR 453.
9 (1976) 14 SASR 124.
10 *R v Milini* [2001] QCA 424 at paras [2], [21].
11 [2000] QCA 267 at para [11].
12 (1995) 84 A Crim R 67 at pp 70-71.

> abnormality. An abnormality may reduce the moral culpability of the offender and the deliberation which attended his criminal conduct; yet it may mark him as a more intractable subject for reform than one who is not so affected, or even as one who is so likely to offend again that he should be removed from society for a lengthy or indeterminate period. The abnormality may seem, on one view, to lead towards a lenient sentence, and on another to a sentence which is severe."[13]

[29] Before the passage of the *Penalties and Sentences Act 1992*, the question of the relevance and weight to be given to the protection of the public as a factor in sentencing was the subject of some debate. The relevance of that factor in establishing what constitutes a proportionate sentence was upheld by a narrow majority of the High Court in *Veen v The Queen [No 2]*.[14] The dissenting judgments emphasised the fact that the common law did not recognise preventive detention. The impact of that decision in Queensland was discussed, and the decision followed, in *R v Chivers*,[15] a judgment delivered before the enactment of the Act. It is unnecessary in the present case to theorise about the effect of the Act on what was said in that case. The Act expressly recognised protection of the Queensland community from the offender as a purpose for which a sentence (any sentence, not just a sentence of imprisonment) might be imposed.[16] It required a sentencing court to have regard to, among other things, the "principle" that a sentence of imprisonment should only be imposed as a last resort.[17] It also made provision for the imposition of an indefinite sentence on an offender convicted of a violent offence;[18] Wilson J had foreshadowed a legislature could provide for preventive detention in his dissenting judgment in *Veen [No 2]*. In 1997 amendments to the Act removed the requirement to have regard to the above principle in cases involving violence and substituted a requirement to have regard to:

> "(a) the risk of physical harm to any members of the community if a custodial sentence were not imposed;
> (b) the need to protect any members of the community from that risk."

Finally, so far as the legislative history is concerned, Parliament enacted the *Dangerous Prisoners (Sexual Offenders) Act 2003*. That Act made provision for the continued detention of certain types of prisoners in cases where it is thought a prisoner might, if released, commit a further serious sexual offence.

[30] In my judgment it cannot be doubted that a sentencing judge in Queensland may now take the protection of the community into account in a case involving violence. He or she may do so not only in determining whether a sentence of imprisonment should be imposed but also in determining how much imprisonment to impose. However it must be remembered that protection of the community is not a mantra to be chanted automatically in every case of violence. There must be evidence from which a threat to the community can be inferred. Such an inference is not to be drawn without a foundation of substance. This is particularly the case when

---

13 *Channon v The Queen* (1978) 20 ALR 1 at 4-5.
14 (1988) 164 CLR 465.
15 [1993] 1 Qd R 432.
16 Section 9(1)(e).
17 Section 9(2)(a)(i).
18 Part 10.

consideration is given to the question whether the threat will exist at the end of a lengthy determinate sentence. Account must be taken of what is likely to occur during the course of the sentence, for example attendance at anger management programs and sexual offender treatment programs. In cases where it applies, account may be taken of the existence of the *Dangerous Prisoners (Sexual Offenders) Act 2003*. Where a lengthy determinate sentence is being imposed in circumstances where an application could have been made for an indefinite sentence, the absence of an application may suggest that protection of the community is a factor of little importance. Judges are entitled to proceed on the basis that the Crown prosecutor will draw their attention to the purposes for which a sentence may be imposed in the circumstances of the case. They are entitled to the assistance of counsel, particularly the Crown prosecutor, in identifying the relative importance (if any) of this factor in a particular case.

Application of these countervailing principles

[31] In the present case the prosecutor urged the importance of general deterrence, but made no suggestion that protection of the community was a consideration in sentencing. That is not surprising. Had it been thought the respondent presented, or would at the end of his sentence present,[19] a serious danger to the community, application could have been made for an indefinite sentence. In all probability the reason that the factor was not considered of importance was that by the time of sentencing, the respondent was subject to an involuntary treatment order. That is an order made under s 108 of the *Mental Health Act 2000*. Such orders are in two categories: in-patient and community.[20] Patients in the former category may be detained in a health service established under the Act.[21] Whatever the category, a treatment plan must be prepared[22] and the administrator of the treating health service must ensure the patient is treated as required by the plan.[23] A community patient who does not comply with the plan may be forcibly detained until treated.[24] An order ends only if the patient does not receive treatment under the order for six months or if it is revoked.[25] The criteria which must be satisfied for the making or revocation of an order include the existence or absence of an imminent risk that the person may cause self harm or harm to someone else.[26] In short, appropriate mechanisms exist under the Act to deal with any danger which the respondent might pose to the community when the time comes for his release. Schizophrenia can often be treated and controlled. It is worth noting that in May the Mental Health Court assessed him as suitable for treatment in the community under escort.[27]

[32] It follows that in my judgment neither the evidence nor the submissions in this case marked the respondent as "a more intractable subject for reform than one who is not … affected, or … as one who is so likely to offend again that he should be removed from society for a lengthy or indeterminate period". His offence is not in the category of the worst class of attempted murder. The mental impairment suffered

---

19 *R v Wilson* [1995] 2 Qd R 599 per Pincus JA.
20 Section 109.
21 Section 114.
22 Section 110.
23 Section 115.
24 Section 117.
25 Section 118.
26 Section 14.
27 See its order of 11 May 2005.

by the respondent removes it from that category. Taking these and the other considerations referred to by the sentencing judge (including the respondent's remorse and his plea of guilty) into account, the sentence imposed below was not manifestly insufficient.

[33] The appeal should be dismissed.