

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Twigge*
[2006] QSC 107

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

FILE NO/S: BS1470 of 2006

DIVISION: Trial Division

PROCEEDING: Originating application

DELIVERED ON: 17 May 2006

DELIVERED AT: Brisbane

HEARING DATE: 11 May 2006

JUDGE: Mullins J

ORDER: IT IS ORDERED THAT:

1. The Court is satisfied to the requisite standard that John Cameron TWIGGE (“the respondent”) is a serious danger to the community in the absence of an order pursuant to Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
2. The respondent be subject to the following conditions for the period of 8 years from the end of the respondent’s current period of imprisonment:

The respondent must:

- (a) be under the supervision of a corrective services officer (“the supervising corrective services officer”) for the duration of this order;
- (b) report to the supervising corrective services officer at the Department of Corrective Services Area Office closest to his place of residence between 9am and 4pm within two business days of his release from custody to advise the officer of the respondent’s current name and address;
- (c) reside at a place within the State of Queensland as approved by the supervising corrective services officer by way of a suitability assessment which must not be within 200 metres of a school, or some other public place or business where children frequent

- unless authorised in writing by the supervising corrective services officer in order to allow the respondent to obtain temporary accommodation;
- (d) report to and receive visits from the supervising corrective services officer at such frequency as determined necessary by the supervising corrective services officer;
 - (e) notify the supervising corrective services officer of every change of the respondent's name at least two business days before the change happens;
 - (f) notify the supervising corrective services officer of the nature of his employment, or offers of proposed employment, the hours of work each day, the name of his employer and the address of the premises where he is employed;
 - (g) notify the supervising corrective services officer of every change of employment at least two business days before the change happens;
 - (h) notify the supervising corrective services officer of every anticipated change of the respondent's place of residence at least two business days prior to the change and to obtain the approval of the supervising corrective services officer prior to the change of residence;
 - (i) not leave or stay out of Queensland without the written permission of the supervising corrective services officer;
 - (j) not commit an offence of a sexual nature during the period for which these orders operate;
 - (k) obey the lawful and reasonable directions of the supervising corrective services officer;
 - (l) respond truthfully to enquiries by the supervising corrective services officer about his whereabouts and movements generally;
 - (m) not join, affiliate with, attend on the premises of or attend at the activities carried on by any club or organisation in respect of which there are reasonable grounds for believing there is either child membership or child participation, without the prior consent of the supervising corrective services officer;
 - (n) notify the supervising corrective services officer of the make, model, colour and registration number of any motor vehicle owned by, or generally driven by him;
 - (o) not be on the premises of any shopping centre, between 8.00 am to 9.30 am and between 2.30 pm and 4.30 pm on school days other than for the purposes of:
 - (i) employment; or
 - (ii) to attend a bona fide pre-arranged appointment with a government agency, medical practitioner or the like;

- or with the approval of the supervising corrective services officer;
- (p) not without reasonable excuse be in the area within 200 metres of a school, a children's playground or child care area;
 - (r) not have any unsupervised contact with children under 16 years of age except with the supervising corrective services officer's prior written approval and provided the respondent discloses the terms of this order to the guardians of the child/ren before any such contact takes place;
 - (s) not contact directly or indirectly the victims of his sexual offences;
 - (t) not access pornographic images containing photographs or images of children on a computer or on the Internet;
 - (u) abstain from illicit drugs for the duration of this order;
 - (v) abstain from consumption of alcohol for the duration of this order;
 - (w) take prescribed drugs only as directed by a medical practitioner;
 - (x) submit to random drug and alcohol testing as directed by a corrective services officer, the expense of which is to be met by the Department of Corrective Services;
 - (y) attend a psychiatrist, psychologist or other suitably qualified mental health professional who has been approved by the supervising corrective services officer at a frequency and duration which shall be recommended by the treating psychiatrist/psychologist/mental health professional, the expense of which (other than the travelling expenses of the respondent) is to be met by the Department of Corrective Services;
 - (z) permit any treating psychiatrist, psychologist, or other suitably qualified mental health professional to disclose details of medical treatment and opinions relating to his level of risk of re-offending and compliance with this order to the Department of Corrective Services if such request is made in writing for the purposes of enhancing rehabilitation and/or updating or amending the supervision order and/or ensuring compliance with this order;
 - (aa) attend any program, course, counselling, therapy or treatment, in a group or on an individual basis, as directed by the supervising corrective services officer in consultation with the treating psychiatrist, psychologist or other suitably qualified mental health professional, the expense of which (other than the travelling expenses of the respondent) is to be met by the Department of Corrective Services;

- (bb) agree to undergo medical testing or treatment as deemed necessary by the treating psychiatrist/psychologist/mental health professional in consultation with the supervising corrective service officer, and permit the release of the results and details of the testing to the Department of Corrective Services, if such a request is made in writing for the purposes of updating or amending the supervision order, the expense of which (other than the travelling expenses of the respondent) is to be met by the Department of Corrective Services, provided that if it is deemed by the treating psychiatrist/psychologist/mental health professional in consultation with the supervising corrective service officer that sexual impulse medication is an appropriate course of therapy/treatment, that is to occur only with the respondent's consent.

CATCHWORDS: CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - OTHER MATTERS - where respondent serving a period of imprisonment that includes a term of imprisonment for a sexual offence involving a child – where application made under s13 *Dangerous Prisoners (Sexual Offenders) Act 2003* (Q) either for a continuing detention order or a supervision order - whether the respondent is a serious danger to the community in the absence of a division 3 order – where respondent is 21 years old and a moderate risk of sexual re-offending without appropriate supervision - where supervision order made for a period of 8 years

Dangerous Prisoners (Sexual Offenders) Act 2003

COUNSEL: DR Kent for the applicant
C Morgan for the respondent

SOLICITORS: CW Lohe, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

- [1] **MULLINS J:** The applicant applies for either a continuing detention order or a supervision order pursuant to s 13(5) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”). The respondent's position is that it is for the applicant to satisfy the Court that he is a serious danger to the community in the absence of such an order. In accordance with an order of this Court the respondent underwent examination by psychiatrists Drs Moyle and Grant who prepared independent reports pursuant to s 11 of the Act. A hearing of the application took place on 11 May 2006 at which those psychiatrists were cross-examined, as was Ms Tunbridge who is a counsellor employed by the Department of Corrective Services who prepared a report dated 21 March 2006 in respect of the respondent after he had completed the High Intensity Sexual Offending Program (“the HISOP”). Notwithstanding the stated position of each party in respect of the application, the

hearing substantially focused on the formulation of appropriate conditions for a supervision order.

Respondent's antecedents

- [2] The respondent was born in March 1985. He is therefore 21 years old. His parents separated when he was aged about 18 months. He went to live with his paternal grandmother and an aunt. His grandmother died when he was about 14 years old. He had learning difficulties from a young age and was diagnosed as being hyperactive and prescribed medication.
- [3] The respondent commenced high school in Brisbane and did not enjoy it. He got into trouble for fighting and stealing and was eventually expelled for stealing in Year 10. The respondent went to live with his father in the country and attended high school there. He enjoyed the new high school and completed Year 12, but his relationship with his father was dysfunctional. The respondent eventually obtained a traineeship with the local council doing horticultural work.
- [4] At the age of 17 years the respondent started abusing alcohol. He reported that he would "binge drink" every weekend. The binge drinking continued and escalated until he was imprisoned.

Criminal history

- [5] As a juvenile in 1999 and 2000, the respondent was cautioned on 3 separate occasions. Of relevance was the caution that related to 3 offences of indecent assault that were committed in February 2000. On one of the offending occasions the respondent was riding his bicycle, when he saw a young girl riding her bicycle along the road. He rode up behind her and grabbed her bottom and breast area. This offence had been planned by the respondent for about a week, although he did not have any particular victim in mind. The other offending occasion occurred when the respondent was walking to a friend's house and he saw a young girl walking near him and he pinched her on her bottom and ran away.
- [6] In January 2003 he was dealt with in the Magistrates Court for 1 charge of enter dwelling and commit indictable offence and 1 charge of stealing. He was dealt with again in the Magistrates Court in June 2003 for 2 charges of wilful destruction of property, 1 charge of entry of dwelling house of owner/person in lawful occupation, 5 charges of being without lawful excuse found in dwelling house or yard, 5 charges of unlawful interference with supply of electricity to customer and 1 charge of stealing. The respondent was given probation for 2 years. These offences were committed for a couple of reasons. Some were committed against people with whom he was angry and others involved entering houses so he could steal money or jewellery. On some occasions he would turn the electricity to the house off and then knock on the door and run away. On other occasions he turned the electricity off, so that he would not be able to be identified.
- [7] On 1 December 2003 the respondent pleaded guilty to 1 count of indecent dealing with a child under 12 years and 1 count of doing grievous bodily harm on an *ex officio* indictment. The indecent dealing was committed on 11 March 2003 at a cinema. The complainant was a 10 year old girl who was at the cinema with her parents to watch a movie. She left to go to the ladies' toilet. The respondent watched her enter the toilet and when she was in the cubicle, entered the toilet and

waited for the complainant. The respondent turned the lights off and when the complainant was trying to find her way in the dark, the respondent grabbed hold of her, pulled her to the floor and started to rub her inner upper thigh through her clothes. The complainant began to scream and the respondent tried to cover her mouth with his hand. When the complainant continued screaming, the respondent got up and ran out of the toilet. The respondent had thought about offending in this way for about 3 weeks before committing the offence. He had checked out the cinema at least 4 or 5 times before carrying out his plan. He selected his victim about an hour before he committed the offence. About 3 months later, the respondent made admissions to the police about his conduct on that occasion.

- [8] The offence of grievous bodily harm was committed on 18 July 2003 against the respondent's supervisor at the council. The complainant had rebuked the respondent about the standard of his work, an argument ensued and the respondent threw the contents of the container he was holding into the complainant's face. The contents were an alkaline liquid that was used to disinfect and deodorise toilets. The complainant underwent intensive medical treatment that prevented permanent visual impairment.
- [9] The sentencing judge ordered that the respondent be examined by a psychiatrist and that a pre-sentence report be prepared. The respondent was examined by psychiatrist Dr Kar who provided a report dated 22 January 2004. Dr Kar diagnosed paedophilia (sexually attracted to girls, non-exclusive type) and also diagnosed alcohol abuse and an antisocial personality disorder. Dr Kar expressed the opinion that the respondent's risk of re-offending sexually was extremely high.
- [10] The respondent was sentenced to 18 months' imprisonment for the offence of indecent dealing and a cumulative sentence of 12 months' imprisonment was imposed for the count of grievous bodily harm. Pursuant to s 19 of the *Criminal Law Amendment Act 1945* the respondent was ordered to report his name and current address to the officer in charge of the Roma Street Brisbane Police Station within 48 hours after being released from custody and that thereafter for a period of 10 years to report any change of address within 48 hours of the change taking place to the officer in charge of Roma Street Brisbane Police Station or at another place approved of by the Commissioner of Police. By virtue of the enactment of the *Child Protection (Offender Reporting) Act 2004*, the respondent is no longer subject to the order and must comply with the reporting obligations under the 2004 Act. The sentencing judge also directed that whilst the respondent was in prison he should receive treatment and counselling to address his offending behaviour and sexual problems.
- [11] The offence of grievous bodily harm was committed by the respondent during the probation period for the offences for which he had been dealt with in June 2003. The respondent was convicted for breaching the probation order and fined \$400, but given no time to pay and ordered to serve, in default, imprisonment of 4 days. The respondent was also re-sentenced in July 2004 for the original offences that had been dealt with in June 2003. The sentences imposed on the re-sentencing were terms of imprisonment to be served concurrently with the period of imprisonment that he was then serving.

Imprisonment

- [12] For the purpose of this application the Department of Corrective Services has made available copies of all the files held by the Department in respect of the respondent. Copies of these files were also made available to Drs Moyle and Grant. It is not practical to summarise the vast amount of material that is contained on these files. It should be noted, however, that there was no dispute between the parties as to the respondent's history, either generally or during imprisonment.
- [13] The respondent has participated in a number of programs whilst in custody including anger management, cognitive skills and substance abuse. He has been attending Alcoholics Anonymous meetings. As of 19 April 2004 he was referred to the Sexual Offenders Treatment Program and was placed on the program waiting list. It is not until 18 April 2005 that he commenced the HISOP. He completed the HISOP on 23 January 2006.
- [14] In view of the respondent's youth, the diagnoses of Dr Kar in the pre-sentence report and the direction of the sentencing judge that the respondent should receive appropriate treatment and counselling whilst in prison, it is of concern that, despite the respondent being assessed early in his sentence for the Sexual Offenders Treatment Program, his inclusion in the HISOP was deferred until after the date on which he was eligible for post-prison community based release.
- [15] The respondent's application for a post-prison community based release order was rejected on 6 May 2005. One of the reasons for doing so was that the Queensland Community Corrections Board considered that the applicant needed to complete the Sexual Offenders Treatment Program.
- [16] The respondent's behaviour in prison has been acceptable and he has remained breach and incident free and demonstrated a willingness to participate in the programs recommended for him. Whilst in prison the respondent resumed contact with his mother. His mother and stepfather are prepared for him to live with them on his release and to assist him in meeting the requirements of a supervision order. The Department of Corrective Services has assessed the proposed residence and the attitude of the respondent's mother and stepfather as suitable to support the reintegration of the respondent into the community.

HISOP post-treatment report

- [17] Ms Tunbridge works as a facilitator in the Sexual Offending Programs and has dealt with the respondent. She prepared her report after the respondent completed the HISOP under the supervision of the psychologist who is the Team Leader for Sexual Offending Programs. The conclusion reached in that report is that the respondent's current level of risk may be deemed as belonging to the "high" category, but several factors were identified as potentially increasing or decreasing that risk. Some of the factors identified as decreasing the risk include learning to maintain a relationship with another person that is mutually beneficial, obtaining professional support through counselling to assist the respondent in gaining the skills required for successful relationships, developing a supportive network of family members and friends who are willing to participate actively in the monitoring of his behaviour, finding constructive use of his time through employment or hobbies, avoiding all forms of activities which involve stalking, role playing games or stealth and using positive problem solving.

- [18] The report noted that the respondent had demonstrated some insight into how he came to offend and had developed a future plan which, if he were able to follow it, would assist him in managing his high risk circumstances. He also acknowledged responsibility for his offending behaviour and expressed remorse and empathy for the damage done to his victim and others.

Dr Moyle's report

- [19] Dr Moyle interviewed the respondent on 27 March 2006 for about 6 hours. Dr Moyle relied on his clinical assessment of the respondent and the application of a number of actuarial studies of sexual offending in reaching his conclusion that the respondent was at moderate risk of re-offending. Dr Moyle expressed a more specific opinion that there was an approximate 30% chance of the respondent sexually re-offending over a period of about 10 years after his release. Dr Moyle could not be specific on the chance of the respondent falling within or without the 30% chance of sexually violent recidivism, because that chance was affected by the positive and negative elements in the respondent's rehabilitation after release. Dr Moyle diagnosed the respondent as having paedophilia (heterosexual with an interest in 8 to 10 year old girls) and in touching and fondling behaviour rather than sexual intercourse and as being in remission from alcohol abuse and dependence and adjustment disorder with depressed mood. Dr Moyle described his concern at the combination of the predatory sexual activity and the impulsive violence associated with resentment and anger that was present in the respective offending conduct for which the respondent was imprisoned. On the positive side, Dr Moyle noted the progress that the respondent had made during his time in custody, particularly in controlling his tendency to anger and impulsivity.
- [20] Dr Moyle was not recommending a detention order, but considered that a supervision order should allow for close supervision of the respondent in the first few years after release with easing of conditions over the balance of the period of the supervision order. Dr Moyle expressed the view that a period of 10 years was "a sensible time period" over which the respondent would have an opportunity to establish a stable personality and a stable pattern of behaviour.

Dr Grant's report

- [21] Dr Grant interviewed the respondent on 24 April 2006 for 2 ½ hours. He also diagnosed the respondent as having paedophilia involving sexual attraction to female children (but of the non-exclusive type as his attraction is not only to children). Dr Grant considered that the respondent's conduct leading up to the offences for which he was in custody indicated that he was suffering from a conduct disorder of childhood and adolescence that was a precursor for an antisocial personality disorder, but that the respondent's behaviour in prison has been exemplary and he has not exhibited obvious signs of an antisocial personality disorder. Dr Grant noted that the respondent has also had some problems with adjustment disorder and depressed mood in the past in association with stressors in his life and within prison, but that has resolved with treatment. Dr Grant noted that the respondent's alcohol abuse has been in remission since he has been in prison. Dr Grant addressed risk assessment relying on formal risk assessment instruments and a clinical risk assessment. Taking into account all the risk factors that could affect whether the respondent re-offends, Dr Grant considered that the risk of re-offending by the respondent is, at least, moderate and, potentially, high. Dr Grant

considered that the risks would be substantially reduced, if the respondent received the appropriate supervision and assistance that he needs and that the conditions of supervision should try to find a balance which will allow the respondent to participate in meaningful and helpful activities in the community and to develop a relatively normal social life without going into situations where he was isolated with children.

- [22] Dr Moyle provided to the court a letter dated 10 May 2006 in which he expressed the opinion that there was no substantive disagreement between Dr Grant's report and his report.

Whether an order should be made

- [23] On hearing an application of this nature the court may decide that it is satisfied the respondent is a serious danger to the community in the absence of the division 3 order only if it is satisfied by acceptable, cogent evidence and to a high degree of probability that the evidence is of sufficient weight to justify the decision: s 13(3) of the Act. The court is required to have regard to the matters prescribed in s 13(4) of the Act in deciding whether the respondent is a serious danger to the community. The material that was filed on behalf of the applicant in support of the application, as supplemented by the oral evidence, has addressed the matters set out in s 13(4) of the Act.
- [24] I found the evidence of Drs Moyle and Grant to be particularly helpful in considering the issue of whether the respondent is a serious danger to the community in the absence of a division 3 order under the Act. Neither psychiatrist could make an unqualified statement that the respondent would re-offend sexually without such an order, but they were of the same opinion that there was at least a moderate risk of such re-offending, unless steps were taken to set up a supervisory regime that would assist in promoting the positive factors (and reducing the negative factors) for the respondent that would maximise his chances of not re-offending.
- [25] It was suggested in submissions that I would have to decide whether a 30% risk of re-offending sexually is an unacceptable risk to the community. Evaluation of risk in terms of percentages is based to some extent on studies of other sex offenders and is only a means of summarising the effect of the material that is before the court on the issue. There is extensive material relating to the respondent and his history and treatment which has been examined by the psychiatrists (and the court) and forms the basis of the opinions expressed by the psychiatrists on this application. It is not a matter of determining this application by deciding that an unacceptable risk is one that exceeds a designated percentage risk of re-offending sexually.
- [26] The evidence of both Drs Moyle and Grant is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that the respondent's moderate risk of sexual re-offending (unless appropriately supervised) is an unacceptable risk, as contemplated by s 13(2) of the Act.
- [27] Although the applicant did not abandon seeking a continuing detention order, that was not considered necessary by Drs Moyle and Grant and took no account of the youth of the respondent, his willingness to undergo rehabilitation and the preparation which the respondent, his mother and stepfather and the Department of Corrective Services have undertaken in endeavouring to organise a residence and

support network that will give the respondent a real opportunity at rehabilitation in a way that will advantage the community by reducing the risk of sexual re-offending by the respondent.

- [28] Under s 13(6) of the Act, in deciding whether to make a continuing detention order or a supervision order, the paramount consideration is the need to ensure adequate protection of the community. I am satisfied that appropriate conditions can be formulated for a supervision order that will address the need to ensure the adequate protection of the community and that a supervision order, rather than a continuing detention order, should be made.

Period of the supervision order

- [29] Since the Act commenced, most of the supervision orders that have been made have been for a period of 10 years. What is an appropriate period for the supervision order will depend, however, on all the relevant circumstances in the case of the particular prisoner. The evidence of Drs Moyle and Grant supports a longer rather than a shorter period of supervision with the capacity for the restrictions that are imposed on the respondent to be reduced, as the period of the supervision order passes, provided the respondent responds satisfactorily to the supervision. This can be done where the conditions permit the supervising corrective services officer to give approval for activities that are proscribed by the conditions (unless such approval is obtained) and allowing for the supervising corrective services officer to reduce the frequency of reporting by the respondent and visits to the respondent by the supervising corrective services officer as time passes.
- [30] Having regard to the respondent's youth and that promoting his rehabilitation is also a real consideration in this matter, I am satisfied that a period of 8 years is an appropriate period for the supervision order.

Conditions of the supervision order

- [31] Each of Drs Moyle and Grant referred in his report to the types of conditions that would be desirable for the respondent. A draft order was produced by the applicant at the commencement of the hearing and Drs Moyle and Grant provided comments and were cross-examined on the draft conditions set out in this order. As a result, the draft was revised by the applicant and, except for one aspect, the respondent accepted the conditions in the final version of the draft order. Those conditions have been developed as the Department of Corrective Services has been involved in greater numbers of these supervision orders. I am satisfied that the substance of the conditions proposed by the applicant reflects the recommendations of the psychiatrists and are appropriate in the circumstances.
- [32] The one aspect on which the respondent's counsel foresaw a difficulty was the cost for the respondent in travelling to obtain any psychiatric, psychological or other like treatment or counselling or attending relevant courses. The Department of Corrective Services is prepared to meet the expenses of the professional who provides such treatment, counselling or courses, but the applicant considers that the respondent should be responsible for his own travel expenses. The distance that the respondent will have to travel to access treatment or courses will be a consideration in what treatment or attendances are required of the respondent by the supervising corrective services officer. It is not unreasonable that the respondent meet his own travel expenses, provided that consideration is borne in mind by the supervising

corrective services officer when directing the attendance of the respondent on any relevantly qualified professional.

Orders

- [33] The conditions which are set out in the orders at the commencement of these reasons reflect the draft conditions that were prepared by the applicant at the conclusion of the hearing. I therefore will make an order in terms of the orders set out at the commencement of these reasons which includes conditions of the supervision order that are set out in paragraphs (a) to (bb).