SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Sutherland* [2006] QSC 268
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **PAUL VINCENT SUTHERLAND** (respondent)
FILE NO/S:	3524 of 2006
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	27 September 2006
DELIVERED AT:	Brisbane
HEARING DATE:	5 September 2006
JUDGE:	McMurdo J
ORDER:	**Paul Vincent Sutherland be subject to a supervision order for a period of 20 years subject to the conditions in paragraph 41 or such other conditions as fixed by further order of the court**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – OTHER MATTERS – QUEENSLAND – where the respondent is due to be released in September 2006 – where the applicant applied for a final order pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – whether the respondent should remain in custody under a continuing detention order or be released under a supervision order – whether there is an unacceptable risk to the community that the respondent will commit a serious sexual offence if released from custody *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 13, s 13(1), s 13(3), s 13(4), s 13(4)(c), s 13(4)(d), s 13(4)(e), s 13(4)(f), s 13(4)(g), s 13(4)(h), s 13(5), s 13(7)

Attorney-General (Qld) v Francis [2006] QCA 324, discussed
Fardon v Attorney-General (Qld) [2004] HCA 46, cited

COUNSEL: M Maloney for the applicant
T A Ryan for the respondent

SOLICITORS: C W Lohe Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

[1] **McMURDO J**: This is an application by the Attorney-General for final orders under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld). The application, at least as filed, seeks a continuing detention order or alternatively a supervision order. On the respondent's behalf it is conceded that there is a case made out for a supervision order but not otherwise.

The prisoner's criminal history and circumstances

[2] The prisoner was born on 26 December 1957, so that he is now almost 49. His current period of imprisonment commenced on 6 February 1989 when he was then 32. He is due to be released on 29 September 2006. That period of imprisonment relevantly comprises two terms: a term of 11 years for an offence of manslaughter and a cumulative term of nine years for an offence of rape.

[3] The prisoner was born in Brisbane. When he was aged two his parents separated and he and his older brother went with his mother to live in Scotland for two years. At the end of that time, they were sent back to Australia to live with their father. He and his brother then lived from time to time with various members of his extended family. One of those family members, a woman, sexually abused him over some years from when he was about eight until he was about 12. He left school at 15 but did not complete grade 10. He did well at primary school but not at secondary school. According to the evidence of psychiatrists, he is nevertheless highly intelligent.

[4] By his early teens he had begun to commit offences. He spent periods in the Westbrook Home when he was 14 and again when he was 16.

[5] At age 17 he was jailed for three and a half years for the arson of a car. He spent eighteen months of that term in custody, at Boggo Road and Wacol Prisons. In 1983 he was sentenced to four years imprisonment for various break and enter offences. He served two years of that term in custody. He married in 1983 and on release from jail in 1985 he and his wife moved to Bundaberg. They separated in 1986 or early 1987. A child was born soon after their separation. At first he saw this child, a daughter, on a regular basis before he moved to Adelaide in early 1988. Since then he has had effectively no contact with her. The respondent says that his former wife told him after their separation that he was not the girl's father.

[6] In September 1987 he caused the death of a woman. This happened in the course of a sexual encounter. They had had sex a few times prior to this occasion when, at her suggestion he says, they had intercourse after he had tied her up with a rope. During the act of intercourse, the rope ruptured something in her larynx and she then died of asphyxiation. He did not report her death. Instead he took her body to

outside Bundaberg where he hid the body in a field of cane which was close to being harvested. At the same time he removed and kept jewellery which the woman had been wearing. In the course of burning the cane some days later, a farmer found her body.

[7] He was ultimately convicted of the manslaughter of this woman, having been acquitted of her murder. In sentencing him for manslaughter, Shepherdson J remarked that the prisoner "possibly killed this woman in cold blood in order to steal her jewellery". But the jury had not been satisfied that he killed her intentionally. In the present proceeding, it must be accepted that the killing was unintentional. It is not suggested that there is evidence which has emerged since his trial from which he should be now considered to have murdered this woman. The prisoner's reaction to her death, by attempting to hide the body where it was likely to be burnt and by taking the jewellery from it, is disturbing and significant for the present application. And as I will discuss, the prisoner's present version of how this woman died seems at odds with the view the jury are likely to have had. Still, it is significant that the death was not intentionally caused.

[8] He was still living in Bundaberg when, but a few months later, in the early hours of New Years Day 1988, he raped a woman. He encountered her when, intoxicated, she was walking home from a nightclub. He raped her repeatedly and performed oral sex and sodomised her. The assaults continued over some hours. She was in fear for her life and the sentencing judge, McLauchlan DCJ, described it as an especially serious rape and the prisoner as "a dangerous person so far as women in isolated or vulnerable situations are concerned" and as having no remorse. But he still maintains his innocence of this offence, saying that there was a consensual sexual encounter between them. Again it is appropriate to approach the present application on the basis of the jury's verdict, there being no evidence which has emerged since to suggest otherwise. The prisoner's failure to accept responsibility for this offence is obviously significant for present purposes.

[9] The prisoner was charged with that offence of rape the day after it was committed. He was then promptly bailed. At that stage he had not been charged in relation to the death which he had caused in the previous September. He breached that bail by fleeing to South Australia where he lived until his arrest in early 1989. In that time he formed a relationship with a woman which resulted in the birth of their daughter shortly prior to his arrest. He has had regular telephone conversations with the child, almost on a weekly basis and the contact continues although she lives in South Australia. She has visited him several times.

[10] He was arrested in South Australia after he had attempted to sell some of the jewellery he had taken from the woman whom he killed. He was brought back to Queensland and charged with murder. His first trial upon that charge had to be aborted and after a second trial on 26 October 1990 he was acquitted of murder and convicted of manslaughter. He was sentenced to 11 years imprisonment and a concurrent term of three months for stealing the jewellery. His appeal against conviction and application for leave to appeal against his sentence[1] were unsuccessful.

[1] Judgement of the Court of Criminal Appeal 26 March 1991

[11] After a trial in the District Court, on 19 September 1991 he was convicted of the rape offence and associated offences of indecent assault. He was sentenced to nine years for the rape offence, with concurrent terms of four years for the other charges, the nine years being cumulative upon his term for manslaughter.

[12] In dismissing his appeal against the manslaughter conviction, Thomas J wrote of the facts:

> "The appellant gave differing accounts of his involvement, initially denying involvement, admitting to sexual relations … but alleging that she was alive and well when she left, another account which attempted to cast suspicion upon a third person (the victim's defacto husband) and a further account in which he had both ordinary and anal sex with her. A considerable time later, after police were in a position to prove that he had sold her jewellery at various places after her death he gave the version on which his counsel relied at the trial. In his words 'it was an accident. She was into bondage and she got me to tie her up when I was screwing her. She just died.'
>
> …
>
> In my view it is not to be expected that the jury can make a finding of the precise events preceding death but any jury would have been thoroughly justified in rejecting absolutely all the self serving accounts of the appellant, including the final one of accidental death in the course of sexual bondage to which the victim was consenting. The jury was entitled to take the view that he tied her up; that only he and she were present when she died; that the alleged inability to untie or cut the cord with a knife in his own house was unacceptable.
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> …
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> It is inescapable that the appellant was at all times in command of the situation and she was helpless. Once the appellant's self serving version was rejected (as it clearly was) there was no basis upon which a reasonable doubt should be entertained that she consented to be tied up. In short, the only reasonable view of the evidence was that he applied force to her by tying her up for his own purposes, that he directly caused her death and that the killing wasn't justified or excused."

[13] The prisoner admits that prior to his imprisonment he had been a regular user of cannabis and that he had occasionally used amphetamines and heroin. He has also admitted using cannabis whilst a prisoner: he has breaches in this respect in 1991 and 2002. He claims that he has not used cannabis for the last 14 or 15 months.

[14] In 1999 he was transferred to Numinbah. He was there for only a few months before being sent back to Borallon where he has remained. He was sent back because of the content of correspondence he was exchanging with a woman who had visited the prisoners as part of a "Toastmasters" group. Their correspondence involved the expression of various sexual fantasies one of which involved bondage.

[15] With the exception of that last mentioned matter, and the two breaches involving cannabis, the prisoner's behaviour in prison has been good. There are no events of violence and he has been given certain duties and work within the prison which demonstrate his good behaviour and the trust which the prison authorities have seen fit to place in him. He has undertaken a number of courses whilst in prison. He has

not undertaken the sexual offenders treatment program, because he was considered to be ineligible apparently for the fact that one of his victims had died.

Psychiatric evidence

[16] Three psychiatrists have examined him in the past year and each gave oral evidence in addition to his or her report. Two of them, who are Dr Lawrence and Dr Beech, were appointed by an earlier order made under s 8[2]. The third is Dr Grant who saw the prisoner on 31 August 2005. Each says that the prisoner has no mental illness but that he has an anti-social personality disorder, i.e. psychopathy. Dr Lawrence, in expressing what she says is her "firm opinion that he is a psychopath in the Cleckley sense of the word" expresses her "entire agreement" with the views of Dr Atkinson, another psychiatrist who examined the prisoner in November 1999. Dr Atkinson then wrote:

> "There is a narcissistic quality about him which, combined with his aggressive, sadistic power plays, and lack of empathy towards females, leads me to conclude that he is in fact a dangerous, superficial, sexually sadistic psychopath."

But Dr Lawrence qualifies her agreement with Dr Atkinson, in saying that she cannot say whether the prisoner is sadistic, there being "no direct evidence of it but I cannot discount the possibility."

[17] Although the psychiatrists substantially agree in those respects, there is some difference between them as to the relative risk of re-offending. Dr Lawrence assesses that risk "both clinically and actuarily" as "high". In oral evidence, when asked whether a supervision order would be "appropriate" Dr Lawrence said:

> "Yes. I think the risks will remain very considerable and high but they – they would be the – that would be the best approach to minimising the risks of offending."

That was not a retraction of her written opinion that the risk was high. Nor was that opinion qualified by answers given by her in cross-examination to the effect that there were some good indicators as to the risks of re-offending from his behaviour in prison and his displays of parental responsibility towards the child with whom he has been in regular contact. Dr Lawrence gave this oral evidence:

> "My concern is that I believe that Mr Sutherland qualifies as a psychopath. Psychopaths can learn to moderate and control their behaviour to an extent but the underlying condition, that's attitudes and emotional approach to things, to life and other people doesn't necessarily change. That condition of psychopathy is also a significant contributor to the offending behaviour that led to this man's incarceration. Therefore, that sort of risk is going to continue virtually life long. Mr Sutherland is a man almost, shall we say, in the prime of his life, and, therefore, I think the potential risks are going to continue for a considerable period of time. Certainly the next 10 years will be a period of, shall we say, greater risk or higher

[2] On 24 May 2006

> risk for the community than one would imagine the ensuing 10 years would be."

Dr Lawrence recommended that if he is released under supervision, that the supervision continue for 20 years.

[18] In his report Dr Beech wrote that "on historical factors alone he would be seen as a high risk of re-offending (but that) the intervening years of his detention have allowed Mr Sutherland to reduce his risk of recidivism from high to "moderately high." Dr Beech did not believe that "the core sexual component of his violence has been adequately addressed" and said that there is no evidence that his behavioural progress in prison would "generalise to the community". Dr Beech wrote, as Shepherdson J had said, that the prisoner may still be a ruthless man and a danger to vulnerable women. But he then wrote that:

> "… the risk of re-offending would be reduced to moderate level if there were a period of community supervision that included involvement in an offender program. This would allow him to integrate into the community while being monitored generally, and specifically for the early stages of high risk behaviours".

In his oral evidence Dr Beech said that the prisoner's completion of a number of courses and programs in prison pointed to a:

> "positive change he has made in his attitude to what he can achieve in life and his work, (and) that is it has given him a more prosocial attitude."

[19] Dr Grant wrote in September 2005:

> "The indications are that, whilst Mr Sutherland has an anti-social personality structure, he has probably matured and has functioned well within the controlled prison environment. The main issues of concern in terms of re-offending revolve around Mr Sutherland's sexual life and sexual fantasies. The offending behaviour indicated a lack of empathy towards women in sexual situations and the potential for sexual violence. It is difficult to know to what extent such a potential remains some 16½ years later. It is likely that the risk of sexually violent behaviour has been reduced by the lapse of many years and a process of maturation and education during those years. The main ongoing issue of concern is Mr Sutherland's steadfast unwillingness to come to terms with his responsibility for the rape offence and to some extent his limited acceptance of his responsibility for Paula Peters' death … it is in a way a pity that he was refused access to (sexual offenders treatment) programs because participation in such a program might have given authorities more understanding of his sexual motivations and future risks. … As I see it the main significant risk factor resides in the possibility of personality or characterological features in Mr Sutherland that might negatively affect his attitudes and behaviour towards women. If, for example, he secretly harbours sadistic sexual urges this would be a significant risk. However, whether such urges exist is known only to

> Mr Sutherland, and certainly the information that he has given to me and other observers would not indicate that such urges are present. The failure to accept responsibility for the rape and the minimisation of his role in Paula Peters' death might indicate a problem with sadistic sexual urges but in my opinion there is no strong evidence that such urges exist at this stage. Overall, in my opinion Mr Sutherland represents relatively moderate risk of future sexual violence, but it must be stressed that this is only an opinion and it is very difficult for anyone to make absolute predictions."

[20] There is also affidavit evidence from a psychiatrist Dr De Leacy, who saw the prisoner on 18 March 2005. In his report written a few days later, Dr De Leacy wrote:

> "His insight is superficial. He understands how he has fallen foul of the law but does not have a full appreciation of the gravity of his culpability. His judgement is more reasonable. His plans for the future are not unrealistic. … He would probably qualify for a diagnosis of a mixed anti-social and narcissistic personality disorder. This is referred to in popular circles as a psychopath. … Whether a person with his background can continue to resist the urges to engage in anti-social activity will remain to be seen. Psychopaths are by nature impulsive, however he should have the sense to realise that breaching release conditions would be detrimental to his future. Absconding interstate would have to be considered a possibility especially if he had supports elsewhere. … Mr Sutherland assures me that he does not want any more problems with the law but people with anti-social personality are impulsive and sometimes act without due consideration. The issue of marijuana may be relevant in this setting. He states he has never been a big user but his inhibitions may be weakened with marijuana usage."

Dr De Leacy concluded that the prisoner could be suitable for some form of early release but because he has a "marked retention of anti-social traits" he "does represent some risk".

[21] Mr BC Young is a registered psychologist employed by the Department of Corrective Services. In August 2006 he assessed the prisoner's suitability for participation in a sexual offending program. He conducted a number of tests, the outcome of which does not seem inconsistent with the opinions of the psychiatrists. He did not give oral evidence and nor was his report the subject of any submission. He would recommend that Mr Sutherland participate in what is described now as the Preparatory Program in order "to assist in his denial issues" from which he might then be referred to other courses. But because of the prisoner's imminent release date (29 September 2006) there was "an unrealistic timeframe to complete the above recommended courses. Hence no recommendation for any course is appropriate."

[22] There is an affidavit sworn by Mr T Ittensohn, the General Manager of the Borallon Correctional Centre which is tendered on behalf of the Attorney-General. Mr Ittensohn exhibits to that affidavit copies of each and every file kept by the Department of Corrective Services in relation to this prisoner. The content of those files is not explained in the affidavit nor is there any index to the files which in total

consist of some 1,933 pages. In neither the written nor oral argument for the Attorney-General was any reference made to any of this material, save to the extent that it was also tendered in another form (for example Dr De Leacy's report). Section 13(4) of the Act requires the court to consider certain matters. In theory, there could be relevant information within the 1,933 pages although it has not been referred to in submissions. I will assume however that there is nothing relevant within these files, other than that which is separately tendered and which has been the subject of some submission.

[23] Under this heading of medical evidence, mention should also be made of the unanimous opinion of the psychiatrists that the prisoner is of above average intelligence and of the view of at least some that, the prisoner's anti-social personality makes unreliable what the prisoner has said about matters which are relevant to his risk of re-offending.

[24] His relatively high intelligence together with the training he has undergone in prison in information technology might provide him with some employment prospects if released. I accept that he has real prospects although as some psychiatrists have observed, he tends to have an inflated opinion as to those prospects which are relevant to an assessment of the risk of re-offending.

Section 13

[25] Section 13 provides as follows:

> " 13 Division 3 orders
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> (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–

(a) the reports prepared by the psychiatrists under section 11[3] 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;

(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 conditions 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), the paramount consideration is to be the need to ensure adequate protection of the community.

(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1).

[26] No order can be made unless the court is satisfied that the prisoner is a serious danger to the community. But if the court is satisfied of that matter, the court may

[3] Section 11 (Preparation of psychiatric report)

make a continuing detention order, a supervision order or no order[4]. There is no submission here that if the prisoner is a serious danger to the community, nevertheless no order should be made. As already mentioned, it is conceded on behalf of the prisoner that I could be satisfied in terms of s 13(1) and that a supervision order would be appropriate.

[27] The court can be satisfied as required under s 13(1) only upon the basis of acceptable, cogent evidence and if satisfied "to a high degree of probability that the evidence is of sufficient weight to justify the decision." Those requirements are expressed within s 13(3) by reference to the decision which must be made under s 13(1). They are not made expressly referable to the discretionary decision under s 13(5). The paramount consideration under s 13(5) is the need to ensure adequate protection of the community. Subsection 13(7) provides that the Attorney-General has the onus of proving the matter mentioned in s 13(1). There is no express requirement that the Attorney-General prove any matter for the making of a continuing detention order, beyond the proof required by s 13(1). So s 13 does not expressly require, precedent to a continuing detention order, that the Attorney-General prove that a supervision order would still result in the prisoner being a serious danger to the community, in the sense of an unacceptable risk that he would commit a serious sexual offence. However in my view, such a requirement is implicit within s 13.

[28] The paramount consideration is the need to ensure adequate protection of the community. But where the Attorney-General seeks a continuing detention order, the Attorney-General must prove that adequate protection of the community can be ensured only by such an order, or in other words, that a supervision order would not suffice. The existence of such an onus in relation to s 13(5) appears from *Attorney-General v Francis*[5] where the Court allowed an appeal from a judgment which had made a continuing detention order upon the primary judge's view that the Department of Corrective Services would not provide sufficient resources to provide effective supervision of the prisoner upon his release. The Court found an error in that reasoning because of the absence of evidence that the resources would not be provided[6]. The Court observed[7]:

> "The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principal, be preferred to a continuing detention order on the basis that the intrusions of the act upon the liberty of the subject are exceptional, and the liberty of the subject should be constrained to no greater extent than is warranted by the statute which authorised such constraint."

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[4] *Fardon v Attorney-General (Qld)* [2004] HCA 46 at [19], [34]; (2004) 78 ALJR 1519 at 1524, 1527; cf in relation to s 30 *Attorney-General (Qld) v Francis* [2006] QCA 324 at [31].
[5] [2006] QCA 324
[6] [2006] QCA 324 at [37]
[7] [2006] QCA 324 at [39]

Thus the absence of evidence of the inadequacy of resources was important because that matter had to be proved, as a step in persuading the court that only continuing detention would suffice.

[29] The Attorney-General must prove more than *a* risk of re-offending should the prisoner be released, albeit under a supervision order. As was also observed in *Francis*, a supervision order need not be risk free, for otherwise such orders would never be made.[8] What must be proved is that the community cannot be adequately protected by a supervision order. Adequate protection is a relative concept. It involves the same notion which is within the expression "unacceptable risk" within s 13(2). In each way the statute recognises that some risk can be acceptable consistently with the adequate protection of the community.

[30] The existence of this onus of proof is important for the present case. None of the psychiatrists suggests that there is no risk. They differ in their descriptions of the extent of that risk. But the assessment of what level of risk is unacceptable, or alternatively put, what order is necessary to ensure adequate protection of the community, is not a matter for psychiatric opinion. It is a matter for judicial determination, requiring a value judgement as to what risk should be accepted against the serious alternative of the deprivation of a person's liberty.

The risk in this case: relevant considerations

[31] In deciding whether a prisoner is a serious danger to the community as mentioned in s 13(1), the court must have regard to the considerations described by s 13(4).

[32] I have already discussed the reports prepared by the psychiatrists under section 11, which are the reports of Dr Lawrence and Dr Beech. I accept that the prisoner adequately co-operated in their examinations.

[33] I have also considered any other medical, psychiatric, psychological or other assessment relating to the prisoner. I have considered the various assessments made by the employees of the Department of Corrective Services which for the most part related to whether the prisoner should undergo certain courses. I have not found any material amongst those assessments which is significant for present purposes.

[34] As to the consideration in s 13(4)(c) I have discussed already the prisoner's anti-social personality disorder which is evidenced by, amongst other things, the absence of any accepted responsibility for his crimes, or as Dr Grant described it, his "steadfast unwillingness to come to terms with his responsibility for the rape offence and to some extent his limited acceptance of responsibility for Paula Peters' death". And as Dr Grant also said, the offending behaviour itself indicates a lack of empathy towards women in sexual situations and a potential for sexual violence.

[35] As to 13(4)(d) there is something of pattern of offending in that each of the crimes which were committed within months of one another and had those characteristics as Dr Grant described.

[36] The prisoner has participated in all rehabilitation programmes offered to him. As to any other efforts he has made to "address the cause or causes of the prisoner's offending behaviour" (s 13(4)(e)), he has not made any other efforts of significance.

[8] [2006] QCA 324 at [39]

This is because he denies his offending behaviour in relation to one offence and he adheres to a version in relation to the other offence which would not have involved any conduct which required something to be addressed.

[37] As to s 13(4)(f) the prisoner's participation in rehabilitation programmes has not had a positive effect on the prisoner which is of present significance, because it has not affected his anti-social personality disorder. Dr Grant wrote that it is likely that the risk of sexually violent behaviour has been reduced not only by the lapse of many years and a process of maturation but also by some education in those years. I am not persuaded that education has significantly affected the risk that comes from this man's psychopathy. I do accept that it is likely that the risk has been reduced by the lapse of time and a process of maturation.

[38] I have discussed already the prisoner's antecedents and criminal history (s 13(4)(g)). The considerations in s 13(4)(h) are at the core of the question of whether he is a serious danger to the community to which I will return.

[39] It is necessary also to consider his circumstances should he be released. The prisoner has made enquiries as to available accommodation and as at the date of the hearing he had no confirmed accommodation available. Clearly he will have difficulty finding employment because of his criminal record and his long period in jail. He has acquired some skills in computer technology but it is likely that he would have to undergo some further training courses before he would be employable or able to derive an income from his own business. He has saved some money which he could use to pay rent and buy clothes, furniture and other items. His father still lives in Brisbane but he is very old and ill. The prisoner has not seen him for about 12 months and they have not kept up any contact by telephone. It seems that his father used to visit more often but that his own lack of money made that too difficult. So the prisoner would be without any network of family or friends within Queensland. There is a prospect that he would resume his use of cannabis. Dr Lawrence says that whilst he "may be able to contain any inherent deviant desires whilst not using substances, the possible use or abuse of substances would certainly increase his risk of re-offending very significantly."

[40] Upon all of this evidence I am satisfied that he is a serious danger to the community if released without a supervision order being made. No contrary submission was made on the prisoner's behalf. The questions then are whether the adequate protection of the community requires him to be kept in custody, or whether adequate protection can be provided by a supervision order and what should be its terms.

[41] The submissions for the Attorney-General proposed a supervision order in the following terms:

> " The respondent must:
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> (i) Be under the supervision of a correction services officer ('the supervision corrective services officer') for the duration of this order;
>
> (ii) report to the supervising corrective services officer at the Department of Corrective Services District Office closest to his place of residence between 9 am and 4 pm on 29 September 2006, the day of his release, and therein to

advise the officer of the respondent's current name and address;

(iii) reside at a place within the State of Queensland as approved by a corrective services officer by way of a suitability assessment.

(iv) report to and receive visits from the supervising corrective services officer at such frequency as determined necessary by the supervising corrective services officer;

(v) notify the supervising corrective services officer of every change of the prisoner's name at least two business days before the change occurs;

(vi) notify the supervising corrective services officer of the nature of his employment, the hours of work each day, the name of his employer and the address of the premises where he is employed;

(vii) notify the supervising corrective services officer of every change of employment at least two business days before the change occurs;

(viii) notify the supervising corrective services officer of every change of the respondent's place of residence at least two business days before the change occurs;

(ix) not leave or stay out of the State of Queensland without the written permission of the supervising corrective services officer;

(x) not commit an offence of a sexual nature during the period for which these orders operate;

(xi) obey the lawful and reasonable directions of the supervising corrective services officer;

(xii) respond truthfully to enquiries by the supervising corrective services officer about his whereabouts and movements generally;

(xiii) notify the supervising Corrective Services officer of the make, model, colour and registration number of any motor vehicle owned by, or regularly used by him

(xiv) abstain from the consumption of alcohol for the duration of this Order;

(xv) abstain from illicit drugs for the duration of this Order;

(xvi) take prescribed drugs as directed by a medical practitioner;

(xvii) submit to alcohol and drug testing as directed by a corrective services officer, the expense of which is to be met by the Department of Corrective Services;

(xviii) not visit premises licensed to supply or serve alcohol without the prior written approval of the supervising Corrective Services officer;

(xix) attend a psychiatrist or other mental health practitioner who has been approved by the Supervising Corrective Services officer at a frequency and duration which shall be recommended by the treating psychiatrist or other mental health practitioner, the expense of which is to be met by the Department of Corrective Services;

(xx) permit any treating psychiatrist or mental health practitioner 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 updating or amending the supervision order and/or ensuring compliance with this order;

(xxi) attend any program, course, psychologist, counsellor or other mental health practitioner, in a group or individual capacity, as directed by the treating psychiatrist and the Supervising Corrective Services Officer, the expense of which is to be met by the Department of Corrective Services;

(xxii) agree to undergo medical testing or treatment (including the testing of testosterone levels by an endocrinologist) as deemed necessary by the treating psychiatrist and the Supervising Corrective Services 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 is to be met by the Department of Corrective Services;"

[42] Although formally there is still an application for a continuing detention order, there was no submission advanced by counsel for the Attorney-General as to why that was necessary. Indeed there was little between the respective arguments, each of which seemed to all but concede that the appropriate outcome was a supervision order upon the terms which I have set out.

[43] That suggested supervision order would place very considerable limitations upon the respondent with a consequent avoidance of many circumstances in which the respondent would be at particular risk of re-offending. For example he would not only be obliged to abstain from consuming alcohol, but also he would be prevented from visiting licensed premises (without the prior approval of the supervising officer). Still there are prospects that he would meet women in circumstances where there would be a risk, acknowledged by each of the psychiatrists, of another serious sexual offence. In the course of argument and in some of the questions asked of the psychiatrists in the course of their evidence, each counsel explored the possibility of a further condition along the lines that the respondent would have to disclose the circumstances of his offences to any woman with whom he was forming some relationship. But such a condition is problematical for a number of reasons and would not be effective. It would have problems of definition. And as he has continues to deny his culpability, there is no real prospect that he would make some full and frank disclosure in that particular context. It must also be

acknowledged that there is a chance that he will not always comply with each and every condition, although his compliance is made more likely within these conditions by the provisions for monitoring his compliance.

[44] It is unnecessary to set out here the results of the various tests employed by the psychiatrists. According to those tests the respondent is at a significant risk of re-offending. But those tests do not measure those prospects of re-offending in a regime of supervised release as is proposed.

Conclusion

[45] There is a substantial risk, according to any of the psychiatric evidence. Some of the psychiatrists consider that the risk is no more than what they describe as moderate. Others, and in particular Dr Lawrence, see the risk as higher than that. The respondent's counsel points out that no psychiatrist advocates his continuing detention. In that respect this case is different from some others, in which psychiatrists have so advocated. Of course it is not for any witness to say whether the risk is unacceptable or that adequate protection of the community requires a certain result, that being the matter for judicial opinion. Nevertheless, the fact that in this case, unlike some others, no psychiatrist advocates continuing detention is of some significance.

[46] Undoubtedly the prisoner's anti-social personality disorder makes him more likely to offend and the fact that his disorder has contributed to the commission of serious crimes is obviously significant. He has a poor level of personal support, in the sense of an absence of friends and relations to help him lead a proper life. A further relevant factor is the doubt as to his employability, although that is not such a significant matter as the others already mentioned. And there is much which is not known about the prisoner, such as any propensity for sadism and the extent of his sexual drive by now. He claims to have little sexual drive but his statements are not reliable.

[47] Against those factors, he is very likely to have matured in the 17 years in which he has been in custody. He has no mental illness and is of high intelligence, so that he is well aware of the potential consequences of criminal behaviour. Although his personal life does not have at present the benefit of friendships and associations, it is likely to be more stable than in late 1987. In prison he has demonstrated an ability to make advances in his life: to learn work skills, to assume positions of trust in the prison environment and to save money. Most importantly, he would be subject to a very strict regime if released under the supervision orders which are proposed.

[48] Counsel for the Attorney-General was unable to advance any submission as to why a continuing detention order was necessary. It is appropriate that I record this exchange in the course of her argument:

> Ms Maloney: "I would note that the application remains as one for continued detention or, in the alternate, a supervision order in relation to the matter. Given the psychiatric evidence, obviously I would suggest that a Court would, in this matter, be likely to consider a supervision order rather than a continuing detention order.

> … But is there any evidence that the adequate protection of the community cannot be ensured by the supervision order, that instead it requires a continuing detention order?
>
> Ms Maloney: I would suggest not".

[49] The fact that no specific argument was put in support of a continuing detention order does not absolve the court of the responsibility to consider the application for that order (unless that application is expressly withdrawn). But the absence of any argument in support of it is relevant in the consideration of whether the court is persuaded, by its own assessment of the evidence, to make that order. It must be a rare case under this Act where a person would be indefinitely detained without there having been any submission for that outcome.

[50] Ultimately, from my own consideration of the evidence, I am not satisfied that it is essential for the adequate protection of the community that he be kept in custody. Many in the community would say that adequate protection of the community requires the elimination of any risk of re-offending. But in my view, that would be inconsistent with this statute, which employs the relative concept of an acceptable risk, rather than the absolute concept of no risk.

[51] So the result should be a supervision order. There is then no contest as to the terms of such an order. The terms proposed by the Attorney-General are appropriate and what remains to be considered is the period during which that order will operate. In general, as time passes, the relative risk should gradually diminish. The fixing of the period for such an order is necessarily arbitrary. In my view, the supervisory regime here is so important in lessening the risk of re-offending, that it ought to be maintained for the relatively long period of 20 years. Under the present terms of the Act, the conditions can be amended within that period if that is desirable: s 19.

[52] There will be an order upon the conditions set out earlier in this judgment, to operate for a period of 20 years from the prisoner's release on 29 September 2006.