

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Qld v B* [2006] QSC 330

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

FILE NO: BS 4765/06

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 3 November 2006

DELIVERED AT: Supreme Court, Brisbane

HEARING DATE: 30 October 2006

JUDGE: Douglas J

ORDER: **1. The Court is satisfied to the requisite standard that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the Dangerous Prisoners (Sexual Offenders) Act 2003.**

2. The respondent be subject to the following conditions until 27 November 2026, or further order of the Court:

The respondent must:

- (i) be under the supervision of a corrective services officer ('the supervising corrective services officer') for the duration of this order;**
- (ii) report to the supervising corrective services officer at the Department of Corrective Services Area Office closest to his place of residence between 9 am and 4 pm on 27 November 2006 and therein to advise the officer of the respondent's current name and address;**
- (iii) report to and receive visits from the supervising corrective services officer at such frequency as determined necessary by the supervising corrective services officer;**
- (iv) notify the supervising corrective services officer of every change of the prisoner's name at least two**

- business days before the change occurs;**
- (v) 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;**
 - (vi) notify the supervising corrective services officer of every change of employment at least two business days before the change occurs;**
 - (vii) 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;**
 - (viii) not leave or stay out of the State of Queensland without the written permission of the supervising corrective services officer;**
 - (ix) not commit an offence of a sexual nature during the period for which these orders operate;**
 - (x) reside at a place within the State of Queensland as approved by a corrective services officer by way of a suitability assessment;**
 - (xi) abstain from the consumption of alcohol for the duration of this Order;**
 - (xii) abstain from illicit drugs for the duration of this Order;**
 - (xiii) take prescribed drugs as directed by a medical practitioner;**
 - (xiv) 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;**
 - (xv) not visit premises licensed to supply or serve alcohol without the express prior permission of a corrective services officer.**
 - (xvi) attend a psychiatrist who has been approved by the supervising corrective services officer at a frequency and duration which shall be recommended by the treating psychiatrist, the expense of which is to be met by the Department of Corrective Services;**
 - (xvii) permit any treating psychiatrist, psychologist or counsellor 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;

- (xviii) attend any program, course, psychologist or counsellor, in a group or individual capacity, as directed by the supervising corrective services officer in consultation with the treating psychiatrist. The expense of which is to be met by the Department of Corrective Services;**
- (xix) agree to undergo medical testing or treatment (including the testing of testosterone levels by an endocrinologist) as deemed necessary by the treating psychiatrist and 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;**
- (xx) obey the lawful and reasonable directions of the supervising corrective services officer;**
- (xxi) respond truthfully to enquiries by the supervising corrective services officer about his whereabouts and movements generally;**
- (xxii) 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;**
- (xxiii) not be on the premises of any shopping centre, without reasonable excuse, between 8 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) attending a bona fide pre-arranged appointment with a government agency, medical practitioner or the like;**
- (xxiv) not visit public parks without prior written permission from the supervising corrective services officer;**
- (xxv) not without reasonable excuse be in the area within 100 metres of a school, children's playground or child care area at any time, save where he is passing the premises whilst in a vehicle or on public transport;**
- (xxvi) not undertake any care of children;**

(xxvii) not establish and maintain unsupervised contact with children under 16 years of age. With respect to supervision, the Respondent's wife by herself is not to be considered a suitable supervisor;

(xxviii) not have contact with any of his female grandchildren;

(xxix) not access pornographic images containing photographs or images of children on a computer or on the Internet or in any other format;

(xxx) not to make direct or indirect contact with the victim of his offences without the prior approval of the supervising corrective services officer.

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – OTHER MATTERS – QUEENSLAND – respondent nearing end of 10 year term of imprisonment for maintaining an unlawful relationship with a child under 16 with aggravation – whether the respondent is a serious danger to the community under s 13(5) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*

Dangerous Prisoners (Sexual Offenders) Act 2003, s 13

Attorney-General (Qld) v Fardon [2006] QSC 275, cited *Attorney-General (Qld) v Francis* [2006] QCA 324, applied *Attorney-General (Qld) v Francis* [2005] QSC 381, cited

COUNSEL: M Maloney for the applicant
P E Smith for the respondent

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

- [1] **Douglas J:** The respondent is serving a 10 year sentence for maintaining an unlawful relationship of a sexual nature with a child under 16, with circumstances of aggravation. He was sentenced on 20 December 1996 to a term of imprisonment of 10 years and is due to be released on 27 November 2006.
- [2] In this application the Attorney-General seeks orders pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* relating to his imminent release. Counsel for the Attorney-General did not press an application that the respondent should continue to be detained, but rather drew my attention to the conditions of a proposed supervision order designed to minimise the risk that the respondent would re-offend.
- [3] It seems clear to me that, pursuant to s 13 of the Act, The respondent would present a serious danger to the community if released from custody without a supervision order being made. Judging by his limited criminal history, constituted by the offence for which he was convicted, and assisted by the psychiatric evidence in particular, I believe that those mainly at risk from him are young girls within his own family, in this case his granddaughters.

- [4] The offence for which he was originally sentenced was one of maintaining a sexual relationship with one of his own daughters over a period of two and half years from when she had just turned 12 years of age. The apparent excuse for his corruption of his daughter related to his wife's illness leading to a loss of interest by her in sexual intercourse. His own history, as related by him to psychiatrists who have assessed him, was that he had also been sexually abused as a child himself, had been a long term abuser of prescription drugs and had also forced another, older daughter to have intercourse on one or two occasions. That offence was, apparently, not pursued by that daughter because of the length of the term of his imprisonment for this offence.
- [5] Comments he had made about his previous behaviour to those treating or assessing him, initially at least, raised real questions about his rehabilitation. When he first entered the sexual offenders' treatment program in prison he was removed from it for attempting to "groom" a 12 year old girl through letters and phone calls. He admitted to that behaviour during a later program known as the high intensity sexual offending program ("HISOP") and expressed a desire to change his behaviour.
- [6] After a preliminary application in this matter he was examined by two psychiatrists appointed by the court, Dr Grant and Dr Moyle. Dr Grant reached the following conclusion:

"OVERALL CLINICAL RISK ASSESSMENT

In my opinion the overall risk of re-offending in [the respondent's] case is moderate. The level of assessed risk will be influenced to some extent by the final HISOP report. The degree of risk can also be modified by the imposition of a variety of conditions if [the respondent] was to be released from prison. In this case the level of risk would be reduced to **low**.

Since [the respondent's] offending has only been incest related, his risk of re-offending is lower than that of an offender convicted of extra-familial paedophilia. The risk is also reduced by lesser opportunities now that his daughters are adult. However, that risk has now passed on to his granddaughters or other young females who might come into his household.

[The respondent] could easily be destabilized by a breakdown in his marriage or if he was to resume substance abuse (a less likely event). In such a situation other social supports would become vitally important to maintain [the respondent's] stability.

The risk of re-offending will be greatly reduced if [the respondent] is prevented from having any unsupervised contact with children, particularly young girls, and particularly in any household setting.

Once [the respondent] has completed the HISOP course there is unlikely to be any further treatment that can be offered in a prison setting.

If [the respondent] is released, **in my opinion a supervision order would be vital.** I would recommend that it should contain conditions as follows:

1. [The respondent] should have no unsupervised access to children, especially to young female family members. Supervision should be provided preferably by someone other than his wife. In the past he has demonstrated the ability to

deceive and manipulate his wife and it would therefore be better if supervision was provided by a more objective person.

2. He should be closely supervised by Community Corrections.
3. He should be offered community counselling in regard to maintaining his progress with strategies and risk prevention measures learnt in HISOP. Such counselling might occur in a group setting designed for sexual offenders or it could be on a one to one basis with an appropriately qualified therapist.
4. He should see a psychiatrist for treatment of his anxiety disorder and to assist him in remaining abstinence from therapeutic substance abuse.
5. [The respondent's] access to public situations where he might have ready access to children should be limited. This condition is, I believe, desirable even though in the past he has not become involved in predatory paedophilic behaviour. However, it would assist in ensuring that he does not become involved in any kind of grooming behaviour of potential victims whilst in an unsupervised setting.
6. If paedophilic impulses recurred and were difficult to control [the respondent] would be advised to consider anti-androgen therapy. This could be given by his treating psychiatrist. However, it is not a treatment which can be mandated as there is a need for informed voluntary consent and the medication can carry significant potential side effects.

Overall, in my opinion, **if such a supervision program was instituted and closely followed through, the risk of re-offending would be reduced to a relatively low level.**" (Emphasis in the original.)

[7] Dr Moyle's conclusions were as follows:

"CONCLUDING REMARKS ON RISK ASSESSMENT

It is my opinion that [the respondent] may be finally using the sex offender treatment program to understand his problem but he has in the past learned from programs but not used that knowledge to lower risk. He has good insight into his offending. He seems well motivated at the current time to not re-offend, and, at the most, is a moderate risk of re-offending. If living in Canada his risk would be moderate.

In my opinion [the respondent] is a suitable person for supervised release only as he has not shown his trustworthiness in an open setting, and, given the obvious psychiatric and psychological problems he has had, is a suitable person for ongoing psychiatric attention as part of a release plan. I believe the intensity of his emotional state has to some degree been modified by years of imprisonment, with containment of feelings being a key feature of prison life. Whether he can continue to contain his feeling without reverting to substance misuse once out of the contained environment of a prison is yet to be seen. This needs to be monitored. I would have preferred for [the respondent], as I would have preferred for many such offenders, to have had a period of home release prior to the end of his sentence. He would have been tested then as to

whether he was able to contain his emotions outside of a prison setting, and, if he was followed up at the time by mental health professionals, skilled in treating people's emotional disorders, any difficulties he had would have been discussed with him. This can of course be set up as an out patient. I would have suggested that [the respondent] receives such psychiatric care while closely supervised by external constraints, such that non compliance would be quickly recognised and acted on. It is not my opinion that psychiatric attention without external behavioural constraints will reliably lessen his community risk. I would not have trusted his word alone given his well developed ability to con and manipulate people throughout his life including medical practitioners. I am wary of Judge Robertson's warning re Mr Peros' report. I would have seen [the respondent] as an ideal candidate for a combined approach using the resources of community corrections and mental health professionals, with the hope that the very damaging behaviours that [the respondent] engaged in would not recur. Of course the prognosis would be worsened if [the respondent] reverted to substance misuse.

After addressing the actuarial and the clinical issues I assess his risk is moderate that he will reoffend, despite the low risk on Static-99. I say this because of his blatant disregard for the fact that he was in a program and observed, while he still tried to make inappropriate contact with a child of his son-in-law. He also tried to convince his family to oppose the wishes of the treatment staff to lower the impending risk to his granddaughter, and didn't comply with the staff instructions to allow him to re-engage with the SOTP. This doesn't auger well in my opinion for his complying with restrictions in the community. All his life he has gone his own way and I see this as a character flaw that is well entrenched. However he has learned society's values and will be responsible for any breaches as he doesn't have the sort of mental disorder that abrogates criminal responsibility. He has an ongoing need for treatment of his fear of dying and of medical problems.

Potential victims are 8 to 14 year old females over which he may exercise some control and the likely venue is his home. I suggest if he is to return home he should not have access to his granddaughters, and he should be encouraged not to voice his disappointment to the children giving them the sense that they are indirectly responsible for his distress. He is, due to his past behaviour, and such complaints are only made to exert emotional control over others.

Conclusions

It is my opinion that [the respondent] is suitable for a supervised release from custody, with psychiatric follow up, and follow up from drug and alcohol professionals, at the time his sentence comes to an end, if his access to potential victims is restricted and he attends a follow-up community sexual offender programs in the community."

- [8] After the preparation of those reports another report became available from those treating the respondent through HISOP. Its contents included the following:

Program Participation

The respondent began the program on the 23 January 2006. At the completion of the program he completed 95 sessions (approximately 261 hours) of a possible 105 sessions of this intensive program, having missed 10 sessions for a variety of medical, legal, and self-reported emotional issues. It is of note that eight of these sessions were in the last three months of the program.

The respondent was repeatedly counselled in the last two months of the program during group and individually regarding his non-attendance and apparent lack of focus during sessions that he was present. One such time he reported his intention to ‘not let the system break [him]’. In reviewing his progress, the closer [the respondent] came to the conclusion of HISOP it is considered that – as indicated by the above statement – he developed a defensive bias in his expressed attitudes. With looming pressure in lieu of the Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA) application against him, it was not unreasonable for him to hold anxiety about his future. Despite attempts to assist him, it was not unreasonable for him to hold anxiety about his future. Despite attempts to assist him, [the respondent] was unable to refocus and attain consistent and meaningful participation, effectively self-sabotaging his ability to successfully achieve the final objectives of the program.

In view of [the respondent’s] decline in attendance and the nature of his participation when present, it is considered that his participation markedly deteriorated to the degree that it was overall unsatisfactory. The respondent’s level of participation fluctuated in terms of his contribution to the group. The respondent asked questions and demonstrated the ability to challenge other participants; however some of his questions were considered irrelevant and appeared to be motivated by curiosity, often illustrating a lack of insight and focus on program objectives.

...

Summary

...

Overall [the respondent’s] participation in HISOP was unsatisfactory due to deterioration in attendance and ineffective participation during the concluding stages of the program. Following his poor participation, his subsequent capacity to develop requisite insight and achieve program objectives – namely an effective New Futures Plan – was significantly limited. Of greatest note, [the respondent] had a simplistic comprehension of the factors underlying his decision to offend. He had basic challenges to his distorted cognitions, and generic strategies to manage his risks. In spite of initial difficulties, [the respondent] eventually identified an appropriate support network. His goals for the future were simplistic, irrelevant and/or unrealistic. In summary it is considered that [the respondent] barely met the objectives of the modules in HISOP, with exception to the Map of Offending and New Futures Plan modules, in which his performance was unsatisfactory.”

- [9] In his oral evidence Dr Grant said that the most recent report from the HISOP team was not particularly encouraging as it did not appear that the respondent had made very much further progress than when he saw him. He believed that a supervision order would be very important if the respondent was released from prison. He also believed that the draft supervision order included satisfactory conditions to meet the needs referred to in his opinion, addressing as they do, issues to deal with drug and alcohol abuse and the issue of contact with children and, in particular, his own grandchildren.
- [10] Dr Grant said that, although there were concerns about access to the respondent's female grandchildren because of his history with his own children, with supervised access of those children pursuant to the conditions in the proposed draft order, he believed the level of risk would be low to moderate. He was concerned about the prospect of the respondent living with his wife because of his previous ability to

abuse his own children while living with her, when she was either oblivious to the conduct or, in some way, allowed it to continue or perhaps was manipulated by him. The proposed condition with respect to supervision provides that the respondent's wife, by herself, is not to be considered a suitable supervisor. Dr Grant also took the view that a lengthy period of supervision of some 15 to 20 years would be the safest approach to the problem caused by the respondent's propensities.

- [11] Dr Moyle, in his oral evidence, took a similar view to that of Dr Grant in respect of the period of supervision. He believed that, if the respondent resided with his wife, the risk to the community would increase because of his ability to influence his wife and children to provide him with support and forgiveness, which he described as a long entrenched skill. He also said that the respondent prided himself on his ability to manipulate and get what he wanted and organised people to provide what he wanted for him. There was evidence from the respondent's wife which indicated that she wished to live with the respondent when he is released if he is unable to find suitable accommodation separate from her.
- [12] Dr Moyle differed slightly from Dr Grant in that he believed that the safest solution would be for the respondent to have no access to his female grandchildren initially, in particular, although he anticipated that they could be gradually introduced to him over time under the supervision of someone perhaps from either the Corrective Services or Family Services Departments. He agreed that the respondent posed a moderate risk of re-offending and that the conditions of his supervision order provided safety for the community in respect of that risk only if he complied with the conditions.
- [13] There was uncontradicted evidence that the respondent nearly died in 2003 from medical complications associated with an ulcer. The respondent has expressed the view to those examining him that that episode changed his outlook significantly and made him more aware of the problems he had created for his daughters and his wife by his previous behaviour. The evidence of the effect of that episode appears to be consistent and does suggest a change in the risk posed by him since he was earlier removed from the sexual offenders treatment program.
- [14] Although his overall participation in HISOP was rated as unsatisfactory, he has completed a significant number of programs in prison and there is no further advantage likely to be obtained by him from such programs that would be more beneficial than the restrictions on his freedom envisaged by the proposed conditions for his release; see Dr Moyle's evidence at T14 ll10-22 and cf *Attorney-General (Qld) v Francis* [2006] QCA 324 at [30]-[31]. The nature of the proposed conditions for his release and the psychiatric evidence leave me with the view that it would not be appropriate that he remain in prison beyond the normal term imposed for his crime. As the Court of Appeal said in *Attorney-General (Qld) v Francis* at [39] in respect of the risks associated with the making of a supervision order:
- “The Act does not contemplate that arrangements to prevent such a risk must be ‘watertight’; otherwise orders under s 13(5)(b) would never be made. 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 principle, 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.”

- [15] See also the remarks of Mackenzie J in *Attorney-General (Qld) v Francis* [2005] QSC 381 at [107] adopted by Lyons J in *Attorney-General (Qld) v Fardon* [2006] QSC 275 at [50].
- [16] The proposed order does not specify where he should live beyond saying that he should reside at a place within the State of Queensland approved by a corrective services officer by way of a suitability assessment. Particularly if he is to live with his wife, which is a real possibility, and at least for a reasonable period into the future, it seems to me that it would be safest to impose a further condition prohibiting contact with any of his female grandchildren. This is not meant to prevent the possibility of such contact in perpetuity, as it will be open to him to apply to vary the conditions of the order in the future. It seems to me, however, that it would be desirable to impose such a condition for a reasonable period after his release from prison to allow some assessment to be made of the uncertainties related to his place of residence, the continuing nature of his relationship with his wife and children and the availability and nature of appropriate supervision of such contact. The wishes of the female grandchildren in respect of that issue may also be relevant to any reassessment of the conditions in the future.
- [17] In the circumstances, therefore, I believe that it is appropriate that I make an order under the Act subject to the proposed conditions with the addition of another condition prohibiting contact with the respondent’s female grandchildren. The period of supervision should be lengthy because of the ingrained nature of the respondent’s earlier behaviour. In my view a period of 20 years would be appropriate.
- [18] The orders will be that:
1. The Court is satisfied to the requisite standard that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
 2. The respondent be subject to the following conditions until 27 November 2026, or further order of the Court:

The respondent must:

- (i) Be under the supervision of a corrective services officer ('the supervising corrective services officer') for the duration of this order;
- (ii) report to the supervising corrective services officer at the Department of Corrective Services Area Office closest to his place of residence between 9 am and 4 pm on 27 November 2006 and therein to advise the officer of the respondent’s current name and address;

- (iii) report to and receive visits from the supervising corrective services officer at such frequency as determined necessary by the supervising corrective services officer;
- (iv) notify the supervising corrective services officer of every change of the prisoner's name at least two business days before the change occurs;
- (v) 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;
- (vi) notify the supervising corrective services officer of every change of employment at least two business days before the change occurs;
- (vii) 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;
- (viii) not leave or stay out of the State of Queensland without the written permission of the supervising corrective services officer;
- (ix) not commit an offence of a sexual nature during the period for which these orders operate;
- (x) reside at a place within the State of Queensland as approved by a corrective services officer by way of a suitability assessment;
- (xi) abstain from the consumption of alcohol for the duration of this Order;
- (xii) abstain from illicit drugs for the duration of this Order;
- (xiii) take prescribed drugs as directed by a medical practitioner;
- (xiv) 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;
- (xv) not visit premises licensed to supply or serve alcohol without the express prior permission of a corrective services officer.
- (xvi) attend a psychiatrist who has been approved by the supervising corrective services officer at a frequency and duration which shall be recommended by the treating psychiatrist, the expense of which is to be met by the Department of Corrective Services;
- (xvii) permit any treating psychiatrist, psychologist or counsellor 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;
- (xviii) attend any program, course, psychologist or counsellor, in a group or individual capacity, as directed by the supervising corrective services officer in consultation with the treating psychiatrist. The expense of which is to be met by the Department of Corrective Services;
 - (xix) agree to undergo medical testing or treatment (including the testing of testosterone levels by an endocrinologist) as deemed necessary by the treating psychiatrist and 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;
 - (xx) obey the lawful and reasonable directions of the supervising corrective services officer;
 - (xxi) respond truthfully to enquiries by the supervising corrective services officer about his whereabouts and movements generally;
 - (xxii) 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;
 - (xxiii) not be on the premises of any shopping centre, without reasonable excuse, between 8 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) attending a bona fide pre-arranged appointment with a government agency, medical practitioner or the like;
 - (xxiv) not visit public parks without prior written permission from the supervising corrective services officer;
 - (xxv) not without reasonable excuse be in the area within 100 metres of a school, children's playground or child care area at any time, save where he is passing the premises whilst in a vehicle or on public transport;
 - (xxvi) not undertake any care of children;

- (xxvii) not establish and maintain unsupervised contact with children under 16 years of age. With respect to supervision, the Respondent's wife by herself is not to be considered a suitable supervisor;
- (xxviii) not have contact with any of his female grandchildren;
- (xxix) not access pornographic images containing photographs or images of children on a computer or on the Internet or in any other format;
- (xxx) not to make direct or indirect contact with the victim of his offences without the prior approval of the supervising corrective services officer.