SUPREME COURT OF QUEENSLAND

CITATION:	*A-G v Wright* [2006] QSC 389
PARTIES:	**ATTORNEY-GENERAL FOR STATE OF QUEENSLAND** (applicant) v **DAVID WRIGHT** (respondent)
FILE NO/S:	BS 7384/06
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court, Brisbane
DELIVERED ON:	15 December 2006
DELIVERED AT:	Brisbane
HEARING DATE:	6 December 2006; written submissions 8 December 2006
JUDGE:	Skoien AJ
ORDER:	**Order for release under supervision**
CATCHWORDS:	*Criminal Law Amendment Act* 1945 *Dangerous Prisoners (Sexual Offenders) Act* 2003
COUNSEL:	Mr BHP Mumford for the applicant Mr SJ Hamlyn-Harris for the respondent
SOLICITORS:	Crown Solicitor for the applicant Legal Aid Queensland for the respondent

[1] This is an application by the Honourable the Attorney-General for the State of Queensland pursuant to part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003. It sought an order that the respondent undergo examinations by two psychiatrists. That order was made, examinations conducted and reports obtained from Professors James and Nurcombe. It also sought the relief with which I am concerned:-

(a) pursuant to s 13(5)(a) of the Act that the respondent be detained in safe custody for an indefinite term for care, control or treatment; alternatively

(b) pursuant to s 13(5)(b) of the Act that the respondent be released from custody subject to such conditions as this Court considers appropriate.

The facts

[2] In about September 2001, the respondent (date of birth 15 June 1966) moved in with the mother of the complainant, a nine year old boy ("BH").

[3] On 11 June 2002, the respondent pleaded guilty in the District Court at Ipswich to 16 counts of indecent treatment of a child under 12. His conduct involved masturbating BH and masturbating himself (on occasions to ejaculation) while performing oral sex on BH. All of the offences occurred over a period of about 11 days in January 2002. The respondent made full admissions in an interview with police on 30 January 2002 in circumstances where BH had made only limited disclosures about the indecent dealings. The sentence was adjourned to 19 July 2002 so that a pre-sentence report could be prepared. On that day, an addendum report was ordered and the sentence was again adjourned.

[4] It seems that publication of those Court proceedings led to another boy coming forward to complain. That complainant ("JR") alleged that between 1 January 1984 and 31 December 1984, the respondent (then aged between 17 and 18), a family friend who was baby sitting JR and later moved into the house, masturbated JR, masturbated himself in front of JR to ejaculation and performed oral sex upon JR. JR was eight years old at the time of those offences. A final offence, a single instance between May 1993 and September 1993, occurred when JR was 17 years old and while the respondent was staying at his home. The respondent masturbated JR who was sleeping.

[5] The respondent was interviewed by police on 4 September 2002, and admitted that he had touched JR in the way described above.

[6] On 20 September 2002, the respondent pleaded guilty to an *ex officio* indictment containing six counts of indecent dealing with a child under 14 and one count of indecent assault, all with respect to JR. Her Honour Judge Richards sentenced him to five years imprisonment for the offences involving BH and three years imprisonment for the offences against JR.

[7] Both terms of imprisonment were concurrent and it was recommended that the respondent be eligible for Post Prison Community Based Release after 21 months. It was declared that he had served 233 days in pre sentence custody. It was ordered that, upon his release, he report to police pursuant to s 19 of the *Criminal Law Amendment Act* 1945 for a period of 20 years.

[8] In the course of investigating the offences concerning BH, police executed a search warrant at the respondent's residence. Police found eight computer hard drives and the respondent gave police passwords for the hard drives.

[9] Two of those hard drives contained a total of 64 images classified as child abuse computer games. The respondent told police that he downloaded images of male children in different sexual positions from internet sites after being told of the sites during discussions on "chat rooms".

[10] He was sentenced in the District Court at Ipswich on 24 July 2003 to nine months imprisonment for this offence. It was recommended that he be eligible for Post Prison Community Based Release on 30 January 2004.

[11] The respondent's full time release date is 29 January 2007.

[12] He respondent has no other relevant criminal history.

Scheme of the Act

[13] Section 3 states that the objects of the Act are to provide for the continued detention in custody or the supervised release of a particular class of prisoner to ensure protection of the community and to provide continuing control, care and treatment of a particular class of prisoner to facilitate rehabilitation.

[14] Section 5(6) of the Act defines a "prisoner" to be someone who is serving a sentence for a "serious sexual offence" (defined in the Schedule as being a sexual offence involving violence or against children).

[15] Section 13 applies if, on the hearing of an application for a division 3 order, a court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (subsection (1)). A prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody, or if released from custody without a supervision order being made – (subsection (2)). A court may decide that it is satisfied only by acceptable, cogent evidence and of a high degree of probability – (subsection (3)). In deciding whether the prisoner represents a serious danger to the community, the court must have regard to the considerations listed in subsection (4).

Pre-Application Report

[16] On 19 May 2006, the respondent was interviewed by Dr Colls. At this time, he had not completed the High Intensity Sexual Offenders Program (HISOP). Dr Colls considered that the respondent's STATIC 99 and STABLE 2000 assessments place him in the moderate risk of re-offending but a more charitable reading of two items might suggest a lower score.

[17] Dr Colls diagnosed the respondent as an Obsessive Compulsive and a Paedophile. Describing both conditions as chronic and difficult to manage, Dr Colls was of the view that the respondent would be at less risk of re-offending after treatment. He thought it would be important to review the exit report after completing the HISOP.

Professor Nurcombe

[18] In his report dated 2 November 2006, Professor Nurcombe expresses this conclusion on the issue of risk:

> "**XIII Opinion and Recommendations**
> 116. David Wright is at *moderate* or *moderate to high* risk of sexual recidivism. My recommendations are included in paragraph 106, above."

[19] This conclusion is clearly intended to be read in conjunction with paragraph 106 of the report, which in turn is to be read with paragraphs 107 and 108:

> "**XI Summary of risk status**
> 106. Mr Wright's risk status is affected by the following risk factors: *prior sex offences, four or more prior sentencing*

> *dates, a conviction for pornography, sexual deviation and difficulty forming intimate relationships with adult partners.* It should be noted that there was a long period of time between the two sets of paedophilic offences. Can the offender be believed when he says that no paedophilic behaviour occurred during that time? He has significant *intimacy deficits, problems of sexual self-regulation*, and relatively poor *cognitive problem-solving skills*. Although he has worked hard to make gains during treatment, his capacity for more than intellectual insight is affected by his obsessive-compulsive personality. Other negative factors include the possibility that his unrealistic plans following release from prison will not be achievable. In particular, he could be adversely affected by failure to gain contact with is biological daughter. On the other hand, positive factors include the following: he has some degree of insight into the nature of his problem, he has a good work record, and he is now in middle-age. In my opinion, his overall risk status is *moderate* or *moderate to high*, depending largely upon whether his response to the HISOP has been genuinely beneficial.
>
> 107. His risk of re-offending could be reduced by the following:
>
> - Limitations on his capacity to have contact with prepubertal males.
> - No contact with families in which there are prepubertal males.
> - Undertaking the COMT.
> - Continued psychiatric treatment.
> - Regular probationary supervision.
>
> 108. Mr Wright has done all he can possibly do in prison, including a completing of the HISOP. I see no advantage in prolonging his imprisonment."

[20] It is implicit in paragraphs 107 and 108 that Professor Nurcombe favours the release of Mr Wright under supervision rather than his continued detention.

[21] Professor Nurcombe's report thus supports a finding, in terms of s 13(2), that "there is an unacceptable risk that the prisoner will commit a serious sexual offence … (b) if the prisoner is released from custody without a supervision order being made", but does not provide a basis for the making of a continuing detention order.

Professor James

[22] In a report dated 21 November 2006, Professor James expresses conclusions which include the following:

> "The calculation of risk, using actuarial methods, of Mr Wright re-offending indicates this risk to be moderate, and the statistical likelihood applicable to the group of individuals to which he can be seen to belong is given above.

> Consideration of the 'dynamic' factors, however, would in my opinion raise the risk of Mr Wright re-offending, in a manner comparable to the offences for which he has been imprisoned, to 'high', if clear external restrictions were not imposed and enforced.
>
> …
>
> Given the pattern of his previous sexual offending, it is very likely that further offending, should it occur, would take a comparable form, that is to say there would be likely to be some forming of an antecedent relationships. In my opinion it would be very important to ensure that restrictions would therefore need to be diligently monitored and enforced.
>
> It is my opinion that provided such external restrictions were in place, the risk of Mr Wright re-offending would be relatively low; there is no history suggestive of impulsive action, offences against strangers, or the use of violence, gratuitous or otherwise."

[23] Thus the effect of Professor James's report is to support a finding of the type described in para [21].

[24] Each psychiatrist was orally examined and cross-examined and nothing emerged to vary their written opinions. The debate was really about the proper supervisory conditions to be imposed.

Statutory requirements

[25] I turn now to the considerations to which I am directed by s 13(4):-

(a) as is obvious from the above I have regard to the reports prepared by both psychiatrists. The respondent's co-operation with them was generally good;

(b) Dr Coll's opinion was quite favourable to the respondent. It is somewhat disturbing to note that in his first interview with a psychiatrist, Dr Schramm, for the pre-sentence report the respondent denied relevant matters which denial was at odds with what he had told the police, especially that he had committed other offences against a child. In other words, he put himself in the best light he could until that stance was no longer available. On the other hand as I have said he made admissions to the police of offences about which no complaint had been made, a feature which strongly supports the view that he wanted his transgressions out in the open, to be dealt with;

(c) whether the respondent has a propensity to commit serious sexual offences in future is dealt with by the psychiatric evidence. He has that propensity. The question is whether it can be controlled by conditional release to a degree consistent with the principle of the liberty of the subject and the right of a prisoner to liberty on the completion of his sentence;

(d) the evidence suggests that there is a pattern to his offending behaviour, that is, his apparent ability to ingratiate himself with adults, to gain their confidence and thus to gain access to a potential child victim;

(e) he has taken advantage of and successfully completed rehabilitation programmes available to him in prison. As Professors Nurcombe and James agree further incarceration will not benefit him therapeutically. He has committed no breaches of prison regulations;

(f) it seems to be accepted that his participation in rehabilitation programmes has had a positive good effect on him;

(g) there is nothing of particular relevance in his antecedents and criminal history except, of course, that the subject sets of offences are his only convictions;

(h) there is, as the psychiatrists opine, the risk that he will re-offend in a similar way if released. However the psychiatrists clearly feel that proper supervision is likely adequately to control that risk;

(i) there is an obvious need to protect the public from that risk and that need must be met by his continued supervision for a proper period. Professor Nurcombe considers that the period of 20 years (which would last until the respondent is 60) would be too onerous on him, given the strict nature of the conditions under debate. Professor James, on the other hand prefers 20 years, to take him to an age where such offending is more rare. As Professor Nurcombe says there is no scientific way to determine this. I conclude that it is best to impose a long period of supervision (arbitrarily selecting 15 years) which may be reviewed at the request of either party under ss 18, 19;

(j) One other relevant matter arose. The respondent is completely determined to seek access to his natural daughter who is aged 10. There seems to be no appreciable risk that he would mis-treat her but the child's mother is implacably opposed to any contact between them. An application to the Family Court by the respondent would be necessary and Professor Nurcombe considers that failure (which is of course possible, perhaps likely) would be a huge psychological blow to him. It seems to me that all that can presently be done on this score is to ensure that his psychiatrist, psychologist or counsellor (who is to be provided for in a condition) is made aware of this potentially serious matter and the Corrective Services authorities should attend to that. Indeed I expect those authorities to brief the supervisor with all psychiatric reports, the transcript of evidence before me, and these reasons.

[26] Counsel have favoured me with submissions on amendments to the draft conditions which are exhibit 1. I will have their submissions placed with the papers. Suffice it is to say that I accept the worth of the agreed amendments and accept those suggested by counsel for the respondent in the two disputed matters in paras 4 and 5 of the submissions. I therefore accept the exhibit 1 conditions as amended.

Conclusion

[27] In the upshot, therefore my order will be:-

1. The Court is satisfied to the requisite standard that the respondent, David WRIGHT, 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 29 January 2022, 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 9:00 am and 4:00 pm on 29 January 2007 and 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 respondent'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 Queensland as approved by a corrective services officer by way of a suitability assessment;
(xi) wear, and comply with any requirements of, an electronic monitoring device as directed by the supervising corrective services officer;
(xii) abstain from illicit drugs for the duration of this order;
(xiii) take prescribed drugs as directed by a medical practitioner the expense of which, if not available under the Pharmaceutical Benefits Scheme, is to be met by the Department of Corrective Services;
(xiv) submit to drug testing as directed by a corrective services officer, the expense of which is to be meet by the Department of Corrective Services;
(xv) attend a psychiatrist, psychologist or counsellor, who has been approved by the supervising corrective services officer at a frequency and for the duration which shall be recommended by the treating psychiatrist, psychologist or counsellor, the expense of which is to be met by the Department of Corrective Services;
(xvi) 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 a request is made in writing for the purpose of updating

or amending the supervision order and/or ensuring compliance with this Order;

(xvii) attend any program, course, psychologist or counsellor, in a group or individual capacity, as directed by the supervising corrective services order in consultation with the treating psychiatrist, the expense of which is to be met by the Department of Corrective Services;

(xviii) 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;

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

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

(xxi) 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;

(xxii) not be on the premises of any shopping centre, without reasonable excuse, between 9 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;

(xxiii) not visit public parks without prior written permission from the supervising corrective services officer;

(xxiv) not without reasonable excuse be in the area within 100 metres of a school, children's playground or child care area at any time;

(xxv) not undertake unsupervised care of children under 16 years of age;

(xxvi) not establish and maintain contact with a child under 16 years of age; except in the case of the respondent's daughter Aimee by way of supervised contact and communications in writing or by telephone if agreed between the respondent and the mother of the child or approved by order of a court under the *Family Law Act* 1975.

(xxvii) not enter into, or maintain a relationship with, a woman with children under 16 years of age in her care;

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

(xxix) not to make direct or indirect contact with the victims of his offences.