

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Reynolds*
[2007] QSC 52

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

FILE NO: BS9343 of 2006

DIVISION: Trial Division

PROCEEDING: Originating Application

DELIVERED ON: 13 March 2007

DELIVERED AT: Brisbane

HEARING DATE: 6 March 2007

JUDGE: Mullins J

ORDER: 1. The Court is satisfied to the requisite standard that the respondent, Joseph Patrick REYNOLDS (“the respondent”), is a serious danger to the community in the absence of an order pursuant to Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003.

2. The respondent be subject to the following conditions until 30 March 2017:

The respondent must:

- (i) be under the supervision of an authorised corrective services officer for the duration of the order;
- (ii) report to an authorised corrective services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence within 24 hours of the day of release from custody and at that time advise the officer of the respondent’s current name and address;
- (iii) report to, and receive visits from, an authorised corrective services officer at such times and at such frequency as determined by Queensland Corrective Services;
- (iv) notify and obtain the approval of the authorised corrective services officer for every

- change of the prisoner's name at least two business days before the change occurs;
- (v) notify and obtain the approval of the authorised corrective services officer at least two business days prior to any change to the nature of his employer and the address of the premises where he is or will be employed;
 - (vi) notify the authorised corrective services officer of any offers of employment, and obtain approval from an authorised corrective services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
 - (vii) reside at a place within the State of Queensland as approved by a corrective services officer by way of a suitability assessment;
 - (viii) not reside at a place by way of short term accommodation including overnight stays without the permission of the authorised corrective services officer;
 - (ix) notify and obtain the approval of the authorised corrective services officer prior to any change of residence at least two business days before the change occurs;
 - (x) not leave or stay out of Queensland without the written permission of an authorised corrective services officer;
 - (xi) not commit an offence of a sexual nature during the period of the order;
 - (xii) not commit an indictable offence during the period of the order;
 - (xiii) must comply with every reasonable direction of an authorised corrective services officer;
 - (xiv) respond truthfully to enquiries by authorised corrective services officers about his whereabouts and movements generally;
 - (xv) not to have any direct or indirect contact with a victim of his sexual offences without the prior approval of the authorised corrective services officer;
 - (xvi) notify the authorised officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;
 - (xvii) submit to medical, psychiatric, psychological or other forms of assessment and/or treatment as directed by an authorised corrective services officer;
 - (xviii) abstain from the consumption of alcohol for

- the duration of this order;
- (xix) abstain from illicit drugs for the duration of this order;
- (xx) take prescribed drugs as directed by a medical practitioner;
- (xxi) not visit premises licensed to supply or serve alcohol, without the prior written permission of the authorised corrective services officer;
- (xxii) submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by the authorised corrective services officer;
- (xxiii) attend upon and submit to assessment and/or treatment by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by the authorised corrective services officer at a frequency and duration which shall be recommended by the treating intervention specialist, the expense of which is to be met by Queensland Corrective Services;
- (xxiv) 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 Queensland Corrective Services, if such a request is made for the purposes of updating or amending the supervision order or for ensuring compliance with this order, the expense of which is to be met by Queensland Corrective Services;
- (xxv) permit any medical, psychiatric, psychological or other mental health practitioner to disclose details of treatment, intervention and opinions relating to level of risk of reoffending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;
- (xxvi) attend any program, course, psychologist or counsellor, in a group or individual capacity, as directed by an authorised corrective services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;
- (xxvii) be assessed for a sexual offending maintenance program and, if referred to participate in such program, attend the

- program as directed by a corrective services officer;
- (xxviii) not have any unsupervised contact with children under 16 years of age;
 - (xxix) not have any supervised contact with children under 16 years of age except with prior written approval of an authorised corrective services officer. The respondent is required to fully disclose the terms of the order and nature of offences to the guardians and caregivers of the children before any such contact can take place; Queensland Corrective Services may disclose information pertaining to the offender to guardians or caregivers and external agencies (i.e. Department of Child Safety) in the interests of ensuring the safety of the children;
 - (xxx) not establish and maintain contact with children under 16 years of age without prior written approval by an authorised corrective services officer;
 - (xxxi) seek written permission from an authorised corrective services officer prior to joining, affiliating with or attending on the premises of or attending at the activities carried on by any club, organisation or group;
 - (xxxii) not reside with a person who has the care of children under 16 years of age without the prior written approval of the corrective services officer;
 - (xxxiii) not enter into a relationship with a person who has the care of children under 16 years of age without the prior written approval of the corrective services officer;
 - (xxxiv) submit to electronic monitoring by Queensland Corrective Services and the conditions of electronic monitoring including wearing a monitoring device as directed by the authorised corrective services officer;
 - (xxxv) be in attendance at and not leave the approved place of residence between the hours of 10:30pm and 5:30am without the prior approval of the authorised corrective services officer. The appropriateness and continuation of the curfew is to be reviewed by an authorised corrective services officer upon request, or every three months whilst the curfew remains in force or, after the cessation of the curfew, upon a review based on an assessment that the risk posed to the community has become elevated;

(xxxvi) comply with all reasonable curfew restrictions imposed by the authorised corrective services officer.

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGEMENT AND PUNISHMENT – OTHER MATTERS – where respondent serving a term of imprisonment for sexual offences involving children – where application made under s13 *Dangerous Prisoners (Sexual Offenders) Act 2003 (Q)* for a continuing detention order or a supervision order – whether the respondent is a serious danger to the community in the absence of a supervision order – where respondent is a moderate risk of sexual reoffending without appropriate supervision – where supervision order made for a period of 10 years

Dangerous Prisoners (Sexual Offenders) Act 2003, s 8, s, 11, s 13, s 16

COUNSEL: JB Rolls for the applicant
K Prskalo for the respondent

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

- [1] **MULLINS J:** In the originating application, as filed, the applicant seeks orders pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”) either that the respondent be detained in custody for an indefinite term for care, control or treatment or, in the alternative, the respondent be released from custody subject to such conditions as the court considers appropriate and that are stated in the order. On the hearing of the application, the applicant conceded that the material supported the making of a supervision order, rather than a detention order. Counsel on behalf of the respondent conceded that there is evidence to support a finding that the respondent is a serious danger to the community and submitted that the conditions imposed on the supervision order be no more onerous than was necessary to ensure the adequate protection of the community or for the respondent’s rehabilitation or care or treatment, as contemplated by s 16(2) of the Act. The focus of the hearing was on the appropriateness of the conditions proposed in the draft order prepared by the applicant.

Respondent’s antecedents

- [2] The respondent was born in 1950. He is therefore 57 years old. The respondent has been assessed as being of low average intelligence. He did not learn at school and had literacy problems. He describes himself as the victim of physical and sexual abuse from a young age. He relates suffering from epilepsy from infancy. He left home at 14 years of age and had a series of unskilled jobs. The respondent is a poor historian and it is difficult to attribute accurate dates or periods to relevant events that are not otherwise independently recorded. He had been in a couple of relationships with adult women before committing the first series of offences for which he was imprisoned. The respondent’s offending coincided with a period in his life in which he had a serious alcohol abuse problem.

- [3] The respondent pleaded guilty in 1985 to 1 count of attempted carnal knowledge of a girl under the age of 10 years, 1 count of attempted carnal knowledge against the order of nature and 10 counts of indecent dealing with a girl under 14 years. The offences were committed between April 1984 and January 1985. The victim was the 6 year old daughter of a woman in the household in which the respondent was residing when he committed the offences. The respondent was sentenced on each charge to 6 months' imprisonment to be followed by probation for 2 years.
- [4] In 1989 the respondent was in a relationship with a woman who is the mother of the victim of the offences which he committed in mid 1989. The victim was about 13 years old at the time. After the series of offences committed against her, the victim left the household of her mother and the respondent and did not make a complaint to the police at that stage. The respondent's relationship with the victim's mother ended soon after. The respondent commenced a new relationship a few years later with another woman whom he married. In November 1996 the victim of his 1989 offending confronted the defendant about his conduct and, with his agreement, taped his responses to her allegations about his sexual offending against her. The respondent largely agreed with what his victim put to him. He was arrested and charged and remanded in custody in April 1997.
- [5] In August 1997 the respondent pleaded guilty to 2 counts of rape and 4 counts of indecent dealing with a child under 16 years in respect of the offences which were committed in mid 1989. For the rapes the applicant was sentenced to 10 years' imprisonment. It was recommended that he be considered for parole after serving 3 ½ years. He had been in custody since 4 April 1997 and his pre-sentence custody was declared to be time served in relation to the sentence. His full time discharge date for that sentence is 30 March 2007.
- [6] The respondent's daughter of his marriage was born in 1997. He has not seen his daughter in over 6 years. He and his wife were divorced about 6 years ago.
- [7] The respondent has not been granted parole. He has been given 4 days of remissions only. The respondent has not committed any breach in prison. He has done some courses including literacy and numeracy, sexuality and relationships, intimate relationships, cognitive skills and managing and preventing relapse (substance abuse).

MISOP

- [8] The respondent did a preparatory course between 27 September and 25 October 2006 for the purpose of enabling him to undertake the Medium Intensity Sexual Offending Program ("MISOP"). The respondent commenced the MISOP on 30 October 2006 and is due to complete the program on 28 March 2007. At the hearing of the application he was in the process of completing the sixth of seven modules of the program. A progress report from a coordinator for the program is exhibit 5. The report shows that the respondent was participating satisfactorily in the MISOP and it was common ground between the applicant and the respondent that there would be no impediment to the respondent completing that program before his discharge.

Psychiatric evidence

- [9] Dr James interviewed the respondent on 5 June 2006 to determine the respondent's risk level of reoffending for the purposes of the Act and prepared a report dated 30 June 2006. As a result of that report, an order was made by this Court on 24 November 2006 pursuant to s 8(2)(a) of the Act requiring the respondent to undergo examinations by psychiatrists Dr Lawrence and Professor Nurcombe who were requested to prepare independent reports in accordance with s 11 of the Act. Dr Lawrence examined the respondent on 29 January 2007. Her report is exhibit 1. Professor Nurcombe examined the respondent on 15 January 2007. His report is exhibit 2.
- [10] Dr James diagnosed the respondent as suffering from a personality disorder of non-specific type with features of both borderline and dependent types. Dr James described this disorder as making the respondent "vulnerable, emotionally fragile and very needy" and that the respondent "appears to have craved security, love and affection throughout his life". In Dr James' opinion that has made the respondent susceptible to very regressed behaviour with poor impulse control. Dr James noted that there was no history of the respondent being predatory and that his offences appeared to have been "more opportunistic in nature". Dr James considered the respondent's history justified the diagnosis of paedophilia, but in the category of non-exclusive, because he also had some adult sexual experiences. Dr James administered standard actuarial tests in combination with a dynamic risk assessment and concluded:
- "Based on my findings with respect to Mr Reynolds' personality structure, in particular his vulnerabilities, it is my opinion that he is at high risk of re-offending if he were again to become involved in a household where female children were present; but the risk would in my opinion be moderately low if restrictions were imposed and maintained which prevented circumstances developing in which he was in close and continuing contact with female children."
- [11] Dr James warned that because of the respondent's existing personality disorder, compounded by the length of time that he has been in prison away from ordinary social structures, that the respondent was likely to need considerable assistance in his community rehabilitation. Dr James emphasised in his oral evidence the respondent's need on his release for support structures in the community by way of obtaining suitable accommodation and employment and in acquiring an appropriate social network. Provided the respondent completed the MISOP before being discharged, Dr James did not see any benefit in detaining the respondent in prison and considered that discharge with restrictions was the option that best managed the respondent's risk of reoffending.
- [12] Professor Nurcombe gave a similar diagnosis in respect of the respondent's paedophilia and personality disorder. Professor Nurcombe also diagnosed an alcohol abuse disorder (which was in remission whilst the respondent was in prison), cognitive defects (possibly due to encephalitis during childhood) and epilepsy (based on the history provided, although noting that there was some uncertainty about the accuracy of that diagnosis). Professor Nurcombe considered that the respondent's predilection towards pubertal and prepubertal females is triggered by rejection in his emotional life.
- [13] In assessing the respondent's risk of reoffending, Professor Nurcombe adopted a combined actuarial and clinical approach. He expressed his opinion as:

“82. If Mr Reynolds were to live in a family that has pubertal or prepubertal female children, his risk of re-offending would be *moderate* or *moderate to high*. If he were to live in the future in a situation where he does not have proximity to female children, his risk of re-offending would be *low*. Overall, his risk of re-offending is *moderate*.”

- [14] Professor Nurcombe was also of the opinion that after, the respondent had completed the MISOP, supervised release would manage the respondent’s risk of reoffending.
- [15] Dr Lawrence’s diagnosis was of alcohol abuse/dependence, paedophilia (females only, non-exclusive), personality disorder and possible long standing epilepsy (but not clearly proven). Dr Lawrence noted that the alcohol abuse/dependence was a significant feature in the respondent’s early and mid adult years and may have been a disinhibiting factor in his actual sexual offending, but this would not account for his paedophilic behaviour. Dr Lawrence described his sexual offences as “opportunistic” and that there was no evidence of any predatory behaviour. Dr Lawrence assessed the respondent’s risk of reoffending as moderate, mainly because of his lack of preparedness for release and his likely exposure to a range of destabilising influences. Dr Lawrence also emphasised the need for the respondent to have considerable support and assistance in negotiating the transition from prison to living in the community. Dr Lawrence recommended supervised conditions of release for a period of at least 10 years.
- [16] Each of Dr James, Dr Lawrence and Professor Nurcombe was given the applicant’s draft supervision order prior to the hearing. Each of these psychiatrists gave oral evidence at the hearing which was mainly directed at considering the applicability of those conditions that were disputed on behalf of the respondent in the context of the opinions held by the psychiatrists as to the risk factors for reoffending that were applicable to the respondent.

Whether a supervision order should be made

- [17] On hearing an application of this nature the court may decide that it is satisfied the respondent is a serious danger to the community in the absence of a division 3 order only if it is satisfied by acceptable, cogent evidence and to a high degree of probability that the evidence is of sufficient weight to justify the decision: s 13(3) of the Act. The court is required to have regard to the matters prescribed in s 13(4) of the Act in deciding whether the respondent is a serious danger to the community. The material that was filed on behalf of the applicant in support of the application, as supplemented by the oral evidence, has addressed the matters set out in s 13(4) of the Act.
- [18] The evidence of Dr James, Dr Lawrence and Professor Nurcombe is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that the respondent’s moderate risk of sexual reoffending (unless appropriately supervised) is an unacceptable risk in terms of s 13(2) of the Act. Under s 13(6) of the Act, in deciding whether to make a continuing detention order or a supervision order, the paramount consideration is the need to ensure adequate protection of the community. In light of the psychiatric evidence, I am satisfied that appropriate conditions can be formulated for a supervision order that will address the need to

ensure the adequate protection of the community and that a supervision order should be made.

Conditions of the supervision order

- [19] At the outset of the hearing Ms Prskalo of Counsel for the respondent had a list of the conditions in the draft order that she submitted should be deleted or modified. The list reflected the legal advice given to the respondent about what were appropriate conditions. As the hearing progressed and the further psychiatric evidence unfolded, some of these objections were not pursued on behalf of the respondent. I will therefore deal specifically with those conditions that remained in issue between the parties at the conclusion of the hearing.
- [20] In paragraph (vii) of the draft order prepared by the applicant, the applicant sought that a distance restriction be expressly placed on the distance between the approved residence of the respondent and a school or business where children would be cared for or supervised (unless there was approval by a corrective services officer for a lesser distance than specified in the restriction). All the psychiatrists who gave evidence considered that such a restriction was unnecessary and would not be relevant to reducing the risk of reoffending. I will therefore not include the additional words which the applicant sought as part of paragraph (vii).
- [21] Counsel for the respondent sought the deletion of paragraph (xxi). This was on the basis that the respondent was prepared to agree to abstain from the consumption of alcohol for the duration of the supervision order (as set out in paragraph (xvii) of the draft order) and that the condition contained in paragraph (xxi) was unnecessary. The applicant pressed for the inclusion of paragraph (xxi) on the basis that alcohol had been a contributing factor to the respondent's sexual offending in the past. It was submitted that, notwithstanding the inclusion of paragraph (xviii), the risk of reoffending was increased to such a degree if the respondent did partake of alcohol, it was important to protect the community by adding another layer of control which was the exclusion of the respondent from licensed premises, unless given permission of an authorised corrective services officer. Mr Rolls of Counsel for the applicant stressed that flexibility was built into this condition of the supervision order by virtue of the fact that the visiting of licensed premises by the respondent could occur, if permission were obtained from the corrective services officer.
- [22] Dr James favoured the inclusion of a condition in terms of paragraph (xxi) because of the respondent's past history of being unable to regulate his alcohol consumption. Professor Nurcombe favoured inclusion of paragraph (xxi), because he considered that if the respondent were on licensed premises and surrounded by people who were drinking alcohol and it were offered to him, he would find it difficult to resist the temptation, at least in the early stages after his release from prison. Professor Nurcombe considered that inclusion of paragraph (xxi) was a negative support for the respondent. Professor Nurcombe was concerned, however, about such a condition being in place for the entire period of the supervision order. Dr Lawrence also favoured the inclusion of paragraph (xxi) in the supervision order, because the respondent's offending in the past had been linked with his alcohol abuse, but considered that the corrective services officer should exercise discretion and understanding in giving approval in certain circumstances for the respondent to visit licensed premises, if he otherwise progressed favourably under the supervision order.

- [23] The psychiatrists' concern about the risks associated with the use of alcohol by the respondent because of the link between his past offending and alcohol abuse justify the inclusion of paragraph (xxi) in the supervision order, but with the recognition that the qualification of the prohibition against visiting licensed premises is intended to be a real qualification. That means that there will be occasions when the corrective services officer who is supervising the respondent will need to consider if it is appropriate to consider favourably a request by the respondent to visit licensed premises in the circumstances that exist at the time the request is made.
- [24] The original paragraphs (xxxiii) and (xxxiv) in the draft order provided:
“(xxxiii) not be on the premises of any shopping centre, without reasonable excuse, between 8am to 9.30am and between 2.30pm and 4.30pm on school days other than for the purpose of:
(a) approved employment;
(b) attending an approved bona fide pre-arranged appointment with a Government agency, medical practitioner or the like;
(xxxiv) not visit public parks without prior written permission from the authorised corrective services officer.”
- [25] Of the psychiatrists, Dr James was the only one who was in favour of including the above paragraphs relating to shopping centres and parks in the draft order. He acknowledged that the respondent would not be “a snatcher of a strange child” and that the danger would arise where the respondent may form a relationship with a young person as a result of meeting the young person in a shopping centre or park. Dr James therefore favoured inclusion of these conditions, but acknowledged (Transcript p 31) that “to impose rigid restrictions for 10 years full stop is a bit draconian and they really do need to be adjustable over time in response to the way that Mr Reynolds is going.”
- [26] Because the nature of the respondent's offending in the past has shown him to be an opportunistic sexual offender, rather than a predator, both Professor Nurcombe and Dr Lawrence were adamant that conditions such as the original paragraphs (xxxiii) and (xxxiv) in the draft order were unnecessary. In view of the circumstances of the respondent's past sexual offending and the unanimous psychiatric opinion as to the risk factors that need to be controlled to reduce the risk of his reoffending, I am not persuaded that the original paragraphs (xxxiii) and (xxxiv) in the draft order are appropriate for the purposes specified in s 16(2) of the Act.
- [27] The applicant submitted that a period of 10 years was appropriate for the supervision order. This was not opposed by the respondent. Dr James considered the proposal period of 10 years was acceptable, but that it was desirable that the restrictions be monitored to ascertain whether they continued to be necessary. Professor Nurcombe was of the opinion that there was no way of knowing what the appropriate period for the supervision should be, but accepted the proposed period of 10 years as “reasonable”.
- [28] What is an appropriate period for the supervision order depends on all the relevant circumstances that apply to the respondent. There is an element of arbitrariness in selecting the period for the supervision order at this time, as it is dependent on

predictions on how the respondent will settle into the community after an imprisonment lasting some 10 years. The evidence of the psychiatrists supports a period of supervision of 10 years, but recognises that if the respondent progresses appropriately under the conditions of the supervision order, there might not be the same justification for maintaining all restrictions that are imposed by the conditions of the order, as the period of supervision elapses. This has been addressed by the flexibility in the application of the restrictions that is given by the qualification to a number of conditions that the restricted activities can be carried out with the approval of the corrective services officer who is supervising the respondent under the supervision order.

Orders

- [29] The conditions which are set out in the orders at the commencement of these reasons reflect the draft conditions that were prepared by the applicant which were modified during the course of the hearing and modified as a result of the conclusions that I reached in respect of the disputed conditions. I therefore will make an order in terms of the orders set out at the commencement of these reasons which includes conditions of the supervised order that are set out in paragraphs (i) to (xxxvi).