SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MULLINS J

No BS3957 of 2007

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| ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND | Applicant |
| and | |
| PHILLIP JAMES SPENCE | Respondent |

BRISBANE

..DATE 20/08/2007

ORDER

HER HONOUR: This is an application by the applicant pursuant to section 13(5) of the Dangerous Prisoners (Sexual Offenders) Act 2003 ("the Act") for an order that the respondent be detained in custody for an indefinite term for care, control or treatment, or alternatively that the respondent be released from custody, subject to such conditions as the Court considers appropriate and that are stated in the order.

The respondent was convicted after trial on 11 March 1999 of one count of rape and one count of disabling in order to commit an indictable offence, namely rape. He was sentenced respectively to nine years and eight years imprisonment. The terms were concurrent. Each of the offences was declared to be a serious violent offence.

That imprisonment dated from 21 August 1998, the date of the offences, and the date on which he was arrested and charged and held in custody. His current period of imprisonment expires on 20 September 2007 as he is serving an additional one month on top of the nine years for unpaid fines relating to driving offences.

The application was initiated as a result of the respondent's history. He was sentenced on 14 October 1988 when he was 20 years old for the offence of rape. He was sentenced to five years on the presentation of an ex officio indictment. That offence was one in which alcohol was involved and which the respondent accepted involved nonconsensual sexual intercourse. He was immediately remorseful after that offence

and the sentence took place about three weeks after the offence was committed.

The term of imprisonment that was imposed on that occasion reflected the remorse and the cooperation with the administration of justice.

The respondent's criminal history shows other offences but of less relevant nature. There are minor drug offences, and a stealing offence.

The respondent has maintained that the sexual intercourse and the circumstances surrounding that sexual intercourse that resulted in the two convictions after trial in March 1999 was consensual. He admits and has always admitted that alcohol and cannabis sativa were involved in the circumstances that resulted in that sexual intercourse.

Psychiatrist, Dr Robert Moyle, examined the respondent in 2006 for the purpose of the consideration by the authorities of whether or not to make this application. As a result of Dr Moyle's report, this application was made and Professor James and Dr Lawrence were appointed by the Court to conduct independent psychiatric evaluations of the respondent for the purpose of this application.

Both Professor James and Dr Lawrence gave short oral evidence to supplement their reports on the hearing before me today. Both Professor James and Dr Lawrence supported the release of

the respondent on a supervision order.

From the materials provided to both psychiatrists and their respective examinations, they reached similar conclusions about the prognosis for the respondent on his release. Some of the common comments that have been made in the reports about the respondent are that he is intelligent and that he has no history of any paedophiliac interests or behaviour.

He has shown by his two previous episodes resulting in convictions for rape that he has been prone to anti-social traits and there is consensus that that is probably attributable to the disadvantage in his upbringing and particularly his dysfunctional relationship with his mother.

He has done a number of courses while in custody. In 2003 he completed an Anger Management course and Cognitive Skills course. In 2005 he satisfactorily completed a Substance Abuse Preventing and Managing Relapse program. In 2006 he did the Getting Started Preparation program for a Sexual Offenders Treatment Program.

He has not done the Sexual Offenders Treatment Program as such. This obviously has something to do with both the timing during his incarceration at which consideration was given to his undertaking such a program, but also to the

conclusion that it was ill-advised for the respondent to do a program at the same time as others who were child sex offenders because of the antipathy that the respondent had expressed towards child sex offenders.

Both Professor James and Dr Lawrence do not consider the fact that the respondent has not completed a Sex Offender Treatment Program as an impediment to his being released. The fact that he has not done the program, however, is one of the reasons for some of the conditions that are in the proposed supervision order and for the emphasis in the supervision order for the respondent to be given opportunity for counselling to assist him in the transition from the institutional environment to unrestricted community living.

Professor James has noted that the history of the respondent's offending, and particularly the sex offences, involved considerable prior imbibing of alcohol and that added significantly to the respondent's disinhibition and lessening of impulse control at the relevant times.

Professor James notes that the respondent has undergone a process of biological maturation during his time in prison which appears to have lessened his relatively poor impulse control.

Professor James considers that a program of psychological therapy on the respondent's release would assist him in developing relationships with women, including those with whom he is related such as his daughter and the mother of his

daughter.

Without a supervision order Professor James considered that the respondent was a medium to a low risk of reoffending in a similar way to that which he had offended previously.

Dr Lawrence interpreted her clinical assessment as well as her assessment on using risk assessment tools as indicating a moderate to low risk of reoffending on the part of the respondent without the benefit of a supervision order. Dr Lawrence also identifies the respondent's abuse of illicit substances, and in particular cannabis sativa, and alcohol abuse as relevant to his offending in the past and potential difficulties for the respondent on his release.

The respondent has been without cannabis sativa for some nine years whilst in prison. He realises that he has to abstain from illicit substances and is prepared to abstain from alcohol for the duration of the supervision order in order to reduce the risk of reoffending.

Dr Lawrence suggests that the focus of therapy for the respondent on his release should be on his relationships and his ability to relate to women generally and also with adaptive coping strategies and support for him in the transitional period particularly. Dr Lawrence suggests the conditions of supervision should be imposed for a period of five years. Both Professor James and Dr Lawrence see that period as one which will allow for reducing control of the

respondent.

It will be a matter for the authorised Corrective Services Officer who is assigned the supervision of the respondent under the supervision order to ensure that the respondent gets the real benefit of the supervision order by having the conditions monitored and their application diminished as time passes if the respondent's response to them is satisfactory.

The evidence of the psychiatrists, Professor James and Dr Lawrence, is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that the respondent's moderate to low risk of sexual reoffending (unless appropriately supervised) is an unacceptable risk in terms of subsection 2 of section 13 of the Act.

In the 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 I am therefore satisfied that a supervision order should be made.

Much of the oral argument on the hearing of this application and the evidence of the psychiatrists was directed towards the conditions of the supervision order. At the commencement of this hearing Mr Kent, of counsel, for the applicant produced a draft of a supervision order. During the course of the hearing changes were made to that draft to meet concerns expressed by Mr Hamlyn-Harris of counsel on behalf of the

respondent.

Most of the argument then focussed on two sets of conditions, one of which concerned the curfew and electronic monitoring and the other concerning the notification to the authorised Corrective Services Officer of the name and contact details of any woman who was within the respondent's support network or with whom he is to have a personal relationship.

On the issue of the curfew and electronic monitoring, I accept that a curfew per se is not, as a stand-alone condition, necessary, but it is proposed on behalf of the applicant as a condition to facilitate electronic monitoring. The form of electronic monitoring utilised by the Corrective Services is one that requires the person who is wearing the monitoring device to be close by the monitoring unit. That is why the curfew is required. In effect the monitoring only will be effective during the time that the respondent is at the approved place of residence.

Professor James was in favour of the monitoring as assisting the respondent in going from the very structured environment that he has been in for the last nine years to the unstructured environment of the community. Ideally it would be best if the respondent could exercise the controls that are necessary to avoid reoffending. His history, though, shows that he has had problems in the past. His first imprisonment for a rape did not prevent him from being in a situation where he was then found guilty of another rape. Dr Lawrence was

not quite as in favour of the electronic monitoring as Professor James, but did concede that for six to 12 months the respondent would gain some benefit from the more intense supervision that electronic monitoring obviously does entail.

It is hoped that the Corrective Services Officer who supervises the respondent and will have the power upon review of the curfew and electronic monitoring each three months to take into account the respondent's performance of and compliance with the supervision order will consider whether the continuation of electronic monitoring and therefore the curfew is really justified.

I therefore am satisfied that it is appropriate to include in the supervision order conditions 25, 26 and 27 that relate to electronic monitoring and the curfew.

There was much debate about condition 28. I have amended it so that there is an obligation on the respondent to notify the authorised Corrective Services Officer of the full name and contact details of any female person within his support network or with whom he is having a personal relationship. That obligation will not extend to the respondent's daughter, the mother of his daughter, the maternal grandmother of his daughter, his sisters and his mother. These are women that it is clear on the material he will resume a relationship with and there is no need to have the prior notification or notification that is required under condition 28.

The applicant sought an order that the respondent would, if directed by his supervising officer, make disclosure of the relevant terms or matters of the supervision order and the nature of his past offences to any person nominated by the supervising officer, the intention being that if the Corrective Services Officer was advised by the respondent that he was proposing to have a relationship with a named woman, that the supervising officer would have the power to mandatorily require the respondent to disclose the supervision order and the nature of his past offences.

Ideally the respondent will need to address the matters of the disclosure of his past and the constraints of the supervision order to any woman with whom he is building a relationship and I would expect that during the course of his regular contact with the Corrective Services Officer who is supervising him he will disclose these matters to that Corrective Services Officer in response to questions about whom he is seeing and what he is doing with his time. It will be a matter obviously for the respondent to deal with the development of his relationship. If the authorised Corrective Services Officer has any concerns about the issue of disclosure, that can be dealt with by other provisions that give powers to the supervising Corrective Services Officer such as referring the respondent for counselling.

I am not persuaded that in the light of all the conditions of the supervision order it is necessary to allow the Corrective Services Officer to have the power of mandatorily directing

the respondent as to the timing of the disclosure to any woman that he is building a relationship with. There are other means, as I have indicated, for the Corrective Services Officer to deal with any concerns that the Corrective Services Officer may have about the development of that relationship.

I therefore make an order in terms of the draft supervision order as amended which has been initialled by me and placed with the file.

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