

# SUPREME COURT OF QUEENSLAND

CITATION: *A-G (Qld) v Fardon* [2007] QSC 299

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

**v**

**ROBERT JOHN FARDON**  
(respondent)

FILE NO: BS5346 of 2003

DIVISION: Trial Division

PROCEEDING: Hearing

DELIVERED EX TEMPORE ON: 19 October 2007

DELIVERED AT: Supreme Court Brisbane

HEARING DATE: 18, 19 October 2007

JUDGE: Wilson J

ORDER: **Orders as contained in [37] of these reasons**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – OTHER MATTERS – the respondent was released from custody subject to conditions pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* – the respondent committed breaches of some of those requirements – whether there is an unacceptable risk that the respondent will commit a serious sexual offence if released or if released without a supervision order – whether the requirements of the supervision order ought to be amended

COUNSEL: M Hinson SC for the applicant  
D O’Gorman SC for the respondent

SOLICITORS: CW Lohe Crown Solicitor for the applicant  
Prisoners’ Legal Service for the respondent

[1] **Wilson J:** The respondent is a 59 year old man who has spent most of his life in prison since the age of 18. He was due for release on 30 June 2003 after serving the full term of imprisonment imposed for violent sexual offences committed in 1988. However he continued to be detained under orders made under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) until released under supervision in December 2006.

- [2] On 8 November 2006 Lyons J made an order for the respondent's release subject to 32 conditions. It was to remain in force for 10 years. The operation of the order was stayed pending an appeal to the Court of Appeal. The appeal was dismissed on 4 December 2006, and the respondent was released shortly afterwards.
- [3] The respondent breached some of the conditions of the order, and he was taken back into custody on 24 July 2007 where he has remained.
- [4] There are two applications presently before the Court (one filed on 13 July 2007 and the other on 1 August 2007) seeking orders amending the supervision order or alternatively rescinding the supervision order and ordering that he be detained in custody for an indefinite term for care, control and treatment.
- [5] The objects of the *Dangerous Prisoners (Sexual Offenders) Act* are –
- (a) to provide for the continued detention in custody or supervised release of prisoners incarcerated for serious sexual offences (those involving violence or against children) to ensure adequate protection of the community; and
  - (b) to provide continuing control care or treatment of such prisoners to facilitate their rehabilitation. (See s 3)
- [6] The Act has been amended on a number of occasions. The present applications are for orders pursuant to s 22 of the Act. That section was substantially amended by the *Dangerous Prisoners (Sexual Offenders) Amendment Act 2007* (No 35 of 2007) which came into force on 29 August 2007. Because the contraventions occurred before that date, the Act as in force before that amendment (Reprint 1D) applies in relation to the contravention: see s 57(3).
- [7] The relevant version of s 22 is in these terms –

**“22 Court may make further order**

- (1) If the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, the supervision order or interim supervision order, the court may —
  - (a) amend the conditions of the supervision order or interim supervision order; or
  - (b) if the order is a supervision order and the court is satisfied as required under section 13(1), rescind the order and make a continuing detention order; or
  - (c) if the order is an interim supervision order, rescind the order and make an order that the released prisoner be detained in custody for the period stated in the order; or
  - (d) make any other order the court considers appropriate —
    - (i) to achieve compliance with the supervision order or interim supervision order; or

- (ii) to ensure adequate protection of the community.
- (2) Subject to subsection (3), for the purpose of subsection (1)(b), section 13 applies as if the application under this section were an application for a division 3 order under that section.
- (3) For the purpose of deciding whether to make a continuing detention order under subsection (1)(b), the court may do any or all of the following —
- (a) act on any evidence before it;
- (b) make any order necessary to enable evidence of a kind needed to support an application for a division 3 order to be brought before it, including an order in the nature of a risk assessment order;
- (c) suspend the supervision order and make an order that the released prisoner be detained in custody for the period stated in the order.
- (4) For subsections (1)(c) and (3)(c), the court may make an order that the released prisoner be detained in custody for the period stated in the order if it is satisfied as required under section 8(1).”
- [8] On 4 May 2007 the respondent attended at a Brisbane school to address year 11 students. It was a prearranged visit, and at all times he remained in the presence of his support worker. He had no direct contact with any individual student. After his visit he received several letters of appreciation to which he did not respond. However, that conduct was in breach of conditions (xxviii) and (xxx) of the order which were in the following terms –
- “(xxviii) 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;
- ...
- (xxx) not establish and maintain contact with children under 16 years of age;”
- [9] Then on 11 July 2007 he contravened condition (xii) (that he abstain from violations of the law) by enabling or aiding a neighbour who was subject to a supervision order to disobey a curfew condition of his order. At about 9.30 pm that night he allowed the neighbour to use his car. He accompanied the neighbour in the car that evening.
- [10] The respondent was arrested on 12 July 2007.

- [11] The next day (13 July 2007) Douglas J ordered that he undergo examinations by two psychiatrists, and that he be discharged from custody.
- [12] The respondent was fearful of returning to his residence and particularly fearful of attack by vigilante groups. At about 7 pm on 21 July he packed his possessions into his car and drove to Mackay. There he made unsuccessful attempts to contact a friend. He drove on to Townsville where he contacted a former prison chaplain. He was taken to the home of friends where he stayed the night of 22/23 July. The next morning he headed back to Mackay. Again unable to contact his friend, he set out for Townsville. However, he was apprehended and taken into custody at Home Hill on 24 July.
- [13] The respondent's conduct in travelling to North Queensland was in breach of conditions (iii) and (iv) of the supervision order which were in the following terms –
- “(iii) reside at all times at a place within the State of Queensland that has received prior approval from a corrective services officer by way of a suitability assessment; (in determining suitability the officer is to have regard to the respondent's need for drug and alcohol counselling support services, and other relevant factors, including but not limited to proximity to recreational areas, and vulnerable members of the community.)
- (iv) report to and receive visits from the supervising corrective services officer at such frequency as determined necessary by the supervising corrective services officer”.
- [14] Later on the day of his arrest (24 July 2007) Cullinane J suspended the supervision order to 1 August 2007; he ordered that the respondent be detained in custody in the meantime and that he be transferred to the Wolston Correctional Centre.
- [15] A further application came before White J on 1 August 2007. Her Honour enlarged the suspension of the supervision order; she ordered that the respondent be detained in custody until the commencement of the hearing of the application for amendment or alternatively rescission of the supervision order, and that he undergo examinations by Dr Ken Arthur and Professor Basil James, psychiatrists.
- [16] By s 22 the Court may amend the conditions of the supervision order or, if satisfied the respondent is a serious danger to the community in the absence of a continuing detention order or a supervision order, rescind the supervision order and make a continuing detention order.
- [17] By s 13 a prisoner is a serious danger to the community if there is an unacceptable risk that he will commit a serious sexual offence if released or if released without a supervision order. The Court may reach such a conclusion only if satisfied by acceptable cogent evidence and to a high degree of probability that the evidence is of sufficient weight to justify the decision. The paramount consideration is the need to ensure the adequate protection of the community.
- [18] The Legislature has recognised that such risk can never be completely eliminated. In *Attorney-General v Francis* [2006] QCA 324 at para 39 the Court of Appeal said of a supervision order under s 13(5)(b) –

“[39] Insofar as his Honour was concerned that, if the appellant began to use alcohol or drugs, he might abscond, the risk of a prisoner absconding is involved in every order under s 13(5)(b). 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.”

[19] In the present case I am satisfied to the requisite standard that the adequate protection of the community does not necessitate the rescission of the supervision order, although some amendments to its conditions are called for. There are a number of reasons for that conclusion.

[20] In deciding to make an order for supervised release Lyons J accepted the evidence of two psychiatrists, Dr D Grant and Dr O Neilssen. Neither thought that the respondent was suffering from any primary sexual disorder such as paraphilia. In his report written on 30 April 2006 Dr Grant’s primary diagnosis was anti-social personality disorder with a past history of alcohol and drug abuse. He said –

“Overall, my clinical assessment of risk is that taking all the risk factors into account there would probably be a moderate risk for some kind of violent offending after release, but in my opinion the risk for specifically sexual violent offending would be relatively low. The risk for sexual offending would be increased in the context of a recurrence of alcohol and drug abuse. Overall the level of risk will be very much dependent on the way in which risk factors were managed by both [the respondent] and by his support network.”

[21] Dr Neilssen agreed with Dr Grant that there had been some change in the respondent over time, and that a combination of age, self control, maturity and insight indicated a lower risk of offending on release. He said –

“In summary I did not find that [the respondent] intended to return to a lifestyle where he would be likely to commit further offences and that he was sincere in his expressed wish to avoid returning to prison. His risk of further offences after release would appear to be largely dependent on his circumstances, particularly if he were affected by any kind of drug and that his circumstances and substance use could be adequately controlled under the conditions of a Supervision Order. ...”

[22] There is evidence of a steady improvement in the respondent’s behaviour in the 10 years leading up to his release in December 2006.

[23] Apart from the contraventions, his compliance with the conditions of his release was satisfactory. Between his release and June 2007 he was subjected to 26 urine

tests and 60 breath tests. None of the test results was positive for alcohol or drugs. Over the same period he received visits from and reported to a corrective services officer on numerous occasions – 20 scheduled home visits, 21 random home visits, 18 unspecified visits, 52 personal attendances – and he submitted to substance tests on 62 occasions.

- [24] The respondent has clearly had difficulties in coping with the change from institutional living to a deinstitutionalised setting. This is hardly surprising in the circumstances.
- [25] None of the contraventions involved sexual or violent offending.
- [26] Reports of Dr Ken Arthur dated 8 October 2007 and Professor Basil James dated 29 September 2007 were tendered at the hearing.
- [27] Dr Arthur diagnosed an adjustment disorder with mixed anxiety and depressed mood. He said this has increased the overall level of risk but significantly the respondent has accepted the need for medication. In Dr Arthur's opinion with the supervision order there would be –
- \* a low to moderate risk of some kind of violent offending;
  - \* a moderate risk of ongoing low level unlawful behaviour;
  - \* a low overall risk for committing another serious sexual offence.

Without supervision the risk of another serious sexual offence would be unacceptable.

- [28] In Professor James's opinion the risk of reoffending in some way is inversely proportional to the comprehensiveness of the rehabilitation package. The fact that the respondent absconded is not an indication that he is a greater risk of offending in a violent or sexual way than he was when released from prison in December 2006. Provided adequate rehabilitation programs exist, the risk of offending sexually in a violent or otherwise serious way is relatively low.
- [29] I accept the evidence of these psychiatrists, and am satisfied that the risk that the respondent will commit a serious sexual offence if released under a supervision order is not unacceptable. Continuing detention is not necessary to afford adequate protection to the community. That said, attention must be given to effective monitoring of the respondent's activities in the community, and to the provision of appropriate housing.
- [30] Through his counsel the respondent indicated that he would consent to electronic monitoring as a condition of his release.
- [31] Queensland Corrective Services has assessed certain premises as suitable for the accommodation of the respondent in the community. Those premises will be available by the end of the month. Having considered the content of that assessment, I am satisfied of the suitability of the proposed accommodation.
- [32] Senior counsel for the applicant has provided a draft order for amendment of the conditions of the respondent's supervised release into the community. Senior counsel for the respondent agreed that the proposed amendments are appropriate

with one exception which I shall address in a moment. I have considered the draft order, and am satisfied that all of the other proposed changes to the requirements imposed by Lyons J should be made.

[33] Requirement (xvii) of Lyons J's order was that the respondent –

“not visit premises licensed to supply or serve alcohol without the consent of the supervising corrective services officer”.

The applicant submits that this should be amended to read –

“not visit premises licensed to supply or serve alcohol, without the prior written permission of the authorised corrective services officer”.

It is the proposed requirement that the permission be in writing that is contentious.

[34] As Lyons J recorded, the respondent committed offences in 1978 and 1988 under the influence of substances and alcohol. At the time of the application before her Honour he had been drug and alcohol free for 15 years. Continuing abstinence from alcohol and drugs is an important factor in containing the risk of reoffending. As I have said, while he was in the community between December 2006 and July 2007 he was subjected to numerous tests for the presence of alcohol and substances. None of the test results was positive.

[35] It is important that requirements attaching to the respondent's release into the community be practicable and not unduly cumbersome. It is important, too, that a good working relationship be maintained between him and the authorised corrective services officer. The imposition of an impracticable and cumbersome requirement would not be conducive to the maintenance to such a relationship.

[36] Circumstances in which the respondent may wish to visit premises licensed to supply or serve alcohol may arise in a short timeframe in which it would not be possible to obtain prior written consent to his attendance. It would be in his interests and in those of the community for him to be able to seek and obtain permission in person or by telephone before deciding to attend. In short, I am not persuaded that there should be a requirement for prior written permission. I will delete the word “written” from paragraph 3(e) of the draft order.

[37] I am satisfied that these additions to the already onerous requirements imposed by Lyons J will afford adequate protection to the community.

[38] I order that –

1. The Court is satisfied that the Respondent has contravened the supervision order made by Lyons J on 8 November 2006;
2. The respondent be detained in custody until Queensland Corrective Services notifies his solicitors that accommodation suitable for him is available in the community, such notification to be provided no later than 4pm on 31 October 2007;

3. The requirements of the supervision order made by Lyons J on 8 November 2006 be amended as follows:
- (a) amend **requirement (vi)** and insert the following underlined words to read:
    - (vi) notify the authorised corrective services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is employed, such employment not to involve working with children under 16 years of age;
  - (b) amend **requirement (xi)** and insert the following underlined words to read:
    - (xi) not to initiate or have any direct or indirect contact with a victim of his sexual offences;
  - (c) amend **requirement (xii)** and insert the following underlined words to read:
    - (xii) abstain from violations of the law (including the commission of indictable and other offences);
  - (d) amend **requirement (xvi)** and insert the following underlined words to read:
    - (xvi) submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by the authorised corrective services officer, the expense of which is to be met by Queensland Corrective Services;
  - (e) amend **requirement (xvii)** and insert the following underlined words to read:
    - (xvii) not visit premises licensed to supply or serve alcohol, without the prior permission of the authorised corrective services officer;
  - (f) insert new **requirement (xxxiii)** to read:
    - (xxxiii) not have any supervised or unsupervised 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 any such guardians or caregivers and Department of Child Safety in the interests of ensuring the safety of the children;
  - (g) insert new **requirement (xxxiv)** to read:

- (xxxiv) seek permission 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
- (h) insert new **requirement (xxxv)** to read:
- (xxxv) not reside at a place by way of short term accommodation including overnight stays without the permission of the authorised corrective services officer;
- (i) insert new **requirement (xxxvi)** to read:
- (xxxvi) discuss with the authorised corrective services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
- (j) insert new **requirement (xxxvii)** to read:
- (xxxvii) notify the authorised corrective services 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;
- (k) insert new **requirement (xxxviii)** to read:
- (xxxviii) comply with a curfew direction or monitoring direction.
- (l) substitute the words “Queensland Corrective Services” for the words “the Department of Corrective Services” wherever appearing.
- (m) amend **requirement (iii)** by deleting the words following “assessment;” through to the end of the requirement;
- (n) amend **requirement (xxii)** and insert the following underlined words to read:
- (xxii) receive intensive support for the first three months after 8 November 2006 and in particular that he receive 30 hours per week support for the first two weeks and that this support gradually reduce over the three months to four hours per week. The details of the Transitional Support Plan are those agreed to between Queensland Corrective Services and the respondent;

[39] A copy of the order of Lyons J of 8 November 2006 as amended by my order today will be annexed to these reasons as subsequently published.

## Annexure

1. Upon release from prison, the respondent be subject to the following conditions until 9 November 2016 or further order of the Court.
2. The Respondent must:
  - i. be under the supervision of an authorised corrective services officer ('the supervising 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 between (9am and 4pm on/or 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. reside at all times at a place within the State of Queensland that has received prior approval from a corrective services officer by way of suitability assessment;
  - iv. report to and receive visits from the supervising corrective services officer at such times and at such frequency as determined by necessary by the supervising corrective services officer;
  - v. notify the supervising corrective services officer of every change of the prisoner's name at least seven business days before the change occurs;
  - vi. notify the supervising corrective services officer of the nature of his employment, offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is employed, such employment not to involve working with children under 16 years of age;
  - vii. notify the supervising corrective services officer of every change of employment at least two business days before the change occurs;
  - viii. notify the supervising corrective services officer of every change of the respondent's place of residence at least seven business days before the change occurs;
  - ix. not leave or stay out of the State of Queensland without the written permission of the supervising corrective services officer;
  - x. not commit any offence of a sexual or violent nature during the period of this order;
  - xi. not to initiate or have any direct or indirect contact with a victim of his sexual offences;
  - xii. abstain from violations of the law (including the commission of indictable and other offences);
  - xiii. abstain from the consumption of alcohol for the duration of this Order;
  - xiv. abstain from illicit drugs for the duration of this Order;
  - xv. take prescribed drugs only as directed by a medical practitioner;
  - xvi. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by the authorised corrective services officer, the expense of which is to be met by Queensland Corrective Services;

- xvii. not visit premises licensed to supply or serve alcohol, without the prior permission of the authorised corrective services officer;
- xviii. not go unsupervised to a place that houses children, intellectually disabled persons, mentally ill persons or persons with drug misuse difficulties;
- xix. attend with 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 Queensland Corrective Services;
- xx. receive reintegration counselling from an individual therapist such as an experienced psychologist, psychiatrist, or social worker who is familiar with the needs of discharged long term prisoners and who could assist with any anxiety symptoms which occur and develop strategies to deal with stress that he experiences, the expense of which is to be met by the Department of Corrective Services;
- xxi. receive specific counselling from an individual therapist such as an experienced psychologist, psychiatrist or social worker in relation to remaining abstinent from alcohol and drugs, the expense of which is to be met by the Department of Corrective Services;
- xxii. receive intensive support for the first three months after 8 November 2006 and in particular that he receive 30 hours per week support for the first two weeks and that this support gradually reduce over the three months to four hours per week. The details of the Transitional Support Plan are those agreed to between Queensland Corrective Services and the respondent;
- xxiii. permit any treating psychiatrist, psychologist or counsellor to disclose details of medical treatment and opinions relating to his level or risk of re-offending and compliance with this Order to Queensland 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;
- xxiv. attend any program, course, psychologist or counsellor, in a group or individual capacity, as directed by the treating psychiatrist and the supervising corrective services officer, the expense of which is to be met by the Queensland Corrective Services;
- xxv. 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 Queensland Corrective Services;
- xxvi. obey the lawful and reasonable directions of the supervising corrective services officer;
- xxvii. respond truthfully to enquiries by the supervising corrective services officer about his whereabouts and movements generally;
- xxviii. 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;

- xxix. not visit public parks without prior written permission from the authorised corrective services officer;
- xxx. not undertake unsupervised care of children;
- xxxi. not establish and maintain contact with children under 16 years of age;
- xxxii. not access pornographic images containing photographs or images of children on a computer or on the Internet or in any other format;
- xxxiii. not have any supervised or unsupervised 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 any such guardians or caregivers and Department of Child Safety in the interests of ensuring the safety of the children
- xxxiv. seek permission 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;
- xxxv. not reside at a place by way of short term accommodation including overnight stays without the permission of the authorised corrective services officer;
- xxxvi. discuss with the authorised corrective services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
- xxxvii. notify the authorised corrective services 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; and
- xxxviii. comply with a curfew direction or monitoring direction.