

SUPREME COURT OF QUEENSLAND

CITATION: *A-G for the State of Qld v O'Rourke* [2008] QSC 153

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
Applicant

v

LESLIE WILLIAM O'ROURKE
Respondent

FILE NO/S: BS2849 of 2006

DIVISION: Trial Division

PROCEEDING: Application under the *Dangerous Prisoners (Sexual Offenders) Act 2003*

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 18 July 2008

DELIVERED AT: Brisbane

HEARING DATE: 23 June 2008

JUDGE: Byrne SJA

ORDER: **That pursuant to s 13(5)(a) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* the respondent be detained in custody for an indefinite term for control.**

CATCHWORDS: CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE- JUDGMENT AND PUNISHMENT - SENTENCE - MISCELLANEOUS MATTERS - SEXUAL OFFENDERS - Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) – where the respondent had lengthy criminal history including four convictions for rape - where the respondent was declared a serious danger to the community and released on a supervision order with certain conditions - where the respondent breached some of the conditions - whether the respondent is a serious danger to the community under s 13 of the Act- whether the respondent should be detained for control.

COUNSEL: J.B. Rolls for the Applicant
P.E. Smith for the Respondent

SOLICITORS: Crown Law for the Applicant.
A.W. Bale & Son for the Respondent.

BYRNE SJA:**S.22 contraventions**

- [1] On 14 August 2006, pursuant to Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”), Chesterman J made an order for the respondent’s supervised release from custody. The Honourable the Attorney-General now seeks an order for detention or further supervision on the footing that the respondent has contravened the supervision order.¹
- [2] Among the many conditions of the ten year supervision order were that the respondent: “attend a psychiatrist ...”; “report to ... the supervising Corrective Services officer at such frequency” as that officer determined; and “not leave or stay out of Queensland without ... permission”.
- [3] As he admits, the respondent left the State without permission in December 2006; did not return to the State until brought back following his arrest in New South Wales in January 2008; and, in that period, neither reported to a Corrective Services officer nor attended on a psychiatrist.

First 10 weeks of a 10 year order

- [4] The respondent was released, subject to the supervision order, on 8 September 2006. That day, he reported to the officer designated to supervise him, Ms Di Pasquale. She issued two written directions. One contained the conditions of the supervision order. He signed that instrument, in terms acknowledging that he agreed to comply with the supervision order. Another was that he not be near venues frequented by children. He refused to accept that direction, asserting that he was not a “child sex offender”. A psychiatrist was discussed. The respondent said that he would consult Professor Nurcombe, a psychiatrist, about referral to another. He was directed to attend on the psychiatrist Professor Nurcombe recommended.
- [5] On the day the respondent was released, Ms Di Pasquale went to his residential address to assess the suitability of his accommodation. The house was near a primary school and a park. The location was of concern. Professor Nurcombe had reported on allegations against the respondent of indecent dealing with children in Queensland and South Australia – charges that had not resulted in convictions.
- [6] The respondent’s solicitors wrote to Queensland Corrective Services complaining about the directions addressing a risk of sexual offending against children. The letter pointed out that no such restrictions were contained in the supervision order and that the respondent had not been convicted of an offence involving a child. The same day, the respondent told Ms Di Pasquale that he had decided to have no unsupervised contact with children nor visit venues frequented by them.²
- [7] About a week after release from custody, the respondent got a job. It involved heavy lifting. This was soon to pose difficulties for him because of problems with his knees.

¹ See s.22(1) of the *Act*.

² By letter dated 10 October, the respondent’s solicitors were informed that the additional directions related to the risk of offending with a child would not be enforced.

- [8] Professor Nurcombe referred the respondent to Dr Moyle. Ms Di Pasquale issued a direction for the respondent to attend appointments recommended by Dr Moyle or Professor Nurcombe. The respondent was directed to see Dr Moyle on 31 October.
- [9] In mid-October, the respondent told Ms Di Pasquale that he hoped to find a new place to stay. At the time, he was living with his mother. Ms Di Pasquale asked him about forming relationships. According to her note, he said that he “has no intention of forming any romantic/physical relationship ... at this stage (quoted his relapse prevention plan).”
- [10] By the end of October, the respondent had found new employment as a storeman, mostly using a forklift.

Burdens prove bothersome

- [11] The supervised release regime operated satisfactorily for about 10 weeks, with the respondent reporting to Ms Di Pasquale once a week. On 21 November, however, Ms Di Pasquale told him that he, as with all others on supervised release under the *Act*, would be required to report twice a week. He said he would not. He was told that he might have this requirement re-considered if he was unable to report more than once weekly.
- [12] Next day, a home visit was held. The respondent was not there. His mother said that he had gone to solicitors to complain about the intrusions of surveillance. That day, he told another Corrective Services officer that he was drafting a letter noting his concerns to send to Ms Di Pasquale’s superior, the District Manager, but remained committed to abiding by the conditions of his release.
- [13] On 23 November, the respondent saw Ms Di Pasquale, taking with him Ms Goddard from the Catholic Prison Ministry. Ms Goddard spoke about his concerns: mainly, having to report twice weekly at times that interfered with his work; not being allowed to go away for the weekend; and “daily” surveillance. Ms Di Pasquale thought these assertions mostly false. In her view, as she explained to the respondent, the reporting schedule allowed him enough time after work to arrive at the office on time, and if he worked overtime, he could arrange a new time to report by telephoning. He had not been directed not to work overtime. Nor had he been directed not to stay overnight other than at his approved residential address, although he was to keep the office informed of his whereabouts. The respondent became angry about what he perceived as harsh treatment, especially being required to report twice weekly. It was suggested that he discuss things with the District Manager, Ms O’Beirne.
- [14] Next day, the respondent telephoned Ms O’Beirne. He told her that he had over-reacted when seeing Ms Di Pasquale but asked for a different supervising officer. Ms O’Beirne said that he had not shown why he should be assigned someone else. He wanted to discuss this further at a meeting. Ms O’Beirne canvassed the prospect of extending the time between his office visits as supervision progressed over time.
- [15] On 25 November, the respondent failed to attend for urine analysis.
- [16] Two days later, he telephoned Ms Di Pasquale to say that he had missed the test because he had slept in. He sounded concerned about the consequences. He seemed depressed and expressed suicidal thoughts. The respondent told Ms Di

Pasquale that he had decided to consume alcohol, believing that he would be returned to custody. He was feeling overwhelmed by the impact the supervision order was having on his ability to lead his life. He reported drinking “at a least a carton” of beer between Saturday and Sunday evening.

- [17] The respondent had called Ms Di Pasquale from the Biala Alcohol and Drug Service. Ms Di Pasquale told him that he had done the right thing by letting her know and in seeking assistance so quickly. Shortly afterwards, a nurse told Ms Di Pasquale that the respondent had seen a general practitioner. She had prescribed anti-depressant medication and made an appointment for him to return in a week. He had an appointment to see a psychologist, was given contact information about a 24 hour Queensland Health telephone counselling service, and supplied with details of Alcoholics Anonymous (“AA”) meetings and encouraged to attend.

Two more weeks compliance

- [18] The Biala intervention looked promising. A few hours after arriving there, the respondent telephoned Ms Di Pasquale to say that he was no longer suicidal and was motivated to seek immediate intervention if he felt at risk of drinking alcohol.
- [19] The following day, feeling much better, the respondent saw Ms Di Pasquale. He said that he would follow recommendations from Biala staff, including taking prescribed medication. Discussion turned to recent non-compliance with conditions of the order.
- [20] Soon after his release, the respondent began a regime of urine screening to detect illicit drug use and breath analysis to ascertain whether he had been consuming alcohol. He was subjected to many such tests. For his first 10 weeks on supervised release, no test revealed a contravention of the conditions that required the respondent to “abstain from illicit drugs [and] ... consumption of alcohol”.
- [21] Ms Di Pasquale told him that, in view of his compliance to 25 November, that he had disclosed his relapse in a timely way, and that he was motivated to follow up on Biala recommendations, he would be issued only with a letter of censure rather than brought before the Court. Such a letter, written by Ms O’Beirne, was issued that day. It drew attention to the failures to abstain from alcohol, to submit to drug and alcohol testing, and in changing his residential address without permission³. The letter proceeded:

“You will not be returned to court on this occasion. However, a copy of this formal censure will be held on your file and you could expect Court based contravention action to be taken should you again fail to comply with the conditions of your Supervision Order.”

- [22] The respondent was relieved. He apologized to Ms Di Pasquale for earlier complaints about the restrictions of his supervision. He had discussed the relapse with his family, who had provided support. And his employer had allowed him to have the week off work “to get back on his feet”.

³ He has lived with his brother in the preceding couple of days.

- [23] Appreciative of support from Biala, his family, his employer and his parole officer, and seemingly committed to future compliance with conditions of his supervision, the respondent returned to live with his mother and step-father on 28 November.
- [24] But he continued to find supervised release irksome.
- [25] When the respondent reported on 30 November, he spoke of frustration at living with his mother. Her house was small, which inhibited enjoyment of his main recreational activity - painting.
- [26] The respondent first consulted Dr Moyle on 1 December. Dr Moyle was told that the drinking relapse was a reaction to resentment over several issues, including a desire to have Ms Di Pasquale replaced. Dr Moyle told the respondent how lucky he was not to have had breach proceedings taken against him. They discussed the importance of his learning to deal with the frustrations of not always having his wishes met. He spoke of trouble finding space to paint while living with his mother. He had decided to look for “art spaces” such as warehouses where people gathered to paint. He discussed his employment in positive terms: he was looking forward to gaining a supervisor’s position in the New Year. He would not attend the office Christmas party, where alcohol would be served. He was participating in AA and looking for what Dr Moyle described as “other interactions of a positive nature ... that might allow exposure to a non-drinking community”.
- [27] By 7 December, when the respondent saw Ms Di Pasquale again, he had seen the psychologist at Biala, claimed that he continued to attend AA meetings, was to see Dr Moyle again, felt that he was travelling along well, and was enjoying his work.
- [28] On 12 December, Ms Di Pasquale learned that a urine sample supplied the day before had tested positive for tetrahydrocannabinol. When he saw Ms Di Pasquale that day, the respondent denied recent use of cannabis. He did say that he might have used cannabis during the late November relapse. But he had tested clean on 10 December. So the positive test on the 11th revealed cannabis use on that day or soon after the test on the 10th.
- [29] After the office visit, the respondent went to see Dr Moyle. He told Dr Moyle that he wanted to stay out of prison. Dr Moyle encouraged him to view the restrictions of his supervision as helping him to learn how those who survive in the community without resorting to criminal behaviour manage to do so. The respondent acknowledged “a lifetime of impulsive decisions”.
- [30] An office visit on 14 December was uneventful. The respondent reported that his employers were pleased with him and were talking about making him a supervisor. Biala no longer required him to attend. He was trying different AA meetings to find one that suited him.
- [31] Surveillance through home visits and testing for alcohol and illicit drugs continued.
- [32] The respondent continued to experience frustrations and resentment at the impositions of his supervision. On 19 December, he complained to Ms Di Pasquale that a surveillance officer had barged into his house and looked around his bedroom. His mother did not like people walking around her home. Ms Di Pasquale noted that he “was particularly belligerent and argumentative ... today in that he became angry very easily and continually voiced his dislike of the supervision process and

was difficult to engage in discussion”. Next day, he again complained about intrusions associated with surveillance officers visiting the house.

- [33] On 21 December, the respondent did not attend for urine analysis.
- [34] The following day, he failed to report to Ms Di Pasquale. By then, she had received a toxicology report showing that the positive sample taken on the 11th contained a creatinine level indicative of dilution. Messages were left on the respondent’s phone directing him to contact the office urgently.

Absconding interstate

- [35] Home visits in the days following achieved no contact. Three days after Christmas, his stepfather said that he had not seen the respondent since 22 December and thought that he had “done a runner”.
- [36] The respondent missed his 27 December appointment with Dr Moyle and did not consult him again. After December 2006, he had no contact with his supervising officer.
- [37] Little is reliably known about the respondent’s conduct after he fled Queensland just before Christmas 2006.
- [38] He says he went to South Australia; and then to New South Wales. He told Dr Lawrence, a psychiatrist who examined him for these proceedings and those before Chesterman J, that he left on a “pay day” and went “towards Moree for a while”. He camped by a river. Then he travelled to Adelaide to stay at a friend’s place. He returned to New South Wales to stay at a commune near Mullumbimby for a month. Then he found himself at Kingscliff. He was hitch-hiking from there when picked up by Ms Toni Flack in her car. They were in Coffs Harbour together for about a month. Ms Flack then bought a small caravan. They lived in it for about six months outside Grafton.
- [39] The respondent gave a slightly different account to Dr James, another psychiatrist who assessed the respondent for these and the earlier proceedings. He told Dr James that he had decided to abscond. He bought a \$500 car, drove to Moree, and then to Adelaide, where he stayed for a week, camping, before returning to New South Wales. He lived in his car. He survived on money earned in his previous job and by selling his paintings. In northern New South Wales, he stayed at a commune rent-free, carrying out maintenance work and continuing to paint. He worked on prawn boats. His car “packed up” near Kingscliff. He was hitch-hiking back to the commune when given a lift by a female driver, Ms Flack.
- [40] Ms Flack deposes that she encountered the respondent in April 2007, when he was hitch-hiking south of Tweed Heads. He told her that he had “lost all of his gear” at a Blues Festival at Byron Bay. She dropped him at a caravan park. They met again soon after. Eventually, they started living together. She says, “we moved around basically having a bit of a holiday constantly”. The respondent told Ms Flack that he had been in prison. But she “accepted him for what he was”, and “never asked what he had been to prison for”.
- [41] Ms Flack has rented a house at the Gold Coast. She hopes to be reunited there with the respondent on his supervised release. She believes him in his “conviction to

change”. If he is released to supervision, she is willing to help him comply with the conditions.

- [42] The respondent asserts that, if released under supervision, he would comply. He claims to be in a “happy”, “really stable relationship” with Ms Flack which he values. And he maintains that he now has a better understanding of things that relate to supervised release.

Dr Lawrence

- [43] When Dr Lawrence saw him in mid-February 2008, the respondent had been at the Arthur Gorrie Correctional Centre for about a month. He complained of victimization at the hands of the female officer in charge of his detention unit. Dr Lawrence thought he was focussed on what he saw as injustices and harassment to which he had been subjected by two women - Ms Di Pasquale and the detention unit manager. His themes were persecutory and exculpatory of him. He “had made no contribution to the actions taken against him by the authorities. He accepted no responsibility for his actions”. Ms Flack was described in “somewhat idealised terms”. Dr Lawrence detected “significant proneness to lying or distorting of facts for his own benefit ... and of conning and manipulative behaviour.” He had “poor behavioural controls”. She found no remorse.

- [44] Dr Lawrence writes:

“15.1 Leslie O’Rourke’s behaviour, attitudes and absconding from parole with a number of breaches of conditions including alcohol and marijuana use, all within 3 months of detention on closely supervised release, are indicative of and consistent with his Psychopathic Personality.

15.2 This ... correlates highly with recidivism. His sexual offending involves violence towards women. That violence, in the past, has usually occurred in a setting of alcohol or other substance abuse. There is no clear evidence of Alcohol or Substance Abuse/Dependence Disorder demonstrable on the information provided since his release, though there is evidence of his failure to comply with one or more of the conditions of supervised release, involving use of substances. Such substance use increases the risk of re-offending, particularly if that use escalates.

15.3 In my opinion, Leslie O’Rourke’s attitude and behaviour to his conditions of release and the efforts made to supervise those conditions, combined with his absconding, all within 3 months, **negate the claimed maturity and benefits learned** from his SOTPs during previous incarceration. Instead, they would appear to confirm his glibness, shallowness, superficiality, degree of narcissism as well as irresponsibility and inability to take responsibility for his own actions.

- 15.4 They also appear to reflect the dichotomy of his attitudes to women. I note that he reserves special hostility for his female Parole Officer and now for the female Officer in charge of Unit in AGCC. By contrast, he presents an idyllic version of his current paramour, Toni. Whilst one may find a psychodynamic understanding for these attitudes, it is clear that they are well-entrenched and have been unchanged since release. This indicates that the risk to women from Leslie O'Rourke remains, especially when other elements of the context are added, ie., the disinhibition of alcohol or drugs on his innate anger and hostility with women who he might feel have disappointed him or failed to meet his particular needs at the moment. His impulsivity, irresponsibility and failure to adequately utilise internal controls on his emotions or impulses have been demonstrated through this episode.
- 15.5 In my opinion, Leslie O'Rourke continues at a **high risk of re-offending** if he is released. He appears to have failed to comply with a number of the conditions on which he was released and within a few months of release from prison. I cannot offer a recommendation for a therapeutic or rehabilitative management approach which is likely to have any great success of achieving change in this man.
- 15.6 ... the behaviour, seen as a whole, is essentially a reflection of his Personality Disorder which is unlikely to change.
- 15.7 My reading of the affidavits of Deborah Di Pasquale and, in particular, the Integrated Offender Management System, provided a significantly different picture and impression to that provided by the account of Leslie O'Rourke. ... his account reflects the cognitive distortion and glib manipulation of facts to suit his own ends. This reflects his Personality Disorder which is unlikely to change.
- 15.8 Leslie O'Rourke was provided with an opportunity to demonstrate and build on the maturity and understanding he claimed to have achieved. He has not re-offended sexually but his behaviour since release only demonstrates more clearly his underlying Personality Disorder with i[t]s close association with recidivism.

16. SUMMARY

Leslie O'Rourke suffers from a Psychopathic Personality Disorder. The implications for recidivism in such a condition are high. There is evidence of use of alcohol and cannabis within 3 months of his conditional release, followed by a serious breach through absconding. Alcohol and drug abuse increase the risk of re-

offending.

Whilst there is no evidence of any sexual violence or other offending occurring during the period of time of absconding and no evidence of any significant alcohol or substance abuse, the fact of his use, the breach of conditions and breach of parole indicate that he remains **at a high risk of re-offending** in the future.

I cannot offer any significant therapeutic management hope for rehabilitation so that his prognosis is grim.

I do not believe that he has been ‘set up to fail’ as he suggests. He has not utilised the strategies that were available to him to help him manage the inevitable difficulties and stresses of his life including his readjustment to life outside prison.”

- [45] In testifying, Dr Lawrence was asked about the implications of her diagnosis of psychopathic personality disorder with strong narcissistic traits. She spoke of the respondent’s lack of empathy or concern for others, a tendency to superficialities in relationships, and manipulation of others. Persons with such a diagnosis are not “capable of maintaining any relationships of any significance and meaning and depth. They may well be more prone to substance abuse”. His inability to conform to the requirements of supervision and his absconding were indicative of his personality disorders. No treatment will reduce the risk of relevant recidivism.
- [46] Dr Lawrence was concerned about the alcohol and drug use while the respondent was in the community after his release. Earlier sexual offending had occurred in the context of substance abuse: particularly alcohol and cannabis. Because of his long history of polysubstance abuse, she testified, “one drink or one smoke of marijuana could very rapidly lead to a greater use ... or dependence; and that is the setting for the loss of control over his impulses ... [T]he effect of the alcohol or substances on him would be to release some of those underlying aggressive and violent drives.”
- [47] Despite his not re-offending while at large, Dr Lawrence considers that the respondent is at “high risk over time” of sexually offending with violence. Compliance with a supervised release condition that required abstinence from alcohol and illicit substances would, she thinks, be “most problematic”.

Dr James

- [48] Dr James examined the respondent in late February 2008. He continued to meet criteria for disorders previously diagnosed: Anti-Social Personality Disorder, Borderline Personality Disorder and Psychopathic Personality Disorder.
- [49] Dr James noted that, during his three months on supervised release, the respondent had become increasingly frustrated and disaffected with supervision. These reactions were indicative of his personality, especially difficulty in controlling anger in the face of behaviour he perceives as neglectful or uncaring. Dr James, who thought that “a degree of impulsivity also appears to have become manifest”, reported:
- “Inevitably, Mr O’Rourke’s breaking of the Order must give rise to serious doubts with respect to his ability to work through the

frustrations involved with conformity with a Supervision Order were he again to be released in the near future, though one would expect that the process of maturation would continue, and his capacity to respond acceptably would improve with the further passage of time.

With respect to the risk that Mr O'Rourke might commit a serious sexual offence were he to be again released, his own account of the time that he spent in New South Wales and South Australia would suggest that he has avoided such offending, and that he has also avoided the contingent high risk factor of intoxication for a period of some twelve months; it is, of course, important to recognise that the only account available is that of Mr O'Rourke himself, and I have referred above to the absence of independent collateral information. An interview with Mr O'Rourke's partner Toni, and others who were in close contact with O'Rourke during the time of his absconding could yield further information of value.

In summary, then, it can be said that Mr O'Rourke's breaking of his Supervision Order must be seen as heightening the further risk of breaches of a Supervision Order were one to be imposed in the more immediate future, given his threshold of frustration, his impulsivity and his disregard for the consequences; but if his intake of intoxicating substances, his conduct in relationship to sexual offending, and his relationships with the opposite sex generally, are as impeccable as he described, that would be reassuring at least to a degree.

On the present evidence, therefore, I would see Mr O'Rourke's risk of serious offending sexually as not being lessened when compared to the opinion expressed in June 2006; but there would be no reason to consider the risk much greater.

Clearly this opinion would be reviewed in the light of any independent information supporting Mr O'Rourke's own contentions."

- [50] Dr James testified that the respondent has demonstrated poor control over emotions. He also has a marked fear of abandonment in important relationships. This may cause his emotions to become unstable, in which event he may drink or take illicit substances and offend with sexual violence. His personality disorder involves a tendency to idealize people with whom he is in a relationship while the relationship succeeds. This can rapidly be "switched to a sense of denigration" when the relationship deteriorates. The respondent had found it "very difficult to maintain a steady relationship ... in the past." And it would be "extremely stressful" for him were his relationship with Ms Flack to break down.
- [51] Dr James considered that the respondent remained at "moderate risk" of sexually re-offending with violence. It would, he thinks, be risky for the respondent to be in the community without a restrictive supervision order, even though there was no evidence of re-offending. The risk could, he believes, be "adequately managed in the community". This view is influenced by Dr James's anticipation that the respondent might comply with a supervision order. In his assessment, the

respondent values the relationship with Ms Flack, does not want to be in prison, has learned from the experience of re-incarceration after being returned to Queensland, and was now more likely to take advantage of “support systems”.

Rapes after relationship failures

- [52] The respondent was born in March 1962. Since age 19, he has spent more than 20 years in prison, most of that time serving sentences for four rapes.
- [53] Consistently with his psychopathic personality, the respondent has not maintained long-term relationships; and their cessation has, more than once, resulted in abuse of alcohol and illicit drugs leading to violent sexual offending against other women.
- [54] His first romantic attachment was at age 14. When that relationship ended, he was 16. He felt abandoned and resentful. Substance abuse and aggression increased markedly. At 17, he formed a new relationship. It lasted about two years. His first rape was committed when the relationship finished. He received a four year sentence. He developed a relationship with another woman. Soon after his release, their child was born. That relationship ended not long afterwards. He then moved around various cities, engaging in casual sex. This time of his life culminated with his second rape. He served six years of a seven year sentence. The third rape occurred in 1994. As with the earlier two, he was intoxicated. He received a six year sentence. Upon release, he moved to South Australia, where he maintained a sex life but no long-term relationship was established. The fourth rape was in 2001. It too was associated with alcohol and illicit drugs. He was sentenced to the imprisonment which expired with his release in September 2006.
- [55] Professor Nurcombe has identified a pattern in this offending⁴:

“The pattern of sexual offences is reasonably consistent. After a period of heavy drinking and drug use, Mr O’Rourke forms a casual acquaintance with a woman. The woman accompanies him for a walk or drive. If she spurns his sexual approach ... he forces himself on her.

...

He regards the sexual offences as attempts to dominate women in the context of a fear of weakness.

...

Sexual satisfaction is subsidiary to dominating the victim, reassuring himself of his masculinity, and getting even with women for real or imagined wrongs.”

Adequate protection of the community

- [56] It is not in contest that the respondent is a “serious danger to the community in the absence of a division 3 order” within the meaning of s. 13(1) of the *Act*. That fact has been established by acceptable, cogent evidence to a high degree of probability.
- [57] The question is whether a continuing detention order ought be made or else whether the respondent should be released subject to a supervision order containing the

⁴ See para [4] of the reasons of Chesterman J.

conditions imposed by Chesterman J and some additional conditions, such as for curfews and electronic monitoring.⁵

- [58] A few considerations may indicate that a supervision order could afford adequate protection of the community⁶ against the risk of the respondent committing an offence of a sexual nature involving violence.
- [59] He was at large for more than a year without re-offending. That is highly significant, particularly as he was drinking as much alcohol as he wished for most of that time. He has his relationship with Ms Flack. He finds it satisfying. Probably, it is an incentive to compliance with a supervisory regime. And Dr James thinks that the level of risk of recidivism can be adequately addressed by a supervision order.
- [60] Other considerations, however, point in a different direction.
- [61] Mention has already been made of the importance that Dr Lawrence and Dr James still attach to abstinence from alcohol and illicit drugs.
- [62] The psychiatrists all agree that the respondent's consumption of alcohol or illicit drugs exposes a high risk of re-offending with sexual violence.
- [63] Chesterman J summarized the view Dr James had expressed in this way:

“Dr James insists that the respondent not consume any alcohol or illicit drugs. Should he do so the risk of re-offending will increase mightily. He should participate, as he says as he intends to, in programs encouraging abstinence, such as those run by Alcoholics Anonymous. He should be carefully monitored to ensure that he does not ingest alcohol or illicit drugs and should have regular support and contact from an appropriately trained therapist.”

- [64] Chesterman J quoted Professor Nurcombe as having reported that:

“Of all the risk factors [the respondent] will face after release, there is no doubt that alcohol and drug use is the most serious. Unless he can abstain from alcohol/drug use in the future, recidivism is likely”.

- [65] Dr Lawrence wrote at the time that:

“... the most likely destabiling [sic] influence in his life would be ... to participate in any alcohol or drug abuse. Total abstinence of these substances should be seen as an essential condition for release.”

- [66] As his testimony reveals, the respondent realizes that alcohol, especially in combination with an illicit drug, markedly increases his risk of raping again. Yet

⁵ It was not disputed that the proposed conditions are reasonably required to secure the adequate protection of women from being violently raped.

⁶ S.13(6) of the Act; cf *Attorney-General v Francis* [2007] 1 Qd R 396.

cannabis use was detected shortly before he absconded; and he talked with Ms Flack about using the drug. He became heavily intoxicated in the November 2006 relapse. And he consumed alcohol after he fled the State.

- [67] Ms Flack has deposed to the respondent's alcohol consumption and talk of cannabis use in the seven months they were together:

“... we would occasionally have a drink of wine with dinner. This was usually port. Sometimes he would have perhaps more than he should have, however there were never any problems with his drinking ... I never saw [his] personality change when he drank. He would just sometimes open up about his childhood and talk a bit more. At no stage during our relationship has [he] consumed any cannabis that I am aware of. We spoke about it and I told him that I was not willing to tolerate it.”

- [68] In his recent report, Dr James assumed that the respondent had “avoided the contingent high risk of intoxication” for about a year. Dr James, however, was not aware of the extent to which the respondent had consumed alcohol. Ms Flack's reports of drinking “wine” usually “port”, and sometimes “perhaps more than he should have”, were not drawn to his attention. Nor was Dr James aware that Ms Flack and the respondent had discussed the use of cannabis and that she told him she would not tolerate it.

- [69] Dr James attaches importance to the potentially therapeutic relationship with Ms Flack, regarding it as incentive to compliance with conditions of supervised release. That relationship, however, is not associated with avoidance of alcohol. And it has not been tested under supervised release. More importantly, the respondent's personality disorders, especially the psychopathy, coupled with his failed relationships over the years make it highly probable that the relationship with Ms Flack would not survive the stresses of his supervision. Its almost inevitable failure - probably sooner rather than later⁷ - the personality disorders, the disturbing history of serious sexual violence against other women after relationships end, and the respondent's demonstrated unwillingness to live within the constraints of supervision – in particular, abstinence from alcohol and illicit drugs – combine to indicate a high risk of relevant recidivism.⁸

- [70] I cannot agree with Dr James that the risk can be managed by a supervision order. The prospects of compliance with conditions important to the safety of women – especially, abstinence from alcohol and illicit drugs - are remote.

- [71] He got a job he liked; and it offered him advancement. He had the support of his family, at least while he lived in Queensland. He had the benefit of Biala's help. He saw Dr Moyle. Yet only weeks into a 10 year supervisory regime, his relapse prevention program collapsed. His late November relapse resulted only in censure

⁷ See the discussion of the history of his relationships with females by the psychologist, Ms Sky, in her 2004 report.

⁸ Where they differ, I prefer Dr Lawrence's opinions to those of Dr James. Her assessment is more consistent with the history of offending, alcohol and drug use over the years, psychopathic personality, many failed relationships, persecutory attitudes, and absence of contrition for the contraventions of his supervision.

and encouragement from Ms Di Pasquale. His response was to choose persistent breaches of supervision conditions - including those he knew to be important to the safety of women. He is not remorseful for those contraventions. Even after incarceration since arrest early this year, he still cannot bring himself to accept the constraints of a supervisory regime: for example, his willingness to submit to supervised release depends on someone other than Ms Di Pasquale supervising him: "I'd rather remain in gaol than be under her", he testified.

- [72] "Most problematic" is how Dr Lawrence summarized the chances that the respondent would comply with conditions of supervision if released now. That assessment involves no exaggeration. Almost certainly, he would not adhere to the strictures of a supervisory regime needed to protect women against a high risk of violent sexual offending.⁹
- [73] The adequate protection of the community requires the respondent's continuing detention for control.

⁹ cf. *Attorney-General v Beattie* [2007] QCA 96, [30]-[32].