

# SUPREME COURT OF QUEENSLAND

CITATION: *A- G for the State of Qld v Voois* [2008] QSC 168

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(Applicant)  
**v**  
**JEREMY WILLIAM VOOIS**  
(Respondent)

FILE NO/S: BS3109 of 2008

DIVISION: Trial Division

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

ORIGINATING COURT: Supreme Court

DELIVERED ON: 31 July 2008

DELIVERED AT: Brisbane

HEARING DATE: 31 July 2008

JUDGE: Byrne SJA

ORDER: **That pursuant to s 13(5) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* the respondent be subject to a supervision order**

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 convicted of multiple sexual offences – where respondent was released from custody - whether respondent is a serious danger to the community in the absence of a division 3 order – whether conditions appropriate and practicable to reduce the risk to the community.

COUNSEL: Mr B. Mumford for the Applicant.  
Mr R.Green for the Respondent.

SOLICITORS: Crown Law for the Applicant.  
Legal Aid Queensland for the Respondent.

- [1] HIS HONOUR: The respondent accepts that the applicant has proved to the requisite standard (section 13(3) of the Dangerous Prisoners (Sexual Offenders) Act 2003) that the respondent is a "serious danger to the community in the absence of a division 3 order" within the meaning of that expression in the Act.
- [2] The evidence amply supports the concession.
- [3] The respondent was born in September 1969. In April 1992, he was sentenced to 9 years' imprisonment, mainly for two rapes of teenage females. In October 1997, he received a 7 year cumulative sentence for a sexual offence committed against a male in custody. He also received another cumulative sentence for an offence committed whilst in prison. More will be said of these shortly. The result was that, before he was released from custody about 2 months ago, he had spent the last 16 years in custody.
- [4] The essential question now is whether the respondent ought to be subject to a continuing detention order or else to supervised release.
- [5] The initial conviction in early April 1992 was after a trial on a charge of rape. After he was convicted for that offence, he pled guilty to another count of rape involving a different complainant. These offences, which were associated with consumption of alcohol, resulted in 9 years sentences in aggregate.
- [6] On 14th October 1997, the respondent pleaded guilty in the Rockhampton District Court to a charge of indecent assault with a circumstance of aggravation - carnal knowledge by anal intercourse. The respondent had forced himself upon another inmate and anally penetrated that person without his consent. That offence resulted in the 7 year cumulative sentence.
- [7] On 19th November 1998, in custody, he pleaded guilty to several counts of indecent assault. Again the complainant was another inmate. The counts involved oral sex, masturbation involving the complainant and simulated anal intercourse while both men were clothed. This resulted in a sentence of 2 years' imprisonment cumulative on the sentences the respondent was serving.
- [8] Over the years, he has received punishment for other offences; but they are of no present relevance.
- [9] The respondent has been assessed by three psychiatrists.
- [10] Dr Sundin assessed him in August last year, no doubt in connection with the initial application for orders under section 8 of the Act for his psychiatric assessment. In her assessment, he had an elevated score on the psychopathy checklist revised: 24 out of 40, which put him below the cut-off point for psychopathy as it is determined in Australia.
- [11] On the Violence Risk Appraisal Guide, he was assessed as category 7, which meant that there was a risk of violent re-offending at the rate of 55 per cent in 7 years and 64 per cent in 10. Under the different assessment mechanism provided for by the SORAG index, he scored at category 6, which put him at a risk of sexual re-offending of 64 per cent in 7 years and 76 per cent in 10.

- [12] Dr Sundin was concerned by the respondent's unwillingness to accept responsibility for the sexual assaults on the female victims. He is, put shortly, in a state of denial concerning the extent of his offending in connection with those young women. This attitude was reflected in a reluctance for many years to participate in a sexual offender treatment program.
- [13] In Dr Sundin's opinion there was little to suggest that the respondent had learnt much from his time in detention or gained in personal insight into his offending or its consequences for victims.
- [14] Even with the proposed conditions of a supervision order, she considers that he is at moderate to high risk of relevant recidivism.
- [15] Dr Sundin testified that the dynamic risk factors (which involve professional judgment) are profound, pervasive and unlikely to change in the near future. Also the continuing denial of involvement in the sexual offences concerning women is indicative of a lack of insight, which is a known factor for "a poor outcome", she testified.
- [16] Dr Sundin found the respondent fixated on his needs and on his perception that he is the victim of "the system".
- [17] When Dr Sundin assessed him, the respondent had been suffering from serious renal disease that required dialysis three times a week. She thought that his predicament and symptoms associated with the dialysis had imposed a major change on the respondent's life. In particular, her assessment was that he had come to appreciate that he could not drink alcohol again and that he would be restricted in his activities for as long as the dialysis continued.
- [18] But for the physical consequences associated with the respondent's health difficulties, Dr Sundin would have assessed him as being in the high risk category for recidivism. The affects of the illness and its treatment led her to assess him as in the moderate to high risk category.
- [19] The two psychiatrists who assessed the respondent for the purposes of this application are Professor James and Dr Harden. Their views differ slightly.
- [20] Professor James was inclined to rate the risk of sexually violent offending at a somewhat lower degree than Dr Harden.
- [21] Dr James saw the respondent in May this year. The respondent had only the vaguest memory of the sexual offences with the women. He appears to have told Dr James that the sexual activity was consensual.
- [22] Dr James assessed the respondent as suffering from anti-social personality disorder and borderline personality disorder. He considered, however, that the impacts of the disorders were being ameliorated with the passage of time, as frequently happens. He also thought that the respondent's behaviour in prison had shown a degree of stabilisation over the last two or three years. And there is evidence tending to support a change in behaviour which, in all probability, is more related to the respondent's health concerns than it is to some change in his capacity to appreciate the advantages to him of good behaviour while in custody.

- [23] On the approach which Dr James took, the respondent scored only 20 on the PCL-R, significantly below the 30 figure required for diagnosis of psychopathy. In respect of the other instruments, his results were: On static 99, 8, which meant that the respondent ranked high in terms of recidivism; on SORAG, 7; on VRAG, in category 6.
- [24] Dr James considered that the renal disease (and the associated need for frequent dialysis) was a significant consideration. He assessed the risk of relevant recidivism as being low to moderate: about 45 per cent, even should the respondent comply with conditions of a supervision order designed to protect against the risk of re-offending.
- [25] Dr James considered that any supervision order should be for at least 10 years.
- [26] Dr Harden thought that there was an elevated score on psychopathy.
- [27] He expressed the view that the respondent had demonstrated, in recent times, an ability to comply with a supervision order. He felt that if the supervision order were strict enough, the respondent may well comply with conditions of supervision into the foreseeable future.
- [28] He did, however, conclude that there was a very substantial risk of re-offending. He considered that the respondent should undertake and satisfactorily complete a sexual offender's treatment program before being released. That has not yet happened.
- [29] The Act requires consideration to be given to a number of factors in deciding whether there has been proof of the s.13 pre-conditions to the making of an order for continuing detention or release on supervision. Subsection (4) of section 13 speaks of the following:
- a. Reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated. Mention has already been made of the reports of Dr Harden and Professor James. The respondent co-operated in their examinations of him.
  - b. Any other medical, psychiatric, psychological or other assessment relating to the prisoner. He has been in custody for 16 years. Over that time, there have been many assessments of his behaviour. The material runs to more than 5000 pages. Almost all of it appears to have been considered by the examining psychiatrists.
  - c. Information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in future. That has already been discussed in speaking of the history of offending and the views of the psychiatrists concerning what the future holds.
  - d. Whether or not there is any pattern of offending behaviour on the part of the prisoner. In respect of the women, there is. He tends to associate with them, get drunk and attack them. Alcohol played an important part in the offending in relation to the females. In connection with the males, alcohol was not involved but it is likely that cannabis was, at least on one occasion. In short, alcohol and illicit drugs are involved in his offending.

- e. Efforts by the prisoner to address the cause or causes of his offending behaviour, including whether he participated in rehabilitation programs. He refused to participate in sexual offender treatment programs until the stage was reached when he could not do so by reason of his dialysis. And his denial concerning the sexual offending concerning females is troubling.
  - f. Whether or not the prisoner's participation in rehabilitation programs has had a positive effect. The answer to that is: none. Relevantly, he has participated in many programs, including anger management. But it does not appear that rehabilitation programs undertaken so far have mitigated the risk of relevant recidivism.
  - g. The prisoner's antecedents and criminal history. These have already been mentioned.
  - h. The risk that he will commit another serious sexual offence if released into the community has been discussed in considering the reports of the psychiatrists.
  - i. The need to protect members of the community from that risk - is self explanatory.
- [30] The main issue is whether supervised release suffices to ensure adequate protection of the community against the risk of sexual violence whether against males or females: see s.13 (6) of the Act.
- [31] I have not so far mentioned the conduct of the respondent since his release from custody about two months ago.
- [32] In that time, he has been subjected to severe constraints, including a curfew. But he has been permitted to leave his accommodation at Wacol for dialysis and for other reasons; and that release has been unescorted.
- [33] In that two month period, there have been assessments to ensure that he has not been consuming alcohol. There has been no significant incident in that time - something which supports Dr Harden's evidence of a demonstration in recent times of an ability to comply with a supervision order. The restrictions under which he is presently in the community are substantially those which would be included in any supervision order.
- [34] As Mr Mumford submitted, there is a need for a sexual offender treatment program. The respondent is, as Mr Mumford characterised him, an untreated sex offender who has in the past resisted treatment. But he can now be treated.
- [35] I have been informed by Mr Mumford that if the respondent moves to live with his parents in Mackay - and they live at premises which have been assessed as suitable to accommodate him - a personal sexual offender treatment program can be made available by a psychologist at times to accommodate the ongoing need for dialysis. The respondent needs a kidney transplant. However, he has not reached the list of those awaiting transplant.

- [36] Four considerations suggest that there are sufficient prospects of compliance with the conditions of proposed supervision to justify a decision that supervised release affords adequate protection for the community.
- [37] First, he has been in the community, admittedly subject to substantial constraints, without significant incident for about two months.
- [38] Secondly, his medical condition matters. His debility affects his capacity to inflict sexual offences. In particular, sensations which he has on the days immediately before and after dialysis are likely to inhibit any tendency towards sexual violence. Dr Harden has pointed to a countervailing consideration: that the stress of the dialysis might increase the risk. But there is no realistic prospect that his renal health will improve before a kidney transplant, which is most unlikely to take place in the near future. So, on balance, his poor health presents as a significant constraint upon his prospects of inflicting sexual violence if in the community under supervised release.
- [39] Thirdly, over the last three years, there have been no institutional infractions. Those who score at elevated levels on the psychopathy scale not infrequently adapt to institutional environments and may, as this respondent has done, learn to behave well in custody. But the most likely explanation for his compliance in the last three years is, as Mr Green submitted, related to the development of his physical health problems. In any event, it is a point in favour of supervised release that there has been a marked, sustained improvement in his behaviour in prison over the last three years.
- [40] Fourthly, he is to undertake a sexual offender treatment program. This will not be an easy thing for him, especially as he still denies the offences involving the females and lacks insight into the distress and harm which he has inflicted on his victims. But he can be required to undertake such a program and was here in Court when the details were canvassed.
- [41] Were he not to participate genuinely in the treatment program to be offered to him by the female psychologist in Mackay - if that is where he goes to live - that would be likely to prompt contravention proceedings, if the breach seemed significant enough. As things stand, he is willing to submit to such a personally tailored program; and it is necessary that he do so.
- [42] In the result, there will be an order for supervised release.
- [43] There was discussion about some of the conditions. Clause 2 of the draft will be altered to require him to report between 9 a.m. and 4 p.m. on a day no later than 2nd August.
- [44] The other conditions debated concern conditions appropriate to paedophiles, which he is not. He has no history of offending against children and nothing in the evidence of the psychiatrists supports conditions that he not have contact, supervised or unsupervised with children, not access a school nor attend activities in respect of which there are reasonable grounds for believing that there will be child membership or child participation.

- [45] So there is nothing to be gained by such conditions and, as the evidence disclosed, a potential disadvantage in doing so.
- [46] This respondent, as with many sex offenders, resents any suggestion that he has paedophilic tendencies. To include conditions which presume that he does when he does not is not only likely to add conditions which are of no benefit but also may be counter-productive.
- [47] As Mr Green proposed, the order should subsist for 15 years.
- [48] Now, gentlemen, I will show you the draft order so that if there is anything further you wish to say with respect to it you may do so.
- [49] MR MUMFORD: I have no other issues, your Honour.
- [50] MR GREEN: No, thank you, your Honour.
- [51] HIS HONOUR: There will be an order as per draft.
- [52] Mr Green, I'm sure he understands the importance of staying away from alcohol and illicit drugs. It occurs to me that it might not do any harm to impress upon him the need to try very hard when engaging in his treatment program and to ensure he does his level best to participate genuinely in it and to see it through.
- [53] MR GREEN: I'll pass those observations on, your Honour.