SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney General for the state of Queensland v Beattie* [2009] QSC 87
PARTIES:	**ATTORNEY GENERAL FOR THE STATE OF QUEENSLAND** (applicant) v **KEITH ALBERT BEATTIE** (respondent)
FILE NO/S:	BS 4963/06
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	17 April 2009
DELIVERED AT:	Brisbane
HEARING DATE:	17 April 2009
JUDGE:	A Lyons J
ORDER:	**1. Pursuant to s 30(1) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, I affirm the decision of Helman J of 20 October 2006 that the respondent, Keith Albert Beattie, is a serious danger to the community in the absence of a Division 3 Order.** **2. Pursuant to s 30(3) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, it is ordered that the respondent, Keith Albert Beattie, continue to be subject to the continuing detention order made by Helman J on 20 October 2006.**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – MISCELLANEROUS MATTERS – SEXUAL OFFENDERS – Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) – where respondent serving a period of imprisonment for sexual offences involving children – where application made under s13 Dangerous Prisoners (Sexual Offenders) Act 2003 (Q) for continuing

detention order – whether the respondent is a serious danger to the community – whether adequate community protection afforded by supervision order.

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) ss 13, 27, 29, 30

Attorney- General (Qld)v Beattie [2007] QCA 96, followed
Attorney- General (Qld)v Beattie [2006] QSC 322, followed

COUNSEL: Mr BH Mumford for the applicant
Mr J R Hunter SC for the respondent

SOLICITORS: Mr G Cooper, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

[1] **A LYONS J**: The respondent had been imprisoned since 20 July 1996, for sexual offences with respect to young boys and was due for release on 3 November 2006. On 15 June 2006, the applicant instituted proceedings against the respondent pursuant to the *Dangerous Prisoners (Sexual offenders) Act* 2003 seeking orders under s 13 of the Act for the respondents continuing detention, or in the alternative, orders that he be released subject to a supervision order.

[2] On 26 October 2006, Helman J made orders that the respondent be detained in custody "for an indefinite term for control, care or treatment." The respondent appealed that decision to the Queensland Court of Appeal but that appeal was dismissed on 30 March 2007.

[3] Section 27(1) of the Act, imposes an obligation on the applicant to seek a review at the end of one year after the order first has effect and afterwards at intervals of not more than one year. Pursuant to s 27(2) of the Act, the applicant applied for a review of that continuing detention order on 13 February 2008. Pursuant to s 29 of the Act, Dr Lawrence and Dr James were appointed to examine the respondent. Reports dated 20 November 2007 and 20 December 2007 respectively, have been prepared.

[4] On 23 June 2008, that application was adjourned at the request of the respondent to a date to be fixed, as the respondent had been charged in June 2008, with further offences namely "one charge of unlawful anal intercourse and two charges of indecent treatment of children under 16. Those offences were alleged to have been committed between November 1995 and February 1996. On 28 February 2008, he was remanded in custody in relation to those offences. On 22 September 2008, the respondent pleaded guilty to permitting sodomy and indecent treatment of a child under 16 and was sentenced to twelve months imprisonment.

The respondent's background

[5] The respondent is currently 67 years of age and for three years, from the age of 14 years he was subjected to serious sexual abuse by a man who was a friend of his father.

[6] He was first charged with sexual offences on 29 September 1978. On that occasion, he failed to appear to answer the charges. On 14 February 1989, he was given a suspended sentence of imprisonment in New South Wales and was extradited to Queensland two days later, where he was sentenced to imprisonment for two years and four months. In May 1990, he was diagnosed by Dr Edwards, as a homosexual paedophile and this assessment was subsequently confirmed by psychiatrists Professor Barry Nurcombe, Professor Basil James, Doctor Ian Colls and Doctor Joan Lawrence. Dr Edwards considered that he was "a substantial risk for re-offending" and the respondent's subsequent history of sexual offences can be summarised as follows;

- In February 1994, he was sentenced to terms of imprisonment for indecent assaults on males.
- On 10 July 1997, he was convicted of further sexual offences, including unlawful carnal knowledge of an intellectually impaired person.
- On 24 November 1997, he was sentenced to nine years imprisonment for further offences of sexual misconduct, including maintaining an unlawful relationship of a sexual nature with a child under 16 years of age.
- 22 September 2008, he was sentenced to 12 months imprisonment for permitting sodomy and indecent treatment of a child under 16.

[7] In prison, the respondent had refused to participate in any sexual offending treatment program prior to the last hearing and Dr Lawrence, in the report dated 20 November 2007, states "Keith Beattie is adamantly opposed to participating in any Sexual Offender Treatment Programs". He continues, therefore, to refuse to participate.

The decision of 26 October 2006

[8] At the hearing before Helman J, Professor Barry Nurcombe, Dr Basil James and Dr Ian Colls each gave evidence about the risk of the respondent re-offending. His Honour considered that, whilst it was not likely that the respondent "would actively seek out children to satisfy his deviant urges, but that when presented with an opportunity to do so, he would be inclined to satisfy those urges."[1] Helman J concluded that, he was satisfied that the respondent was a serious danger to the community in the absence of an order under Division 3 of Part 2 of the Act and that there was an unacceptable risk, to a high degree of probability, that the respondent would commit an offence of a sexual nature against children if he is released from custody. He stated;

> "[31] From the evidence of the psychiatrists and from the respondent's criminal history I conclude that the risk of the respondent's committing an offence of a sexual nature against children if he is released from custody is substantial - at least moderate but probably moderate to high. Taking into account his history and the views of the psychiatrists, including Dr Edwards, I conclude Dr James's assessment is

1 *Attorney- General (Qld)v Beattie* [2006] QSC 322 at [31]

> too optimistic. It would appear to me that it is not likely that he would actively seek out children to satisfy his deviant urges, but that, when presented with an opportunity to do so, he would be inclined to satisfy those urges. The question of his age was discussed in the oral evidence by each of the psychiatrists called at the hearing and they were in agreement that the risk of re-offending by this type of offender is not eliminated with advancing years.
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> ….
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> [35] …Professor Nurcombe diagnosed the respondent as having the disorder of paedophilia, non-exclusive, primarily fixated, homosexual in type. He also diagnosed the respondent as having an avoidant personality disorder. Drs James and Colls did not make the latter diagnosis. Professor Nurcombe noted that the respondent's paedophilia is directed predominantly toward pre-adolescent and adolescent males, adding that he has also been sexually involved with an intellectually impaired male young adult that he has engaged in homosexual activity with male adults and has had only minor involvement with adult women. Professor Nurcombe's assessment of the risk of the respondent's sexual recidivism was, as I have related, moderate to high. Dr Edwards assessed him as a homosexual paedophile not suffering from a psychiatric illness. Dr Edwards's pessimistic forecast proved to be correct, Mr Andreasen's confidence in the benefits of supervision was misplaced.
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> [36] As to s. 13(4)(c), the respondent's past history clearly shows that he has a propensity to commit serious sexual offences which, on the evidence of all three psychiatrists who gave oral evidence, is not eliminated with advancing years for this type of offender.

The Appeal

[9] On appeal to the Court of Appeal, it was argued that, as the expert opinion of the risk was "moderate' that meant that the risk fell short of "unacceptable". In this regards Keane JA held;[2]

> "But this argument overlooks the point that whether or not a moderate risk is unacceptable must be gauged by taking into account the nature of the risk and the consequences of the risk materialising. In this regard the appellant's likely targets are children, and especially street children: vulnerable members of the community who are likely to be susceptible to his seduction techniques. The focus of consideration must, therefore, be upon the likely effect of a supervision order in terms of reducing the opportunities for the appellant to engage in acts of seduction of children to an acceptably low level."

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2 *Attorney- General (Qld)v Beattie* [2007] QCA 96 at [19]

[10] Whilst it was further argued before the Court of Appeal that the conditions of supervision "could" reduce the risk of re-offending" the Court noted that Professor Nurcombe doubted that the conditions in themselves could eliminate the risk as "the conditions proposed might reduce the appellant's risk of re-offending but not eliminate it."[3] Keane JA also stated that "The significance of the appellant's history for present purpose is that it tends to undermine confidence in the belief that the appellant will adhere to the conditions of the proposed supervision order."[4] His Honour noted;

> [29] "The learned primary judge was not satisfied that the appellant can be relied upon to adhere to the strictures of the conditions in the supervision order. The efficacy of the protective regime under the proposed supervision order is inevitably dependent to a substantial degree upon the appellant's adherence to the conditions regulating his recourse to areas where he will have the opportunity to initiate relationships with children which he may then seek to exploit for criminal purposes. It was open to his Honour to conclude that it would not be a responsible exercise of the discretion conferred by s 13(5) of the Act to assume that the conditions of release would serve to bring to the attention of the authorities any attempted seduction of a child by the appellant before an offence could be committed."

[11] The appeal was accordingly dismissed.

The Review hearing

[12] Section 30 of the Act provides that, on the hearing of a review under ss 27or 28 the Court may affirm the decision that the respondent is a serious danger to the community in the absence of a division 3 order, only if it is satisfied by acceptable, cogent evidence to a high degree of probability that the evidence is of sufficient weight to affirm the decision. Section 30(1) provides that, in coming to this determination, the Court must have regard to the matters set out in s13(4).

[13] Section 30(4) also provides that, the paramount consideration in deciding whether to continue with the continuing detention order, or to make a supervision order, is to ensure adequate protection of the community.

[14] If the court affirms the decision, s 30(3) provides that, the Court may order that the prisoner continue to be subject to the continuing detention order, or be released from custody subject to a supervision order.

[15] For the test of "serious danger to the community" to be satisfied, there must be an unacceptable risk the prisoner will commit a serious sexual offence, if released from custody or released without a supervision order being made.

[16] In coming to a determination in relation to this matter, I have placed considerable reliance on the Reports of Dr Lawrence and Professor James, as well as the oral evidence they gave at the review hearing.

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3 *Attorney- General (Qld)v Beattie* [2007] QCA 96 at [22]

4 *Attorney- General (Qld)v Beattie* [2007] QCA 96 at [25]

Professor James Evidence

[17] Dr James interviewed Mr Beattie on 16 November 2007 and noted that Mr Beattie's mental state was essentially unchanged. He stated that, there was no evidence of any psychiatric disorder over and above that of "Paedophilia, Non–exclusive Homosexual." He considered however, that Mr Beattie showed traits of avoidant personality. Dr James stated that, Mr Beattie indicated to him that he had come "not to care whether he went out or not" and that, in many ways, he was better off staying where he was.

[18] In relation to the risk of recidivism, Dr James noted, there had been further institutionalisation and he also noted a "stubborn and recalcitrant dimension to his personality." Dr James considered it unlikely that, the respondent will undertake a Sex Offender Treatment Programme while in prison, and the longer his imprisonment lasts, the more difficult rehabilitation is likely to be.

[19] He considered that;

> "the situation has been reached that the prospect of release becomes less appealing to him with time. Under these circumstances, the increased stressfulness of any attempt at rehabilitation is likely to lead to an increased risk of offending. Currently, therefore, I judge the risk- of *offending in a manner similar to that which led to his imprisonment*- is somewhat greater than when I examined him in August 2006 and I would now rate the risk as moderately high; I continue to hold the opinion that his risk of *violent offending* is low." [5]

[20] Accordingly, it is clear, that Dr James has revised his earlier assessment that the risk of re offending sexually was **low to moderate** and his opinion now is that the risk of offending in a similar manner to that which led to his imprisonment is **moderately high.**

[21] In his oral evidence at the hearing, Dr James stated that he considered that Mr Beattie's "controls had got less" and that, in relation to a supervision order, Mr Beattie "would not comply and would not be motivated to comply". He stated that in prison, Mr Beattie has a role and an identity and that those matters are important to him, but would be lost if he was released. He considered that "if released he would be inclined to behave in a way which would ensure his return."

Dr Lawrence's Evidence

[22] Dr Lawrence also interviewed Mr Beattie in November 2007, and she considered that Mr Beattie displayed some very significant cognitive distortions. He also continued to deny, rationalise and minimise his offending behaviour and was opposed to participating in a Sexual Offender Treatment Programme.

[23] In her report, she states;[6]

> "He lacks a social support network but appears to have found a satisfactory equilibrium in his life within the structured environment of prison. This gives him a degree of personal

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5 Report of Dr Basil James dated 20 December 2007 at p7

6 Report of Dr Joan Lawrence dated 20 November 2007 at paragraph 16.5

> satisfaction and status through his employment. He has been able to maintain amicable relationships, compliance and avoidance of difficulties with staff and prisoners alike. His needs are met and he appears resigned, if not determined, not to disturb the status quo."

[24] Dr Lawrence continued;

> "…release into the community with conditions of supervision do appear threatening and quite intimidating to him. He would become increasingly anxious and his current satisfactory adjustment to his situation would be significantly destabilised. Release, I believe, with conditions, is likely to lead to a high probability that he will break conditions, possibility through alcohol abuse or even some form of sexual re-offending."

[25] In her evidence at the hearing, Dr Lawrence stated that, she considered that Mr Beattie was a high risk of re-offending and that he himself desires continuing detention. Dr Lawrence also stated that any conditions imposed would be a challenge for him as he has adapted to a life in prison which suits him.

The Submissions of the applicant and the respondent

[26] The applicant submits that, in the circumstances of the current case, the adequate protection of the community cannot be ensured by the making of a supervision order and a continuing detention order is required.

[27] In his submissions, Counsel for the respondent indicated that, the respondent is the subject of a warrant for his arrest issued in NSW, concerning his breach of a parole order made in that state. Were he to be released from custody in Queensland, proceedings would be commenced to extradite him to NSW, where he would serve a further period of imprisonment in the order of 18 months duration.

[28] Counsel indicated that the respondent does not oppose the making of orders:

a. affirming the decision of Helman J that, the respondent is a serious danger to the community in the absence of a division 3 order; and

b. that he continue to be subject to the continuing detention order.

The Section 13(4) matters

[29] In relation to the matters which I am required to take into account, it is clear that I have considered the reports, which have been prepared by the psychiatrists as required by s13(4)(a). In relation to s 13 (4) (b) and (c), I am satisfied that the clear pattern of offending behaviour, points to there being little in the way of a reduction in the nature or scope of offending. Indeed, the risk of re-offending seems to have increased. I am not satisfied that, the "propensity" to commit further offences would be adequately dealt with by a supervision order. I consider that the concerns enumerated by Helman J and the Court of Appeal in relation to Mr Beattie's ability to conform to any supervision order, continue to operate. I do not consider that Mr Beattie would comply with the conditions of a supervision order.

[30] Furthermore, in relation to s 13(4) (e), which concern the efforts by the respondent to address the cause or causes of his offending behaviour, including participation in rehabilitation programs, it is abundantly clear that Mr Beattie has consistently

declined to participate in a Sexual Offender Treatment Program. As Dr Lawrence notes, Mr Beattie wishes to avoid anxiety and challenge that would be associated with participation in such a program, as it would require self reflection, undoubted discomfort and confrontation within himself, as to the social unacceptability of his behaviour.

[31] In relation to s 13(4)(f), whilst Mr Beattie has attended a "transitions" course, completed in June 2007, he has not participated in any other sexual offender treatment program.

[32] In relation to s13(4)(g), which requires consideration of the respondent's antecedents and criminal history, the respondent's sexual offending commenced in 1978 and he has a lengthy criminal history of sexual offences against boys.

[33] The paramount consideration is the need to ensure adequate protection of the community.

[34] I consider that, Mr Beattie poses too great a risk of continuing to commit serious sexual offences against pubescent and pre pubescent boys and I do not consider that the risk could be adequately addressed by any supervision order, given his low motivation to comply. In particular, I am concerned that, given Mr Beattie's stated desire is to remain in prison I consider it is highly likely that he would break any conditions imposed, by sexually re-offending.

[35] Accordingly, I am satisfied that, the respondent is a serious danger to the community in the absence of an order under Division 3 of Part 2 of the Act and that there is an unacceptable risk, to a high degree of probability, that the respondent would commit an offence of a sexual nature against children, if he is released from custody.

Orders

[36] The decision of Helman J made on 26 October 2006 is affirmed.

[37] The respondent be subject to a continuing detention order.

[38] I will invite submissions as to the form of the order.