

# SUPREME COURT OF QUEENSLAND

CITATION: *A-G for the State of Queensland v Currie* [2009] QSC 112

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
**Applicant**  
**v**  
**ASHLEY CURRIE**  
**Respondent**

FILE NO/S: No 12305 of 2008

DIVISION: Trial Division

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

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 5 May 2009

DELIVERED AT: Brisbane

HEARING DATE: 5 May 2009

JUDGE: Byrne SJA

ORDER: **That pursuant to s 13(5)(b) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* the respondent be subject to supervised release in accordance with the initialled draft.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – MISCELLANEOUS MATTERS – SEXUAL OFFENDERS – *Dangerous Prisoners (Sexual Offenders) Act 2003* – where respondent serving a period of imprisonment for rape – where application made under s13 *Dangerous Prisoners (Sexual Offenders) Act 2003* for continuing detention order – whether the respondent is a serious danger to the community – whether adequate community protection afforded by supervision order – whether conditions of supervision order appropriate.

ss 11, 13(2), 13(4)(a) – (j) *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld)

COUNSEL: Mr B Mumford for applicant  
Mr T A Ryan for respondent

SOLICITORS: Crown Law for applicant  
Legal Aid Queensland for respondent

- [1] This is an application by the Honourable the Attorney-General for an order pursuant to Division 3 of Part 1 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”) that the respondent be detained in custody for an indefinite term for control care or treatment, or else that he be released from custody subject to requirements stated in a supervision order. Such an order, whether for continuing detention or for supervision, may only be made if the Court is satisfied that the respondent is a serious danger to the community in the absence of a division 3 order.
- [2] By section 13(2) of the Act, 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 from custody or released from custody without a supervision order being made.
- [3] The making out of the ground for a continuing detention order or a supervision order depends upon the Court’s being satisfied, by acceptable cogent evidence, and to a high degree of probability, that the evidence is of sufficient weight to justify the decision, applying the factors listed in s13(4)(a) – (j).
- [4] As it happens, the respondent accepts that the evidence does establish, to the requisite degree of probability, that he is a “serious danger to the community” in the absence of a supervision order. There is an ample foundation in the evidence for that concession.
- [5] There are reports of psychiatrists. I intend no disrespect to their comprehensive and thoroughly considered assessments of the respondent and what the future likely holds for him in mentioning the essence of their conclusions rather than dwelling at length upon the detail of their reports.
- [6] Professor Nurcombe describes the circumstances surrounding the offending which has led to the respondent's incarceration for his adult life. He had consumed a large amount of beer, some rum and he smoked some cannabis. On the way home from the hotel, he felt bored. He decided to break and enter a house and did that. He knew the family whose home it was and a 28-year-old intellectually retarded woman who lived there, who became his victim. He also knew that she was small and limited intellectually. He climbed into the house, entered her bedroom, turned on her light, asked her for a cigarette, forced her to take off her clothes, disrobed himself, pushed her onto the bed, raped her vaginally and anally, and forced her to perform fellatio on him, ejaculating in her mouth. Seeing police lights outside the house, he made his escape through the bedroom window.
- [7] The respondent had a substantial criminal history of offences of dishonesty and other antisocial activities before this offending took place. And on 5 February 1993, he had committed an aggravated assault on a female.
- [8] In July 1996, aged 20, he pled guilty to the offence I have described and related offences of house breaking, burglary and stealing. He was sentenced to 12 years' imprisonment, and to a cumulative term of 12 months' imprisonment for the breach

of probation that had been imposed in respect of other offences, and for some motor vehicle offences. His full-time release date is imminent.

- [9] Professor Nurcombe describes the institutional behaviour, which has not been satisfactory, including some aberrant sexual indiscretions. A number of programs have been undertaken by the respondent, including, sometimes more than once: Anger Management, Stress Management, Substance Abuse Education Program, Cognitive Skills, Ending Offending, Literacy and Numeracy, Substance Abuse Preventing and Managing Relapse, and a Sex Offender Treatment Program. His participation in the programs appears to have been of some benefit.
- [10] Professor Nurcombe considers that, if historical factors alone were taken into account, the risk of sexual violent reoffending is high. On the other hand, he thinks that, if the respondent can avoid alcohol and illicit drugs, eschew antisocial companions, gain employment and develop a satisfying intimate relationship, the risk would be moderate. He finds that there have been authentic changes in the respondent's personality as a result of treatment and self-reflection but is concerned that the changes might not be durable in the face of the stresses of living outside the prison.
- [11] Professor Nurcombe was concerned at the suggestion the respondent made to him that he might drink in a controlled fashion with friends. There is little doubt that, if he reverts to heavy alcohol consumption or uses illicit drugs or inhalants, he is at high risk of reoffending. If he does reoffend, in Professor Nurcombe's assessment, the most likely scenario is that he will once again abuse alcohol and substances and become involved in breaking and entering and other offences of dishonesty or motor vehicle offences. He might enter a house and rape a defenceless woman, although it is unlikely that the sexual violence would escalate to a life-threatening level. Warning signs that might signal that the risk is increasing would be reversion to drinking and drug use, especially if in the company of antisocial companions.
- [12] If released subject to a supervision order, the respondent would live for at least three months in a precinct at Wacol which is under the supervision of Queensland Corrective Services. That accommodation is designed to provide short-term contingency housing for persons released subject to supervision orders.
- [13] There, as the affidavit of Ms Lynas, the director of the High Risk Offender Management Unit within Probation and Parole, Queensland Corrective Services explains, "[w]hilst some initial support is offered on a case by case basis, offenders are expected to live independently and are responsible for their own reintegration activities in accordance with the conditions of their order ... The precinct does not provide an intensive personal support program and does not include such activities as escorted leave." But there will be means available within the precinct for the regular testing of the respondent's urine and blood, to see to it that he complies with conditions of any supervision order that might be made to abstain from the use of illicit drugs or the consumption of alcohol, and to take his medication.
- [14] Dr Sundin believes that, if the respondent were released into the community without a supervision order, his risk of reoffending would be very high. She considers that a supervision order, however, might be made, and that it should require him to abstain from alcohol, illicit substances and use of inhalants. Other conditions which she thinks appropriate include attending a psychiatrist and participating in treatment and

electric monitoring, which would form part of a process of control while he is held in the precinct that includes a curfew.

- [15] Professor James, Professor Nurcombe and Dr Sundin all had the opportunity to speak to the respondent this morning, together.
- [16] Dr Sundin, who had seen the respondent shortly after he began to take a new anti-psychotic medication earlier this year, regarded him now as being more settled and attentive. She detected no evidence of psychosis, although the respondent did appear still to be minimising the sexual component of his offending. She saw a general improvement in mental status. She expressed the view that he must remain abstinent from alcohol, and that any supervision order ought to subsist for 10 years.
- [17] Professor Nurcombe saw the respondent a few days after Dr Sundin had earlier this year. By that time his new medication was reducing the risk of inappropriate and disinhibited behaviour, and otherwise proving effective to control mental state. Professor Nurcombe, who did not detect any substantial difference today from his assessment in January, also considers that a supervision order should be for 10 years, and that with proper management of the psychiatric disorder, which now seems possible through the new medication, the respondent's capacity to comply with such a supervision order is increased.
- [18] Professor James had provided a report in 2008. He saw quite significant improvements in the respondent today. There was no evidence of active psychotic process. He, too, considered that there ought to be a supervision order for 10 years. He is optimistic that, if the respondent takes his medication daily and avoids alcohol and illicit substances, he might yet become a worthwhile member of the community.
- [19] There are two major sources of risk. One is that the respondent not take the medication which has so far proved effective in controlling his mental state. The other is that he reverts to the use of alcohol or ingests illicit drugs or inhales inappropriate substances.
- [20] As the respondent is to be held in the Wacol precinct for at least three months, he can, over that time, be regularly assessed for compliance with requirements to take his medication and to avoid alcohol and illicit substances.
- [21] I accept Professor Nurcombe's opinion that the imminence of a relevant risk ought to be detected before it eventuates.
- [22] The processes for testing the urine and blood of the respondent may mean that the analysis is not available for a week or so. That delay is not enough to justify the continuing detention of someone who, if he takes his medication and exercises the self-discipline needed to stay away from alcohol and drugs, could become a worthwhile member of the community.
- [23] No supervision order can ever ensure completely that there is no relevant risk. But in the circumstances the risk can be reduced to acceptable limits by a supervision order of the kind which has been considered by the psychiatrists and discussed in argument.
- [24] It has not been demonstrated that a continuing detention order is warranted.

- [25] The appropriate way of dealing with the risk that the respondent poses is by the imposition of a supervision order.
- [26] During the course of the day, the terms of that order have been refined. I will leave it now to the parties to attend to finalising the detail.
- [27] The order should be, as the psychiatrists propose, for 10 years.