SUPREME COURT OF QUEENSLAND

CITATION:	*A-G (Qld) v Lawrence* [2009] QCA 136
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant/respondent) **v** **MARK RICHARD LAWRENCE** (respondent/appellant)
FILE NO:	Appeal No 10696 of 2008 SC No 7468 of 2007
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	22 May 2009
DELIVERED AT:	Brisbane
HEARING DATE:	24 April 2009
JUDGES:	Muir and Chesterman JJA and Wilson J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**The appeal is dismissed**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – where the appellant was subject to a continuing detention order pursuant to s 13(5) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the primary judge made a continuing detention order – whether the court had the power to make such an order – whether such an order was unconstitutional APPEAL AND NEW TRIAL – APPEAL - GENERAL PRINCIPLES – INTERFERENCE WITH DISCRETION OF COURT BELOW – IN GENERAL – JUDGE MISTAKEN OR MISLED – where appellant argued that supervision order would suffice – whether primary judge appreciated the seriousness of the order – whether primary judge reversed the onus of proof as required by s 13(7) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 3, s 13, s 43(2)(d) *Attorney-General v Francis* [2007] 1 Qd R 396; [2006] QCA 324, followed

Buckley v The Queen (2006) 80 ALJR 605; [2006] HCA 7, considered
Chester v The Queen (1988) 165 CLR 611; [1988] HCA 62, considered
Fardon v Attorney-General (Qld) (2004) 223 CLR 575; [2004] HCA 46, followed

COUNSEL: P E Smith for the appellant
J B Rolls for the respondent

SOLICITORS: Volk Lawyers for the appellant
Crown Law for the respondent

[1] **MUIR JA**: I agree with the reasons of Chesterman JA and with the order he proposes save that I would prefer not to address questions of onus of proof.

[2] Paragraphs [37] to [43], in particular, of Chesterman JA's reasons show that the outcome of the appeal turns on no nice questions of onus of proof.

[3] **CHESTERMAN JA**: On 3 October 2008 Fryberg J ordered that the appellant, Mark Richard Lawrence, be detained in custody for an indefinite term for control. The order was made on the application of the Attorney-General, pursuant to s 13(5)(a) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ("the Act").

[4] The appellant asks that the order be set aside and that instead he be released from custody subject to a supervision order, pursuant to s 13(5)(b) of the Act. The appellant did not suggest what requirements are appropriate for his release. He seeks an order pursuant to s 43(2)(d) of the Act that that inquiry be remitted to a judge of the Trial Division for determination.

[5] The appellant is 48 years of age. He has been continuously in gaol since December 1983, more than 25 years.

[6] His criminal history begins with an appearance in the Ipswich Children's Court on 9 May 1978 when he was charged with the aggravated assault on a male child under the age of 14 on 4 May 1978. The appellant was admonished and discharged. He next appeared on 2 November 1978 in the Ipswich Magistrates Court charged with another aggravated assault of a male child under the age of 14. He was sentenced to two years' probation. (The date given for the offence was 20 December 1978 which must be incorrect given the date of his appearance.) He appeared again in the Ipswich Magistrates Court on 23 February 1979, this time charged with the aggravated assault of a female child under the age of 17, the day before, 22 February. He was sentenced to three years' probation and ordered to undergo any psychiatric treatment which the probation officer might direct including treatment as an inmate of a psychiatric hospital. On 23 December 1980 he appeared for a third time in the Ipswich Magistrates Court. The charge this time was aggravated assault on a male child under the age of 14 on 21 December. He was fined $75.

[7] On 3 September 1981 he appeared before the Brisbane District Court charged with conspiracy to commit a crime and assault with intent to steal with the threatened use of violence whilst armed and in company. The offences were committed on 11 April 1981. At the time the appellant was an involuntary patient in Wolston Park

Hospital from which he absconded with three other patients. They caught a taxi and decided to rob the driver. One of them held a knife to the driver's throat. He was not harmed and refused to give up his takings. The appellant was sentenced to four months' imprisonment and required to undergo a further three years' probation.

[8] Having served the imprisonment he was returned to Wolston Park Hospital where, on 26 December 1983, he and another patient killed a fellow patient, a woman. On 7 February 1985 the appellant was sentenced to 15 years' imprisonment for manslaughter. That verdict rather than one for murder was returned on the basis of diminished responsibility. The appellant had compelling sexual fantasies about rape and murder. The young woman was killed as an enactment of the fantasies.

[9] In August 1991 the appellant escaped from custody. He had been allowed to leave the gaol to attend a tennis competition and did not return. He was found after a few days and on 3 September 1991 sentenced to one year's imprisonment, cumulative upon the 15 years, for escaping lawful custody.

[10] On 4 April 2002 in the Brisbane District Court he was convicted of rape and sexual assault with a circumstance of aggravation on 14 October 1999. It was a sodomitic attack on a fellow prisoner. He was sentenced to seven years' imprisonment for the rape and three years for the assault, to be served concurrently. An earlier conviction had been quashed and the appellant was retried in 2002. By the time he was convicted and sentenced the second time his previous sentences had expired. He was, however, kept in gaol and remanded in custody. That time, from 7 February 2001 until 4 April 2002, was declared to be time served under the sentence.

[11] The term of imprisonment imposed for the manslaughter expired on 6 February 2000. The year's imprisonment for escaping expired 12 months later. The seven years imposed for rape expired on 7 February 2008. The appellant's confinement since then has been pursuant to the Act.

[12] Section 13 of the Act provides:

> "**13 Division 3 orders**
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> (1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a ***serious danger to the community***).
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> (2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence –
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> (a) if the prisoner is released from custody; or
> (b) if the prisoner is released from custody without a supervision order being made.
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> (3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied –
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> (a) by acceptable, cogent evidence; and
> (b) to a high degree of probability;

that the evidence is of sufficient weight to justify the decision.

(4) ...

(5) If the court is satisfied as required under subsection (1), the court may order –

(a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (***continuing detention order***); or

(b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (***supervision order***).

(6) In deciding whether to make an order under subsection (5)(a) or (b), the paramount consideration is to be the need to ensure adequate protection of the community.

(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1)."

[13] The trial judge had evidence from four eminent psychiatrists, Professor Nurcombe, Professor James, Dr Beech, all of whom examined the appellant at the request of the Attorney-General, and Dr Morris who was retained by Legal Aid Queensland on behalf of the appellant. All psychiatrists diagnosed the appellant as suffering from a paraphilia, sexual sadism, and an anti-social personality disorder. Dr Morris thought that as well the appellant had borderline personality traits. He assessed the risk that the appellant would re-offend and commit further offences of a sexual nature at the high end of the moderate range. The other psychiatrists all thought the risk was high. The trial judge found:

"[34] There is abundant evidence to support the proposition that Mr Lawrence is a serious danger to the community if released without a Division 3 order being made, and there is no evidence to the contrary. The psychiatric evidence of high risk of his committing another serious sexual offence if released into the community unconditionally is overwhelming. Having regard to his antisocial personality disorder and sexual sadism, and his past offending, I am satisfied that risk is unacceptable. I find that he is such a danger."

[14] The appellant does not challenge this finding nor does he contend that the judge should not have made an order under s 13(5). The appellant's challenge was to the order that he be detained in custody for an indefinite term for control. He contends that he should be released on a supervision order. Four arguments were advanced. Three can be dealt with briefly.

[15] The first is that Fryberg J acted without legal authority in ordering the appellant's detention for control. The submission is that an order for continuing detention may only be made where the prisoner is in need of care or treatment to effect his

rehabilitation. The appellant was not detained for that purpose. He was detained only, and specifically, for control.

[16] The trial judge found:

> "[52] Only Dr James thought that continued detention of Mr Lawrence with treatment in prison would reduce the risk which he poses to the community. I reject that view. I prefer the evidence in particular of Dr Beech. I am satisfied that continued detention of Mr Lawrence is antithetical to the creation of a set of requirements for his release in circumstances where the risk to the community would be acceptable. If he is to continue to be detained it must be for the purpose of control. From the therapeutic point of view the risk to the community cannot be reduced by his continued detention. Indeed such detention places at risk the gains which have been made until now.
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> …
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> [72] There is no evidence of any need to detain Mr Lawrence for care or treatment. The order of the court should be that he be detained in custody for an indefinite term for control."

[17] The appellant points to s 3 of the Act which sets out its objects. They are:

> "(a) to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community; and
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> (b) to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation."

[18] From this foundation the argument is built that the Court may only make an order for continued detention if it is to facilitate the rehabilitation of the prisoner. Section 3 cannot bear the weight put upon it. By its own terms it shows that a prisoner may be detained as a means of protecting the public. Rehabilitation is a separate objective. It is clear from the terms of s 13(5)(a) that a prisoner who is a serious danger to the community, as defined by the Act, may be detained indefinitely for control, care or treatment. The words are clearly to be understood disjunctively and detention may be ordered in an appropriate case for the control of a prisoner, or his care, or his treatment.

[19] The matter is put beyond doubt by the judgment of this Court in *Attorney-General v Francis* [2007] 1 Qd R 396. The Court (Keane and Holmes JJA and Dutney J) said (401):

> "[28] Section 13(5)(a), in speaking of a continuing detention order as an order 'for control, care or treatment', identifies the three purposes for which an order may be made: control of the dangerous prisoner, care for the dangerous prisoner, or treatment of the dangerous prisoner. These purposes are identified as alternatives. The phrase 'control, care or treatment' must, as a matter of ordinary language, be read disjunctively.

> [29] This disjunctive reading suggests that there may be cases where the basis for an order may be, either:
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> - the control of an incorrigible offender, or
> - the care of an offender whose propensities endanger the offender as well as others, or
> - the treatment of an offender with a view to rehabilitation.
>
> It will often be the case that more than one of these considerations will inform the making of an order."

[20] The second argument is that the conferral of power on the Court to make a continuing detention order for the purposes of control, rather than care or treatment is unconstitutional. The point is precluded against the appellant by *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575 which held the Act to be constitutionally valid at least insofar as the powers conferred on the Court are exercised for the purposes of preventing a prisoner from committing further offences, and not as a means of further punishing him.

[21] An associated argument was that the trial judge failed to understand the seriousness of the order he made, and its potential consequences for the appellant, and for that reason the order should be set aside. The failure in comprehension was said to be apparent from his Honour's omission "to refer to High Court authority", the cases in question being *Buckley v The Queen* (2006) 80 ALJR 605 and *Chester v The Queen* (1988) 165 CLR 611. Neither of those cases was concerned with the Act. *Buckley* was a successful appeal against the imposition of an indefinite sentence pursuant to s 163 of the *Penalties and Sentences Act* 1992. Buckley committed three grossly violent sexual offences and was given a nominal sentence of 22 years imprisonment as part of the process of imposing the indefinite sentence. In allowing the appeal the High Court referred to the exceptional nature of an indefinite sentence and pointed out that:

> "A proper exercise of the power involves an understanding of why it is exceptional, and careful attention to the considerations that call for its exercise ... in considering the risk of serious harm to members of the community if an indefinite sentence were not imposed, a sentencing judge is required to consider the protective effect of the finite sentence that would otherwise be imposed.
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> ...
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> Protecting the community may be one of the purposes of the imposition of a lengthy custodial sentence. Such custodial sentences remain the norm for the punishment of offenders convicted of serious offences of violence. Indefinite sentences are not the norm. ... there may be certain cases where the extraordinary step of imposing an indefinite sentence may be justified ... . Where the appropriate finite term ... is 22 years, then it is necessary to consider whether the protective purpose in contemplation could reasonably be met by such a term. If it were otherwise, the consequence would be the banalisation of indefinite imprisonment." (612-613)

[22] Chester was a habitual thief who was sentenced to four years' imprisonment for stealing a car and ordered to be detained during the Governor's pleasure upon the

expiration of the term as a means of protecting the public from his further depredations. The High Court held the order for indefinite detention was so exceptional as not to be made use of in cases not involving the risk of violence to members of the public. The Court said (618):

> "The fundamental principle of proportionality does not permit the increase of a sentence of imprisonment beyond what is proportional to the crime merely for the purpose of extending the protection of society from the recidivism of the offender ... the power to direct or sentence to detention contained in s 662 [of the Western Australian Criminal Code] should be confined to very exceptional cases where the exercise of the power is demonstrably necessary to protect society from physical harm. The extension of a sentence of imprisonment which would violate the principle of proportionality can scarcely be justified on the ground that it is necessary to protect society from crime which is serious but non-violent."

[23] It will be seen at once that the cases to which it is said the trial judge should have referred are concerned with circumstances in which it is appropriate to order indefinite imprisonment as a means of protecting the public from re-offending as well as to punish the offender. The High Court has emphasised the extraordinary and exceptional nature of such a penalty and its inconsistency with the fundamental principle of punishment, proportionality. Apart from the general proposition that orders for continuing detention, or indeed for supervision, should not be lightly made but only in cases where the restriction imposed on a prisoner who has served his full term is justified in the public interest, the cases have no relevance. There is no particular reason why the trial judge should have referred to them.

[24] There was a hint in the appellant's oral submissions that the trial judge had not appreciated the seriousness of the order he was asked to make, and did make, because his Honour did not refer to *Buckley*, or *Chester*, or cases to the like effect. The submission cannot be accepted. It is inconceivable that the trial judge did not fully understand the nature of the jurisdiction he was asked to exercise and the seriousness of the consequences for the appellant of the order he did make. The appellant conceded that he was a serious danger to the community and that the Court, acting responsibly, had to make one of the orders specified in s 13(5). The whole debate at trial was whether a supervision order would provide sufficient protection to the public against the risk which the appellant posed to it. Fryberg J considered the matter very carefully indeed and at greater length than is the norm in applications under the Act. His Honour thoroughly investigated whether an order other than continued detention might achieve the degree of protection for the public that the Act requires. The question was agitated at such length because the judge was aware of the very serious consequences a detention order would have for the appellant.

[25] The appellant's last point is that the trial judge "reversed the onus of proof"; and required the appellant to prove that the community would be adequately protected if he were released on a supervision order. The Attorney-General, the submission goes, had the onus of proving that the community could only be adequately protected by a continuing detention order, and had not done so.

[26] The trial judge said:

> "[36] ... the starting position ought to be that a supervision order ought to be made in preference to a continuing detention order unless there is reason to do otherwise. However I do not think that this is the same as saying that the Attorney-General has the onus of proving that a supervision order would still result in the prisoner being a serious danger to the community in the sense of an unacceptable risk that he would commit a serious sexual offence. I reject Mr Lawrence's submission to that affect. Nor is it the same as saying that the Attorney-General has the onus of proving that any supervision order is unreasonable, ie that it is impossible to devise an practicable supervision order, if he is to obtain a continuing detention order. I reject Mr Lawrence's submission to that effect. In my judgment s 13(5) confers a discretion to be exercised having regard to all of the evidence. In that context it is unhelpful to talk in terms of onus of proof or standard of proof."

[27] The authority for the first proposition, that a supervision order is to be preferred to a continuing detention order, is *Francis*.

[28] Section 13(7) explicitly places on the Attorney-General the onus of proving that a prisoner is a serious danger to the community, ie that there is an unacceptable risk that he will commit a serious sexual offence if released from custody or released without a supervision order. As the trial judge pointed out if the Attorney discharges that onus the Court is then empowered pursuant to s 13(5) to make a continuing detention order or a supervision order or, perhaps, no order. The latter possibility comes from the use of the permissive "may order" in terms of (a) or (b). In *Fardon* Gleeson CJ thought that the Act conferred:

> "a substantial discretion as to whether an order should be made, and if so, the type of order." (592)

McHugh J thought that:

> "... if the Court finds that the Attorney-General has satisfied that standard, the Court has a discretion as to whether it should make an order under the Act and, if so, what kind of order (s 13(5))." (597)

[29] The trial judge thought that it was "an open question whether the s 13(5) discretion extends to making no order". The opinions just quoted reinforce my own, formed from the terms of s 13(5), that the Court may make no order despite being satisfied that the prisoner in question poses a serious danger to the community; though it is to be expected that it will be rare indeed for a court to make no order where the finding is made. The point does not arise in the present appeal and need not be considered further.

[30] What is in issue is whether the Attorney-General, having discharged the onus referred to in s 13(7), must persuade the Court that one or other of the orders specified in s 13(5) should be made. In my opinion he must. Such a conclusion accords with the orthodox legal convention that the party who makes an application must satisfy the court that the order sought should be made. The authors of *Cross on Evidence* Australian edition put it shortly:

> "For a fundamental requirement of any judicial system is that the person who desires the court to take action must prove the case to its satisfaction." [7060]

The authorities cited, *Dickinson v Minister of Pensions* [1953] 1 QB 228 at 232 and *Currie v Dempsey* (1967) 69 SR (NSW) 116 at 125 are civil cases but the principle is obviously of wider application.

[31] If an application is brought under the Act and the Attorney discharges the onus of proving that the prisoner in question is a serious danger to the community, the pre-condition for making an order under s 13(5) will have been satisfied. Invariably, or almost invariably, satisfaction of the pre-condition will satisfy the Court that it should make a continuing detention order or a supervision order. If the Attorney-General contends that the "starting position" should be displaced and a continuing detention order be made then, in my opinion, there is an onus on him to prove that that is the appropriate order. This necessarily involves proving that the community will not be adequately protected by a supervision order. I would respectfully disagree with the trial judge if, in the passage quoted, his Honour meant to express a different view.

[32] Importantly in this context the Court pointed out in *Francis* (405):

> "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."

[33] It follows from this undoubted proposition that in cases where the Attorney-General contends that the community will not be adequately protected by a prisoner's release on supervision the burden of proving the contention is on the Attorney. The exceptional restriction of the prisoner's liberty, after he has served the whole of whatever imprisonment was imposed for the crimes he committed, and for the protection of the public only, should not be imposed unless the inadequacy of a supervision order is demonstrated. The liberties of the subject and the wider public interest are best protected by insisting that the Attorney-General, as applicant, discharges the burden of proving that only a continuing detention order will provide adequate protection to the community. This does not, I think, mean that the Attorney-General has the onus of proving that any supervision order is unreasonable, or that it is impossible to devise a practical supervision order. It means only that the evidence put before the Court must satisfy it that a supervision order will not afford adequate protection to the public.

[34] The making of one order rather than the other obviously involves the exercise of the discretion conferred by the Act. If the Attorney-General argues for an exercise of the discretion that will keep a prisoner in gaol, it is consistent with legal orthodoxy and consonant with the seriousness of the consequences for the prisoner that the Attorney-General bear the onus of proving that the order should be made.

[35] Fryberg J did not express his determination of the application from this standpoint. His Honour did, however, consider with great thoroughness whether the evidence would permit the making of a supervision order, which he described as the "starting position" or whether a continuing detention order was necessary to protect the public adequately.

[36] In fact the trial judge approached the matter as, in my opinion, it should have been approached by reference to the burden of proof. His Honour said:

> "[53] The evidence of the psychiatrists and of psychologists ... has uniformly emphasised the need for any release into the community to be gradual and closely supervised. ... Unless it is possible to devise a set of requirements for a supervision order which ... will [enable the appellant to begin supervised re-entry into the community] Mr Lawrence cannot be released until he is much older, and possibly can never be released. The need to ensure the adequate protection of the community would prevent it. Unless an adequate order can be devised, the fact that he has undertaken all available programs for his rehabilitation and that they have had a positive effect upon him can avail him naught. Can such requirements be devised (as Mr Lawrence submits) or not (as the Attorney-General submits)?"

[37] The appellant did not challenge any of his Honour's findings of fact or submit that the findings were against the evidence or the weight of the evidence. The only argument advanced was that the burden of proof was reversed. It was said that the trial judge required the appellant to prove that the public would be protected by his release on a supervision order and that he had failed to discharge the onus. The passages relied upon are:

> "[66] ... It is necessary that I be satisfied that an appropriate regime can be established for Mr Lawrence. From the evidence which was given ... I suspect that a suitable regime could be put in place at a not unreasonable cost, but I am not prepared so to find. On the evidence there are too many variables and unknowns.
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> …
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> [69] Mr Lawrence presents an extreme and difficult case. The risk that he will reoffend if not adequately supervised and controlled on his release from prison is high. The evidence before me is insufficiently detailed and precise to permit the confident formulation of requirements for a supervision order, particularly requirements relating to supervision, accommodation and employment. In the absence of such requirements a supervision order would not ensure adequate protection of the community."

[38] The passage quoted does not indicate that the trial judge placed any onus on the appellant. His Honour expressly analysed the evidence to see whether the "starting position" could remain or whether the evidence established with sufficient cogency that only a continuing detention order would adequately protect the public. On

whom lay the burden of proof did not enter into his Honour's assessment of the evidence. The clear thrust of the judgment is that there was a high risk that the appellant would commit a violent sexual offence if released unsupervised. There was then an investigation of whether supervision would reduce the risk to acceptable limits. The evidence did not allow that finding to be made.

[39] The logical process was impeccable. It follows precisely the course it would have if the judge had thought that the Attorney bore the onus of proving that a supervision order would not afford adequate protection. That was the only question to be determined. Unless the answer was favourable to the appellant, whoever bore the onus of proof, the order made was the correct one.

[40] A recitation of some further findings of fact indicate the correctness of his Honour's assessment. The findings, as I mentioned, were not contested.

[41] His Honour said:

> "[54] ... any supervision order must deal with three related and complex questions: how would Mr Lawrence be supervised; how and where would he be accommodated; and how and where would he be employed. Supervision must deal not only with containment and control but also with treatment and medication. Accommodation must deal not only with physical housing but also with the relationship between that housing and the necessities of daily life. It must be compatible with the security requirements yet not unreasonable to either Mr Lawrence or the State in terms of its cost and effect. If it is to be shared accommodation risks to others living in it must be assessed. Employment must be concerned not only with how Mr Lawrence gets money to live, but also with how he occupies his time.
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> [55] I am satisfied that for a period which might be as short as six months but which might extend to two years or more, any supervision order must provide for close physical supervision ... by corrective services officers. During this period Mr Lawrence must be confined to his place of residence and mechanisms must exist to ensure that he does not leave it without permission of his supervising officer. When he has such permission he must be escorted by a corrective services officer and a report of his behaviour and activities must be created. He must undertake the maintenance program and individual therapy described ... . His therapist should be consulted".

[42] His Honour considered the evidence relating to each of these problems. He noted that the appellant would need to be supervised by an escort whenever he left his accommodation in which he would have to be, in effect, confined. He referred to Dr James' testimony that it would be nigh on impossible to put sufficient restrictions on the appellant to ensure that he did not avoid his escort/supervisor and go alone into the community. The judge noted other difficulties relating to supervision:

> "How Mr Lawrence might go about searching for work when subjected to a supervisory regime of the type ... described when required to be escorted by a corrective services officer whenever away from his accommodation was not addressed. ... Nor was there any evidence of how Mr Lawrence would attend the employment whilst subject to supervision, or of the impact such supervision might have on the likelihood of his getting work. No attention was paid to how Mr Lawrence might occupy his days until he obtained employment. Hobbies, visits to psychiatrists ... and attendance at sporting events could hardly keep him fully occupied."

[43] The appellant would need intense supervision amounting to constant escort if released from custody. His accommodation would have to be such that he was confined in it whenever he was not in the presence of the escort. The impracticability of the arrangement needs no elaboration. The finding that a continuing detention order was necessary for adequate public protection did not come from any mistake as to the burden of proof. The appellant did not attempt to show it to be wrong on any other basis.

[44] Despite the seriousness of the consequences for the appellant there is no substance in his complaints and the appeal must be dismissed.

[45] **MARGARET WILSON J**: The appeal should be dismissed for the reasons expressed by Chesterman JA.