[2009] QSC 146

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MULLINS J

No 11102 of 2006

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND	Applicant
and	
DESMOND GEORGE BUCKBY	Respondent

BRISBANE

..DATE 09/06/2009

ORDER

HER HONOUR: This is an application for the annual review of a continuing detention order made against the respondent by her Honour White J on 7 December 2007.

The respondent is 61 years old. He is a Vietnam veteran. He has no family or community support. He participated in the hearing of this application by telephone from the Townsville Correctional Centre. He declined to have any legal assistance. When the hearing commenced, I gave him the opportunity of seeking legal assistance. He did not wish to take that opportunity.

The Crown has previously provided the respondent with the psychiatric reports from Professor James and Dr Harden that were filed in this Court on 28 April 2009. Both Dr Harden and Professor James were present and gave short supplementary evidence. The respondent did not place any evidence before the Court. He did make many statements during the course of the hearing. These statements echoed the observations that had been made of him by Professor James and Dr Harden in their reports. I will refer to those observations after giving a brief summary of the respondent's criminal history.

In Queensland, he was convicted in 1990 of unlawful and indecent dealing with a child under the age of 12 years and sentenced to 12 months imprisonment. In 1995, he was dealt with in the District Court for a series of sexual offences, the most serious of which was carnal knowledge with circumstances of aggravation that was committed in the latter

part of 1993. He was sentenced to 10 years imprisonment for that offence and for shorter periods of imprisonment for the concurrent offences. His appeal against the convictions was dismissed in 1996. The 10 year sentence for the sodomy was substituted with one of seven years.

Those offences which involved victims ranging from nine years of age to 13 years of age occurred as a result of the respondent developing a relationship of trust and spending considerable time with the parents of the victims. In relation to the sodomy conviction, there was an administering of a sleeping tablet in a drink prior to the commission of the offence.

The respondent was released from prison. He was charged with offences that were committed in May 2003. These were the offences for which he was dealt with in the District Court in July 2004. The victims were 11 years and eight years old. The respondent had befriended their parents whilst staying at a caravan park. The victims obtained permission from their parents to spend the night in the respondent's caravan.

He was convicted of one charge of indecent treatment of children under the age of 16 years with a circumstance of aggravation. He gave the children tablets telling them that they were lollies. The blood tests of the victims showed they had low levels of Temazepam. He was therefore convicted of one count of attempt to administer drug for purpose of a

sexual act and one count of administer drug for the purpose of sexual act. Both victims reported that they fell asleep and one reported that she woke up during the night and felt a finger on her vagina. This resulted in the charge of indecent treatment of children under the age of 16 years with circumstance of aggravation. The respondent pleaded guilty to those charges.

It was at the conclusion of the periods of imprisonment for those offences that the respondent first came before the Court on an application by the Attorney-General under the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act). A supervision order was made in this Court that resulted in the respondent's release from custody on 14 May 2007. One of the conditions of that supervision order was that the respondent not have any supervised or unsupervised contact with children under 16 years of age except with prior written approval of an authorised corrective services officer.

The respondent was living in a block of units. Some children moved in nearby. The respondent befriended the father of the five children. The corrective services officer who was supervising the respondent gave him a warning about fraternising with the children. A surprise visit took place on 3 October 2007. The respondent was sitting on the couch in his home with five children with the youngest aged six wearing a bikini. He was then taken into custody.

What was of concern about his conduct was that it had the

hallmarks of the grooming of the children that was present in the offending conduct for which he had been dealt with in 1995 and 2004. He was breached for the lack of compliance with the supervision order. He was brought before the Court to show cause as to why the supervision order should continue. That hearing was before her Honour White J. Her Honour had before her psychiatric reports that were obtained after the respondent's return to custody. They were the reports from Professor James and Professor Nurcombe.

On the basis of those reports and the other evidence before her Honour, her Honour concluded that the respondent had not discharged the onus imposed upon him by section 22(2) of the Act and her Honour rescinded the supervision order that had been made by the Court in April 2007 and ordered that the respondent be detained in custody under a continuing detention order.

Since the respondent has been in custody, he has been dealt with for the breach of the supervision order. That was before the Magistrates Court in Townsville in January 2008. He was sentenced to imprisonment for a term of 10 months for the offence of without reasonable excuse contravene requirement of a supervision order. With taking of the presentence custody into account, he was given a fixed parole release date of 29 April 2008. That no doubt explains why the application for the annual review was filed on 28 April 2009.

Whilst in custody, under the continuing detention order, the

respondent has undergone the Getting Started Preparatory Program. This is a program designed for preparing a person for a sexual offending treatment program. The difficulty that the respondent has had in undertaking any programs or treatment whilst in prison, both for the sentences he has served in respect of the offences for which he has been convicted and whilst being on remand and under the continuing detention order, is that he strongly denies the offending conduct.

Although he pleaded guilty to most of the offences of which he has been convicted for sexual misbehaviour, he is firm in his denials that he in fact committed sexual offences. It is this denial of offending that has caused the psychiatric opinion to be against Mr Buckby in evaluating his risk of re-offending.

During the many statements that the respondent made during the hearing today, he maintained his denial of sexual offending. Dr Harden referred to it as "minimisations" and "rationalisations". They are good descriptions of the approach of Mr Buckby to his offending. He minimises what he has done to child victims by comparing his touching to what rapists do to children or what other offenders do by way of torturing victims.

He takes issue with the description of his offending as sexual because he emphasises that what he does is take photographs or looks. The statements that he made during the course of the hearing today merely confirmed the opinions that have been expressed by Dr Harden and Dr James in their reports that were

prepared for the hearing today.

Dr Harden interviewed the respondent in Townsville on 7 November 2008 for two hours 15 minutes. By that stage, the respondent had done the Getting Started Preparatory Program. He refused to do the High Intensity Sexual Offending Program.

When Dr Harden gave evidence today, he was able to supplement his written report because subsequent to doing that report, he has seen the results of the preparatory program. He stated that he was most impressed with the extent to which the facilitators of that program had been able to engage with the respondent and get some limited insight from him into his offending. The fact that there was some benefit to the respondent in his undertaking the Getting Started Preparatory Program is also reflected by the recommendation of the facilitators of the Getting Started Preparatory Program that Mr Buckby participate in the High Intensity Sexual Offending Program to build on the limited gains that he had made.

Unfortunately, Mr Buckby made it absolutely clear in the course of the hearing today that he has no intention of undertaking the High Intensity Sexual Offending Program. It is a shame that Mr Buckby will not endeavour to do something further to address his risk of re-offending. Dr Harden, in his report, emphasised the lack of insight that the respondent displayed to Dr Harden about the respondent's own psychological functioning with regard to his prior sexual offending or even his functioning at the time that he was

interviewed. The level of denial was such that Dr Harden could not explore the understanding that the respondent had of himself further.

The application by Dr harden of the formal assessment instruments resulted in the respondent being in the highest risk category in terms of recidivism rates. Dr Harden recommended that the respondent remain in detention. He also recommended that he complete the High Intensity Sexual Offending Program. Dr Harden did not change his conclusion in the course of giving evidence today, but I will add that there was nothing that Mr Buckby said that gave any optimism for a change in Opinion, in my view, in the short-term.

Professor James interviewed the respondent on 28 October 2008. Professor James had the advantage of having seen the respondent on previous occasions. He did note that the respondent was more amicable when he saw him on 28 October 2008, but described the respondent's lack of insight as leading Professor James to "considerable therapeutic pessimism". Professor James considers the respondent to be incapable of learning either from experience or as a result of education.

If he were released, then Professor James considers it is highly likely that his offending behaviour would be similar to that which occurred or which was in the process of occurring when he was grooming children while on the supervision order in September and October 2007.

During the hearing today Professor James made the observation that although the respondent complains that he cannot get through to us, referring to the Court, the lawyers and the psychiatrists, Professor James said that the psychiatrists and the authorities have great difficulty in getting through to the respondent. Professor considers that what any treatment program for the respondent has to start with is building up a working relationship with the respondent so that meaningful counselling or therapy can then be engaged in with the respondent. Professor James considers that any such therapeutic or counselling program has to be undertaken whilst the respondent continues in custody.

I raised for consideration of the Corrective Services Department whether, in preparing a future management plan for the respondent, some consideration might be given to an individual counselling program within the prison system as a bridge to doing the High Intensity Sexual Offending program or even, as an alternative, if that is feasible. Obviously that will depend on input from those who are experienced in dealing with sexual offenders like the respondent, who maintain such strong denials about the characterisation of their offending conduct as sexual offending.

For the purpose of this review hearing I have had the benefit of the psychiatric reports to which I have made reference from Professor James and Dr Harden and the updated material from the Corrective Services file that has been provided in the further affidavits of Mr Harrison. The evidence before me,

particularly that from Professor James and Dr Harden, is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that the respondent's high risk of sexual re-offending is an unacceptable risk under the Act.

The paramount consideration in dealing with this review application is the need to ensure adequate protection of the community. I am not satisfied the respondent's state of denial of his prior sexual offending makes him suitable for a supervision order. I am not satisfied that at this stage, in the light of the psychiatric evidence, that appropriate conditions can be formulated for a supervision order that will address the need to ensure the adequate protection of the community.

During the course of the hearing the respondent made the statement that what he wanted to do was to get away from people. Unfortunately, because of his history and his predilection for making friends with parents who have children, he would need close supervision, if released from custody. The psychiatric evidence shows that the respondent does not have the skills that enable him to understand and comply with the types of conditions that would be needed to ensure adequate protection of the community from him.

I therefore consider that the appropriate outcome of this application is to affirm the decision made by her Honour White J on 7 December 2007 that the respondent is a serious

danger to the community in the absence of an order pursuant to Division 3 of Part 2 of the Act and to order that the respondent continue to be subject to the continuing detention order made by White J on 7 December 2007.

I therefore make an order in terms of the amended draft, initialled by me and placed with the file.
