SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Fisher* [2009] QSC 169
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (Applicant) **v** **TRAVEN LEE FISHER** (Respondent)
FILE NO/S:	SC No 5070 of 2007
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	29 May 2009
DELIVERED AT:	Brisbane
HEARING DATE:	29 May 2009
JUDGE:	Wilson J
ORDER:	**Pursuant to s 22(7) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld), the respondent continue to be subject to the supervision order imposed by Mackenzie J on 22 November 2007.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – where application brought by the Attorney-General pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2002* (Qld) alleging contravention of a supervision order made on 22 November 2007 – where respondent breached order by removing an electronic monitoring personal identification device – whether adequate protection of the community can be ensured by the existing order despite the contravention – whether supervision order should be rescinded and order made for continuing detention *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld), s 22(7)
COUNSEL:	J M Horton and for the applicant P E Smith for the respondent

SOLICITORS: The Crown Solicitor for the applicant
A. W. Bale & Son Solicitors for the respondent

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

WILSON J

No S5070 of 2007

ATTORNEY-GENERAL FOR STATE OF QUEENSLAND	Applicant
and	
TRAVEN LEE FISHER	Respondent

BRISBANE

..DATE 29/05/2009

JUDGMENT

HER HONOUR: This is an application brought by the Attorney-General against Traven Lee Fisher pursuant to section 22 of the Dangerous Prisoners (Sexual Offenders) Act 2003 alleging contravention of a supervision order made by Mackenzie J on 22 November 2007.

The order was to be in force for 10 years. It included a number of conditions, including that the respondent not commit an indictable offence while the order was in force and that he comply with a curfew or monitoring direction.

On 23 November 2007 an electronic monitoring personal identification device was fitted. This took the form of a bracelet worn around his ankle referred to as an anklet. Since then, several substitute devices have been fitted.

On 2 March 2009, the respondent breached the order by removing the anklet. A warrant was issued for his arrest and he was taken into custody. On 15 April 2009, he was released pursuant to an order made by Applegarth J for his release pending a final decision on the application under section 22.

Under that section, it is for the respondent to satisfy the Court on the balance of probabilities that the adequate protection of the community can be ensured by the existing order, amended if appropriate, despite the contravention. If the Court is not so satisfied, it must rescind the supervision order and make an order for continuing detention.

The respondent is an indigenous man aged 25. He is illiterate and innumerate. He has never been employed. On the evidence, he has a personality disorder. His intelligence has been assessed as either borderline to low average or below average.

On 13 October 2004, the respondent was convicted of rape, assault occasioning bodily harm and common assault. The rape was constituted by the digital penetration of the two year old daughter of his then partner. The other two offences were committed against his partner's other children and they were evidenced by bite marks and other harm done to them.

He was also convicted of unlawful and indecent assault. That offence had been committed on another occasion at a nightclub when he had placed his hand on a woman's breast and squeezed it.

He was further convicted of robbery with personal violence committed on yet another occasion.

The head sentence imposed was four and a half years imprisonment.

Of those various offences, it is the rape of the two year old child which has brought him within the purview of the Dangerous Prisoners (Sexual Offenders) Act.

The removal of the anklet which constituted the breach of the supervision order on 2 March 2009 was conceded to have been reckless conduct. It occurred in the early hours of the

morning. Almost immediately, the respondent telephoned a Corrective Services officer and said that the anklet had fallen off. Two officers attended his premises shortly after that, and later in the morning a substitute device was fitted.

The supervision order was made by Mackenzie J who had the benefit of the evidence of three psychiatrists who had examined the respondent, Dr Lawrence, Dr Beech and Dr James. His Honour found that the respondent's acceptance of the seriousness of his sexual offences and his understanding that such offences should not be committed was limited. He found that there was an unacceptable risk that the respondent would commit a serious sexual offence if he were released from custody or released without a supervision order being in place. His Honour said that two things emerged from the evidence of the psychiatrists: first, that the respondent was not in the category of offenders who appear to be intractable and second; that he was a young man whose process of maturation and better understanding of the issues might result in his requiring less restraint than was currently appropriate. He concluded that a continuing detention order was not required, but that in order both to protect the public and to require the respondent to undertake programs which might heighten the degree of insight that was necessary to minimise the risk of serious sexual offending in the future, a supervision order for 10 years should be made.

Upon his release pursuant to the order of Mackenzie J, the respondent lived for a time at the Wacol Reserve and then moved into a house with his father and brother. His father is

away from the house for extended periods attending to family business. His brother works in a mine in Central Queensland on a week on, week off basis, with the result that he, too, is frequently away from the house.

The respondent is subject to a curfew between the hours of 10 p.m. and 6 a.m.

He is unemployed. He seems to spend his time, as Dr Lawrence described, drifting. He works on his car from time to time, he watches television, he does a few household chores. He has formed a relationship with a young woman, Hilary. That relationship is now of some months' standing and he hopes that they will set up house together.

Clearly, the respondent has found the curfew and the electronic monitoring device to be intrusive and a source of frustration and irritation. This is apparent from the log of interventions which is exhibited to the affidavit of Mr Wildin filed 3 March 2009.

Importantly, one of the conditions of the supervision order has been abstinence from alcohol and dangerous drugs. The respondent has been compliant with that requirement but for one instance in January 2009. At that time, he consumed beer which was brought to the house by his girlfriend in circumstances where he was apparently depressed about his nephew being arrested and in the watch-house.

It is significant that the breach now before the Court was not

committed in the context of consumption of alcohol or illicit substances.

There are two further psychiatric reports presently before the Court: a report of Dr Lawrence and a report of Dr Harden. There is also a report of a psychologist, Ms Shay Addison.

Both Dr Lawrence and Dr Harden consider the risk of sexual re-offending to be high. Both are of the view that the circumstances of this breach do not give rise to increased risk of sexual re-offending. The significant circumstances are that the breach was not in the context of a disinhibiting agent such as alcohol or an illicit drug and that the respondent promptly reported the removal of the anklet to Corrective Services rather than, for example, trying to abscond.

Dr Harden observed that while the respondent's insights and judgments appeared to be adequate appropriately to manage day-to-day interactions and he appeared to have some understanding of his legal situation, he had little or no insight into his own psychological functioning with regard to his prior sexual offending. He appeared to be trying very hard to minimise the nature and seriousness of his offences and had a limited relapse prevention plan. Dr Harden said there was significant externalisation of responsibility to external variables and other people. He said that the respondent's underlying psychological constraints associated with his prior sexual offending continued to be unknown, probably because of a combination of concrete thinking on his

part, extreme minimisation, and denial and disavowal of sexual content and sexual matters. While the respondent expressed a strong desire not to re-offend, his planning around managing situations of high risk was, in general, superficial or non-existent and he had continually struggled against the need for significant restrictions on his lifestyle in the community in order to decrease the risk of future offences.

Dr Harden considered that he had antisocial personality disorder with very significant psychopathic personality traits. He also had a significant history of polysubstance abuse with a stated particular preference for alcohol. He said that the risk of re-offending was high and it was most likely to be impulsive and opportunistic. Dr Harden was nevertheless of the view that a supervision order on the terms of that made by Mackenzie J would be an appropriate way of managing the risk.

The respondent had completed a High Intensity Sexual Offenders Program. The results had not been particularly encouraging. Dr Harden said that, given his limited intellect and limited literacy skills, he may have benefited more from the Inclusion Program which is available only to inmates of correctional centres. However, even completion of that program would not be a guarantee against further offending. What it might have done would have been to give him an opportunity to develop better strategies aimed at avoiding relapse and a better understanding of why the supervision order, which he resents, is necessary.

Dr Harden did not suggest any amendment to the supervision order made by Mackenzie J.

Dr Lawrence, as I have said, gave evidence before Mackenzie J. She said then that the risk of future offending was high and that the risk of re-offending might well be more in the direction of other antisocial, potentially violent, behaviour rather than necessarily sexual behaviour, although sexual re-offending was likely.

Generally, Dr Lawrence' views did not differ from those of Dr Harden which I have just described. She placed particular emphasis on the need for more constructive activity during his non-curfew hours. She suggested that he ought to undertake some work, even if voluntary in nature, to make better use of his time. While she did not suggest that the supervision order required amendment, it is of concern that she said there is really nothing to give any hope that the risk is decreasing. Like Dr Harden, she said that the Inclusion Program, even if it were available to the respondent and completed by him, would not have a guaranteed outcome and she was not overly hopeful that it would have a positive outcome. She drew attention to a range of factors, including personality and intellect, as being relevant in assessing outcomes. Clearly, in Dr Lawrence's view, the respondent's behaviour has been a product of his personality more than anything.

Ms Shay Addison's report records that the respondent attended seven of nine pre-arranged counselling sessions between

mid-December 2008 and 20 February 2009. She said there were many outstanding treatment needs requiring appropriate intervention, but she thought they had established a "decent rapport" and she was willing to engage further with the respondent.

Thus, it seems there is very little difference between the expert opinions. It is significant that there has been no re-offending of a sexual nature since the supervision order was made by Mackenzie J, and I accept the submission of the respondent's counsel that there really has been a genuine attempt to comply with its terms, albeit with some resentment directed at the restrictions.

In all of the circumstances, the respondent has satisfied me on the balance of probabilities that despite the contravention on 2 March 2009, adequate protection of the community can be ensured by a continuation of the order made by Mackenzie J. The order has worked in the last 15 months and I am satisfied that it will provide adequate protection into the future.

...

HER HONOUR: Pursuant to section 22(7) of the Dangerous Prisoners Sexual Offenders Act 2003 Queensland, the respondent continue to be subject to the supervision order imposed by Mackenzie J on 22 November 2007.

Order as per draft.
