

SUPREME COURT OF QUEENSLAND

CITATION: *A-G for the State of Qld v Fisher* [2009] QSC 203

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(Applicant)
v
HARRIGAN DEAN FISHER
(Respondent)

FILE NO/S: No 1812 of 2009

DIVISION: Trial Division

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

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 3 July 2009

DELIVERED AT: Brisbane

HEARING DATE: 3 July 2009

JUDGE: Byrne SJA

ORDER: **That pursuant to s13(5)(b) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* the respondent be released subject to the terms of a supervision order.**

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

COUNSEL: ss 11, 13(3), s13(4)(d) – (i) *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld)
M. Maloney for Applicant
T. Ryan for Respondent

SOLICITORS: Crown Law for the Applicant

Howden & Saggars for the Respondent

- [1] This is an application by the Honourable Attorney-General for an order pursuant to Division 3 of Part 1 of the Dangerous Prisoners (Sexual Offenders) Act 2003 for the continuing detention of the respondent or, alternatively, an order that he be released from custody subject to requirements of a supervision order.
- [2] I am satisfied to the requisite standards - see section 13(3) - that the respondent is, in the absence of a supervision order, a "serious danger to the community" within the meaning of that expression in section 13 of the Act. A finding to that effect is not resisted and is amply supported on the evidence.
- [3] The respondent is soon to be released at the conclusion of a sentence of 12 and a-half years' imprisonment, which was imposed in 1996 in respect of offences which include rape. That offence is the respondent's only sexual offence. It was committed opportunistically during a robbery. It was an offence serious in its nature, and it was committed whilst the respondent was on probation.
- [4] His life history is unfortunate. He was involved in offending as a juvenile. He has given more than one account of his involvement with cannabis and alcohol. On one version, he was binge drinking and using cannabis from the age of 13. What does seem clear is that by the time he was 16 he was drinking alcohol to great excess and regularly using cannabis. The sexual offence that resulted in his lengthy sentence of imprisonment was committed while he was heavily intoxicated.
- [5] Section 13(4) requires that attention be given to a number of considerations; most prominently, the reports prepared by the psychiatrists pursuant to section 11 and the extent to which the respondent cooperated in the examinations by those psychiatrists.
- [6] An order was made under section 11 after a report had been obtained from Professor Nurcombe. The psychiatrists who have reported for the purpose of section 11 are Dr Beech and Professor James. Their reports provide analysis of the various risk assessment measures.
- [7] Professor James concluded that several considerations suggest a high level of risk of offending, at least in the absence of a supervision order with which the respondent was compliant. These included that the respondent has spent most of his adult life in prison; a repeated failure of community-based sentence options prior to the current imprisonment; and that there had been two separate failures to comply with conditions of parole, both related to drug offending.
- [8] He considered that a supervision order ought to reduce the risk of relevant re-offending to a moderate risk, if the supervision order were strictly monitored. He proposes a total prohibition on consumption of alcohol or other intoxicants. He warned that any contravention of that prohibition should be regarded as an early sign of potential relapse. He is also of opinion that a structured programme of rehabilitation is necessary and that appropriate recreational and social activities of a constructive nature are required.
- [9] Dr Beech concluded that there had been some progress during the respondent's incarceration, although there had been offences whilst in prison which included

drugs offences. He considers that, in the absence of a supervision order at any rate, the risk of sexual violence is moderately high. He also thinks that if the respondent were to be released, "He would need to be abstinent from alcohol and substances, and this would need to be very closely monitored and supervised."

- [10] In Dr Beech's view, if the respondent remains abstinent from alcohol and illicit substances, the chances of re-offending sexually would be reduced to low to moderate. His primary concern is whether the respondent has the determination to abide by the conditions of the supervision order.
- [11] There are other medical, psychiatric and psychological assessments. See section 13(b). They include the opinion of Professor Nurcombe, assessments made at the completion of sexual offender treatment programmes and other psychological assessments that have been made for various purposes during the respondent's incarceration. It is unnecessary to dwell on them. For present purposes, they are helpful background to the reports, which the psychiatrists have taken into account in forming their views.
- [12] Information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in future must also be taken into account. There is such a risk, as the psychiatrists have said.
- [13] On the other hand, the offence which led to the lengthy sentence of imprisonment was, as I have said, the only offence of a sexual nature. There is no pattern of relevant offending behaviour on the part of the prisoner. See section 13(4)(d).
- [14] Efforts to address the causes of offending behaviour, including participation in rehabilitation programmes, are another material consideration. The respondent has participated in a number of programmes during his incarceration. These include the sexual offenders treatment programme, anger management, and others. By and large, the exit reports are satisfactory. In that sense, participation in the programmes appears to have had a positive effect. See section 13(4)(f).
- [15] The respondent's unhappy antecedents have been touched upon. His criminal history - see section 13(4)(g) - is extensive. From an early age, he was involved in property and other antisocial offences.
- [16] The risk that he will commit another serious sexual offence if released into the community has already been addressed.
- [17] I am obliged also to consider the need to protect members of the community from that relevant risk. See section 13(4)(i).
- [18] The conditions of the proposed supervision order - which is to subsist, as the three psychiatrists propose, for 10 years - include a number of conditions directed towards reducing the risk to an acceptable level.
- [19] If the respondent can remain abstinent from alcohol and illicit drugs, he has good prospects of becoming a useful member of the community. He has substantial incentives to do so. He has a young child and a fiancée waiting for him. If, therefore, he can find the strength to stay away from drugs and alcohol, his prospects are reasonable. If he cannot, he faces the near certainty of return to prison.

- [20] There will be a supervision order in accordance with the draft, which I have initialled and placed with the papers.