

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney General for the State of Queensland v Yeo* [2009] QSC 214

PARTIES: **ATTORNEY GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
RAYMOND YEO
(respondent)

FILE NO/S: BS 9323/05

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 4 August 2009

DELIVERED AT: Brisbane

HEARING DATE: 29 July 2009

JUDGE: A Lyons J

ORDER: **The Supervision Order made on 2 October 2007 is rescinded**
It is ordered that the Respondent should be detained in custody for an indefinite term for control, care or treatment

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – MISCELLANEOUS MATTERS – SEXUAL OFFENDERS – Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) — contravention of conditions – where application made under s22 Dangerous Prisoners (Sexual Offenders) Act 2003 (Q) for further orders – whether the respondent satisfied the court on the balance of probabilities that the adequate community protection afforded by supervision order despite the contravention.

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)
ss 11, 20, 21, 22

COUNSEL: Mr J Horton for the applicant
Mr P Smith for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

A LYONS J

- [1] Mr Raymond Yeo is a sixty-three year old single man who has been subject to the provisions of the *Dangerous Prisoners (Sexual Offender) Act 2003 (Qld)* (the Act) since April 2006. He was initially made the subject of a continuing detention order under the Act but since October 2007 he has been subject to a supervision order. It is alleged that in March 2009 he contravened two of the 31 conditions imposed in the supervision order of Mullins J on 2 October 2007.
- [2] Contravention proceedings were initiated by the Attorney General and pursuant to s 20 of the Act a warrant was issued for Mr Yeo's arrest. He was subsequently arrested on 16 March 2009. On 19 March 2009 orders were made by Philippides J pursuant to s 21(2)(a) of the Act that Mr Yeo be detained in custody pending the making of final orders. An order was also made that Mr Yeo undergo examinations for psychiatric risk assessment by Dr Michael Beech and Dr Rob Moyle who were to prepare reports in accordance with ss11 and 22(5) of the Act. Those reports have been prepared and are dated 28 June 2009 and 8 April 2009. An application has now been made pursuant to s 22 of the Act for the Court to make further orders.

Factual Background

- [3] Mr Yeo's criminal history commenced in 1958 when he was thirteen and comprised mainly property and driving offences until 1993 when, whilst aged in his late forties, he committed the first of the sexual offences of which he was convicted in 1995. That offence was carnal knowledge by anal intercourse of an intellectually impaired 16 year old boy. He was sentenced to 3 years imprisonment. Mr Yeo was subsequently convicted by a jury on 5 April 2001 of 13 sexual offences, which occurred between June and October 1999. These counts included nine counts of indecent dealing with circumstances of aggravation, two counts of wilfully and unlawfully exposing a child under sixteen to indecent acts with circumstances of aggravation and two counts of unlawfully permitting himself to be indecently dealt with by a child under the age of sixteen with circumstances of aggravation. The offences in question involved two boys aged nine and eleven, who resided at his home and occurred over a four month period. He was sentenced to three years imprisonment. In April 2002 a further sentence of two years imprisonment was imposed following a conviction on two further counts of the indecent treatment of children on 6 and 17 May 2000. This sentence was to be served cumulatively with the previous sentence.
- [4] Mr Yeo served those sentences in full and was due for release on 4 April 2006. On 3 April 2006 Mr Yeo was made the subject of a continuing detention order under the Act as Philippides J was not satisfied that the adequate protection of the community could be ensured by a supervision order. Of major concern to the psychiatrists at that time was the fact that there had been no change in Mr Yeo's behaviour whilst in prison and the success of any supervision order was totally dependent on external controls. It was considered that Mr Yeo had not gone very far along the path of planning how not to offend. The reasons provided as follows:¹

¹ [2006] QSC 063 at [50] – [53].

“[50] ... In Dr Moyle’s view the best option for reducing risk is the combination of external control through a supervision order and a program that addresses the criminogenic factors that pertain to the respondent.

[51] This was not dissimilar to the view expressed by Dr Lawrence. Her oral evidence was that, if the respondent was presently to be released on the terms of a supervision order such as that tendered, the risk of re-offending would be reduced from high to moderately high. She stated that if the respondent were to participate in a genuine sense in a treatment program then the risk of re-offending would be further reduced. Dr Lawrence dealt with concerns relating to the option of a supervision order in her oral evidence as follows:

“ ... the supervision order is a possible way of dealing with ... the problems. There would be no guarantee, of course, that they would be 100 per cent successful, but the supervision order is, I think, as detailed and probably as comprehensive as you can expect to get in these sort of circumstances. My view was that this man continues to deny the sexual offending against children behaviour totally and that on the basis that it doesn’t exist, he doesn’t do those sort of things he has declined to receive or participate in any sort of corrective type programs or programs that might be designed to help him change his behaviour internally. There’s no evidence that I could establish as a result of my examination to suggest that there has been any significant change in his approach and attitudes as a result of his detention. If then such a person goes back in to the community – there been no change within him, so if you want to try to prevent recurrence of that behaviour you are virtually entirely reliant on external control for him to try to prevent that. Now, that is not really terribly possible, but if it’s going to have any chance of success it’s got to be fairly detailed and, as I say, as far as I can see the requirements of this order are fairly comprehensive and I really couldn’t suggest very much more.”

[52] Drs Moyle and Lawrence were unable to detect that the respondent’s incarceration has resulted in any significant alteration in his attitude or that it has had a deterrent effect. The evidence indicates that the respondent has not demonstrated any empathy for the victims of his sexual offending or understanding of his offending conduct. It is of concern that the respondent’s offending and propensity is directed towards young children. The effects on young victims of the type of sexual offences for which the respondent shows a propensity can be severe as noted by Dr Moyle. It is of particular concern that the respondent has not while in custody participated in any program, whether at a cognitive skills level or a SOTP level, which addresses his propensity and the cause of his offending conduct. The respondent has not addressed his propensity and denies even that there is any conduct by him that needs to be addressed. As a result, Drs Moyle and Lawrence had no confidence in the respondent being able to minimise the risk of re-offending by means of any internal constraints. The respondent’s failure to adequately address his sexual offending by

means of any sexual offender program, especially when considered in the light of his denial of every aspect of his sexual offending, are factors which on the expert evidence point to there presently remaining a high to moderately high risk of the respondent committing further serious sexual offences, even if released on a supervision order.

[53] Bearing in mind that the paramount consideration in deciding whether a continuing detention order as opposed to a supervision order ought to be made is the need to ensure adequate protection of the community, I am satisfied that a continuing detention order is in this case appropriate.”

- [5] This decision was confirmed on appeal by the Court of Appeal on 9 February 2007. The first annual review of that order was heard before Mullins J in August and September 2007. Mullins J in her reasons described Mr Yeo’s offending behaviour in the following terms;²

“[5] The pattern of the respondent’s sexual offending can be summarised as one in which **he made contact with a parent or the parents of an intended victim that put him in a situation where he was alone with or physically next to the victim that enabled him to commit the offences.** The relationship with the parent facilitated the preparatory contact with the victim that can be described as “grooming style.” (my emphasis)

- [6] Reports were prepared by Drs Beech and Moyle in 2007 for the purpose of that annual review and these reports were discussed by Mullins J in her reasons as follows;³

“[21] Dr Moyle had prepared a risk assessment report for the purpose of the hearing that resulted in the 2006 decision. After his further interview of the respondent in February 2007 he concludes that the respondent is of no less risk of reoffending than he was when interviewed 15 months earlier.

[22] Dr Moyle identifies **the respondent’s impulsivity, disobedience to rules and minimal regard for others as factors relevant to reoffending. Dr Moyle describes the respondent’s defiance as a life long problem.** Dr Moyle did not do a mental state examination during his recent interview with the respondent, because there was nothing to suggest any mental deterioration on the part of the respondent and there was no evidence of any serious mental disorder affecting the respondent’s cognition in the past. Dr Moyle had previously concluded that the respondent’s “intellect would not be high but it would not be mentally disabled either”. Dr Moyle describes the respondent as being “rather concrete”, in that it is unlikely he would change his attitudes readily, but that he was capable of learning new information.

² [2007] QSC 274 at [5].

³ [2007] QSC 274 at [21] – [28].

[23] Dr Moyle suggests that as the respondent's proclivities apply to boys or disabled youthful males, **he should not be in any situation where he could be in contact with children under the age of 16 years or disabled persons. Dr Moyle considers that the respondent's refusal to acknowledge his sexual offending precludes intervention strategies based on any recognition by the respondent of the triggers of such offending.** Dr Moyle therefore suggests that a supervision order must set conditions that leave the respondent in no doubt as to the expectations of him and that will facilitate the supervising correctional officer responding quickly to any breach by the respondent of the requirements of the supervision order. This is so that the external constraints of the supervision order may address to some extent the risks associated with the lack of the respondent's own internal constraints. **Dr Moyle considers that the respondent is adept at working around conditions that are placed on him and this requires the external constraints (the requirements of the supervision order) to be clearly and unambiguously articulated.**

[24] Dr Moyle considers that the release of the respondent from prison on a supervision order incorporating appropriately stringent requirements would reduce the risk of sexual reoffending from a high risk to a moderate risk. Dr Moyle suggests that the period for such a supervision order should be at least 10 years.

[25] Dr Beech expresses similar views to Dr Moyle that the respondent's failure to follow rules, **show empathy or take responsibility for his actions affects his risk of reoffending. Dr Beech considers that the respondent's likelihood of reoffending is enhanced by his plausible manner and glib social interactions.** Dr Beech judges the respondent to be of average intelligence.

[26] From the respondent's history, Dr Beech diagnoses the respondent as having an anti-social personality disorder and that he operates within the range of psychopathy. Dr Beech agrees with Dr Moyle that the respondent's sexual ending history is consistent with homosexual paedophilia.

[27] Dr Beech is sceptical of any mitigation of the respondent's risk of reoffending due to his wanting to live a Christian lifestyle. Dr Beech expresses concern about the respondent attending a church service or functions at which children may be present.

[28] Dr Beech considers that the respondent needs to be restricted from opportunities of befriending parents of young boys or from situations where young boys come into contact with him. Dr Beech considers that a supervision order would reduce the respondent's risk of reoffending only from high to moderately high and emphasises the need for close monitoring of the respondent's compliance with the requirements of the supervision order. Dr Beech suggests that a supervision order should continue for at least five years and up to 10 years." (my emphasis)

[7] Mullins J concluded;⁴

“[41] The psychiatric evidence shows that the respondent is sufficiently intelligent to understand the nature of the restrictions imposed on his conduct and activities by a supervision order and to understand the consequences that will follow if he contravenes a requirement.

[42] At the time the 2006 decision was made, the respondent did not have the support that is now offered by his brother, both in terms of accommodation and in providing assistance to the respondent in meeting the requirements of a supervision order.

[43] There was no suggestion from the Attorney that the Department was unable to provide the supervision contemplated by the draft supervision order.

[44] The respondent’s denial of his sexual offending which makes him at least a moderate risk of reoffending if released under a supervision order has to be considered in the context of all matters that are relevant to managing that risk of reoffending. There is protection for the community in the stringency of the requirements of the draft supervision order and that the least indication that the respondent is not complying with them should be apparent to the Department as soon as it occurs.”

[8] On 2 October 2007 Mullins J made orders that she was satisfied that Mr Yeo was a serious danger to the community in the absence of an order pursuant to the Act. The continuing detention order of 3 April 2006 was rescinded and Mr Yeo was made subject to a supervision order which contained 31 conditions, which required his compliance.

[9] The arrest warrant was issued on 16 March 2009 as it was reasonably suspected that Mr Yeo had contravened condition (xiii) of the supervision order, which required him to comply with every reasonable direction of a Corrective Services Officer. He was also suspected of having contravened condition (xxii) which provided that he “not undertake any trip, visit, or other activity away from his approved place of residence without the prior written approval of an authorised Corrective Services Officer, unless an authorised Corrective Services Officer dispenses with this requirement”. Condition (xxi) also required Mr Yeo to submit to and discuss with an authorised corrective services officer, a schedule of his planned and proposed activities on a weekly basis or at such other interval as directed by an authorised corrective services officer, which must, if required by the authorised corrective services officer, disclose the identity of any person who will accompany the respondent during any of those activities and the extent to which that person has been advised by the respondent of the nature of his sexual offences.

The contraventions

[10] The nature of the contraventions relate to a period between 9 January 2009 and 3 March 2009 when Mr Yeo attended meetings of the Bad Boyz Program, which is a program for released prisoners. It would appear that Mr Yeo was given directions by

⁴ [2007] QSC 274 at [41] – [44].

Corrective Services Officers on 11 occasions that he was not permitted to attend meetings which were to be held at McDonald's Restaurants which had children's playgrounds situated at the venue.

- [11] The affidavit material establishes the clear directions that Mr Yeo was given about his attendance at these meetings at those venues. Ms Heidi Bird, in her affidavit⁵ states that Mr Yeo "has been told each and every week that he is not to attend Bad Boyz meetings at McDonald's and has been told by three Probation and Parole Officers in total, therefore he is well aware that he is not to attend."
- [12] Despite these directions, Mr Yeo attended McDonald's at Booval on 28 February 2009 and there is video footage which establishes that attendance. Mr Yeo admits that he attended, although initially he indicated he did not go into the store. Mr Yeo also admits that he had been given verbal directions not to attend. Roger Vaughan, a Chaplain with Community Care Network, which runs the Bad Boyz Downunder Program, accompanied Mr Yeo to the meeting on that date and states that at no time did he see Mr Yeo approach any children.
- [13] Counsel on behalf of Mr Yeo, stated that Mr Yeo concedes he had been given verbal directions not to attend McDonald's at Booval, but submits that he did not attend McDonald's for any illegal or illegitimate purpose. He also disclosed his attendance on 3rd March 2009. Counsel stated that Mr Yeo's position is that he admits breaching the order by attending McDonald's at Booval contrary to an oral direction given to him.⁶ Counsel submitted that in all of the circumstances it is not a serious breach of the order.
- [14] Dr Beech discusses Mr Yeo's behaviour which led to his attendance at McDonald's in his report of 28 June 2009 and Mr Yeo's explanation of what occurred is illustrative of the difficulty Mr Yeo has with compliance with conditions. Dr Beech wrote ⁷(his emphasis);

"Mr Yeo said also that 'regardless of whether they said no a hundred times, they should have given me a written direction that I couldn't go, rather than verbal no's (each time he asked)'.

Mr Yeo said he put the Bad Boyz meeting on the schedule and a different Corrective Services Officer saw it and copied it but did not say he could not go. When he saw his usual officer the next time (Mr Yeo had two meetings per week) she did not comment on the schedule and so *'I just went. Unless they're saying no, what are they saying?'*

Mr Yeo explained that *'if they're not saying no, I'm assuming everything's ok. Unless they say Raymond, you can't do this (...) you can do it. That's the way I took it. The fact they said no other times has no relation to this.'*

...

When asked to clarify his understanding of the contravention Mr Yeo said he believed he had done the right thing because he had put the Bad Boyz meeting in his schedule and he had not been told he could

⁵ Affidavit of Heidi Sherie Bird filed 6 July 2009.

⁶ Respondents Outline of Submissions at [3].

⁷ Report of Dr Michael Beech, dated 28 June 2009 at p 5.

not go. He said if the first officer had made an annotation as he requested, then the second officer should have noticed and said something to him. He said however he did not particularly raise the matter with the second officer and added *'is that my job? She didn't say something. Why didn't she look at the schedule – isn't that her job?'*

- [15] Dr Moyle also referred to his discussion of the breach of the condition with Mr Yeo in his report of 8 April 2009 in these terms;⁸

“I took him back to what he had told me, that, using his brain, they had told him that he was not allowed to go on several occasions because the play equipment was there, and that is all he was told. He agreed that is all anyone had said to him; that it was a park with play equipment. And then he angrily told me, ‘They are changing their story, which means they are lying. The Council said it is not a park’. I again reiterated that the last thing said was that, for two to three times, he was told there was play equipment there. And he said to me, ‘But I ask the question again: “Does a child give up asking for an ice cream when he is told no?”’ I asked him if he is likening himself to putting into his schedule each time that he intends to go to the Bad Boyz at McDonalds. He stated, ‘Their job is to approve or disapprove it’. Again, I was trying to encourage him to look at the principles rather than rely on other people always supervising him for the rest of his life.

I asked, ‘Do you believe that if you persevere then you should eventually get to have permission to go there?’ He said, ‘Yes’. He then said that, after the fact, they have given him written refusal of permission to go there, that he would not sign, on solicitors’ advice – i.e. signing would mean that he agrees with the restriction. He emphasises that he can disagree yet still comply with the restrictions. He again pointed out that it has to be a ‘reasonable’ direction. He emphasised that they have to go back to court to argue that the issues of this nature must be in writing prior to the event. He gave me examples of, when he says he needs to go shopping, they say, ‘Where?’, and they give him specific shops he can go to. **He emphasised the unfairness of having written schedules, compared to others who have verbal permission.** When he points that out to his supervisors, they tell him that every case is different, that all orders are different, and he named two people who were able to go places and tell the supervisor after. I am aware one of those people has been breached.”

- [16] What comes through very clearly in both of the reports of Mr Yeo’s view of the contravention, is that he constantly argues about directions that he is given and is openly defiant and difficult. He also considers that it is unfair that he has to present schedules in advance and get permission, when others are not required to do so. It would also seem clear that the Department of Corrective Services were very aware of the need to give clear directions to Mr Yeo and were very specific as to what they

⁸ Report of Dr Rob Moyle, dated 8 April 2009 at p19.

required of him in terms of schedules. I consider that the exhortations of the psychiatrists in their 2007 reports and of Mullins J in her reasons, that the conditions imposed “should leave Mr Yeo in no doubt as to the expectations of him” were in fact followed. The requirements he was required to comply with, were in fact clear and unambiguous. As Mullins J indicated in her reasons Mr Yeo is intelligent and he does understand the nature of the restrictions imposed on his conduct and activities by a supervision order and he also understand the consequences that will follow if he contravenes a requirement.

- [17] I consider that Mr Yeo knew and understood he was not to attend meetings at particular McDonald’s venues. He knew he had to put in schedules, but he clearly put in a schedule that indicated he was going to a Bad Boyz meeting, but did not reveal it was to be held at McDonald’s. He is openly defiant. Dr Beech states he follows his own rules. Dr Moyle states he is “likely to test any restrictions placed on his freedom.”⁹ When asked the extent to which the contravention affects the risk Mr Yeo poses to the community Dr Moyle stated;¹⁰

“Well again it’s-it reflects an inability to use rational judgment. Not because he has a mental disorder preventing that, but because he may have an urge to do something that strictly speaking he’s been warned against by many people acting in his interest in the past from doing, and it simply suggests that Mr Yeo in my opinion is more likely to follow his own sense of what he should be doing rather than general principles underlying why he should not be behaving this way, and as such, Mr Yeo is more likely than not, most of the time to follow written down orders not to offend. Not so much so that he hasn’t breached the conditions, but most of the time, but you can’t predict that he will always follow all orders or restrictions.”

- [18] It is also clear from the material that there were two earlier contraventions of the conditions for which he was censured. He drove without a licence on one occasion and was fined and on another occasion he went to a post office without permission. Apart from these breaches, the consensus is that generally Mr Yeo, while frustrated by the conditions of his order, has otherwise been compliant with them.

The Reports Dr Whittingham

- [19] Mr Yeo attended on Dr Whittingham on 46 occasions for treatment in the period from his release in October 2007 until the period of his arrest in March 2009 and Dr Whittingham has provided a report dated 29 May 2009 which summarises treatment and assessment of Mr Yeo during that period in the community. Dr Whittingham states that his assessment is that Mr Yeo is in the high risk category compared to other sex offenders.¹¹
- [20] Dr Whittingham stated that Mr Yeo attended all sessions punctually and appeared to cooperate with therapeutic tasks, although he was initially reluctant to participate in any work that examined his sexual offending in any context. A risk management plan however, was able to be devised using hypothetical risk situations. Mr Yeo

⁹ Transcript day 1-p8 line 10.

¹⁰ Transcript day 1 p 8 line 52 –p 9 line 5.

¹¹ Report of Dr David Whittingham, dated 29 May 2009.

consistently denied any past sexual offending and denied any risky thoughts. Dr Whittingham considered that there was evidence that Mr Yeo displayed problems with self regulation, particularly in relation to traffic and driving offences and that he had negative emotionality specific to his views of Queensland Corrective Services, the legal system and his own circumstances. He then said “I note he appears to cope positively with this at times and struggles during periods of increased direction with the department.”¹²

- [21] Dr Whittingham considered Mr Yeo’s attendance at McDonald’s highlighted “a continued need for increased emphasis on external controls as noted in previous assessments.”¹³ Dr Whittingham thought that Mr Yeo’s attendance at McDonald’s, indicated “a slight worsening of his dynamic risk factors, more specifically his cooperation with supervision in that he appears to have tested the conditions of his order and known risk factors. It is unclear if this testing was a function of sexual self regulation difficulties (acting on sexual needs) was simply a reflection of his antisocial and entitlement oriented thinking and beliefs.”¹⁴
- [22] Dr Whittingham recommended continued assessment and intervention of risk factors, continued long-term psychological engagement, continued focus on risk management and problem solving and a focus on improving his interpersonal skills. Dr Whittingham noted Mr Yeo’s positive progress. It was his view, however, that should Mr Yeo remain in custody, he should complete an intervention program that examines his general self-regulation and supervision engagement.

Dr Beech’s report 28 June 2009

- [23] Dr Beech considers:¹⁵

“In my opinion he has an Anti-social Personality Disorders characterised by childhood onset disruptive behaviour that progressed to juvenile delinquency and later adult criminality. His criminal history is noted for his re-offending and in particular for repeated driving offences, one of which led to a death. He also has a repeat history of sexual reoffending against young males with two offences occurring at two different times while on bail.

It is my opinion that he is a Psychopath and a review of reports of Dr Moyle and Dr Lawrence would support this. His personality is notable for a projection of personal responsibility onto others and this has been commented on also by his treating psychologist Dr David Whittingham who is of the opinion that Mr Yeo requires external controls and checks. My (sic) Yeo is a shallow glib man able to argue details and legal technicalities but with no sense of remorse, personal reflection, or overview of his circumstances.

It is my opinion that he is at high risk of reoffending against young males if released into the community. I believe that he has the sexual deviance, Paedophilia, and he has really taken very few steps to personally address this or his risk of offending. I am sceptical of any

¹² Report of Dr David Whittingham, dated 29 May 2009 at p 17.

¹³ Report of Dr David Whittingham, dated 29 May 2009 at p 17.

¹⁴ Report of Dr David Whittingham, dated 29 May 2009 at p 18.

¹⁵ Report of Dr Michael Beech, dated 28 June 2009 at pp 15-16.

progress he may have made with Dr Whittingham but I accept it would be a long process of engagement given his resistance to therapy and his denial.

I agree with Dr Whittingham that the recent events suggest that the risk of reoffending even with supervision is increased and I would view it as moderately high.

Mr Yeo has shown, I believe, a general contempt for the law in his most recent driving offences which suggest to me a general risk of offending which can be a precursor to sexual offending. His driving offences hearken back to earlier criminality and I believe they suggest that he is maintaining into advancing years a continued anti-social character.

I agree with Dr Whittingham that it is difficult to know whether the Bad Boyz contravention reflects simply an anti-social stance towards Corrective Services Officers or a more specific prelude to sexual re-offending. Neither scenario gives me comfort when I consider Mr Yeo's risk.

I am uncertain whether he has technically breached his order. In terms of his risk management I do not think it matters really. To use his simile, he is like a child who is continually asking for an ice-cream, despite repeated parental refusals, all the time waiting for the parent to relent or slip up and then use this as an excuse or cover to do what he wants. It displays an abrogation of personal responsibility for his own risk management. This is of particular concern given his impulsive nature and the style of his offences.

At present I believe his risk in the community can be managed only to the extent that others are vigilant on his behalf."

Report of Dr Moyle – assessment 8 April 2009

- [24] Dr Moyle in his report notes that Mr Yeo was released in October 2007 with 31 conditions and that he has challenged aspects of his case management at numerous intervals. Dr Moyle states that Mr Yeo's risk of offending "appears no less now than on release" despite the fact that he had commenced a therapeutic relationship with Dr Whittingham which, whilst it had started to address some relevant issues, it does not address his sexuality.
- [25] Dr Moyle states that Mr Yeo's previous behaviour is suggestive of a considerably powerful drive to offend because he was on bail for other offences when he offended. He states that a little over a year had elapsed from the end of a lengthy sentence to the time that Mr Yeo was arrested for reoffending after a previous sexual offence and he was sentenced to a total of five years for that reoffence, plus other offences committed subsequent to that arrest that occurred brazenly. Dr Moyle outlined that the offending behaviours on that occasion were committed against the children of a woman who was providing support to him prior to his trial for those prior offences. Indeed, on the day of one of the offences he had taken one of the children of that lady to a lawyer so that the child could present evidence in his favour in his court case. Dr

Moyle comments that Mr Yeo's offending involves enticement rather than violence and subterfuge involving the parents.

- [26] Dr Moyle also states that Mr Yeo has a history of more minor offending, including traffic offending, which has included blatant disregard for the laws of the road, as well as dangerous driving causing death resulting in a prison sentence. He also notes that even after that, he proceeds to commit other traffic offences and has, in recent years, also been chastised for traffic offending, the most recent being while under a supervision order he drove an unregistered vehicle while he was unlicensed. Mr Yeo puts this down to acting on impulse. Dr Moyle states:¹⁶

“He presents as a man who protests not only his innocence but also his right to maintain innocence, and this is used as the reason not to take part in programs targeting sexual offending behaviours, programs looking at the way sexual offenders think, and other factors including impulsivity, sexual arousal disorders known in medicine as paraphilias, issues to do with general criminality, impulse problems, including drug and alcohol difficulties and other specialised factors targeting what is known as criminogenic factors. Attempts to assist him to look at these issues are met with blanket denial of offending and statements that his enthusiastic taking up of Christianity justifies us believing he is indeed telling the truth as he would not lie to God about his offending. This lacks credibility. As long as the sexual offending is not discussed he can use a therapeutic situation to reduce some elements related to risk in general without having to talk of sexual offences.”

- [27] The respondent's position is that the breach is minor and that adequate protection of the community can be achieved by amendment of the conditions of the Supervision Order. It is proposed that existing condition (xxi) be amended as follows

(xxi) submit to and discuss with an authorised Corrective Services Officer a written schedule of his planned and proposed activities on a weekly basis (including the date, time, place and address of the proposed activity) or at such other intervals as directed by an authorised Corrective Services Officer, which must if required by the authorised Corrective Services Officer disclose the identity of any person who will accompany the Respondent during any of those activities and the extent to which that person has been advised by the Respondent of the nature of his sexual offences;

And that an additional condition be inserted as follows;

(xxxii) not visit or attend on the premises of any place where there is a dedicated children's play area or child minding area without the prior written approval of an authorised Corrective Services Officer.

- [28] In my view, the difficulty with the additional conditions is that they simply express in even greater detail what Mr Yeo was required to provide or the additional condition simply sets out in further detail what he was already well aware of. He was already required to provide schedules in great detail and he knew he was not to attend

¹⁶ Report of Dr Rob Moyle, dated 8 April 2009 at p29.

playgrounds as he had been given very specific directions. I cannot see how the proposed additional conditions in any way address the risk given the fact that Mr Yeo fundamentally objects to the need to provide schedules, has an entrenched defiance of rules as well as impulsivity and lifelong disobedience.

[29] In coming to a determination as to the appropriate order, I consider that the following findings to be particularly relevant;

- (1) Mr Yeo has an anti-social personality disorder and he operates within the range of psychopathy. His sexual offending history is consistent with homosexual paedophilia.
- (2) Dr Whittingham, who has seen Mr Yeo on 46 occasions since his release on conditions, considers that Mr Yeo is in the high risk category compared to other sex offenders. Mr Yeo still consistently denies any past sexual offending and denied any risky thoughts.
- (3) Dr Whittingham considered that there was evidence that Mr Yeo displayed problems with self regulation, particularly in relation to traffic and driving offences and that he had negative emotionality specific to his views of Queensland Corrective Services, the legal system and his own circumstances.
- (4) Mr Yeo's impulsivity, disobedience to rules and minimal regard for others are factors relevant to his re-offending.
- (5) Mr Yeo's defiance is a life long problem.
- (6) Mr Yeo should not be in any situation where he could be in contact with children under the age of 16 years or disabled persons.
- (7) Mr Yeo has previously made contact with a parent or the parents of an intended victim so that he was in a situation where he was alone with or physically next to the victim that enabled him to commit the offences. The relationship with the parent facilitated the preparatory contact with the victim that can be described as "grooming style."
- (8) Mr Yeo's refusal to acknowledge his sexual offending precludes intervention strategies based on any recognition by him of the triggers of such offending.
- (9) Mr Yeo is adept at working around conditions that are placed on him and this requires the external constraints (the requirements of the supervision order) to be clearly and unambiguously articulated.
- (10) Mr Yeo's failure to show empathy or take responsibility for his actions affects his risk of re-offending.
- (11) Mr Yeo's likelihood of re-offending is enhanced by his plausible manner and glib social interactions.
- (12) Mr Yeo was under a supervision order which had 31 restrictive conditions, which included the condition that he comply with reasonable directions and that he not undertake any trip, visits, or other activity away from his approved place of residence without the prior written approval of an authorised Corrective Services Officer.
- (13) Mr Yeo breached a clearly understood direction of the Corrective Service Officers.

(14) Mr Yeo resents having to submit written schedules.

- [30] It has been clearly established that Mr Yeo breached the conditions of his supervision order. The provisions of s 22 of the Act are quite specific. It provides that if the Court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening or has contravened a requirement of a supervision order then, unless the prisoner satisfies the Court on the balance of probabilities that despite the contravention the adequate protection of the community can be ensured, then if the existing order is a supervision order it can rescind it and make a continuing detention order.
- [31] The essential question is whether Mr Yeo has satisfied this onus.
- [32] Mr Yeo is clearly a serious danger to the community in the absence of a Division 3 order. All the psychiatrists are satisfied that Mr Yeo presents either a moderately high or high risk of re-offending. The question is whether, despite the contravention, the adequate protection of the community can be ensured by a supervision order. As Mr Yeo has no internal restraints and no recognition of risk factors the adequate safety of the community is essentially dependent on the success of the conditions of the supervision order addressing the risk posed. In 2006 Dr Lawrence said there had been no change within Mr Yeo. The psychiatrists, Drs Beech and Moyle as well Dr Whittingham, confirm that that is still the case some three years later in 2009. Accordingly, to try and prevent recurrence of his behaviour “you are virtually entirely reliant on external control for him to try to prevent that”¹⁷. In 2006 Dr Lawrence indicated that this was “not really terribly possible, but if it’s going to have any chance of success it’s got to be fairly detailed.”
- [33] At the 2007 hearing, very specific and detailed conditions were drafted with this requirement in mind. The 31 condition supervision order was so specific because of the recognition that such detail was a key to the success of the order. I consider that the affidavit material indicates Mr Yeo understood what was required of him. Mr Yeo did not breach the condition because he did not understand what was required of him but rather he breached the conditions due to his lifelong issues of defiance.
- [34] The only way the supervision order can work is if the external constraints around Mr Yeo are sufficient to meet the risk. As Dr Beech explains, the only way the supervision order can really work is “vigilance” on the part of Corrective Services. A reading of Mr Yeo’s explanation as to why he breached the conditions exemplifies the difficulties faced by the department. Mr Yeo argued details and legal technicalities but with no sense of remorse, personal reflection, or overview of his circumstances. Mr Yeo is waiting for the department to slip up or falter and if there is any mistake Mr Yeo takes advantage of it. As Dr Beech stated at the hearing¹⁸ “he will continue to seek loopholes or ways around the restrictions and he will do so in an astute and glib and I guess plausible manner”. He later stated

“So, I think, it just seems to me that he has an entrenched pattern of breaking rules and doing what he wants to do and there’s little comfort to be taken from his - his return to old patterns of offending in a general sense. So my concern when I see that is that he will simply be

¹⁷ Dr Lawrence Report quoted at [51] [2006] QSC 063.

¹⁸ Transcript Day 1 p 14 lines 1-3.

returning to old patterns of offending when it comes to sexual matters.”¹⁹

- [35] In my view, Mr Yeo’s recent behaviour indicates he is not currently suitable for a supervision order given the level vigilance, monitoring and supervision required to ensure he does not find the loopholes or take advantage of a slip up. Essentially Mr Yeo is a high or moderately high risk of re-offending and a supervision order cannot currently address that risk because of Mr Yeo’s attitude to any constraints placed on him. I do not consider that Mr Yeo has satisfied me that the adequate protection of the community can be ensured by a supervision order given his attitude to the previous supervision order. I consider that the only way the risk can be adequately managed at this point in time is in detention.
- [36] I agree with Dr Whittingham, that Mr Yeo should complete an intervention program that examines his general self-regulation and supervision engagement and that this should be undertaken prior to his next annual review. Should Mr Yeo be able to establish he has some internal self regulation or controls, then his prospects of being successfully released under a supervision order would be greatly increased. The evidence is that a therapeutic relationship has been commenced with Dr Whittingham and he has been able to start to address some of the issues with the exception of sexuality.
- [37] Accordingly, the supervision order should be rescinded and Mr Yeo should be detained in custody for an indefinite term for control, care or treatment.

ORDERS

- (1) The Supervision Order made on 2 October 2007 is rescinded.
- (2) It is ordered that the respondent be detained in custody for an indefinite term for control, care or treatment.

¹⁹ Transcript Day 1 p 14 lines 31-37.