SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Valence* [2009] QSC 255
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **KERRY PATRICK VALENCE** (respondent)
FILE NO/S:	SC No 2941 of 2009
DIVISION:	Trial division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	13 August 2009
DELIVERED AT:	Brisbane
HEARING DATE:	13 August 2009
JUDGE:	White J
ORDER:	As per the draft
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the Attorney-General applies for an order under Division 3 *Dangerous Prisoners (Sexual Offenders) Act* 2003 that the respondent be detained in custody for an indefinite term – whether the respondent is a serious danger to the community in the absence of such an order *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 13
COUNSEL:	J B Rolls for the applicant J M Sharp for the respondent
SOLICITORS:	Crown Law for the applicant Legal Aid Queensland for the respondent

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

WHITE J

SC No 2941 of 2009

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND	**Applicant**
and	
KERRY PATRICK VALENCE	**Respondent**

BRISBANE

DATE 13/08/2009

ORDER

HER HONOUR: The Attorney-General has applied for an order under Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 that the respondent, Kerry Patrick Valence, be detained in custody for an indefinite term for control, care or treatment or subject to a supervision order, on the ground that without such an order he constitutes a serious danger to the community.

Mr Rolls appears for the Attorney-General and has submitted that the appropriate order necessary to ensure adequate protection of the community is a continuing detention order. Ms Sharp, for the respondent, concedes on behalf of her client that the Court would make such an order.

On the 10th of March 2006, the respondent was convicted of three counts of indecent treatment of children under 16 years; they were under 12. He was sentenced to concurrent terms of imprisonment, the greatest of which was four years. His release date, taking into account pre-sentence custody is the 29th of August 2009.

The Chief Justice ordered reports to be prepared by Professor Basil James and Dr Michael Beech, both psychiatrists with appropriate expertise in risk assessment. Those reports have been prepared and neither is required to give oral evidence. There is other extensive material about the respondent, including a lengthy report by Dr Robert Moyle, psychiatrist, who saw the respondent in September 2008.

The respondent is present at the hearing by video link from his Corrections facility. No eligible person pursuant to section 21A of the Act has been identified.

A prisoner is a serious danger to the community if there is a serious risk that he will commit a serious sexual offence, either if he is released from custody or released from custody without a supervision order being made.

Section 13 sets out the matters to which the Court must have regard in deciding whether a prisoner is a "serious danger to the community". They are:

> "(a) the reports prepared by the [two] psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;
> (b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;
> (c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;
> (d) whether or not there is any pattern of offending behaviour on the part of the prisoner;
> (e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;
> (f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;
> (g) the prisoner's antecedents and criminal history;
> (h) the risk that the prisoner will commit another serious sexual offence if released into the community;
> (i) the need to protect members of the community from that risk;
> (j) any other relevant matter."

In deciding whether to make an order under Division 3, the paramount consideration is to be the need to ensure adequate protection of the community. The onus upon the Attorney-

General is to prove by acceptable cogent evidence to a high degree of probability that the evidence is of sufficient weight to justify the order.

It is convenient to start with the respondent's relevant prior criminal history. He is now aged 52. Some sexual offending occurred in New South Wales in 1975 and 1980 when the respondent was aged 18 and 23 respectively. The criminal history describes the offences as buggery and indecent assault on a male and assault with intent to commit buggery. He was bound over to be of good behaviour in 1975 and in 1980 sentenced to two years' imprisonment which was deferred on him entering into a recognisance and under supervision. In 1970 the victim was about 12 and in the 1980 offences, the victim eight years.

In the latter case, after an encounter in the caravan park showers, the respondent invited the boy back to his caravan. In both cases the respondent denied penetration but admitted physical contact with the boys to ejaculation. He has numerous other offences involving excessive consumption of alcohol and possession of illegal drugs. The history supports a long-existing problem with alcohol and unlawful drugs of various kinds. The current offences concern two boys aged about 10 years and the offences were separated by some years.

The first offence occurred in 1999 and 2000 against a boy with whose family the respondent was friendly. On one occasion he grabbed the boy's penis through clothing. On the second, despite resistance, the respondent engaged in fellatio on the boy and threatened to kill him if he revealed the assault. The later offence occurred in 2004 when the respondent was on bail for the earlier offences when he was befriended by a family and when in the home fondled the boy's penis after pulling down his pants. The respondent tended to attribute initiating conduct to the boy.

The respondent had a happy childhood. He has engaged in relationships with women and also with men. Whilst incarcerated he has declined to participate in any programme directed to assisting him to deal with his tendency towards sexual offending towards young boys. Neither did he reveal any post-prison release plans, but ventured the opinion that he should be capable of disciplining himself. The respondent has otherwise been a compliant hardworking prisoner with good reports about his prison behaviour.

In summary, the psychiatrists' and the psychological evidence puts the respondent into the high risk category of re-offending if released from custody against young boys without any pre-release treatment and no condition imposed would limit the risk to an acceptable level.

The reports of Doctors Moyle, Beech and James are thorough and extensive. It suffices to record their conclusions. They have each administered the recognised battery of risk assessment tests and brought to bear their clinical judgment and expertise in reaching their conclusions. Dr Beech concluded in this way:

> "There are two outstanding features regarding his offending in my opinion. Firstly, it has been chronic, with offences occurring every decade since the 1970s. He has offended while on bail with a wanton recklessness and disregard for the consequences. Secondly, he has significantly distorted views about childhood sexuality, childhood consent, the wrongfulness of his behaviour and the effects on his victims. I believe that these act to facilitate his offending by almost allowing him to believe that the children have sought the acts and that they have enjoyed them."

Dr Beech continued:

> "In my opinion, Mr Valence would be at a high risk of re-offending if he were to be released into the community at this time. He is an insightless recidivist sex offender with a poor attitude to treatment and no reasonable plan to limit his risk. He has very few supports and he has significant substance abuse problems. I have a limited understanding of his internal mental life and it is difficult to suggest at present what strategies would assist him."

Finally, Dr Beech opines:

> "his risk of re-offending could be reduced by his participation in a high intensity sexual offender programme with a subsequent development of a robust relapse prevention plan that could, with supervision, be monitored in the community."

Professor James, who was the other section 11 psychiatrist to examine the respondent, concluded in this way:

> "In summary, nothing of significance has changed with respect to Mr Valence's capacity to understand, make judgments about, and channel into appropriate relationships his sexual impulses. In my opinion, the generally high risks demonstrated by the actuarial measures are supported by dynamic considerations and should be considered valid. I consider it unlikely that Mr Valence will make any further progress or act in any way to reduce his risk of re-offending unless he completes the appropriate SOTP prior to discharge from prison. In summary, it is my view that there has been little, if any, change in Mr Valence during the process of his imprisonment. His risks of recidivism are high and he should be required to complete the SOTP prior to release."

Dr Robert Moyle was not a section 11 reporting psychiatrist, but he reported to advise the Attorney-General whether or not an application ought to be made under the Act. He has observed as follows:

> "As far as the acute features go, on release from prison he will have victim access as soon as he makes contact with vulnerable people in pubs or the like, but he's not at risk of emotional collapse. He's significantly at risk because of a lack of social supports, has no risk regarding hostility and significant risk with substance abuse, sexual preoccupations and rejection of supervision. I think a unique factor is his desire to find an acceptance in himself that he had as a child and a meaningful identity. He really needs to work on these issues before release."

Dr Moyle then concludes:

> "Using approaches to assess risk, Mr Valence is now 51 years of age and he's at least at moderately high if not high risk of re-offending in the same way he has offended since he was 18 at times when he feels like giving up or impulsively gets the urge to do so and when the opportunity arises irrespective of whether potential victims are very young or whether they are the children of acquaintances that are trying to do him favours."

Clearly it is essential for the respondent to participate in an appropriate programme. The affidavit material placed before the Court demonstrates that they are available to him and only within a correctional setting. The respondent has now evidenced his willingness to

participate through Ms Sharp, having, no doubt, read the reports of the psychiatrists and perhaps having some understanding of what he needs to do.

Having considered all the material which is acceptable and cogent, I am satisfied to the high degree required by the Act that the respondent is a serious danger to the community in the absence of a Division 3 order and he be detained in custody for an indefinite term for control, care or treatment. The order is as per draft.

You've seen that, Ms Sharp?
MS SHARP: yes, I have, your Honour.

HER HONOUR: Thank you, Mr Valence. Anything else, Mr Rolls?

MR ROLLS: I have nothing further, thank you, your Honour.

HER HONOUR: Thank you for your assistance - you don't mind if I don't include you in this one, Ms Sharp-----

MS SHARP: Not at all, your Honour.

HER HONOUR: -----for your extensive submissions which certainly made my task working through the file much easier than it might otherwise have been.

MR ROLLS: Thank you.