

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v O'Rourke*
[2009] QSC 362

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
LESLIE WILLIAM O'ROURKE
(respondent)

FILE NO/S: 2849/06

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 12 November 2009

DELIVERED AT: Brisbane

HEARING DATE: 9 November 2009

JUDGE: A Lyons J

ORDER: **Order as per attached schedule**

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.

Attorney-General for the State of Queensland v O'Rourke
[2006] QSC 196
A-G for the State of Qld v O'Rourke [2008] QSC 153
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)
ss 13, 27

COUNSEL: J Rolls for the applicant
P Smith for the respondent

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

A LYONS J:**This application**

- [1] Leslie William O'Rourke is 47 years of age and is currently detained in the Wolston Correctional Centre pursuant to an order made under Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA)*. The *DPSOA* establishes a scheme for the continued detention in custody or supervised release of prisoners who are considered to be at risk of committing serious sexual offences if released without appropriate supervision. The Act makes provision for the Supreme Court to hear applications for orders under the Act.
- [2] On 14 August 2006, an order was made for Mr O'Rourke's release subject to a supervision order. There was an alleged breach of the supervision order and the Attorney-General made an application for Mr O'Rourke's continuing detention. On 18 July 2008 Byrne SJA ordered that Mr O'Rourke be detained in custody for an indefinite period for control.
- [3] Once a continuing detention order has been made under Division 3 the Attorney-General must make an application for a review to be carried out. By this application therefore, the Attorney-General seeks an order pursuant to s 27 of the *DPSOA* for a review of the order of 18 July 2008 requiring Mr O'Rourke's continuing detention.

Criminal History

- [4] Mr O'Rourke has an extensive criminal history, which dates back to Children's Court convictions in 1978. His history includes convictions for assaults, fraud, stealing, receiving stolen property, burglary as well as various drug and driving offences. He has been convicted of rape on four occasions. He was aged 18, 24, 31 and 39 at the time of those offences. The circumstances surrounding those offences are relevant and I adopt Counsel for the Attorney-General's summary of them.
- [5] In relation to the 1982 offences, Mr O'Rourke picked up the complainant from the Rocklea Hotel and offered to drive her home. On the way home the car became bogged and he raped the woman. The sentencing judge, McPherson J, referred to the fact that the respondent had been drinking and observed that "it was manifest (in the respondent's) conduct a degree of contempt for the rights of the complainant". The respondent was imprisoned for a period of four years with a recommendation for parole after 12 months.
- [6] Mr O'Rourke was convicted in the Northern Territory in 1987 of unlawful assault with intent to have carnal knowledge and having carnal knowledge. At the time the offences took place the respondent had been drinking heavily and taking drugs. He drove a man and two women to the country. He made advances to one of the women. She resisted and then slapped him. Nonetheless, he forced himself on her. He was sentenced to a period of imprisonment of seven years with a non-parole period of three years.
- [7] In 1994 Mr O'Rourke was convicted of having sexual intercourse without consent. After heavy drinking and taking drugs he met a woman in a hotel. They smoked marijuana and then went for a walk along the beach where he had forced sexual intercourse with the woman. He was sentenced to six years imprisonment.

- [8] The offences for which the respondent was incarcerated immediately prior to the order of Chesterman J occurred on 17 March 2001. The complainant was a 58 year old woman. She was the mother of an acquaintance of the respondent. The respondent approached the woman at the house. He said the woman's daughter owed him money. He subsequently left the house but returned later. He appeared to be drunk. The woman said that she would go with the respondent in his car to find her daughter. During the drive the respondent threatened her and made threats against the daughter. He made the woman expose her breasts and forced her to perform oral sex on him.
- [9] The respondent then went to the house of a second woman. The woman was 30 years old and pregnant. She was the friend and mother of the daughter of the first woman. He threatened this woman also and touched her breast. He threatened her and the daughter saying he would slit her throat. He head butted the woman.
- [10] In sentencing Mr O'Rourke in 2002, Judge Healy DCJ made no recommendation for parole and observed:
- “You have been convicted of rape twice in the past; in Queensland in 1982. You received four years imprisonment for that rape. In 1994 you were convicted of rape again in New South Wales and sentenced to six years imprisonment. You also have some history with indecent assault in the past.
- This must have been a terrifying and unpleasant experience for the complainant. Having regard to your previous history, and the circumstances in which the offence was committed in relation to count 1, I am satisfied that the head sentence of five years is appropriate in your case.”

History of applications pursuant to the *DPSOA*

- [11] On 8 August 2006, the Attorney-General made the initial application pursuant to the *DPSOA* seeking Mr O'Rourke's continuing detention or release subject to a supervision order.
- [12] On 14 August 2006, Chesterman J¹ ordered that Mr O'Rourke be released under a 10 year supervision order containing 23 conditions including requirements that he attend a psychiatrist, not consume drugs or alcohol and not leave or stay out of Queensland without permission. Within a week of leaving prison he had obtained employment.
- [13] Whilst the supervision regime operated satisfactorily for a period of about 10 weeks, Mr O'Rourke objected to an increase in his reporting requirements in November and failed to attend for a urine analysis on 25 November 2006. He also commenced drinking within a few days of the missed test and consumed a carton of beer over two days, as he considered he would be returned to custody. He self reported however, and sought assistance from the Biala Alcohol and Drug Service. Whilst he was censured for the breach of his conditions, he was not returned to custody on that occasion. It is clear however, that he continued to find supervised release “irksome”.²

¹ *Attorney-General for the State of Queensland v O'Rourke* [2006] QSC 196.

² *A-G for the State of Qld v O'Rourke* [2008] QSC 153 at [24].

- [14] Mr O'Rourke attended his first appointment with the psychiatrist Dr Moyle, on 1 December 2006 and discussed with him his frustrations with the conditions and his resentment in relation to several issues. Surveillance through home visits and drug and alcohol testing continued throughout December 2006, with Mr O'Rourke becoming increasingly resentful. He was also noted to be "belligerent and argumentative". On 21 December 2006 he did not attend for urine testing and his test of 11 December was found to contain the presence of cannabinoid substances, as well as an indication that dilution to the sample had occurred.
- [15] There was no further contact with Mr O'Rourke and he missed his 27 December 2006 appointment with Dr Moyle. It is not disputed that Mr O'Rourke left Queensland in December 2006. He was apprehended in January 2008 in Grafton, after he was recognised by police. During that period interstate, Mr O'Rourke formed a relationship with a woman in her fifties and lived with her for eight months, until his re-apprehension and return to Queensland. It is clear that during the 16 month period interstate, he was in breach of a substantial number of the conditions of his supervision order, including the requirement not to leave Queensland, to attend a psychiatrist and to report to a Corrective Services Officer. There is no indication that he committed any criminal offences during this period.
- [16] On 23 June 2008, Byrne SJA considered an application by the Attorney-General for an order for Mr O'Rourke's detention or further supervision on the basis that he had contravened the supervision order.

The July 2008 order of Byrne SJA

- [17] In his reasons, Byrne SJA set out Mr O'Rourke's history of criminal behaviour, the history of his compliance with the supervision order as well as his actions in absconding interstate. His Honour then considered the opinions of Drs Lawrence and James, the two psychiatrists who had been appointed under the Act to examine and provide reports in relation to Mr O'Rourke.
- [18] His Honour concluded:³
- [56] It is not in contest that the respondent is a 'serious danger to the community in the absence of a division 3 order' within the meaning of s. 13(1) of the *Act*. That fact has been established by acceptable, cogent evidence to a high degree of probability.
- [57] The question is whether a continuing detention order ought be made or else whether the respondent should be released subject to a supervision order containing the conditions imposed by Chesterman J and some additional conditions, such as for curfews and electronic monitoring.
- [58] A few considerations may indicate that a supervision order could afford adequate protection of the community against the risk of the respondent committing an offence of a sexual nature involving violence.
- [59] He was at large for more than a year without re-offending. That is highly significant, particularly as he was drinking as much alcohol as he wished for most of that time. He has his relationship with

³ *A-G for the State of Qld v O'Rourke* [2008] QSC 153.

Ms Flack. He finds it satisfying. Probably, it is an incentive to compliance with a supervisory regime. And Dr James thinks that the level of risk of recidivism can be adequately addressed by a supervision order.

[60] Other considerations, however, point in a different direction.

[61] Mention has already been made of the importance that Dr Lawrence and Dr James still attach to abstinence from alcohol and illicit drugs.

[62] The psychiatrists all agree that the respondent's consumption of alcohol or illicit drugs exposes a high risk of re-offending with sexual violence.

[63] Chesterman J summarized the view Dr James had expressed in this way:

‘Dr James insists that the respondent not consume any alcohol or illicit drugs. Should he do so the risk of re-offending will increase mightily. He should participate, as he says as he intends to, in programs encouraging abstinence, such as those run by Alcoholics Anonymous. He should be carefully monitored to ensure that he does not ingest alcohol or illicit drugs and should have regular support and contact from an appropriately trained therapist.’

[64] Chesterman J quoted Professor Nurcombe as having reported that:

‘Of all the risk factors [the respondent] will face after release, there is no doubt that alcohol and drug use is the most serious. Unless he can abstain from alcohol/drug use in the future, recidivism is likely’.

[65] Dr Lawrence wrote at the time that:

‘... the most likely destabiling [sic] influence in his life would be ... to participate in any alcohol or drug abuse. Total abstinence of these substances should be seen as an essential condition for release.’

[66] As his testimony reveals, the respondent realizes that alcohol, especially in combination with an illicit drug, markedly increases his risk of raping again. Yet cannabis use was detected shortly before he absconded; and he talked with Ms Flack about using the drug. He became heavily intoxicated in the November 2006 relapse. And he consumed alcohol after he fled the State.

[67] Ms Flack has deposed to the respondent's alcohol consumption and talk of cannabis use in the seven months they were together:

‘... we would occasionally have a drink of wine with dinner. This was usually port. Sometimes he would have perhaps more than he should have, however there were never any problems with his drinking ... I never saw [his] personality change when he drank. He would just

sometimes open up about his childhood and talk a bit more. At no stage during our relationship has [he] consumed any cannabis that I am aware of. We spoke about it and I told him that I was not willing to tolerate it.’

[68] In his recent report, Dr James assumed that the respondent had ‘avoided the contingent high risk of intoxication’ for about a year. Dr James, however, was not aware of the extent to which the respondent had consumed alcohol. Ms Flack’s reports of drinking ‘wine’ usually ‘port’, and sometimes ‘perhaps more than he should have’, were not drawn to his attention. Nor was Dr James aware that Ms Flack and the respondent had discussed the use of cannabis and that she told him she would not tolerate it.

[69] Dr James attaches importance to the potentially therapeutic relationship with Ms Flack, regarding it as incentive to compliance with conditions of supervised release. That relationship, however, is not associated with avoidance of alcohol. And it has not been tested under supervised release. More importantly, the respondent’s personality disorders, especially the psychopathy, coupled with his failed relationships over the years make it highly probable that the relationship with Ms Flack would not survive the stresses of his supervision. Its almost inevitable failure - probably sooner rather than later - the personality disorders, the disturbing history of serious sexual violence against other women after relationships end, and the respondent’s demonstrated unwillingness to live within the constraints of supervision – in particular, abstinence from alcohol and illicit drugs – combine to indicate a high risk of relevant recidivism.

[70] I cannot agree with Dr James that the risk can be managed by a supervision order. The prospects of compliance with conditions important to the safety of women – especially, abstinence from alcohol and illicit drugs - are remote.

[71] He got a job he liked; and it offered him advancement. He had the support of his family, at least while he lived in Queensland. He had the benefit of Biala’s help. He saw Dr Moyle. Yet only weeks into a 10 year supervisory regime, his relapse prevention program collapsed. His late November relapse resulted only in censure and encouragement from Ms Di Pasquale. His response was to choose persistent breaches of supervision conditions - including those he knew to be important to the safety of women. He is not remorseful for those contraventions. Even after incarceration since arrest early this year, he still cannot bring himself to accept the constraints of a supervisory regime: for example, his willingness to submit to supervised release depends on someone other than Ms Di Pasquale supervising him: ‘I’d rather remain in gaol than be under her’, he testified.

[72] ‘Most problematic’ is how Dr Lawrence summarized the chances that the respondent would comply with conditions of supervision if released now. That assessment involves no exaggeration. Almost

certainly, he would not adhere to the strictures of a supervisory regime needed to protect women against a high risk of violent sexual offending.

[73] The adequate protection of the community requires the respondent's continuing detention for control."

The Report of Dr Sundin

[19] As required by the Act, Mr O'Rourke has been assessed by two psychiatrists, Dr Sundin and Professor Nurcombe for the purposes of this review. Professor Nurcombe had also previously assessed Mr O'Rourke in 2005 for the initial hearing under the Act.

[20] Dr Sundin's report reviewed all the previous psychiatrist's reports, the affidavit material, the previous decisions of this Court as well as the notes of her interview with Mr O'Rourke and her assessments using the actuarial instruments. Dr Sundin noted Professor James' 2006 and 2008 reports as follows:⁴

"Professor James continued to make the diagnosis of Antisocial Personality Disorder, Borderline Personality Disorder and Psychopathic Personality Disorder. Professor James comments that Mr O'Rourke became frustrated with the supervision order and thus absconded. He considered this behaviour consistent with his diagnosis of a Borderline Personality Disorder and demonstrated an individual having difficulty controlling his anger *'in the face of behaviour on the part of others which he perceives as neglectful, withholding or uncaring. A degree of impulsivity also appears to have become manifest, both to Mr O'Rourke's significant consumption of alcohol as reported in the IOMS report of 27 November 2006; and of course ultimately in his absconding'*." (Emphasis as original report)

[21] Dr Sundin referred to the previous reports of Dr Joan Lawrence in 2006 and 2008 who had noted "the significance of the diagnosis of Psychopathic Personality and its implications for recidivism."⁵ Dr Sundin continued:

"Dr Lawrence observes that Mr O'Rourke's behaviour in absconding from parole with a number of breaches of conditions including alcohol and marijuana use, all within three months of detention on closely supervised release, are indicative of and consistent with his Psychopathic personality. She considers that his behaviour *'negates the claimed maturity and benefits learned from his SOTPs during previous incarceration. Instead, they would appear to confirm his glibness, shallowness, superficiality, degree of narcissism as well as irresponsibility and inability to take responsibility for his own actions'*."

She also wisely draws attention to his continuing pattern of idealisation and devaluation of females. On this occasion he has grossly devalued both his female parole officer and the female officer in-charge of his unit at the AGCC, while presenting an

⁴ Report of Dr Sundin at p 6.

⁵ Report of Dr Sundin at p 7.

idealised version of his current girlfriend. Dr Lawrence observes that these patterns indicate that he continues to have ‘*well entrenched*’ adverse attitudes towards women and that ‘*this indicates that the risk to women from Leslie O’Rourke remains, especially when other elements of the context are added, i.e., the disinhibition of alcohol or drugs on his innate anger and hostility with women who he might feel have disappointed him or failed to meet his particular needs at the moment. His impulsivity, irresponsibility and failure to adequately utilise internal controls on his emotions or impulses have been demonstrated through this episode.*’” (Emphasis as original report)

- [22] In her report, Dr Sundin considers that Mr O’Rourke has features of an Anti-Social Personality Disorder and a Borderline Personality Disorder. She also states that:
 “Admixed with his lifelong failure to conform to social norms is his capacity for lying and conniving behaviour. He has a demonstrated capacity for impulsivity and failure to plan ahead. He also has a demonstrated capacity for aggressive outbursts and a reckless disregard for the safety of self and others.”
- [23] Dr Sundin also considered that he demonstrated a pattern of a grossly disturbed sense of self “deeply entrenched antagonistic attitudes towards and a capacity to project his racial hostility upon women, at times when he was overwhelmed by his feelings of isolation, abandonment or emptiness”. Dr Sundin noted that Mr O’Rourke has no emotional empathy but rather perceives himself as the victim. She considers he has exploited others to his own ends, has no realistic long term goals as well as “limited frustration tolerance”.
- [24] Her conclusion is that:
 “The combination of Borderline Personality Disorder in an individual with Anti-social Personality Disorder and Psychopathic personality traits bodes extremely poorly for his prognosis and for his likely risk of recidivism; particularly given the fact that 12 months down the track of further time in prison, he continues to perceive that his incarceration came about through the failings of others rather than through the direct consequence of his own actions.”⁶
- [25] Dr Sundin’s assessment of Mr O’Rourke using the actuarial tables indicated that on the Hare Psychopathy Checklist, he scored 32/40 which placed him above the cutoff range for a diagnosis of psychopathic personality disorder. On the SORAG he achieved a score placing him in category 7 which is regarded to be at a high risk level. On the Static-99 the respondent achieved a score of 8 which placed him in the high risk category.
- [26] Dr Sundin gave evidence at the hearing. Her oral evidence confirmed the views expressed in her written report. Those conclusions were that Mr O’Rourke’s risk of recidivism was high and she considered he would comply with a supervision order only as long as it suited him and that essentially any supervision order was doomed to failure. She stated:⁷

⁶ Report of Dr Sundin at p 17.

⁷ Report of Dr Sundin at p 8.

“Combining the actuarial instruments with the above described personality assessment and putting it together with Mr O’Rourke’s failure while on community supervision and his ongoing perception of himself as the unhappy victim of an overzealous Parole Officer; I have no great confidence of the success of any future Supervision Order.

I consider that Mr O’Rourke’s ongoing risk of recidivism is high and I can see little evidence that his risk has changed since he was last before the Supreme Court in 2008. While it is evident that he has maintained good institutional conduct over the last 12 months, I see little evidence of substantial attitudinal change in that time. In my evaluation, Mr O’Rourke remains much as he was then reported on by Ms McEvoy in 2006 and Dr Lawrence in 2008. I consider he will comply with any community supervision order only so long as it suits him.

I consider he is idealizing Ms ... just as he previously idealized ... I am deeply fearful of his likely reaction when inevitably this relationship fails; given his past pattern of opportunistic, sexually aggressive behaviour when he has felt abandoned or betrayed by a woman in his life. His assertion that he will blithely let Ms ... go and simply reach out to unidentified, support a person if she leaves him; is not to be believed given historical factors. An assertion of maturation made by Mr O’Rourke must be weighed against the same claims made by this prisoner in 1992.

Unfortunately, I can offer little by way of suggestions for significant therapeutic interventions which are likely to make any substantial change, although it may be worth giving consideration to getting him to do one-on-one counseling sessions with one of the Clinical Psychologists at the Wolston Correctional centre to see if this can help shift some of the core dysfunctional attitudinal problems and help him to enact a viable relapse prevention plan.”

Professor Nurcombe’s Report

- [27] Professor Nurcombe also provided an extensive report. He interviewed Mr O’Rourke as well as his partner. Professor Nurcombe noted that he had previously interviewed Mr O’Rourke in 2005 and stated that on this occasion he had “a reflective quality to his account of the past and present”. Professor Nurcombe’s report indicates the following conclusions in relation to his diagnosis of Mr O’Rourke and the risk factors which applied to him:⁸

“VII Diagnostic Formulation and Risk Analysis

42. The categorical diagnosis has not changed:

- | | |
|---------|---|
| Axis I | 1. Polysubstance Abuse Disorder: amphetamine, heroin, marihuana (in remission). |
| | 2. Alcohol Abuse Disorder (in remission) |
| Axis II | Antisocial Personality Disorder with Psychopathic Features |

⁸ Report of Professor Nurcombe at pp 12-13.

- Axis III 1. Chronic Hepatitis C infection
2. Osteoarthritis of the hand and knees

43. Without consulting my previous rating(8/8/05), I rescored the Psychopathy Checklist Revised. I found a score of 28/40, just below the cut-off point for the diagnosis of Psychopathic Personality Disorder. This score which is below what I found in 2005 (32/40) is made up of 4 subscores....

...

VIII Risk Appraisal

45. My opinion concerning the risk of reoffending has not changed from that expressed in paragraph 103 of my previous Report. According to static, historical issues, Leslie O'Rourke is at ***moderate to high risk*** of sexual/violent recidivism. The potency of these static historical risk factors may be counteracted by recent changes in his attitude to women and to his offences, a greater degree of self-understanding engendered by the Sex Offender Treatment Program, and his relapse prevention program. It is evident that he found the restrictions and expectations to his supervision plan very difficult, and he did not have a good relationship with his probation officer. Apparently because he was thought, incorrectly, to have paedophilic tendencies, restrictions were imposed upon him that were not part of the original Supervision Order. Moreover, he was greatly stressed by persecution at the hands of people in his neighbourhood. Eventually, when it became evident that he would be breached because he had used marihuana, he absconded from supervision and wandered aimlessly about New South Wales until he finally met ... It is evident that he and ... have a close and supportive relationship. This relationship could be a key to his stability if he is released.

46. I see no therapeutic purpose in Mr O'Rourke's remaining further in prison. If he is to be released, the following conditions are likely to reduce his risk of reoffending to ***moderate to low***:

- His relationship with ... is encouraged and supported.
- He seeks and finds suitable employment.
- He does not drink alcohol for at least the first two years of his supervision.
- He does not use illicit drugs.
- He has regular supervision by a correctional officer who is supportive to him and his relationship with
- He receives psychiatric treatment.

47. Since he is not a child molester, it is unnecessary to impose on him a distance from schools, malls, or places where children congregate. I see no purpose in imposing on him a curfew or electronic surveillance. There is no need for him to have urine and breath tests more than once per week. I strongly recommend that Corrective Services not impose on Mr O'Rourke additional restrictions that are not part of his official Supervision Order.

48. I recommend he return to psychiatric treatment adjudication that, with the help of his therapist, he explore the relationship between early childhood abuse, unresolved conflict concerning self-worth, the origin of his hypermasculine attitudes, alcohol/drug abuse, and sexual offending against adult women.”

- [28] At the hearing, Professor Nurcombe stated that the difference in the current score and the previous score on the Psychopathy Checklist was because he considered that in Mr O’Rourke was “less glib and manipulative and less callous perhaps than I had thought on the first occasion.” He conceded however, that a difference in four points on the scoring was not significant and agreed that if Mr O’Rourke was not a psychopath he was “close to it”.⁹ Ultimately, he stated that this diagnosis means that it has a considerable impact on his life and the real question was whether he had gained a “sufficient understanding of himself and whether maturation of age will dampen down the more impulsive tendencies he showed when he was younger.”¹⁰
- [29] Professor Nurcombe considered that there had in fact been signs of maturation, particularly given that he had asked to be kept in a part of the prison where he no longer had to adopt the “tough-guy” role, which had been part of his previous persona when in prison. He also considered it significant that O’Rourke had told him that he had come to terms with his anger at his mother and had some understanding as to why he had been so angry with her. Overall he considered that he was a lot more self reflective. He stated that:¹¹
- “He has been much affected in his personality development by serious sexual abuse he experienced as a young man. He said he had come to terms with that to some extent, although I don’t think he’s understood fully the relationship between that and his hypermasculine attitudes. He said he met the man who abused him, a man who he had been violently angry at, and all he felt was pity.”
- [30] Professor Nurcombe had also interviewed Mr O’Rourke’s partner and considered she was a forthright and honest woman who knew about his offences as well as the fact he had been sexually abused. He considered that the relationship should be supported. He stated that he had formed the impression that she genuinely loved Mr O’Rourke. She had also informed Professor Nurcombe that while they were together during the eight months he drank alcohol at night at times, but never to excess, and he was never involved in any anti-social behaviour. She also indicated that he worked in a saw-mill and had other employment during this time.
- [31] Professor Nurcombe stated that in his view Mr O’Rourke genuinely appeared to love his partner and that they shared the same interests, including music and the outdoors, and that he found her to be gentle and kind. Professor Nurcombe also stated that Mr O’Rourke discussed the fact that relationships can break up and he understood that it could happen and that this could be upsetting to him.
- [32] When asked about the fact that Mr O’Rourke has idealised relationships in the past and then devalues them when they break up, Professor Nurcombe replied:¹²

⁹ Transcript at p 19, ll 35-40.

¹⁰ Transcript at p 19, ll 52-55.

¹¹ Transcript at p 20, ll 25-31.

¹² Transcript at p 21, ll 45-50.

“There’s only one I know of where he spoke in an idealised way. Then that was a woman with whom he had a relationship prior to his most recent conviction. I don’t know of any evidence that he switched from idealising that person to devaluing them. This formula, of course, comes from the theoretical concepts of borderline personality where the person with that condition is said to be likely to switch from idealisation to devaluation rapidly.”

When asked if he considered it to be a pertinent concern in Mr O’Rourke’s case, Professor Nurcombe replied, “It could be but I see no direct evidence of it”. He continued:¹³

“Well, it may be that I know insufficient about the details of his intimate relationships. There was no evidence of it in his eight month relationship with Mrs ..., according to her and according to him, and if there had been, I don’t think Mrs ... could have obscured it.”

- [33] Professor Nurcombe considered that he did not see any evidence of the idealisation and devaluing process occurring. He continued:¹⁴

“The idealisation is there without doubt. In fact, they both idealise each other to some extent and that’s love. However, devaluation would occur, for example, if after a rejection the individual becomes violently angry and beats up the other person or behaves in a highly impulsive way. The situation is – borderline personality upon which this concept of idealisation and devaluation is based is mostly diagnosed in women and it may well be that borderline personality is the female mirror image of anti-social personality in men. There’s some evidence for that, but in women the devaluation is seen in violent rages and self-injury, suicide attempts, highly impulsive and accusatory self-injury, suicide attempts, highly impulsive and accusatory behaviour. It’s unmistakable and the – usually the partner of the person who is devaluating can’t stand it any longer and has to separate, unless they are for other reasons tied to the person.

That process would presumably take some time to work its way out and would occur after the idealisation process has come to an end as a result of some form of rejection, or misunderstanding, or whatever?-- It would not be a gradual process, it would be a sudden thing based upon a sense of rejection, or jealousy, or a sense that somebody was restricting the other person too much and then there would be a violent explosion.”

- [34] When asked what would occur when the relationship came to an end, Professor Nurcombe considered that he would be concerned if the relationship came to an end because of perceived rejection. However, he considered that Mr O’Rourke would already be in therapy with a psychiatrist and therefore that was something that could be dealt with and helped in that context. Professor Nurcombe considered this was a concern because in the past, Mr O’Rourke has behaved impulsively and aggressively when he has felt demeaned and cheated. He considered there was

¹³ Transcript at p 21, ll 57 and p 22, ll 1-5.

¹⁴ Transcript at p 22, ll 13-27 and p 23, ll 1-8.

evidence of past impulsive behaviour after rejection.¹⁵ Significantly however, he considered that the risk of committing a violent sexual offence after a relationship breakdown “would be preceded by alcohol and substance abuse I think. It wouldn’t be an imminent thing but the danger of his getting on to the slippery slide of alcoholism and substance abuse would be increased.”¹⁶ In summary then, Professor Nurcombe stated that if the relationship broke down there would be an increase in the risk, but it may not necessarily be an immediate increase in the risk.

- [35] Professor Nurcombe considered that there were three critical cornerstones to a supervision order. First, support of his relationship with his partner, second, alcohol and substance abuse counselling and third, psychotherapy with an experienced psychiatrist. He considered that the restrictions on alcohol could be lifted after two or three years and that the total order should last 10 years with decreasing restrictiveness if things progressed well. Professor Nurcombe agreed that Mr O’Rourke’s personality led to difficulties in his willingness to comply with an order, but that he considered it was something that could be dealt with under individual psychotherapy. Professor Nurcombe expressed concern that if the orders were unnecessarily restrictive, Mr O’Rourke will see the restrictions as being excessively restrictive and discriminating against him with the consequence that, once again, he would breach the order.
- [36] Professor Nurcombe considered that Mr O’Rourke had a good exit summary from his sex offender treatment program that he had completed in prison in 2004 and that he had applied himself vigorously to it. He also considered that Mr O’Rourke had developed a self-generated and comprehensive relapse prevention plan.
- [37] Mr O’Rourke’s affidavit stated that he had not incurred any breaches of discipline since he had been incarcerated in 2008, he had not consumed any alcohol or drugs and that he had not returned any positive urine samples. He also outlined the courses he had completed, including a First Aid Certificate. He also referred to the relapse prevention plan, which he had developed and the contacts he had made with the Salvation Army Chaplain and Ron Henderson, a drug and alcohol counsellor. He also outlined the support he would receive from his partner as well as his family.
- [38] Mr O’Rourke indicated that his immediate plans on release would be to live in the Wacol precinct for a few months and then he would move to a home with his partner. He intended to stay in touch with his support network and find work once he had settled in his new home. He has a forklift driving ticket and a certification in construction. He also intended to continue his painting and his shared interest in music with his partner.

Other supports for Mr O’Rourke

- [39] Mr O’Rourke’s partner gave evidence that she was aware of his background and that she would support him on his release. She outlined their plans for eventually living together once he left the Wacol precinct. She indicated she was prepared to totally abstain from alcohol in order to support Mr O’Rourke. She had also been in contact with Ron Henderson, who was an alcohol counsellor, who would provide support and it was her intention to work in with Corrective Services on Mr O’Rourke’s release and comply with anything they suggested which would

¹⁵ Transcript at p 23, l 35.

¹⁶ Transcript at p 23, ll 40-45.

benefit him. In her evidence she stated that she would not tolerate drugs and also indicated that she worked part time as a youth worker.

[40] There was also evidence of a Salvation Army prison chaplain indicating her contact with Mr O'Rourke and the counselling and support which would be provided to him on his release particularly at the Wacol Precinct. These services included crisis counselling, personal counselling, financial counselling, drug and alcohol rehabilitation services as well as emergency accommodation and employment services.

[41] There was also an affidavit from Ron Henderson a drug and alcohol counsellor with the Alcohol and Drug Foundation Queensland who stated that he had been in contact with Mr O'Rourke since February 2009 and that he had attended on him on a number of occasions to provide one on one counselling. He had also viewed Mr O'Rourke's relapse prevention plan and considered that it was "realistic and appropriate". He had also been in contact with Mr O'Rourke's partner on a number of occasions.

Should the detention order be continued?

[42] On the basis of the evidence before me I am satisfied that the respondent is a "serious danger to the community in the absence of a division 3 order" within the meaning of s 13(1) of the *Act*. I consider that that fact has been established by acceptable, cogent evidence to a high degree of probability. I also note that this fact is not seriously in dispute between the parties.

[43] Once again the real question is whether a continuing detention order should be made or whether the respondent should be released subject to a supervision order. I note Byrne SJA's view at the last hearing that at that time there were indeed some positive considerations which may have indicated that a supervision order could afford adequate protection of the community against the risk of the respondent committing an offence of a sexual nature involving violence. Ultimately however, his Honour considered that there was a very real concern that the relationship was not associated with avoidance of alcohol and that it had not been tested under supervised release. More importantly, his Honour considered that the respondent's personality disorders, especially the psychopathy, coupled with his failed relationships over the years made it highly probable that the relationship would not survive the stresses of his supervision. He also considered that the personality disorders, the history of serious sexual violence against other women after relationships end, and his unwillingness to live within the constraints of supervision meant that there was a high risk of recidivism.

[44] The critical issue therefore, is whether the current risk which Mr O'Rourke poses of committing a serious sexual offence is such that the adequate protection of the community can be assured by the making of a supervision order or whether the risk still continues to be so high that adequate protection can only be assured by the making of a continuing detention order. There is clearly a divergence of views between Dr Sundin and Professor Nurcombe in relation to this question. Both have provided extensive and comprehensive reports. Dr Sundin clearly considers that Mr O'Rourke is still a high risk of committing a serious sexual offence even if released under a supervision order. She does not consider he would comply with a supervision order and does not see that his risk has changed since he was last before

the Court in 2008. Professor Nurcombe however, considers that whilst Mr O'Rourke is "at moderate to high risk of sexual/violent recidivism" he considers that appropriate conditions in a supervision order could reduce the risk to "moderate to low". He considers therefore, that Mr O'Rourke could be released under an appropriate supervision order.

[45] Ultimately however, I prefer the conclusions expressed in the report of Professor Nurcombe for two reasons. First he has interviewed Mr O'Rourke on two occasions and has known him since 2005. Significantly he has assessed him both before his release and then again after his re-incarceration. He has therefore, been able to compare his presentation on both occasions and he has been able to identify the signs of maturation and the indicia of a more reflective personality. The second and major reason why I have preferred the views of Professor Nurcombe is that he has actually interviewed Mr O'Rourke's partner and considered the issue of the "idealisation" of the relationship, which is a highly relevant factor, from her perspective as well as from Mr O'Rourke's perspective. Ultimately therefore, for these reasons, I consider that Professor Nurcombe's view should carry more weight where the opinions of the two psychiatrists diverge.

[46] I consider therefore, that the risk of Mr O'Rourke committing a serious sexual offence if released without an order to be moderate to high. I also consider that there have been a number of factors which indicate that this risk can be appropriately managed by a supervision order. I do not share Dr Sundin's view that a supervision order is doomed to fail. In my view, the key factors which indicate that a supervision order can appropriately manage the risk are as follows:

- There has been no re-offending since his release in September 2006. His last offence was in March 2001.
- Since his re-incarceration in January 2008 there have been no breaches of prison discipline as well as complete abstinence from drugs and alcohol as evidenced by his negative urine samples.
- There have been signs of maturation in prison, with a less "macho" stance and positive comments from supervising prison officers.
- He was in a realistic relationship for a period of eight months with no domestic violence or anti-social behaviour. This relationship has continued during the last 22 months in gaol with weekly visits and daily phone calls.
- He obtained employment during his last release and has gained further qualifications in construction and first aid whilst in prison. He had interests and activities when previously released which he has continued.
- His partner is willing to totally abstain from alcohol to support him and he has commenced with a drug and alcohol counsellor who continue to provide support on release.
- He has a realistic and staged release plan which involves an initial move to the Wacol Precinct and has organised support to be in place once he moves. His relapse prevention plan is sensible, realistic and appropriate.

- He is willing to attend psychotherapy with Dr Moyle and arrangements have been made for an appointment upon release.

- [47] In coming to a conclusion that the adequate protection of the community can be ensured by the making of a supervision order I have place particular reliance on a number of factors in the report of Professor Nurcombe. In particular, I consider his view that there has been increasing maturation to be significant. He considers that Mr O'Rourke is now more reflective and has an understanding of his relationship with his mother. He has also resolved his resentment towards her as well as his anger to her and his uncle who abused him as a child.
- [48] A further significant factor is that many of the reports have placed particular significance on the fact that Mr O'Rourke has previously "idealised" and then "devalued" his relationships with women. Professor Nurcombe examined this issue in the context of his current relationship and importantly concluded that he could find "no direct evidence of it". He also stated that given his questioning of his partner on this issue it would have been difficult for her to "obscure" it.
- [49] Furthermore, Professor Nurcombe reports that Mr O'Rourke has an understanding that the relationship may fail and has discussed what to do when that occurs. There is a clear indication that this issue will need to be addressed with his psychiatrist and Professor Nurcombe considers that any relationship failure can be adequately addressed in this way. He also stated that whilst a failed relationship may increase the risk this increase in risk would not be immediate but rather there could be a decline into drinking and drug taking which would then increase the risk of sexual offending. Given this pattern it is clear that the monitoring which will be occurring in relation to drugs and alcohol would promptly identify any such decline. Mr O'Rourke has also indicated that he is willing to advise his Corrective Services officer if his relationship with his partner breaks down. This would also ensure that appropriate strategies could be put in place to monitor his behaviour during this period.
- [50] Professor Nurcombe considers that there are three cornerstones to a successful supervision order namely support of his current relationship, alcohol and substance abuse counselling and psychotherapy with an experienced psychotherapist. I consider that the draft supervision order which has been tendered which contains 30 conditions is appropriate. I also consider that the period of the order should be 10 years. I consider however that two additional conditions be added. First that within seven days of his release he organise an appointment on the earliest available date with Dr Moyle or an experienced psychotherapist and second that he is required to advise an Authorised Corrective Service Officer within 24 hours of the breakdown of his relationship with his partner.
- [51] I therefore order that, the court being satisfied to the requisite standard that the respondent, Leslie William O'Rourke, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*:
1. The respondent be subject to the following conditions until 2.11.2019.

The respondent must:

 - i be under the supervision of an authorised Corrective Services officer for the duration of the order;

- ii report to an authorised Corrective Services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 9am and 4pm on the day of release from custody and at that time advise the officer of the respondent's current name and address;
- iii report to, and receive visits from, an authorised Corrective Services officer at such times and at such frequency as determined by Queensland Corrective Services;
- iv notify and obtain the approval of the authorised Corrective Services officer for every change of the respondent's name at least two business days before the change occurs;
- v comply with a curfew direction or monitoring direction;
- vi notify an authorised Corrective Services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed at least two (2) days prior to the commencement or any change;
- vii seek permission and obtain approval from an authorised Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
- viii reside at a place within the State of Queensland as approved by an authorised Corrective Services officer by way of a suitability assessment;
- ix if this accommodation is of a temporary or contingency nature, reasonable efforts must be demonstrated to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services;
- x whilst housed at any contingency or temporary accommodation you must comply with any regulations or rules in place at this accommodation;
- xi not reside at a place by way of short term accommodation including overnight stays without the permission of an authorised Corrective Services officer;
- xii seek permission and obtain the approval of an authorised Corrective Services officer prior to any change of residence;
- xiii not leave or stay out of Queensland without the written permission of an authorised Corrective Services officer;
- xiv not commit an offence of a sexual nature during the period of the order;
- xv not commit an indictable offence during the period of the order;
- xvi comply with every reasonable direction of an authorised Corrective Services officer;
- xvii respond truthfully to enquiries by an authorised Corrective Services officer about his whereabouts and movements generally;
- xviii not have any direct or indirect contact with a victim of his sexual offences;
- xix disclose to an authorised Corrective Services officer upon request the name of each person with whom he associates and respond truthfully to requests for information from an authorised Corrective Services officer about the nature of the association, address of the associate if known, the activities undertaken and

- whether the associate has knowledge of his prior offending behaviour;
- xx notify an authorised Corrective Services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;
 - xxi submit to and discuss with an authorised Corrective Services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
 - xxii if directed by an authorised Corrective Services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by an authorised Corrective Services officer who may contact such persons to verify that full disclosure has occurred;
 - xxiii abstain from the consumption of alcohol for the duration of this order;
 - xxiv abstain from illicit drugs for the duration of this order;
 - xxv submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by an authorised Corrective Services officer;
 - xxvi disclose to an authorised Corrective Services officer all prescription and over the counter medication that he obtains;
 - xxvii not visit premises licensed to supply or serve alcohol, without the prior written permission of an authorised Corrective Services officer;
 - xxviii attend upon and submit to assessment, treatment and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by an authorised Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;
 - xxix permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;
 - xxx attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by an authorised Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;
 - xxxi within 7 days of his release organise an appointment at the earliest available date with Dr Moyle or an experienced psychotherapist;
 - xxxii advise an Authorised Corrective Service Officer within 24 hours of the breakdown of the relationship with his partner.