

# SUPREME COURT OF QUEENSLAND

CITATION: *A-G for the State of Qld v Dawson* [2009] QSC 431

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
**(Applicant)**  
**v**  
**STEWART JAMES DAWSON**  
**(Respondent)**

FILE NO/S: No 10682 of 2009

DIVISION: Trial Division

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

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 17 December 2009, ex tempore

DELIVERED AT: Brisbane

HEARING DATE: 17 December 2009

JUDGES: Byrne SJA

ORDER: **There will an order in terms of the initialled draft, as amended.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – MISCELLANEOUS MATTERS – SEXUAL OFFENDERS – *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – where respondent serving a period of imprisonment for rape and attempted rape – where application made under s13 *Dangerous Prisoners (Sexual Offenders) Act 2003 (Q)* for continuing detention order or supervision order – whether the respondent is a serious danger to the community in the absence of an order – whether conditions in proposed supervision order appropriate

ss 11, 13(2)(b), s13(4) *Dangerous Prisoners (Sexual Offenders) Act 2003*

COUNSEL: Mr J B Rolls for the Applicant  
Mr J J Allen for the Respondent

SOLICITORS: Crown Law for the Applicant  
Legal Aid for the Respondent

- [1] This is an application by the Honourable the Attorney-General for an order that the respondent, Stewart Dawson, be subjected to an order under division 3 of the Dangerous Prisoners (Sexual Offenders) Act 2003. Detention for care and control of treatment is sought. Alternatively, it is proposed that the respondent be released subject to the conditions of a draft supervision order which have been considered by the two reporting psychiatrists, Professor Nurcombe and Dr James.
- [2] The Attorney-General acknowledges, appropriately enough, that the psychiatric (and, indeed, other) evidence supports the imposition of a supervision order rather than continuing detention.
- [3] An order of that nature may only be made if the Court is satisfied that the respondent is a serious danger to the community in the absence of a division 3 order within the meaning of that expression in the statute. A prisoner is a serious danger to the community in that sense if there is an unacceptable risk that he would commit a serious sexual offence if released from custody without a supervision order being made; see section 13(2)(b).
- [4] The Court may decide that it is satisfied of the existence of the relevant danger only if persuaded by acceptable, cogent evidence, and to a high degree of probability, that the evidence is of such weight to justify the decision.
- [5] Here, the evidence amply supports that conclusion. Indeed, the contrary is not suggested for the respondent. Nonetheless, it is necessary to advert to the matters which, by section 13(4) of the Act, are pertinent in deciding whether the Attorney-General has proved to the requisite standard and by evidence the essential factual matters to be established before a supervision order may be made.
- [6] By section 13(4)(a), the reports of the psychiatrists, who have reported under section 11 of the Act, fall to be considered. They are reports of Professor Nurcombe and Dr James. As the respondent does not resist a finding that he is a serious danger to the community in the absence of a division 3 order, I do not intend to canvas in any detail the extensive reports of the two psychiatrists. In essence, both of them conclude, for reasons elaborately expressed in their helpful and comprehensive reports, that the respondent presents a moderate degree of risk of committing a serious sexual offence in the absence of a supervision order.
- [7] His sexual history includes two offences of serious sexual violence: one a rape in 1986; the other, the index offences: involving entering a dwelling house with intent and attempted rape. Those offences were committed at about the same time as doing grievous bodily harm with intent to do so, an offence which was perpetrated on the husband of his victim after he had entered her house and attempted to rape her. The serious natures of the sexual offences are sufficiently described in the reports. The offending was associated with alcohol. And the psychiatrists' reports establish that it is critical to this respondent's successful release, subject to a supervision order, that he abstain from any use whatsoever of alcohol and avoid illicit drugs. If he can do so, the risk of committing serious sexual offences is reduced to low or at least no more than moderate.

- [8] The psychiatrists both suggest that the supervision order should subsist for 10 years. They have today testified that such a period is reasonably required. It may be expected that conditions of supervision would be relaxed after a period of time, if the respondent proves compliant.
- [9] By section 13(4)(b), other medical, psychiatric or psychological or other assessment falls to be considered. Over the many years in which this respondent has been incarcerated, there have been a number of such reports. Some have been associated with his unsuccessful applications for parole; outcomes sometimes attributable to his offending, in particular drug offending, whilst in prison.
- [10] But there is nothing in those reports to call into question in any way the recent reports of the two psychiatrists who have reported pursuant to orders made under section 11 of the Act.
- [11] Information indicating whether there is a propensity on the part of the prisoner to commit serious sexual offences in future is also discussed in those reports.
- [12] Whether or not there is a pattern of offending behaviour on the part of the prisoner is also to be considered. There is. There are attacks upon women involving aggressive sexual violence directed towards strangers when the respondent has been in drink.
- [13] Efforts by the prisoner to address the causes of the offending behaviour, including programs in which he has participated, are also significant. He has participated in many programs. These are directed to dealing with drug abuse, anger management and opportunities for employment, among others. His literacy has improved. And he has been taught ways in which he can cope with his anger, his tendency to emotional arousal and his inclination to drug abuse.
- [14] He has made, in particular in the last 18 months, significant efforts to avoid drug use whilst in prison. He has also reflected upon the circumstances which led to his offending. These matters have been more than adequately assessed by the psychiatrists. His participation in the rehabilitation programs has had a positive effect upon him; see section 13(4)(f).
- [15] His antecedents and criminal history involve criminal misconduct from an early age. The most significant offending involved entering houses, which exposes adventitious opportunities to commit sexual offences, which is what has happened.
- [16] The risk that the prisoner will commit another serious sexual offence if released into the community is obviously a major concern and is expressed as such in section 13(4)(h) of the statute. The risk that this man will commit another serious sexual offence is, if he complies with the conditions of the supervision order proposed, low or, at most, moderate. Over time, if he can commit to a life free from involvement of alcohol and dangerous drugs, the degree of risk he poses should ameliorate. The need to protect members of the community from the risk is legislatively stated as a matter for concern.
- [17] The real contest today, in the light of the evidence of the psychiatrists, concerns the suitability of the number of conditions proposed in the supervision order.

- [18] I accept the evidence of Professor Nurcombe and Dr James concerning the challenged conditions, which is, in effect, that all of them are reasonably required to reduce to an acceptable degree the risk of the commission of a serious sexually violent offence against women.
- [19] Their evidence also shows convincingly that the period of supervision should be as long as 10 years.
- [20] Both psychiatrists envisage that the degree of supervision might be lessened as time progresses, if the respondent can demonstrate compliance with the conditions of supervision.
- [21] I am satisfied that the adequate protection of the community can be achieved by the imposition of the conditions proposed. Those which are challenged are all reasonably necessary for the adequate protection of the community against the material risk.
- [22] There will therefore be an order in terms of the initialled draft, which accords with Exhibit 1, the proposed supervision order, except in two respects:
- paragraph 22 of Exhibit 1 has been amended by inserting the word "reasonably" between "if" and "directed" in the opening words of the clause; and the draft clause 30 has been deleted because it is, in its current form, incomprehensible.
- [23] There will, therefore, be an order as per draft.
- [24] Now, Mr Dawson, you should understand this: your prospects of remaining free in the community depend essentially upon you. Many others have expressed a willingness to support you. So you know you have plenty of people who can help you. But at the end of the day this is up to you.