SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ATKINSON J

No 1358 of 2006

THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND	Applicant
and	
SHANE CHARLES WAGHORN	Respondent

BRISBANE

..DATE 27/05/2010

ORDER

HER HONOUR: This is an annual review of the detention of Shane Charles Waghorn who has been the subject of detention under a continuing detention order under the Dangerous Prisoners (Sexual Offenders) Act 2003 ("the Act"). Part 3 of the Act provides for annual reviews of that continuing detention. Such review is, of course, both desirable and necessary because of the constraints that ought be placed on detaining a person who has completed his sentence of imprisonment for offences committed in the past.[1]

Mr Waghorn was first subject to an order made by Justice PD McMurdo on 14 July 2006. At that time he was nearing the end of a term of 14 years' imprisonment and was 45 years old. Justice PD McMurdo conducted a very careful review of all the evidence before him, both written and oral, and, in particular, had regard to psychiatric evidence given by well-known experts Dr Lawrence and Dr Moyle with regard to Mr Waghorn and his prospects for the future. I will not quote again from Dr Lawrence's opinion and Dr Moyle's opinion, but they do show that he was a person in need of continuing detention to protect the community.

One of the factors which weighed heavily upon Justice McMurdo

[1] The Human Rights Committee of the United Nations in Communication 1629/2007 expressed the view that continuing detention under the Act was in breach of Article 9, paragraph 1 of the International Covenant on Civil and Political Rights which provides that: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." While that decision is not binding on Australian courts, it serves to emphasise the respect for human rights that ought be applied by this court when giving effect to the Act.

was the lack of treatment undertaken by Mr Waghorn. This continued to be a problem when Mr Waghorn came up for annual review first before Justice Douglas on the 5th of December 2007, and then before Justice Byrne on 5th of December 2008. This matter came on before me on the 14th of December 2009 for the next annual review.

Justice Douglas, acting under Part 3 of the Act, reviewed the order and on the Attorney-General's application had regard to all of the evidence including the psychiatric evidence prepared and affirmed the decision of Justice McMurdo because he was satisfied, as he was required to be under subsection 13(2) of the Act, that the evidence was of sufficient weight to affirm the decision. He was satisfied, as he was required to be, by acceptable cogent evidence and to a high degree of probability. He therefore ordered that the prisoner, under subsection 13(3), continue to be subject to the continuing detention order.

Much the same occurred before Justice Byrne and he had regard to the evidence, in particular of Dr Sundin and Dr James, as well as the previous psychiatric evidence, and, in particular, the view expressed by Dr Sundin that he needed to participate in a Sexual Offenders Treatment Program before he could be considered for safe management in the community. He had not participated in such a program and had declined to participate in a transition program, a necessary precursor to a Sexual Offenders Treatment Program.
Justice Byrne also affirmed the decision and ordered that he continue to be subject to the continuing detention order.

When the matter came before me, Mr Waghorn had refused to be seen by the two psychiatrists appointed to review him for the purpose of informing the Court for that annual review.

However, it appeared from Dr Sundin's report that Mr Waghorn's resistance to the Sexual Offenders Treatment Program was caused by his incapacity to engage in a group program. She suggested the view, which was then confirmed in her oral evidence, that he might well be suitable for individual assessment and then treatment, either with a view to that treatment being sufficient in itself, or to prepare him for group treatment.

Mr Waghorn then appeared to undertake a slightly more positive attitude. His previous attitude to his prospects for the future and the prospect of treatment has been a mixture of hostility and apathy caused in part by fear of the treatment and the confronting nature of it, which it appears is justified because such treatment is, of necessity, confronting, and also a view which he had formed, rightly or wrongly, that no matter what he did he would never be allowed to be released.

The annual review is, of course, not a rubber stamp and considers the matter thoroughly. The hearing was adjourned to enable the Corrective Services department, as it undertook to the court to do, to arrange for a particular named psychologist to commence working with Mr Waghorn. That psychologist has done so, but progress has been slow and he

has, quite rightly, required Mr Waghorn to actively choose to participate rather than imposing the program on Mr Waghorn.

Mr Waghorn's attitudes of hostility and apathy are not easily overcome, but he did manage to overcome them sufficiently to undertake a second session. The matter is, of course, still at the assessment stage and the psychologist said in oral evidence before me that while this was a positive sign that he had engaged in the treatment, but at this stage it was preparation in order to tailor what's likely to be a very specific program for Mr Waghorn.

It appears that if he does undertake the assessment and successfully undergoes treatment tailored to him, this would be likely to reduce his risk factors. Of course, it is not known at the moment whether or not such treatment would sufficiently reduce his risk factors, which have been thoroughly identified, to allow him to be released under supervision. That must wait until the treatment has been undertaken.

The requirement on the Court now under section 30 of the Act is if, on hearing a review of the matter and having regard to the matters mentioned in section 13(4) which are the matters which the Court is required to have regard to when imposing the initial detention order and to which I have had regard, the Court affirms the decision that the prisoner is a serious danger to the community in the absence of a Division 3 order.

Given that Mr Waghorn has not yet undertaken full treatment,

but noting that he has commenced along that road, it is still the situation that he is a serious danger to the community in the absence of a Division 3 order.

There is acceptable and cogent evidence, and I am satisfied to a high degree of probability, that the original decision should be affirmed. The way matters stand at the moment, for the protection of the community, which is the paramount consideration under section 13(4), I have no choice but to order that he continue to be subject to the continuing detention order.

I note that the detention order in itself appears to be having a negative effect on Mr Waghorn's motivation to undergo treatment and to change his prospects of release, which was one of the reasons that I adjourned the hearing in order to give him the opportunity to start down that road, and I further note that he did, perhaps somewhat ambivalently, but nevertheless did, take advantage of that opportunity, and so has commenced upon that road. This decision should not be taken by him as suggesting that he should cease treatment or cease his endeavours to change his risk factors so that the adequate protection of the community does not require him to be subject to a continuing detention order but allows him to be released from custody subject to a supervision order on strict terms.

The orders are that Shane Charles Waghorn continue to be subject to the continuing detention order imposed by Justice McMurdo on 14 July 2006.