

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v ADJ* [2010] QSC 221

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(applicant)  
v  
**ADJ**  
(respondent)

FILE NO/S: BS 7888/04

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 21 June 2010

DELIVERED AT: Brisbane

HEARING DATE: 21 June 2010

JUDGE: Ann Lyons J

ORDER: **That pursuant to s 22(7) of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* the existing supervision order is amended in the terms set out of the attached Schedule.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – OTHER MATTERS – where respondent was sentenced to 16 years imprisonment for sexual offences involving children – where on appeal that sentence was reduced to 13 and a half years – where the respondent served the term of imprisonment and was released under a supervision order – where the respondent contravened that supervision order – where applicant seeking orders pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – whether the respondent is a serious danger to the community in the absence of a division 3 order – whether an amended supervision order can ensure adequate protection of the community

*Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*

COUNSEL: J Horton for the Applicant  
D Kent for the Respondent

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

**ANN LYONS J:****This Application**

- [1] The Attorney-General seeks orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (the Act) that:
- (a) the supervision order made by Muir J on 3 March 2005 (and later amended by Applegarth J on 6 November 2009) be rescinded and the respondent be detained in custody for an indefinite period for care, control or treatment (s 22(2)(b)).
  - (b) alternatively, the respondent be released subject to an amended supervision order on such conditions that this Court considers appropriate (Act s 22(7)).
- [2] Ultimately the submission of the applicant is that the current supervision order be amended to better deal with the risk which the respondent poses to the community because the evidence of the psychiatrists and the risk of recidivism is more consistent with supervision than detention.
- [3] The threshold for making either of these orders is that the Court is satisfied the respondent contravened a requirement of the supervision order pursuant to which he was released.

**Criminal history and background**

- [4] The respondent is currently 50 years of age. In 1991, he was sentenced to 16 years imprisonment after pleading guilty to sexual offences against four children. Those offences were:
- (a) attempted rape (one count), rape (two counts), unlawful anal intercourse (two counts), indecent treatment of a child under 12 (one count). The victim (K) was the daughter of the respondent's then de facto partner. K was in some respects mentally deficient and attended a special school. She was 11 years old at the time of the offences;
  - (b) indecent dealing with a child under 16 (two counts), unlawful anal intercourse (six counts). This child (M) was 13 at the time of the offences;
  - (c) indecent treatment of a child under 16 (two counts). The victim was C, the respondent's natural son. C was two years old at the time of the offences;
  - (d) indecent treatment of a child under 12 (two counts). The victim was D (M's brother).
- [5] The sentencing Judge, Pratt DCJ, observed:
- “It is clear that this is a dreadful case of child molestation over a significant period and I can say without hesitation had it not been for the remorse shown by the accused, I would have imposed a very long sentence indeed.

...

I shall leave it for the authorities how the accused is responding to treatment, which I am sure he will receive. I make no recommendation as to parole.”

- [6] The respondent’s sentence was reduced to 13 and a-half years on appeal.
- [7] In 2005, the respondent was released by Muir J subject to a supervision order. That supervision order is due to expire on 31 December 2015. Relevantly, the supervision order required the respondent, among other things, to:
- (a) obey the lawful and reasonable directions of the supervising corrective services officer (clause (d));
  - (b) not establish or maintain contact with children under 16 years of age (clause (p)).

### **The contravention**

- [8] On 29 February 2008, the respondent was issued with a written direction from his supervising officer in these terms:  
You are hereby directed to:
- Not to approach or establish contact with children who attend Dart Club functions or competitions;
  - Not to be outside Dart Club functions or competitions without being in the company of another adult.
- [9] The events that gave rise to the contraventions occurred on 28 August 2008 when the respondent drove three people including an adult uncle, his nephew and niece to a dart’s club for his nephew to participate in a darts competition. This was at the request of the children’s mother to whom he was related. He left the venue twice during the evening to go to a teller machine and was accompanied by his 13 year old niece on each occasion.
- [10] On 4 September 2008, the respondent was arrested on suspicion of having contravened the supervision order by:
- (a) committing an offence of a sexual nature during the period for which these orders operate (Requirement (k));
  - (b) establishing and maintaining contact with a child under 16 years of age (Requirement (p)).
- [11] On 5 September 2008, Dutney J ordered that the respondent be detained until final determination of the alleged contraventions referred to above.
- [12] The respondent was charged with committing the offence of indecent treatment of a child under 16 years, under care on 28 August 2008
- [13] He was found not guilty of that charge on 30 September 2009.
- [14] Following his acquittal on these charges, the respondent was (on his own application), released on 6 November 2009 pending this hearing having established exceptional circumstances justifying his release. The respondent had served 14 months imprisonment prior to his release. In ordering his release, Applegarth J amended the supervision order earlier made by Muir J and also ordered that the respondent be examined by Drs Moyle and Lawrence.

- [15] The respondent had almost completed his second sexual offender maintenance programme in the community prior to the breach in 2008. The respondent has been compliant with the supervision order in the seven months since his release and has now almost completed his third sexual offender maintenance program.
- [16] As the respondent was found not guilty of the charge, I note that the Attorney-General in this application does not allege that the respondent committed an offence of a sexual nature as part of this contravention proceeding. There is evidence, however, of a breach by the respondent of Requirement (p) of the Supervision Order. Relevantly in his record of interview and in his reporting to the psychiatrists, the respondent admitted having established and maintained contact with children under 16 years of age.

### **The reports of the psychiatrists**

#### *Dr Moyle*

- [17] Dr Moyle summarises the respondent's circumstances in his report and says<sup>1</sup>:  
 “[The respondent] faces court to address a breach of the conditions of a DPSOA Supervision Order when he allowed a girl to ride with him in a car. He was on an order on the basis of serious past offending from 17 to 30 years of age the latter so serious as to result in a 13 ½ year sentence and his behaviour over a lifetime suggested at a minimum he enjoyed challenging behaviour, deceit and the ability to convince families that despite his past he was a suitable adult to supervise children he later sexually assaulted who ranged from age 3 to early teens and including actual penetrative sex. There is considerable evidence of his control over the victims, the callousness of his attitudes to them, ongoing smiling at thoughts of his behaviour, poor general organisation skills and developing and sustaining mutually caring relationships with a general tendency to enjoy casual impersonal sexual activity.”
- [18] Dr Moyle<sup>2</sup> referred to the respondent's lapse of judgment and stated:  
 “Allowing a girl to ride in his car and then facing court accused of misdeeds may be seen as a lapse of judgement as you see in people with impulse control problems such as in those who are psychopathic.”
- [19] Dr Moyle considered that the respondent knew what he was doing and observes:<sup>3</sup>  
 “I simply cannot find evidence [the respondent] suffered an illness that normally absolves a person of criminal responsibility. He was always aware of his actions and his motives for them and was always in control of how much he reveals to others while trying to verbally gain lower restrictions on the ground he was more compliant than he was in the end.  
 ... I doubt [the respondent] has any serious appreciation of the moral values that most use to guide their social decision making, and in the above account of his performance under supervision there was little

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<sup>1</sup> Report page 3.

<sup>2</sup> Report page 4.

<sup>3</sup> Report pages 5 and 13.

to suggest he uses moral reasoning to provide support to others over whom he may have some obligation such as offspring or that he prepares for future adversity.

- [20] It is clear that the respondent has little internal restraint and requires the external controls which the supervision order imposes upon him. Dr Moyle says:<sup>4</sup>

“The most likely scenario is that he has retained the vulnerability to rape and molest children if he is not subject to external constraints, allows himself contact with children at times of low self esteem and/or intoxication, and not given the emotional and practical support to address his decreasing self esteem and overcome the stress caused in part by his poor planning and coping skills. .... The risk will become imminent if he becomes distrustful of supervisors or therapists, increases his hostile communications, isolates from his support network, increases his impersonal sexuality, and his paraphilic urges. In these circumstances he could revert to the behaviours of his earlier life that gave him a sense of control over others albeit children who are opportunistically available and the parents he could convince to trust him with their children. ...”

- [21] Dr Moyle’s overall view is that the respondent’s risk of recidivism is “moderately high” unless he is supervised.<sup>5</sup>

“Analysis of the risk factors afresh reveals he remains at moderately high risk, if not subject to external constraints on his freedom as before, that he will again sexually abuse to the extent of rape, children in his care or who are opportunistically available to him, either by encouraging the trust of their parents or by indulging in activity he labels as games to win the trust of children in his area of influence, grooming them to his future potential abuse. There is insufficient protection from internal factors and motivating factors leaving only external constraints.

... Optimal management would be a return to his prior supervision with additional conditions that describe the nature of the boundaries between professionals who are all working to his best interests as he wants to return to life outside. I would therefore see his latest acknowledged breach as a lapse of judgement occurring at a particular time when the external circumstances changed (employment, social network, job, accommodation) ...”

#### *Dr Lawrence*

- [22] Dr Lawrence was left with some uncertainty as to the veracity or reliability of some of his responses and was therefore reluctant to accept everything that he said as being completely reliable:<sup>6</sup>

“In the case of [the respondent], the overall tenor of the interview leads one to accept, in general terms the veracity of his statements, perhaps filtered through a veil of scepticism.

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<sup>4</sup> Report page 30.

<sup>5</sup> Report pages 32 and 33.

<sup>6</sup> Report page 18.

There are, however, several occasions when his responses raised significant questions of concerns about some issues which were not satisfied by more detailed enquiry and explanation. On the other hand, [the respondent] did not appear to be reluctant to raise or to mention matters which undoubtedly could be verified and could be interpreted in a negative context, particularly if they were not spontaneously declared.

Thus, the crucial issue of his reliability and credibility must remain with some ambiguity.”

- [23] The respondent has admitted that he had a relationship with the 13 year old who was the complainant in the District Court proceedings. This led Dr Lawrence to observe:<sup>7</sup>

“.... This background adds some validity to the existence of a social relationship and contact which [the respondent] himself does not really deny. However, he reports it as very limited in terms of the opportunities of association with the 13 year old girl over whom he was charged but found not guilty. In my opinion, technically, he was therefore in breach of a provision of his Supervision Order. The weight that is given to that breach must be a matter of fact for decision by the Court.

From the risk assessment point of view, the fact that there was an element of deception or failure to report has to be taken into account.”

- [24] Dr Lawrence considers the respondent’s risk of recidivism to be “moderate to low” as follows:<sup>8</sup>

“My overall risk assessment is that the underlying risk of sexual offending remains as before. It is moderate to low. He remains vulnerable to further sexual offending under certain circumstances. The protection of the public and factors which are of the most benefit to the respondent are likely to be those conditions which are already in place....

Increasing age may be of some protective assistance to him but he is still a relatively young man and, particularly in the absence of acceptable sexual release, he remains at risk of sexual deviant behaviour with children, both female and male, as judged by past behaviour.

Overall, with these supervisory conditions being monitored regularly, the risk of reoffending will be, in my structured professional judgement, moderate to low.”

### **Has there been a breach of the supervision order?**

- [25] I am satisfied that the evidence clearly establishes that there has been a breach by the respondent of Requirement (p) of the Supervision Order. Relevantly in his record of interview and in his reporting to the psychiatrists, the respondent admitted having established and maintained contact with children under 16 years of age. Accordingly, pursuant to s 22 (1) of the Act, I am satisfied on the balance of

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<sup>7</sup> Report page 19.

<sup>8</sup> Report page 21.

probabilities that the respondent has contravened a requirement of a supervision order.

**Is there a need for a continuing detention order?**

- [26] Section 22(2) requires the respondent to satisfy the Court on the balance of probabilities that the adequate protection of the community can, despite the contravention of the existing order, be ensured by the existing order as amended under subsection (7).
- [27] Counsel for the respondent states that the respondent now recognises that it was unwise for him to have a child in the car with him and points to a lapse in judgment at the time. He also argues that at the time the respondent did not think that having the child in the car amounted to “establishing or maintaining contact” with the child, as the word “establish” suggests an ongoing or permanent contact. I note that to overcome this distinction the proposed Condition (p) has replaced the word “establish” with the word “initiate” which I consider makes the meaning clear and is therefore more appropriate. I also note Dr Moyle’s comment that he considered that the lapse of judgment occurred at a time when his external circumstances including his employment, social network and accommodation all changed and reduced his access to a caring professional. It is also clear that the respondent has paid dearly for this lapse, having spent some 14 months in jail before his release on supervision in November 2009 subsequent to his acquittal.
- [28] The respondent initially had a good employment history whilst released on supervision until he was retrenched from his position as a truck driver with a transport company. He currently has stable accommodation in the Wacol precinct. He completed almost three sex offender maintenance programs in the last three years, which he indicates were helpful. It would also seem clear that the respondent has essentially been released on supervision in the last seven months without incident. The respondent had also been released for almost four years before he breached his supervision orders on 28 August 2008. As Dr Lawrence noted:<sup>9</sup>
- “[The respondent] had, in fact completed approximately 4 years of a release on a Supervision order without significant breaches, difficulties, and appeared to be maintaining a satisfactory, constructive adjustment in the community without anti social behaviour at the time of these charges. The comprehensive information on the IOMS records does not indicate any significant aberrations or departures from his declared information.”
- [29] It is of concern that the respondent does not have any personal support in the community and that stress is obviously a factor to which he is vulnerable. I note, however, that Dr Lawrence considers that overall he is a “moderate to low” risk if he is supervised. Dr Lawrence also stated that she “did not see that a further period of detention would be of any therapeutic benefit”. Dr Lawrence considered that he needs “professional help and support to assist him in maintaining control over his deviant sexual drives.”<sup>10</sup>
- [30] Whilst Dr Moyle considers that he is a moderately high risk if not subject to external constraints he considers that:

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<sup>9</sup> Report page 19.

<sup>10</sup> Report p 21.

“Optimal management would be a return to his prior supervision with additional conditions that describe the nature of the boundaries between professionals who are all working to his best interests as he wants to return to life outside.

...

I would recommend praise for the good progress he did make prior to the year up to the breach and encouragement for him to change his attitude to see the network of professionals as all working together to help him achieve his wish to remain living in the Queensland community rather than a them and us mentality that reinforces longstanding antisocial attitudes and beliefs.”

- [31] Whilst in the community the respondent has had professional support from the psychologist Lars Madsen and has participated in eight sessions with him. This support will continue. Ultimately, therefore, I am persuaded that the adequate protection of the community can be assured without the need for a continuing detention order and that that a supervision order with amended conditions can adequately address the risk posed.
- [32] In relation to the conditions which should be imposed, I agree with Counsel for the applicant that the term of the order should be as required by the original order of Muir J, which required the respondent to be subject to a supervision order until 31 December 2015.
- [33] In terms of the conditions of the supervision order, I consider that the amendments as proposed by Exhibit 2 are appropriate with the addition of Condition (h)(1) as proposed by the respondent. I consider that given the nature of his usual employment as a truck driver, it is difficult to obtain employment if he has to seek permission and obtain approval from a corrective services officer prior to entering into employment. I consider that the proposed Condition (h)(1), which requires that he not maintain any particular employment without consent, when combined with existing Conditions (h) and (i) adequately address any risk.
- [34] I also consider that the amended conditions which require specific permission and approvals before joining clubs or groups, and the requirement in condition (ee) that he submit a weekly plan of his planned and proposed activities, is appropriate. I also consider that the addition of the condition that he not attend premises or establishments where there is a dedicated children’s area not only make the terms of his Supervision Order much clearer but also specifically address the issue of risk.
- [35] I consider that the attached schedule contains amendments to the existing Supervision Order which seek to better ensure the adequate protection of the community, having regard to the respondent’s contravention of that existing order.

## Schedule

### THE ORDER OF THE COURT IS THAT:

1. The Court is satisfied to the requisite standard that the Respondent, ADJ, has contravened a requirement of the supervision order imposed by Muir J on 3 March 2005.
2. The Respondent continue to be subject to the supervision order imposed by Muir J on 3 March 2005, and amended by Applegarth J on 6 November 2009 until 31 December 2015, with further amendments to the requirements as follows:

The Respondent must:

- (a) be under the supervision of a corrective services officer (“the supervising corrective services officer”) for the duration of this order;
- (b) reside ~~with persons and~~ at a place in the State of Queensland that has received prior approval from a corrective services officer by way of a suitability assessment;
  - (b)(1) if this accommodation is of a temporary or contingency nature, demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services;
  - (b)(2) comply with any regulations or rules in place at any contingency or temporary accommodation;
  - (b)(3) not reside at a place by way of short term accommodation including overnight stays without the permission of an authorised corrective services officer;
- (c) report to and receive visits from an authorised ~~the supervising~~ corrective services officer at such times and on a weekly basis until 30 April 2005 and thereafter at such frequency as determined ~~necessary~~ by Queensland Corrective Services; ~~the supervising corrective services officer.~~
- (d) obey the lawful and reasonable directions of the supervising corrective services officer;

- (e) respond truthfully to enquiries by the supervising corrective services officer about his whereabouts and movements generally;
- (f) seek written permission from an authorised corrective services officer prior to joining, affiliating with or attending on the premises of any club, organisation or group ~~notify the supervising corrective services officer of any affiliation with any club or organisation~~ that has child membership or child participation in its activities;
- (f)(1) disclose to an authorised corrective services officer upon request the name of each person with whom he associates more than incidentally 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 the Respondent's prior offending behaviour;
- (g) notify the supervising corrective services officer of the make, model, colour and registration number of any motor vehicle owned by, or generally driven by him;
- (h) notify the supervising corrective services officer of the nature of his employment, the hours of work each day, the name of his employer and the address of the premises where he is employed;
- (h)(1) not maintain any particular employment without the consent of an authorised corrective services officer (whether such employment is volunteer work or paid or unpaid);
- (i) notify a corrective services officer of every change of his name, place of residence or employment at least 2 business days before the change happens;
- (j) not leave or stay out of Queensland without the written permission of the supervising corrective services officer;
- (k) not commit an offence of a sexual nature during the period for which these orders operate;
- (l) not be on the premises of any shopping centres, without reasonable excuse, between 8am to 9.30am and between 2.30pm and 4.30pm on school days other than for the purposes of: ~~employment unless in the company of Mr or Mrs Page:~~
  - A) approved employment;

- B) attending an approved bona fide pre-arranged appointment with a Government agency, medical practitioner or the like;
- (m) not be in the area within 100 metres directly outside a school between 8am to 9.30am and 2.30pm to 16:30pm on school days without reasonable excuse;
  - (n) not visit any public parks without the prior written permission of an authorised corrective services officer ~~unless in the company of Mr or Mrs Page;~~
  - (o) not to visit or attend on the premises of any establishment where there is a dedicated children's play area or child minding area without the prior written approval of an authorised corrective services officer; ~~not visit public places containing children's playgrounds other than a public park or a shopping centre containing a playground and must not remain in the vicinity of such a children's playground and at all times be accompanied by Mr or Mrs Page;~~
  - (p) not initiate ~~establish~~ and maintain contact with children under 16 years of age without the prior written approval by an authorised corrective services officer;
  - (q) not access pornographic images that display ~~containing~~ photographs or images of children on a computer or on the Internet or in any other format;
  - ~~(r) abstain from alcohol;~~
  - (s) abstain from the use of illicit drugs for the duration of this Order;
  - (t) take prescribed drugs as reasonably directed by a medical practitioner;
  - (u) submit to alcohol and drug testing as reasonably directed by a corrective services officer.
  - ~~(v) Continue to participate in the Sex Offenders' Maintenance Program run by the Department of Corrective Services which commenced on 24 January 2005.~~
  - (w) 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 the treating medical, psychiatric, psychological or other mental health practitioners where appropriate ~~psychiatrist and the supervising corrective services officer;~~

- (x) attend and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or mental health professional as reasonably directed by an authorised corrective services officer who has been approved by the supervising corrective services officer at a frequency and duration which shall be recommended by the treating intervention specialist psychiatrist, ~~the expense of which is to be met by the Department of Corrective Services;~~
- (y) permit any ~~treating~~ medical, psychiatrist, psychologist, social worker, or counsellor, or other mental health professional to disclose details of ~~medical~~ treatment, intervention and opinions relating to his level of risk of reoffending and compliance with this Order to Queensland Corrective Services ~~the Department of Corrective Services~~ if such request is made in writing for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;
- ~~(z) If the treating psychiatrist advises the supervising corrective services officer in writing that he recommends ADJ should no longer be bound by the directions in terms (r) and (b), then as at the date of that correspondence, ADJ shall no longer be bound by terms (r) and (b) contained within this Order. Such a recommendation shall not be made prior to 30 April 2005;~~
- (aa) comply with a curfew direction or monitoring direction;
- (bb) not have any supervised or unsupervised contact with children under 16 years of age except with prior written approval of an authorised corrective services officer. The respondent is required to fully disclose the terms of the order and nature of offences to the guardians and caregivers of the children before any such contact can take place; Queensland Corrective Services may disclose information pertaining to the offender to guardians or caregivers and external agencies (i.e. Department of Child Safety) in the interests of ensuring the safety of children;
- (cc) not undertake any care of children without the prior written approval of an authorised corrective services officer;
- (dd) advise an authorised corrective services officer of any repeated contact with a parent of a child under the age of 16. The respondent shall 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.

- (ee) 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;
- (ff) not to have any direct or indirect contact with a victim of his sexual offences.