

SUPREME COURT OF QUEENSLAND

CITATION: *A-G (Qld) v AJD* [2010] QSC 294

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

FILE NO/S: No. 1879 of 2010

DIVISION: Trial Division

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

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 3 August 2010, ex tempore

DELIVERED AT: Brisbane

HEARING DATE: 2 August 2010

JUDGE: Byrne SJA

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

CATCHWORDS: CRIMINAL LAW – JUDGMENT AND PUNISHMENT – SENTENCE – MISCELLANEOUS MATTERS – SEXUAL OFFENDERS – *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – where respondent presently serving a period of imprisonment for a violent sexual assault – where respondent had a substantial criminal history – where application made under s 13 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

Dangerous Prisoners (Sexual Offenders) Act 2003

COUNSEL: J M Horton for the Applicant
K Prskalo for the Respondent

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

Byrne SJA:

- [1] The Honourable the Attorney-General applies for a continuing detention order pursuant to Div 3 of Pt 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
- [2] The respondent accepts that the Court may be satisfied that he is a serious danger to the community in the absence of a Div 3 order. And there is ample, acceptable, cogent evidence which establishes to a high degree of probability that there is an unacceptable risk that he would commit a serious sexual offence if released from custody, at least without a supervision order being made.
- [3] The respondent is 48 years old. He is approaching the end of a lengthy period of incarceration imposed for a violent sexual assault on a female taxi driver. The offence occurred at night when the respondent produced a dangerous knife, threatened the driver, and robbed her. Then, while keeping the knife, he sexually assaulted her. She activated an emergency alarm. Others came to her aid, interrupting the attack. The offence occurred in 1994. In 1995, the respondent was sentenced to 14 years' imprisonment for the offences involved in the incident.
- [4] The respondent had been at liberty for only a few months when he committed the offence. His previous criminal history was substantial. It included a conviction for robbery with violence whilst armed in relation to a taxi driver in Cairns a few years earlier.
- [5] The respondent's personal circumstances are, to say the least of them, distressing.
- [6] Between about age four and age seven, he had been physically and sexually abused by his adoptive father. The abuse included penetration.
- [7] At age seven, he was told abruptly that he was adopted. As from that time, he started behaving disruptively. He would steal and run away. He behaved badly at school. He experienced learning difficulties that required after-school remedial classes.
- [8] At school in Year 7, the respondent was sodomised by two older students who were drinking at his place. After that, he found it increasingly difficult to trust people, especially women. That problem became exacerbated when, at age 12, he came home to find his mother in bed with his uncle.
- [9] At age 13, the respondent was given up to become a ward of the State. He had been expelled from school for stealing.
- [10] He went from his school to the unit across the road armed with a piece of pipe, intent on mischief. The door was opened to him by a woman. He later told others that he had developed sudden thoughts about assaulting the woman sexually. Eventually, he was restrained and placed in juvenile detention.
- [11] In the juvenile home, he was sodomised by one of the other detainees. He remained at the home until age 16, when he absconded. He had no friends. There had been no school during his detention, and no vocational training.

- [12] The respondent went to Sydney where he lived on the streets. Eventually, he was placed in boys' homes. As he became older, in adolescence, he started to feel secure in the institutions he described as lock-ups. The long-term effect of this early institutionalisation has, as the report of the psychiatrist, Dr Beech, explains, made him feel more secure as an adult in gaol than in the outside world.
- [13] At the age of 17, the respondent was detained at the Long Bay Prison for car theft. Since that time, he has spent most of his life in prison, punctuated with brief periods of release.
- [14] In 1992, the respondent witnessed his best friend being murdered in prison. He was to become a Crown witness in the case. He was transferred to another correctional facility where he was badly assaulted. When it became apparent to police just how badly the respondent had been bashed, he was released, suddenly, two weeks later.
- [15] The respondent was unprepared for his release into the community. He had no transition plan. He settled in the Browns Plains area. He lived with a woman for four months before he was eventually returned to prison following the assault on the taxi driver.
- [16] Not long after being imprisoned in respect of the offences concerning that incident, the respondent was convicted and sentenced for an offence of unlawfully and indecently assaulting a fellow prison inmate.
- [17] The sexual element of the attack on the taxi driver appears to have been opportunistic.
- [18] The respondent had few female sexual partners while in the community. Over the years, however, most of his sexual partners have been males in prisons.
- [19] The respondent has never been employed outside the prison system.
- [20] He has had major difficulties with poly-substance abuse, mainly illicit substances, including pills, cannabis and heroin.
- [21] He started using heroin at the age of 16. He became dependent on the drug. He funded his habit through stealing and prostitution.
- [22] On the respondent's last release into the community in the mid-1990s, he returned to heroin use.
- [23] He has used illicit substances, including heroin, whilst in prison.
- [24] In the last year or so, however, the respondent's behaviour in custody has generally improved markedly. In 2008, he was dealt with for dealing with a prohibited drug. But his disciplinary situation has improved more recently.
- [25] The respondent has told Dr Beech that he has had enough of gaol. He now wants to live within the community.

- [26] He has completed many courses whilst in prison.
- [27] For present purposes, the most important of those is the high intensity sexual offender program (HISOP). The respondent apparently found this useful.
- [28] Before completing that course, he had been besotted with sexual fantasies involving women, many of them involving sexual violence.
- [29] He had earlier been involved in a sexual offender treatment program in 2000. He had been removed from that course because he started becoming aroused on hearing disclosures of the sexual offending of others. The respondent, however, considers that he made considerable progress at the HISOP and claims that he no longer experiences fantasies of sexual violence.
- [30] Looking to his future, the respondent has poorly developed plans were he to be released. He assumes, correctly, that he would be sent to the Wacol precinct. He would hope to seek employment but, as I have said, he has never had a job outside the prison system.
- [31] Dr Beech considers that the respondent has an anti-social personality disorder associated with drug use. A separate diagnosis of polysubstance abuse and dependence has been made. Dr Beech considers that condition to be in limited, enforced remission. Dr Beech says that the respondent himself has expressed ambivalence about drug abstinence.
- [32] Dr Beech considers that the nature of the offences of which the respondent has been convicted, the nature of his sexual predation on others in prison, and accounts of arousal earlier when hearing the disclosure of others in a sex offenders course indicate that the respondent has sexual paraphilia of sexual sadism.
- [33] Dr Beech speaks of a limited capacity on the part of the respondent for empathy and a skill for manipulation. On the traditionally used checklist for psychopathy, Dr Beech gave the respondent a pro rata score exceeding 31, which indicates that he is in the realm of psychopathy.
- [34] Dr Beech considers that the respondent is at high risk of violent sexual re-offending if released from prison. The risk principally arises from anti-social personality, associated psychopathy and, as Dr Beech sees things, sadism.
- [35] Dr Beech states:
- “Importantly, he is institutionalised and he has not coped well in the community. He has in fact not been in the community much at all since his adolescence ... if released now he will be exposed to a range of destabilising factors ... he does not cope well with the stress of community living and of concern is that he will quickly return to substance abuse. This will lead to general criminality and on to violence. In his negative angry state he might begin to fantasise again about rape and will either intentionally or impulsively act on this.”
- [36] Dr Beech adds:

“There is however some sign that he is settling with age and maturity although this is recent. His risk could be managed in the community although ... the ongoing substance abuse is problematic ... if he is released it would need to be with close supervision and he will need a lot of general basic support. He would need to be abstinent. This would entail initially close watching, regular drug monitoring, and limited community access until he has shown that he is beginning to adjust to his release.”

- [37] If he is to be released, Dr Beech considers that the respondent should commence drug counselling and would need to participate in a maintenance offender program that may need to be bolstered by individual support.
- [38] Dr Grant, another psychiatrist who has examined the respondent, concluded that the respondent suffers from anti-social personality disorder with some other additional borderline personality traits. In the past, the respondent had adjustment disorders that produced self-harm and suicide attempts requiring hospital treatment. But there has been no evidence of psychiatric conditions for quite a few years.
- [39] Dr Grant considers that the prison records indicate that the respondent has become less hostile and more co-operative with police officers, with improved relationships with other inmates as well. This is said to contrast with much more anti-social behaviour during earlier periods of imprisonment.
- [40] Dr Grant felt unable to make any definite diagnosis of sexual paraphilia, although he considers it a possibility that the respondent may have sadistic paraphilia.
- [41] Dr Grant considers that there is a high risk of sexual offending on release.
- [42] Although there has been some maturity with age, Dr Grant thinks that the respondent's insights into his behaviour are still very basic. He appears to have continued inability to tolerate frustration. His attitudes towards women in the past have been very negative and antagonistic. The respondent reports that those attitudes have now changed and that he recognises the need to respect others. But Dr Grant considers it difficult to gain a clear understanding of the extent of that change.
- [43] Dr Grant points out that the respondent has spent most of his adult life in incarceration and is totally institutionalised in the prison environment and culture. Outside prison, Dr Grant points out, the respondent has no supports, nor has he real plans for what he will do if released. According to Dr Grant:
- “[The respondent] has a very high risk of relapsing to drug abuse, particularly heroin, and all of these factors result in a high risk of him failing to adapt in the community and a high risk of re-offending.”
- [44] Dr Grant records that the respondent doubts his own ability to adapt to life outside prison and expresses a great deal of ambivalence.

[45] Dr Grant considers that as a graduated return to society is not possible under the current Corrective Services legislation, “then release on a supervision order would be the next best option in order to manage risk.”

[46] According to Dr Grant:

“Continuing detention would appear to have little advantage from a psychiatric viewpoint and would serve only as a means of protecting the community ... continuing detention has little usefulness if the long-term plan is for [the respondent] to regain life in the community.”

[47] Dr Grant believes that a supervision order would reduce the risk of re-offending. But he says it would “need to be a strict order which was closely monitored”.

[48] Dr Grant proposes:

“Access to increased freedoms would need to be gradual and he would require a lot of social support, rehabilitation, counselling and treatment to facilitate his adjustment to the community. I consider that there is a very high chance that he would breach a supervision order, mostly likely with drug abuse, and that return to prison as a result of a breach is quite a likely outcome. Nevertheless, [the respondent] is prepared to make the effort to adjust to life outside prison on a supervision order and in my opinion that would be an appropriate way to attempt to manage risk.”

[49] Dr Grant recommends not only that the respondent’s activities be closely monitored under supervision but also that he have regular random drug screening to ensure that he is not using drugs. Complete abstinence from drugs and alcohol would be required. Dr Grant thinks the respondent “should also access a maintenance sexual offender treatment program if one is available. He should have individual counselling and support and will require extensive psycho-social support in relation to re-establishing himself in the workforce and in appropriate independent housing over time.”

[50] Dr Grant considers that the risk in the respondent’s case is long-term and a supervision order should be in place for at least 10 years.

[51] Dr Sundin, a psychiatrist, also examined the respondent.

[52] She considers that he is at risk of substantial relapse into drug abuse. That possibility has two connections with the risk of serious sexual offending. The drugs would have a substantially disinhibiting effect and this may act on sexually violent fantasies. Secondly, the respondent might look for money to buy drugs and if he encountered a woman, he might proceed, opportunistically as he did with the taxi driver 15 years ago, to attempt a serious sexual assault.

[53] Dr Sundin also identifies a major risk of early relapse into drug abuse.

[54] It seems likely that such a relapse would occur before there would be any sexual offending.

- [55] In an application such as this, the paramount consideration is the need to ensure adequate protection of the community: see s 13(6) of the Act.
- [56] The respondent does present with at least a moderate risk that he will commit another serious sexual offence if released into the community. The indications are that there is a high degree of risk that he may not comply with the conditions of a supervision order, especially in relation to illicit drug use.
- [57] It is also concerning that the respondent has previously indicated that one of his motivations for offending against the taxi driver in the mid-1990s was a wish to return to prison. However, on that occasion, his release was unsupervised. If released now, he will be subject to close supervision and orders calculated to reduce pertinent risks.
- [58] The case is a difficult one.
- [59] Despite the risks, the circumstances are such that, in my opinion, the adequate protection of the community can be achieved by a supervision order - at least for as long as the respondent will comply with its terms.
- [60] No doubt those who would supervise his release will see to it that he understands the importance of compliance with the conditions, and also that any contravention will see his immediate return to custody so that if he should ever feel impelled to return to prison, he will clearly understand that it is not necessary for him to harm anyone to achieve that ambition.
- [61] There will be an order in terms of the draft, which I shall initial and place with the papers, for a supervision order to subsist for 10 years.