

SUPREME COURT OF QUEENSLAND

CITATION: *A-G (Qld) v TTE* [2010] QSC 295

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

FILE NO/S: No. 3316 of 2010

DIVISION: Trial Division

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

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 4 August 2010, ex tempore

DELIVERED AT: Brisbane

HEARING DATE: 4 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 had a substantial criminal history, including serious sexual offences – where application made under s 13 for continuing detention order or supervision order – where evidence of psychiatrists supported a 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
G McGuire for the Respondent

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

Byrne SJA:

- [1] The Honourable the Attorney-General seeks an order for the continuing detention of the respondent for control, care or treatment under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
- [2] The evidence of the psychiatrists, however, supports release subject to supervision as providing adequate protection of the community: see s 13(6) of the Act.
- [3] The respondent is 45 years old.
- [4] He is on the point of completing a five year term of imprisonment for offences involving an adolescent boy: indecent treatment and two offences of sodomy.
- [5] The respondent has a substantial criminal history. The offences include stealing and drug offences as well as, critically for present purposes, serious sexual offences.
- [6] The first sexual offence was committed in 1990. This happened at a time when the respondent was on parole after a period of imprisonment in respect of a conviction for armed robbery.
- [7] Briefly, the circumstances were these, as the respondent related them to one of the psychiatrists, Dr Grant: On the night in question, the respondent had a sexual encounter with a man he had picked up at a gay beat. After that, he drove around looking for a victim. He went to a cafe, got some food and parked by a riverbank. There he smoked cannabis.
- [8] Next, he went and stood outside his ex-wife's house. He left there and decided to drive home. As he drove towards his house, he saw a young woman walking along the side of the road. The moment he saw her, he decided that he would abduct and rape her. He saw the offence as more of power and control than sex.
- [9] He had a knife with him in his car. He abducted the woman at knifepoint. He threatened to kill her. He then subjected the woman, over a period of hours, to rape and sodomy. He thinks he may have murdered her but for the fact she got him talking. This meant he did not proceed with his actual fantasy of killing her.
- [10] He received a sentence of eight years' imprisonment.
- [11] The offences which account for the present custody involve a 15 year old boy who was known to the respondent.
- [12] The respondent had dated the boy's mother briefly in 1990. He offered to care for the boy. Over the next three weeks, during which the boy lived with him, the respondent performed a number of sexual acts with the boy, and he permitted the boy to have anal sex with him. He also performed oral sex on the boy in the shower.
- [13] In July 2006, in respect of the offending involving the boy, he was sentenced to imprisonment for five years.

- [14] The respondent left school in Year 11 aged 15. He first obtained work on a mango farm. He had another job opportunity before he joined the Army at a relatively young age. Eventually, things started to go wrong for him there. He left the Army to work at a meatworks until he was sentenced to prison for the armed robbery offence.
- [15] The respondent has an unfortunate history.
- [16] He maintains that his father was a strict man who used to flog the children for bad behaviour. He used to wet his bed until Grade 9. His father would discipline him by rubbing his nose on wet sheets which impacted, it seems, on the respondent's self-esteem.
- [17] The respondent had his first sexual encounter at age nine when he was sexually abused by a female neighbour.
- [18] After that, the respondent was caught carrying out sexual activities with girls in the neighbourhood.
- [19] At about age 11, he had mutual oral sex with a male of his own age.
- [20] Aged about 12 or 13, he had a sexual experience with an adult male who had given him alcohol and shown him pornography.
- [21] The respondent spoke to Dr Grant of confusion about his sexuality in his teenage years. There were other difficulties.
- [22] When he was 17, he had sexual fantasies about a woman which extended to killing her. When he was 18, he had fantasies of torturing, raping and killing a couple.
- [23] The respondent was cruel and violent towards animals. He involved himself in sexual activities with animals: a duck which he killed, a calf and a pig.
- [24] The respondent first went to prison following the armed robbery at age 21. There he became excited by stories that serious sexual offenders were telling.
- [25] Gradually, his sexual fantasies became more and more violent. He would fantasise about abduction, rape, torture and murder. Both men and women featured in his fantasies. In prison, he spoke to rapists about their offences and whilst there he had sexual encounters with other prisoners.
- [26] The respondent, however, reports that his sexual fantasy life and activity has changed dramatically over the years that he has been in prison.
- [27] After the rape offence, he underwent a sexual offender treatment program which he says he found helpful. The course assisted him to understand the gross deviance of his previous fantasies and behaviour. After release from prison in 2000, he was determined not to go back onto that path.

- [28] During the current term of imprisonment, the respondent has undergone another sexual offender treatment program. He says he has found that helpful too. He now recognises, he says, the deviance of past behaviour and takes full responsibility for the offending against the boy. He reports that he has outgrown previous violent thoughts and fantasies, and claims that they no longer plague him as once they did.
- [29] The high intensity sexual offending treatment program was completed in August 2009. The respondent has also completed a moderate intensity substance abuse program.
- [30] That program was necessary because the respondent has been a long-time user of cannabis. He started at age 13 or 14. He used to grow his own plants. He used cannabis during his first term of imprisonment and twice during the second. He claims he has not used it at all since his arrest in August 2005. He says he is pleased to be free of cannabis and asserts that he will not use the drug again. He has also experimented with heroin, magic mushrooms, speed, and LSD.
- [31] He maintains that alcohol has not been much of an issue for him.
- [32] Three psychiatrists have assessed the respondent in recent years.
- [33] Dr Grant considers that, despite an extremely disturbing history, the respondent appears to have matured in prison and responded to the two sexual offender treatment programs. Dr Grant thinks that the respondent has a deal of insight into his tendency towards sexual sadism and has shown an ability to control that part of himself.
- [34] The respondent, according to Dr Grant, shows some psychopathic personality traits, and narcissistic and anti-social traits in a diagnostic sense.
- [35] Dr Grant considers that the respondent has developed strong motivations not to revert to previous patterns of behaviour and he also appears to have a supportive relationship with a previous partner.
- [36] In Dr Grant's opinion, the overall risk of re-offending is moderate. And the risk of future offending could be appropriately reduced, he considers, by the use of a supervision order.
- [37] Dr Harden, psychiatrist, diagnoses the respondent as having the sexual paraphilia of sadism. He also considers that the respondent has elevated psychopathic traits.
- [38] Dr Harden considers that the respondent's risk of serious sexual offending could be reduced to moderate with supervision in the community.
- [39] Dr Beech reported on an assessment he made of the respondent in July last year.
- [40] In his assessment, the respondent, during detention between 1990 and 2000, gained control over violent fantasies of stalking, sexually assaulting and killing.
- [41] Dr Beech considers that the respondent has relatively high psychopathic traits and criminal versatility that speaks to substantial antisocial personality traits. He

considers that, without supervision and support, the respondent would quickly relapse into old patterns of instability, drug use and relationship problems. That would lead to a heightened risk of resorting to sex as a means of coping.

- [42] Dr Beech, however, considers that the respondent could be managed under supervision in the community upon release.
- [43] The respondent does not resist a finding that he is within the meaning of Division 3 of Part 2 of the Act as a serious danger to the community on the footing that there is an unacceptable risk that he would commit a serious sexual offence if released from custody without a supervision order being made.
- [44] That finding is established to the requisite standard: see s 13(3) of the Act.
- [45] A supervision order will, all the psychiatrists agree, provide adequate protection to the community against the relevant risks.
- [46] There has been some debate concerning particular conditions: for example, whether the respondent should be subject to the condition that he remain abstinent not only from illicit substances but also from alcohol.
- [47] I accept the evidence of Dr Grant, which is to the effect that if the respondent refrains from resorting to cannabis (which he must do in his own interest and the community's), there is a risk that he might resort to alcohol for its disinhibiting effect, with potentially harmful consequences for women. The respondent ought to be subjected to a condition that requires complete abstinence from alcohol during the term of the supervision order.
- [48] In the circumstances, there will be an order for supervised release in terms of the draft which I have initialled and placed with the papers.