

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Valence*
[2010] QSC 335

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

FILE NO: BS2941 of 2009

DIVISION: Trial Division

PROCEEDING: Application for review

DELIVERED ON: 8 September 2010 (ex tempore reasons)

DELIVERED AT: Brisbane

HEARING DATE: 8 September 2010

JUDGE: Mullins J

ORDER: **Order as per draft initialled by Mullins J and placed with
the file**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND
PROCEDURE – JUDGMENT AND PUNISHMENT –
OTHER MATTERS – where respondent has served a term of
imprisonment for sexual offences – where respondent
currently under a continuing detention order – application for
review of continuing detention order by Attorney-General
under s 27 *Dangerous Prisoners (Sexual Offenders) Act 2003*
(Qld) (the Act) – where applicant sought an order pursuant to
s 30 of the Act affirming the original decision that the
respondent was a serious danger to the community in the
absence of a division 3 order – whether evidence is of
sufficient weight to affirm the decision – where decision was
affirmed

*Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 27, s
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COUNSEL: J B Rolls for the applicant
K Prskalo for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

HER HONOUR: The applicant has made application pursuant to section 27 of the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act) that the continuing detention of the respondent, Mr Valence, be reviewed.

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On 13 August 2009 her Honour Justice White ordered that the respondent be detained in custody for an indefinite term of care, treatment and control (Attorney-General for the State of Queensland v. Valence [2009] QSC 255).

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Mr Valence is currently 53 years old. His history of sexual offending is summarised in Justice White's decision, including the offences that resulted in his imprisonment for four years with a full-time discharge date of 29 August 2009. He remains in prison, having completed those sentences, because of the continuing detention order made by her Honour Justice White. That order was made because the applicant made an application under the Act that the respondent be dealt with under the Act.

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Justice White in her decision summarised the psychiatric assessments that were relied on for the purpose of that application that were provided by Dr Moyle, Dr Beech and Professor James. Dr Beech had concluded that Mr Valence is an "insightless recidivist sex offender with a poor attitude to treatment and no reasonable plans to limit his risk." Dr Beech noted that the respondent has very few supports and significant substance abuse problems. Dr Beech expressed the opinion that the respondent's risk of reoffending could be reduced by his participation in a high intensity sexual

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offender program with a subsequent development of a robust relapse prevention plan that could, with supervision, be monitored in the community.

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Professor James' opinion concurred with that of Dr Beech. It is worth repeating Professor James' conclusion:

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"His risks of recidivism are high and he should be required to complete the SOTP prior to release."

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Since Justice White's decision, the respondent has undertaken the Getting Started Preparatory Program which is a sex offender program that is undertaken prior to a more intensive sex offender treatment program. The Getting Started Preparatory Program involved 12 sessions that Mr Valence attended between 9 November and 16 December 2009. Mr Valence did the program when it became available to him at Capricornia Correctional Centre where he is imprisoned. The exit report for the program notes that Mr Valence was disengaged during the initial stages of the program, but increased his participation as the program progressed. The exit report concurs with the recommendations from the psychiatrists that the respondent undertake the High Intensity Sex Offender Program before release into the community under a supervision order.

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Professor James reassessed Mr Valence on 10 June 2010 for this review application. Professor James could not find any material which would cause him to alter the view that he

previously expressed that the respondent attracted a diagnosis of paedophilia of a predominantly homosexual nonexclusive type and substance alcohol abuse which were currently in remission as a result of imprisonment. Professor James did not consider that there had been any alteration to the actuarial findings in his previous report and the dynamic considerations remain the same.

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In his reassessment Professor James concluded that:

- "1. Mr Valence remains a person with a high risk of reoffending if he were to be released from prison.
2. The high level of risk would not be significantly reduced by the imposition of a supervision order upon his release.
3. Mr Valence therefore should remain in custody in the interests of community safety.
4. The respondent should be strongly encouraged and supported to participate in a high intensity sexual offenders treatment program."

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Psychiatrist Dr McVie assessed the respondent on 23 April 2010 for the purpose of the review application. Dr McVie had the benefit of reviewing the earlier psychiatric assessments and other material that had been made available to her by the applicant in relation to the respondent's criminal history and

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imprisonment. Dr McVie's assessment included the following statements:

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"Mr Valence continues to minimise his offending history. He has made very few plans to deal with his attitudes and behaviours which have resulted in his past sexual offences. He readily admits that he will continue to use alcohol and cannabis on release from custody if it is available to him. He has no plans for where he wishes to live or for any meaningful employment on release from custody. In some ways he feels content to remain in custody."

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Dr McVie made the following recommendation:

"My primary recommendation at this point is that this program, the High Intensity Sexual Offenders Program, needs to be completed satisfactorily by him and then a re-evaluation of his attitudes, intentions, plans and behaviour needs to be completed on finalisation of the program in order to effectively evaluate his suitability for any type of supervised release."

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The psychiatric evidence relied on by the applicant on this application precludes any consideration of a supervision order for the respondent at this stage. The respondent must undertake the High Intensity Sexual Offender Treatment Program and his risk of sexual reoffending must be reassessed, if he can successfully conclude that program, before supervised

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release is a realistic option. This is acknowledged to some extent by the respondent through the instructions that he has given his counsel to not oppose the continuing detention order that is sought today by the applicant.

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The psychiatric evidence before me on this review application is acceptable, cogent evidence that satisfies me to the degree of probability required under section 30(2) of the Act that the evidence is of sufficient weight to affirm the decision of Justice White made on 13 August 2009 that the respondent is a serious danger to the community in the absence of an order made pursuant to Division 3 of the Act and that the respondent must continue to be the subject of a continuing detention order.

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I therefore make an order in terms of the draft initialled by me and placed with the file.

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I hope you listened to that, Mr Valence. It's a very pessimistic outcome for you unless you embark on HISOP.

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