

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Friend* [2010] QSC 408

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

FILE NO: BS883 of 2006

DIVISION: Trial Division

PROCEEDING: Application for review

DELIVERED ON: 1 November 2010 (ex tempore reasons)

DELIVERED AT: Brisbane

HEARING DATE: 1 November 2010

JUDGE: Mullins J

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

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – OTHER MATTERS – where respondent imprisoned for sexual offences against children – where respondent released from prison subject to supervision order made pursuant to *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (the Act) – where respondent breached supervision order and was returned to prison under continuing detention order – where applicant seeks a review of continuing detention order pursuant to s 27 of the Act – whether respondent is a serious danger to the community in the absence of a division 3 order – whether a supervision order rather than a continuing detention order can ensure adequate protection of the community

Dangerous Prisoners (Sexual Offenders) Act 2003, s 27, s 30

COUNSEL: J B Rolls for the applicant
S M Ryan and L S Reidy for the respondent

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

HER HONOUR: The Attorney-General applies under section 27 of the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act) that the continuing detention of the respondent be reviewed.

The respondent was first released under a supervision order made under the Act in June 2006 (Attorney-General for the State of Queensland v. Friend [2006] QSC 131).

In November 2007 the respondent breached those conditions. The supervision order was rescinded by Acting Justice Skoien on 27 February 2008 who ordered that the respondent be detained in custody under the Act (Attorney-General for the State of Queensland v. Friend [2008] QSC 27). That continuing detention order was reviewed and on 2 June 2009 Justice Daubney ordered that the respondent continue to be subject to the detention order made on 27 February 2008 (Attorney-General for the State of Queensland v. Friend [2009] QSC 135).

The application for the next review of that order came before me on 29 April 2010. At that stage psychiatrist Professor James, who had examined the respondent on three previous occasions, examined the respondent on 15 March 2010 and provided a report dated 20 March 2010. Although by March 2010 the respondent had made significant progress, because of his treatment within prison, Professor James strongly recommended that the treatment continue in the prison for a further six months. The respondent had sufficient insight to give instructions to act on that recommendation and, at his

request, the review hearing was adjourned from 29 April 2010 until today.

The respondent is 57 years old. He has a significant criminal history consisting of offences against children that are summarised in [2008] QSC 27 at paragraphs 4 to 7. The last series of offences for which the respondent was convicted on 14 April 2003 concerned primarily boys aged between 14 years to 16 years. In general terms, the evidence against the respondent in relation to that offending showed a process of the respondent befriending and grooming the boys who were the victims of his offences.

The reason that the respondent wanted the adjournment in April 2010 was to enable him to continue with the treatment he was receiving within the prison system from psychologist Mr Whittingham.

Mr Whittingham saw the respondent on 14 occasions between 24 May and 7 September 2010. The respondent has achieved a clinically significant improvement in his post-traumatic depression symptomatology. Mr Whittingham has provided a report dated 24 September 2010 which is significant in the sense that it is the report that was also before psychiatrists Professor James and Dr Harden, who have given updated reports for the purpose of this review hearing.

Mr Whittingham stated in his report, "Mr Friend continues to appear motivated to participate in psychological treatment

and his report and his responses on psychological tests continue to suggest an acknowledgment of several areas of important problems and strong views about continuing professional support. Treatment will continue to be challenging with Mr Friend due to his long-term risk, personality disturbance and vulnerability for developing depressive illness and post-traumatic symptoms."

Mr Whittingham recommended that it is critical that further support be available to the respondent via participation in the Sex Offenders' Maintenance Program at two yearly intervals for review of his relapse prevention plan and benefits of group process and that he continue to receive community supervision.

Mr Whittingham identified that the respondent will likely continue to require long-term multi-disciplinary treatment, including psychological treatment and support and psychiatric treatment and support, to assist with ongoing management of his complex mental health and sexual offending needs and risks.

Mr Whittingham's overall conclusion, for the purpose of this report, was that there was evidence of a reduction in both stable and acute dynamic risk, according to the SONAR, and in Mr Whittingham's opinion an overall adjustment of his level of risk to moderate/high due to, "reduced attitudes tolerant of sexual assault, improved general self-regulation, and reduced negative affect and anger and hostility, substance use and

victim access as outlined."

Whilst in prison, under the continuing detention order, the respondent has been treated for symptoms of a depressive disorder by a psychiatrist, Dr Timmins. Dr Timmins noted that the respondent had been preoccupied with his own experience as a victim of child sex abuse. Dr Timmins has stabilised the respondent's mood symptoms with medications and recommends continued medication and follow-up treatment for the respondent, upon his release from the prison system, with a psychiatrist.

For the purpose of the review, the applicant relies on the earlier psychiatric reports obtained for the purpose of dealing with the respondent under the Act and, in particular, relies on the reports obtained from Professor James and Dr Harden for the review that was due to take place in April 2010 and on their updated assessments of those opinions for the purpose of the review hearing today.

Professor James interviewed the respondent on 27 September 2010. Previously, Professor James had diagnosed the respondent as suffering from two interrelated conditions, paedophilia and borderline personality disorder, and that it was for the latter condition that Professor James recommended continued therapy, in order to regulate the respondent's propensity for sexual re-offending. Professor James was of the opinion that the main risk for the respondent in acting out his paedophilic tendencies was inversely related to the

degree to which he attained a stable improvement in his personality disorder.

In the addendum psychiatric report, dated 15 October 2010, Professor James expressed the opinion that the respondent had assimilated and consolidated the changes brought about by the treatments that had continued in the prison system to a sufficient degree for it to be no longer necessary for the treatment to continue whilst he was in prison, and that it was reasonable to recommend that the risk of re-offending now be managed in the community, and that it would be necessary for the supervision order to be in place for at least five years, provided there was a supervision order that restricted the respondent's contact with young males and allowed for continuing psychological treatment and continuation of the antidepressant/antianxiety medication that the respondent has been prescribed within the prison system.

Professor James put the respondent's risk of re-offending as moderate within the first year to 18 months but should the respondent provide evidence of successful rehabilitation, including strict adherence to the terms of the supervision order, then the risk of re-offending will decrease progressively.

Dr Harden had been prepared to support a supervision order at the review hearing on 29 April 2010, although did suggest that it be for a period of approximately ten years. At that stage Dr Harden diagnosed the respondent as meeting the criteria for

paedophilia, sexually attracted to males, non-exclusive type, and a diagnosis of personality disorder not otherwise specified with predominantly borderline personality traits.

Dr Harden also recommended that the respondent continue to participate in an appropriate sexual offender treatment maintenance program as a group and individual process in the community.

Dr Harden, in his updated report, prepared after interviewing the respondent on 5 October 2010, maintains the same diagnosis and continues with the recommendation that the respondent could be released from incarceration, provided he were monitored in the community by means of a supervision order.

Dr Harden is of the opinion that the respondent's future risk of sexual reoffence continues to be high if released into the community without appropriate monitoring support and therapeutic intervention.

The respondent himself accepts that he is a serious danger to the community in the absence of a Division 3 order, but seeks to be released under a supervision order.

The submissions of the applicant acknowledge the considerable improvement in the respondent since the detention order was continued on 2 June 2009, but note that the psychiatric evidence supports the making of a Division 3 order, but that the intensive supervision and restriction on the respondent's

activities that is recommended by the psychiatrists should be met by a supervision order.

I have considered the terms of the supervision order that was proposed by both the applicant and the respondent. It is very strict but it reflects the recommendations of the psychiatric opinion. I propose to impose it for a period that expires on 2 June 2016. That is consistent with the recommendation of Professor James.

The evidence of Professor James, Dr Harden and Mr Whittingham is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that the respondent's high risk of sexual re-offending, unless appropriately supervised, is an unacceptable risk in terms of section 30(2) of the Act.

Under section 30(4) of the Act, in deciding whether to make a continuing detention order or a supervision order, the paramount consideration is the need to ensure adequate protection of the community. In light of the psychiatric evidence and psychological evidence, I am satisfied that appropriate conditions can be formulated for a supervision order that will address the need to ensure the adequate protection of the community and that a supervision order should be made.

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