

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney General for the State of Queensland v Donovan*
[2011] QSC 154

PARTIES: **ATTORNEY GENERAL FOR THE STATE OF QUEENSLAND**
(Applicant)

v

ANTHONY JAMES DONOVAN
(Respondent)

FILE NO/S: BS 1879 of 2010

DIVISION: Trial Division

PROCEEDING: Originating application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 3 June 2011

DELIVERED AT: Brisbane

HEARING DATE: 1 June 2011

JUDGE: Boddice J

ORDER: **1. The supervision order made on 3 August 2010 be revoked;**
2. The respondent be detained in custody for an indefinite term for control, care or treatment.

CATCHWORDS: CRIMINAL LAW - SENTENCE - SENTENCING ORDERS
- ORDERS AND DECLARATIONS RELATING TO
SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS
SEXUAL OFFENDERS - DANGEROUS SEXUAL
OFFENDER – Where the respondent contravened a
supervision order – Where the Attorney-General seeks orders
under Division 3 of the Dangerous Prisoners (Sexual
Offenders) Act for an indefinite detention order – Where the
respondent represents a high risk of sexual re-offending –
Whether adequate protection of the community can be
reasonably and practically managed by a supervision order
Dangerous Prisoners (Sexual Offenders) Act 2003

COUNSEL: Ryan, T for the applicant
Bryson, KT for the respondent

SOLICITORS: Crown Law for the applicant

Legal Aid Queensland for the respondent

- [1] The Attorney-General for the State of Queensland (“the applicant”) seeks orders that a supervision order made pursuant to the provision of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”) in respect of Anthony James Donovan (“the respondent”) be rescinded and that the respondent be made the subject of a continuing detention order under the Act.
- [2] The application is made on the basis the respondent has contravened the following requirements of the supervision order made on 3 August 2010:
- (a) condition (xiv):
- “The respondent must comply with every reasonable direction of an authorised Corrective Services Officer.”
- (b) condition (xv):
- “The respondent must respond truthfully to enquiries by authorised Corrective Services officers about his whereabouts and movements generally.”
- (c) condition (xxiv):
- “The respondent must not engage in or demonstrate interpersonal violence or aggression against any other person excluding acts of self-defence”; and
- (d) condition (xii):
- “The respondent must not commit an offence of a sexual nature during the period of the order.”
- [3] The respondent accepts he has contravened the supervision order in respect of condition (xiv), condition (xv) and condition (xxiv), but denies any contravention of condition (xii). The respondent submits that notwithstanding that contravention, adequate protection of the community can be ensured by continuation of the existing supervision order.

Background

- [4] The respondent, who was born on 31 March 1962, has an extensive criminal history which includes offences as far back as 1978 committed in various States. He has been incarcerated for most of his life since 1983.

- [5] In 1995, the respondent was sentenced to 14 years imprisonment in respect of offences committed on 15 June 1994. Those offences involved the robbery at knife point of a female taxi driver, and her sexual assault. In 1995, whilst in custody, the respondent committed a further sexual offence. That offence entailed forcing another inmate to perform oral sex upon the respondent. The respondent was sentenced to two years imprisonment for that offence.
- [6] On 3 August 2010, the respondent was made the subject of a supervision order pursuant to the Act. The duration of the order was ten years. The respondent was released from custody pursuant to that order on 24 September 2010.
- [7] On 22 October 2010, the respondent was returned to custody pursuant to an arrest warrant in respect of the alleged contraventions of the supervision order. The respondent has remained in custody awaiting the determination of those alleged contraventions.

Contraventions

Condition (xiv)

- [8] On 8 October 2010, the respondent, who was residing in accommodation as required by the supervision order, became unwell and was taken to the Princess Alexandra Hospital. He remained in that hospital until 18 October 2010. Prior to his discharge on that date, the respondent had been given two verbal directions by Corrective Services Officers that he was to contact his case officer or the electronic monitoring surveillance unit coordinator when given any information with regard to his proposed discharge from hospital. Notwithstanding those directions, the respondent was discharged on 18 October 2010 without the respondent contacting those persons to advise of his proposed discharge. The respondent contacted the electronic monitoring surveillance unit coordinator some hours after his discharge and advised he was still at the hospital. The breach of condition (xiv) is his failure to comply with these directions. The respondent admits that breach.

Condition (xv)

- [9] On 12 October 2010 and 14 October 2010, a Corrective Services Officer was unable to locate the respondent in his room at the hospital or in the nominated smoking locations. The respondent was contacted by telephone on 15 October 2010 and questioned in respect of those absences. The respondent replied he was either in his room or in the smoking area and suggested the officer had not been “looking hard enough”. These untruthful responses found the basis for the breach of condition (xv). The respondent admits that breach.

Condition (xxiv)

- [10] This condition is alleged to have been breached in two separate incidents. The first, on 15 October 2010, related to an occasion when the respondent was abusive to a Corrective Services Officer. The second, on 19 October 2010, related to an occasion after the respondent was released from hospital when he attended the Peel Street Clinic. He became hostile and aggressive towards staff, punching a wall. The respondent admits that breach.

Condition (xii)

- [11] This condition is alleged to have been breached in that the respondent was “likely to contravene that requirement”¹ having regard to statements made by him during an interview on 21 October 2010 with Joel Brady, the principal adviser of the High Risk Offenders Management Unit. During that interview, it is alleged the respondent disclosed to Mr Brady that he had been escorted to a pharmacy earlier that day and that a female staff member of the pharmacy had been the immediate object of a rape fantasy. The respondent wanted to follow this woman and “forcibly rape her”. If it had not been for the Corrective Services Officers escorting him, he did not know how he would have behaved. The respondent identified a similar event concerning a female doctor whilst in hospital.
- [12] The respondent denies breaching condition (xii) as, even if he had such thoughts (which he subsequently denied), he did not commit any offence. Having regard to the lack of any evidence of any attempt to act on any such fantasies, I am not satisfied a breach of condition (xii) is established on the material.

The application

- [13] The applicant has established the respondent contravened the supervision order in respect of three conditions. That being so, unless the respondent satisfies the Court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention, be ensured by the existing order as amended, the Court must rescind the order and make a continuing detention order.²
- [14] The applicant submits the Court will not be so satisfied having regard to the opinions expressed by two psychiatrists, Dr Grant³ and Dr Beech,⁴ together with the contents of a report in relation to the extent to which any proposed requirements for the supervised release of the respondent can be reasonably and properly managed by

¹ Applicant’s submissions para 8.

² The Act, s 22(2)(a)

³ Exhibit 1.

⁴ Exhibit 2.

Corrective Services Officers.⁵ The respondent submits that notwithstanding those opinions, and that material, a continuation of the existing supervision order would provide adequate protection of the community.

Medical evidence

- [15] Dr Grant and Dr Beech gave evidence at the hearing. Each expressed the opinion that any release of the respondent into the community on a supervision order at the present time carried a high risk of re-offending,⁶ and that the respondent would benefit from further treatment, both in respect of drug and alcohol dependence and his sexual fantasies, before being released into the community.⁷ These opinions were expressed against a background of a diagnosis of sexual paraphelia, namely, sadism,⁸ and an apparent inability by the respondent to deal with the stressors associated with release, even on strict conditions under a supervision order.⁹
- [16] In his report dated 6 March 2011, Dr Grant noted that whilst he had had some hope that there might have been a degree of maturation in the respondent's personality since his incarceration, his behaviour since his release from prison would indicate he continues to have very significant difficulty with emotional control, dyscontrol of aggression, impulsivity and anti-social attitudes, combined with the preoccupation with thoughts about sexual assault, and that all of these concerns would indicate that the risk for future offending, both violent and sexual, remains very high. The respondent had also been dishonest in regard to his drug use in prison and since his release from prison, and in regard to alleged previous control of negative attitudes to females and fantasies about aggressive sexual behaviour.
- [17] In Dr Grant's opinion, the improvements seen in prison were "clearly somewhat illusory and have not translated well to placement in the community, even within the structures and supports of a comprehensive supervision order".¹⁰ He concluded:
- "Given all of these concerns it is difficult to be confident that a release once again on a supervision order would be successful in enabling Mr Donovan to undertake appropriate rehabilitation and adjustment to community living without a significant risk of emotional decompensation, potential self-harm or offending behaviour (which might include violence or aggressive sexual offending). The concern is whether Mr Donovan is capable of conforming to a supervision order and profiting from its limit setting in achieving further rehabilitation.

⁵ Exhibit 3.

⁶ Transcript 1-5/30, 1-18/20

⁷ Transcript 1-8/1-20, 1-21/25

⁸ Transcript 1-5/45, 1-18/30

⁹ Transcript 1-7/40-50, 1-20/30-40

¹⁰ Exhibit 1, p 14.

All of this, in my opinion, indicates Mr Donovan has a need for further sexual offender treatment and drug and alcohol treatment and I believe that such treatment would be preferably given prior to release from prison. Mr Donovan's attitude to treatment may be questionable and therefore the gains may also be questionable, but I believe his present level of control over both his sexual impulses and his drug abuse is insufficient to be safely managed in the community. Overall I am unable to now recommend Mr Donovan's release into the community on a supervision order as I would see the risks to be too high."

- [18] Dr Beech, in his report dated 30 March 2011, opined that the respondent had deteriorated within a very short time of release despite a high level of supervision and structure and that had he not been returned to custody he would have come quickly to a state where he would have been at a very high risk of re-offending.¹¹
- [19] Doctors Grant and Beech did not waiver in their opinions in cross-examination. They both maintained there was a need for the respondent to undergo further programmes and treatment in custody before any release into the community. I found their evidence highly persuasive. I accept that evidence.

Conclusion

- [20] Whilst the respondent contends only a short period had elapsed between his release on the supervision order and his return to custody, and that appropriate support and treatment in respect of his drug and alcohol dependence and sexual fantasies whilst under an ongoing supervision order would provide adequate protection to the community, I am not satisfied the conditions imposed under a supervision order would provide adequate protection to the community having regard to his behaviour upon release under the supervision order.
- [21] Whilst it is correct that the contraventions did not involve any re-offending on the part of the respondent, and that the existing supervision order effectively contains a 24 hour curfew with a requirement that any leave be escorted leave, the matters referred to by Doctors Grant and Beech, when viewed against the respondent's past history, render the risk of re-offending too great. The fact that the additional programmes proposed by Doctors Grant and Beech could be undertaken within the community, does not negate the risk to the community whilst those programmes are being completed.
- [22] I am satisfied the respondent presents a high risk of re-offending, both generally and sexually if released on a supervision order. I am also satisfied the respondent has

¹¹ Exhibit 2, p 12.

contravened the supervision order. The respondent has not satisfied me on the balance of probabilities that the adequate protection of the community can, despite that contravention, be ensured by the existing order or an amended order being made by the Court.

[23] I order:

1. The supervision order made on 3 August 2010 be revoked;
2. The respondent be detained in custody for an indefinite term for control, care or treatment.