

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Kynuna*
[2011] QSC 193

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

v

GREGORY DAVID KYNUNA
(respondent)

FILE NO/S: No. 9492 of 2009

DIVISION: Trial Division

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

ORIGINATING COURT: Supreme Court

DELIVERED ON: 9 June 2011, ex tempore

DELIVERED AT: Brisbane

HEARING DATE: 31 May 2011

JUDGE: Dick A/J

ORDER: **Order for supervised release of Gregory David Kynuna on conditions in accordance with the draft proposed orders.**

CATCHWORDS: CRIMINAL LAW – JUDGMENT AND PUNISHMENT – SENTENCE – MISCELLANEOUS MATTERS – SEXUAL OFFENDERS – *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – respondent convicted of sexual offences – respondent contravened supervision order - application by Attorney-General to have the supervision order rescinded and the respondent detained indefinitely or alternatively amend the supervised order – whether conditions of the supervision order are appropriate

Dangerous Prisoners (Sexual Offenders) Act 2003

COUNSEL: M. Maloney for the applicant
T. Ryan for the respondent

SOLICITORS: Crown Solicitor for the applicant
Howden Saggars for the respondent

- [1] By an application filed on the 19th of April 2010 and an amended application filed on the 5th of October 2010, the Attorney-General applied under section 22 of the Dangerous Prisoners' Sexual Offenders' Act 2003 hereinafter called the Act, for the following orders:
 - (a) Rescission of the supervision order or Douglas J made on the 29th of January 2010 and an order that he, the respondent, be detained in custody for an indefinite period for care, control or treatment; or
 - (b) Alternatively, that pursuant to section 22(7) the supervision order be amended.
- [2] The matter came on because it was alleged that the respondent had breached the order of Douglas J.
- [3] The background of the matter is that the respondent is now aged 46 years of age having been born on the 18th of November 1964 at Cairns. He has a long and relevant criminal history including offences of a sexual nature. In 1987 he was convicted of two counts of break and enter a dwelling house with intent in the night time and six charges of aggravated assault of a sexual nature on a female child under the age of 17 and he was sentenced to imprisonment.
- [4] In 1990 he was convicted in the Yarrabah Magistrates Court of a single count of aggravated assault on a female and fined. In 2004 he was sentenced to six years' imprisonment in the Cairns District Court for a single count of rape and the complainant was a six-year-old child who was unknown to him at the time of the offence.
- [5] He has a drug and alcohol history as is evidenced by his criminal history and prior to his last incarceration on criminal offences he was a heavy consumer of alcohol and marijuana. He has a relevant background of medical and mental health problems.
- [6] In 1979 he was involved in a motor vehicle accident and suffered a severe head injury. Following the accident he displayed persistent bizarre behaviour which was described as confused and disorientated. He was subsequently transferred to the psychiatric unit of the Cairns Base Hospital. He has been assessed a number of times over the years by various medical practitioners of various specialities including neurologists and psychiatrists.
- [7] By 2004, it was noted that he was experiencing auditory hallucinations which was thought might be the result of the organic brain syndrome. It was also noted that he was suffering a number of conditions including behavioural problems possibly exacerbated by the head injury.
- [8] Whilst in custody, as well as receiving treatment for his acquired brain injury, he has also been diagnosed, on occasions, with chronic schizophrenia and I have read reports from Dr Beech and Professor James. I will come back to their evidence in a moment.
- [9] The present contravention allegations relates to two matters. One of the conditions of the previous order was that he was required to abstain from the use of illicit drugs

for the duration of the order. On the 15th of April 2010, he was required to undergo a random urinalysis and that test indicated the presence of cannabinoids.

- [10] Another condition of the supervision order required him not to commit an offence of a sexual nature during the period of the order. Having been taken back into custody for the first breach in August 2010 while attending an IT class at Brisbane Correctional Centre, the respondent, in front of a female tutor, put his hands down his shorts and appeared to be masturbating. He then removed his hands from his shorts and went to touch the tutor in her groin area. She pushed his hand away and that concluded the incident.
- [11] He pleaded guilty to a charge of sexual assault in the Magistrates Court at Richlands on the 10th of November 2010 and was convicted and sentenced to five months' imprisonment. That is the second breach. The breaches are admitted.
- [12] Dr James provided a risk assessment report for the initial contravention proceedings, that is, relating to the substance abuse and, at that time, he was of the opinion that the respondent's condition and risk of re-offending had not significantly changed from the time he last had examined him in March 2009 or from when he was released in February 2010.
- [13] In his report, Dr James referred to the possibility of trialling an increase in his anti-psychotic medication either in frequency or in strength. He also discussed the need for vigilance in respect of the supervision order and in respect of the respondent because of his inclination to use intoxicants as a response to stress.
- [14] Professor James provided another report dated 1st of October 2010 which post-dated the incident resulting in the sexual assault charge. He said in that report, in part, "There appears to have been the unanimous psychiatric opinion that Mr Kynuna requires anti-psychotic medication to treat his psychotic symptoms such as hallucinations to control his irascibility and impulsiveness and to assist sleep."
- [15] In addition to optimal psycho-pharmacotherapy, he considered it necessary also to ensure an extended and intense program of community rehabilitation appropriate to Mr Kynuna's cultural and clinical needs. He was concerned about Mr Kynuna's poor impulse control, his only partial insight and said that those things would result in him imposing a significant risk of re-offending violently and/or sexually if he were to be released from prison even with a supervision order, "were the above contingencies not addressed".
- [16] Dr Beech gave a report dated the 11th of September 2010. He pointed out that much of the respondent's offending had taken place in the context of intoxication with substances. He said added to this is the aggravating feature that he suffers from severe mental illness, schizophrenia, which is likely to be exacerbated by cannabis use. He said the respondent also has an anti-social personality disorder and, as a result of the brain damage suffered in the motor vehicle accident he is, by nature, impulsive prone to emotional arousal and has limited problem solving skills.
- [17] On the 2nd of May 2011, Dr Beech provided another report. By this time, Mr Kynuna was being treated with increased doses of Risperidone and has been since February this year. Part of Dr Beech's latest report said, "Nonetheless, when he takes regular prescribed medication, Mr Kynuna is mostly settled and behaved. He

is relatively insightful into the adverse effects of alcohol and other substances but he now indicates that he will remain abstinent and he is accepting of ongoing management and treatment.

- [18] He said if the respondent were to be released into the community without supervision the risk of further offending would be high and the risk would be for both general assault and violence but also for inappropriate sexual behaviour that could range from indecent behaviour to sexual assault, to rape.
- [19] He thought that that risk could be reduced to the moderate range but would require a range of circumstances and conditions to do so. It was, of course, necessary that the respondent abstain from alcohol and illicit substances. He thought it was important that the respondent undergo counselling to assist with integration into the community and strategies to manage the day-to-day stresses of living and encouragement to continue with pro-social pursuits.
- [20] It was important the respondent had close, assertive community management from Mental Health services to monitor his mental state and adjust his medication as required. It was important that he was compliant with all prescribed medications and Dr Beech thought it would be beneficial to have the anti-psychotic medication converted into a single intramuscular dose regime. At the moment, one of the drugs with which he is being treated is given as intramuscular and it is possible that the other can as well.
- [21] Dr Beech thought that if Mr Kynuna were to be released, it would be necessary to ensure that there be close liaison with community agencies to ensure that his case was immediately taken up by external agencies so that he is closely monitored.
- [22] When he gave evidence before me, Dr Beech reiterated that he was concerned that all the steps that needed to be taken to provide the appropriate supports be in place immediately upon release.
- [23] A further affidavit from Jenny Lynas of Queensland Corrective Services has been filed and in response to Dr Beech's concerns, the following matters have been put into place. The respondent has been accepted to the forensic psychology centre and will immediately be given an evaluation for treatment by Mr Olaf Handrick, a forensic psychologist. He will be seen on a weekly basis for two hours for the initial month and appointments will then be arranged from there.
- [24] He has been accepted by the Acute Care team, Division of Mental Health at the Princess Alexandra Hospital and Dr Sean Tracey, who is a psychiatrist and an acute care team consultant has provided written information regarding the acceptance of his referral as well as the time frame for an initial appointment upon his release to ensure prompt action.
- [25] He has also been accepted by Gallang Place and I have seen a letter from that organisation. Gallang Place delivers a counselling service that explores emotional behaviour of family psychological and social issues that have caused problems and impacted on the quality of life for indigenous families.
- [26] Gallang Place is able to provide ongoing culturally appropriate counselling for the respondent and he can commence that counselling immediately upon his release.

- [27] The position of the Attorney, at this stage and in light of the following factors, is that the respondent should be released back to the terms of his current supervision order amended to reflect the amendments to the mandatory conditions required by the Act.
- [28] Those factors include the evidence of both the psychiatrists, having considered the reports from Dr Goel and Timmins from the Prison Mental Health Service who have been positive that the current treatment regime seems to have resulted in a stabilisation of the respondent's mental health issues.
- [29] The evidence reflects the fact that this is a long-term treatment required by the respondent and he will need ongoing supervision and review of the treatment well into the future.
- [30] The concerns expressed by Dr Beech in relation to the transition from the respondent being in custody, to being released on the supervision order appear to have been addressed by the various methods to which reference has been recently made.
- [31] The evidence of the psychiatrists Dr Beech and Dr James is consistent in the view that a supervision order would be sufficient to ensure the adequate protection of the community because now careful arrangements have been made in respect of accommodation, support and treatment options upon the respondent's release.
- [32] In the immediate future, accommodation is available for the respondent at the contingency accommodation at Wacol and further assistance will be provided to assist the respondent to source alternative accommodation as and when appropriate.
- [33] I am satisfied the respondent has satisfied the onus on him required by s 22(2) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
- [34] In those circumstances, I order the respondent continues to be subject to the supervision order made by Douglas J on 29 January 2010 with the additional following conditions:
- (xlii) Comply with any reasonable direction under s 16B of the Act, with respect to accommodation, rehabilitation, care or treatment given to the respondent by an authorised Corrective Services Officer.

Amend requirement (xvi) and insert the following underlined words to read:

(xvi) Must comply with every reasonable direction of an authorised Corrective Services Officer that is not directly inconsistent with a requirement of the order.