

SUPREME COURT OF QUEENSLAND

CITATION: *R v Fletcher* [2011] QSC 235

PARTIES: **R**
(applicant)
v
LLOYD CLARK FLETCHER
(respondent)

FILE NO: Indictment No 425 of 1997

DIVISION: Trial Division

PROCEEDING: Indefinite Sentence Review

DELIVERED ON: 11 August 2011

DELIVERED AT: Brisbane

HEARING DATE: 8 and 11 August 2011

JUDGE: Mullins J

ORDER: **Indefinite sentence imposed on the respondent on 14 July 1998 in respect of count 4 on indictment 425 of 1997 is confirmed.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – indefinite sentence – periodic review of indefinite sentence – whether the offender is still a serious danger to the community

Penalties and Sentences Act 1992, s 163, s 171, s 173

R v Fletcher [1998] QCA 286, considered

R v Wilson [1998] 2 Qd R 599, considered

COUNSEL: D A Holliday for the applicant
The respondent appeared on his own behalf

SOLICITORS: Director of Public Prosecutions (Queensland) for the applicant
The respondent appeared on his own behalf

HER HONOUR: This is the first periodic review of the indefinite sentence imposed on Lloyd Clark Fletcher (the respondent) on 14 July 1998, for the offence of disabling in order to commit an indictable offence - rape, that was committed on 20 April 1997.

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The nominate sentence that attaches to the indefinite sentence is life imprisonment. This review is required under section 171 of the Penalties and Sentences Act 1992 (the Act).

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The respondent appealed to the Court of Appeal against the indefinite sentence, and that appeal was dismissed. It is convenient to rely on the history of the respondent's offending which is set out in the reasons for judgment of the Court of Appeal in R v Fletcher [1998] QCA 286.

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I heard submissions from Ms Holliday of counsel on behalf of the Director of Public Prosecutions on 8 August 2011. The respondent was unrepresented at the hearing of the review of the indefinite sentence, and indicated that he did not oppose the indefinite sentence continuing, and, effectively, did not participate in the hearing other than by being present.

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The respondent's attitude does not avoid the need for the Court to consider, pursuant to section 173 subsection (1) of the Act, whether the respondent is still a serious danger to the community when the review is made.

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The approach to the review must be informed by the

considerations under section 163 of the Act that are specified as relevant to determining whether an offender is a serious danger to the community.

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Consistent with the approach taken by the Court of Appeal in R v Fletcher [1998] QCA 286, in reliance on the observations of Justice Pincus in R v Wilson [1998] 2 Qd R 599 at 668, whether the respondent is still a serious danger to the community at the time of the review, requires the Court to consider the present risk that the respondent presents to the community, and prospective risk to the community, if the indefinite sentence were discharged.

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If the indefinite sentence were discharged, the respondent would be subject to a life sentence. It appears that if a life sentence were in place, the respondent's eligibility to apply to parole, both in respect of such life sentence in lieu of the indefinite sentence, and the life sentence that was imposed on him for the offence of murder in May 1998, has already arrived.

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That means that, for the purpose of this review, I do not need to project forward very far at all to consider the prospective risk to the community, if the respondent were to apply and be granted parole.

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For the purpose of this review, I have been provided with the victim impact statement of the victim against whom the conduct was committed that resulted in the imposition of the

indefinite sentence. I have also been provided with a collation of the documents from the respondent's file with Queensland Corrective Services.

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Relevantly, I have also been provided with the psychological risk assessment report undertaken by psychologist, Joel Smith, who interviewed and assessed the respondent for five and a half hours over 24 and 30 May 2011, and the medico legal opinion of psychiatrist, Dr Donald Grant, who interviewed the respondent for two and a quarter hours on 20 June 2011.

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The respondent's antecedents and personal history are summarised in the reports. Relevantly, for the purpose of considering the risk to the community, the respondent completed the Getting Started Preparatory Program for sex offender treatment programs over 10 sessions between 6 September and 25 October 2010.

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The report of his participation in this program shows that his participation was reserved and not the full participation that is expected of a person who embraces the opportunity to participate in such a program.

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The respondent also expressed tentativeness about participating in a sex offender intervention program which is the next step in treatment for an offender who has committed serious sexual offences.

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The respondent has a good institutional record, otherwise, as far as his imprisonment is concerned. It appears that he has favourable reports from work supervisors and has settled into a routine in prison that has, no doubt, informed his attitude that he has taken to this periodic review of his indefinite sentence that he does not wish to change the status quo.

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In relation to the psychological and psychiatric assessments undertaken of the respondent for the purpose of this review, it can be noted that the respondent did not fully engage in these assessments. There is, therefore, tentativeness about the opinions expressed in a diagnostic sense by the experts as to the respondent's psychiatric condition. But there is no tentativeness about the conclusions of their reports.

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Mr Smith noted from the respondent's self report and demonstrated strong work ethic in the prison environment that, "His employment is an important part of his self identity and allows him to maintain a lifestyle in prison that is in keeping with his principles".

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Mr Smith expressed his conclusion about a diagnosis in these terms: "Given limitations in Mr Fletcher's self report, his tendency to avoid and underreport experiencing negative life experiences, diagnosis is currently incomplete. He does not display any evidence of psychosis or mood disturbance to a

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clinically remarkable level. What can be assessed from Mr Fletcher's presentation is a mixed and complex picture of anti-social personality disorder and the possible interaction between post-traumatic stress disorder and the paraphilia sexual sadism."

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Mr Smith concludes: "Irrespective of the limitations of the above assessments and the offence formulation conclusions that have followed, one known factor concerning Mr Fletcher's risks is the severity of the potential harm his offending represents. That is, the nature of Mr Fletcher's risk behaviour is severe to potentially fatal. Whilst this offender remains unwilling and unable to address any or all of the criminogenic needs that have contributed to this situation, the prognosis, for the future, does not bode well for Mr Fletcher."

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Dr Grant expresses his conclusions in these terms: "In the face of Mr Fletcher's defensiveness, denial and lack of willingness to explore his offending and its motivation, it is not possible to accurately define his problems or make a definite diagnosis of a sexual paraphilia such as sadism, although that seems likely. He is, so far, inaccessible to treatment or counselling. The most that can be said is that Mr Fletcher has very deep seated and severe psychological and emotional conflicts that have produced intermittent,

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devastating, sexual violence leaving a trail of severely damaged women and one dead victim. The origin of those conflicts is unclear and not entirely explainable on the evidence so far to hand.

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Whilst Mr Fletcher is so defended, in such denial and so inaccessible to exploration of his underlying emotional issues, he will remain a severe risk for himself and more so, for the community. His risk of re-offending, in my opinion, is high. No treatment has yet altered that risk. He has not shown any ability to achieve his own insights and he has no plans as to how that risk could be managed if he was to be released from custody."

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Dr Grant therefore expresses the opinion that, "Mr Fletcher represents a high risk of re-offending in a sexual, violent fashion and his potential for offending represents an unacceptable risk to the community in the absence of a much more comprehensive understanding of the origins of his offending and subsequent effective treatment for the causes".

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In the light of the respondent's history of offending, the little progress made in treatment and ascertaining the causes of his offending during his imprisonment (despite the respondent's otherwise good response to institutional routine), and the psychological and psychiatric assessments

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undertaken for the purpose of this review of the indefinite sentence, I am satisfied that the respondent is still a serious danger to the community, both now, at the time the review is being made, and in the short to medium future when a parole order could be granted, if the respondent were not the subject of an indefinite sentence.

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The order that I make, therefore, is the indefinite sentence imposed on the respondent on 14 July 1998, in respect of count 4, on indictment 425 of 1997, is confirmed.

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