

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Hocking* [2011] QSC 251

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

FILE NO: BS 2661 of 2011

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 18 August 2011

DELIVERED AT: Brisbane

HEARING DATE: 5 August 2011

JUDGE: Philippides J

ORDER: **Pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* the respondent be released from custody, subject to the specific conditions of the supervision order as annexed.**

CATCHWORDS: CRIMINAL LAW – JUDGMENT AND PUNISHMENT – OTHER MATTERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – CONTINUING DETENTION OR SUPERVISION – FACTORS RELEVANT TO DECISION – where the Attorney-General seeks orders under Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – where the respondent represents a moderate risk of sexual re-offending – whether the respondent is a serious danger to the community in the absence of a Division 3 order – whether adequate protection of the community can be reasonably and practically managed by a supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)
Attorney-General for the State of Queensland v Francis [2007] 1 Qd R 396; [2006] QCA 324

COUNSEL: TA Ryan for the applicant
CM Chowdhury for the respondent

SOLICITORS: Crown Law for the applicant
Legal Aid for the respondent

PHILIPPIDES J:

The application

- [1] On 27 June 2008 the respondent was convicted of a number of offences and sentenced to various terms of imprisonment, the longest being a sentence of six years imprisonment. He has a full-time release date from custody of 18 August 2011. The respondent is now aged 47 years, being born on 8 July 1964.
- [2] The applicant, the Attorney-General for the State of Queensland, seeks orders pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”). The Act has as its objectives the provision of orders that ensure adequate protection of the community and that provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation (s 3).
- [3] The applicant bears the onus of satisfying the court that the respondent is a serious danger to the community in the absence of an order pursuant to s 13 of the Act. A person is a serious danger to the community if there is an unacceptable risk that the person will commit a serious sexual offence if released from custody or if released from custody without a supervision order being made (s 13(2)). A “serious sexual offence” means an offence of a sexual nature involving violence or against children. “Violence” is defined as including intimidation or threats. A court may decide that it is satisfied that a prisoner poses a serious danger to the community only if it is satisfied by acceptable cogent evidence and to a high degree of probability that the evidence is of sufficient weight to justify the decision (s 13(3)). The matters identified in s 13(4) are the relevant considerations for the purposes of determining whether a prisoner is a serious danger to the community.
- [4] If satisfied that the respondent is a serious danger to the community in the absence of a Division 3 order, the court may, under s 13(5) of the Act, order that the respondent be detained in custody for an indefinite term for control, care or treatment (detention order) or order that he be released from custody subject to requirements stated in the order (supervision order). In deciding whether to make either a detention order or a supervision order, the paramount consideration is the need to ensure adequate protection of the community. In the case of a supervision order, it is necessary to consider whether adequate protection of the community can be reasonably and practicably maintained by a supervision order (s 13(6)).
- [5] The Act does not contemplate that arrangements to prevent a risk must be “watertight”, otherwise a supervision order would never be made. The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principle, be preferred to a continuing detention order. This is on the basis that the intrusions of the Act upon the liberty of the subject are exceptional and the liberty of the subject should be constrained to no greater extent than is warranted by the statute which authorises such constraint: *Attorney-General for the State of Queensland v Francis* [2007] 1 Qd R 396 at 405; [2006] QCA 324 at [39].

- [6] In the circumstances of the present case, the only order sought by the applicant was a supervision order in the terms of the draft provided.

The respondent's criminal history

- [7] The respondent has a lengthy criminal history, which involves offences of violence and also serious sexual offences as defined by the Act.
- [8] Relevantly, for the purposes of this application, on 19 April 1984 the respondent was sentenced for the offence of attempted rape committed on 21 June 1983. He was sentenced to two and a half years imprisonment. The circumstances of that offence involved an attack on a 34 year old woman who was a stranger to him. The woman was making a telephone call from a public telephone booth when she was forced to a nearby alley. The victim was punched several times in the face and knocked to the ground. She was dragged to a nearby vacant lot where her clothing was then removed. The victim's vagina and anus were digitally penetrated before an attempt at penile penetration was made. The respondent escaped when assistance was rendered by nearby neighbours. A report prepared for sentencing recorded that at the time of the offence the respondent had been drinking alcohol for several hours and that in addition, he had sustained a head injury about an hour earlier (although no evidence of brain injury was subsequently detected as having been sustained).
- [9] After his release from prison, the respondent committed the offences of breaking and entering a gunsmith shop and stealing firearms (in September 1986) for which he was sentenced on 3 July 1987 to seven years imprisonment.
- [10] On 22 October 1987 he was sentenced to nine months imprisonment for possession of an implement capable of effecting escape. He was also sentenced on 17 March 1988 to 12 months imprisonment for assault with intent to prevent detention following the discharge of a firearm at a police vehicle during the pursuit following the commission of that offence. On 29 April 1988 the respondent was sentenced to three years imprisonment for two counts of stealing.
- [11] On 15 September 1988, the respondent was convicted of the offences of assault occasioning bodily harm and unlawful wounding committed in September 1986. The respondent was released on parole in respect of those offences in October 1991.
- [12] Thereafter, on 8 March 1993 while on parole, the respondent committed the offence of armed robbery in company for which he was sentenced on 18 June 1993 to 10 years imprisonment.
- [13] The offences for which his current term of imprisonment relates were committed in 2005 and include offences committed against two sisters, P (aged 19 at the time) and her younger sister B. He was sentenced on 27 June 2008 for those offences.
- [14] In respect of the complainant P, the respondent was convicted of two counts of assault occasioning bodily harm committed in January-February 2005 (for which he was imprisoned for two years), one count of stalking with circumstances of aggravation between 10 February 2005 and 19 August 2005 (for which he was sentenced to six years imprisonment) and an offence of common assault committed on 29 December 2005 (for which he was imprisoned for 18 months). A domestic violence order in relation to P had been served on the respondent while he was in

custody. On his release he went to see P, in breach of that order. The sentencing judge outlined the circumstances of the offending against P as follows:

“You had been in a relationship with [P] between September 2004 and about February 2005. She was aged 19 at the time of the offences against her and you were about 40. You were violent and possessive towards her. On 29 December 2004 you were at your house with [P]. It was her 19th birthday. She wanted to leave but you did not want her to do so. In the upshot you assaulted her and she stayed.

Then there was an incident in January 2005 when you grabbed her by the throat, squeezed it hard and slapped her on the face several times with the result that her head banged against a fridge. She had a swollen throat. There was another incident on 09 February 2005 in which you punched her around the head.

The stalking commenced on about 11 February 2005 when she left you. It continued until you went into custody on 23 March 2005 and then resumed while you were on bail from early May to 18 August 2005.

... Four acts in the stalking involved the use of violence, 32 acts involved intentionally threatening violence, one act involved the possession of a weapon and 11 acts involved contraventions of an order of the Magistrate’s Court.

You sent text messages, you pursued her to a service station at Stafford, over a period of more than 24 hours you took her from a house at The Gap to the Bandidos clubhouse at East Brisbane, then to the Gold Coast, then back to the clubhouse, then to your parents’ place ... and finally back to her car. Over that period you inflicted violence; you threatened suicide with a double-barrelled shotgun; you threatened [P] with a kitchen knife; there was a struggle and her wrist was cut. Subsequently she moved to her aunt’s place at [M]. You continued to attempt to contact her, sending her text messages. Her aunt’s telephone listing and maps of [M] were downloaded by you from the internet. You stole personal correspondence from her family home ...”

- [15] Relevantly for the purposes of this application, the offending against P’s sister B, for which the respondent was also sentenced on 27 June 2008, concerned sexual offences committed when the respondent was on bail and heavily affected by amphetamines. The circumstances of the offending against B are outlined in the sentencing judge’s sentencing remarks as follows:

“She was a girl of 17 at the time of the offences against her. She had met you twice. She knew of your relationship with her sister, [P].

You attempted to contact [B] on MSN messenger but she changed her contact details. You sent her text messages, enquiring about [P]. The offences against [B] were all committed on one night while you were on bail, in July 2005.

Early in the afternoon, she was at home working on her computer when you arrived. She went to the door; you walked straight past her and into the house to the computer, where you worked on the Austar

cable television connection for some time. In the meantime you were consuming crystal meth or speed. ...

At about 4.30, [B] was seeing you off. You picked her up and carried her to your car against her will. You drove along country roads to an old wooden shed, where you stopped. You consumed more speed. You ran your hand along her thigh and forced her to remove her underclothing. You indecently assaulted her, licking the outside of her vagina and digitally fondling her genitalia and vagina, then pulling her face towards your erect penis and trying to put her hand on your penis. You forced her right hand onto your penis and made her rub your penis with her hand. You ordered her to remove her pants again. You licked her private parts, masturbating as you did so. You asked her for sex, but she declined. You continued to masturbate, and ejaculated on the back seat of the car. Then you took her home.”

- [16] The respondent was convicted of the offences of deprivation of liberty, two counts of sexual assault and one count of procuring the complainant to engage in a sexual act by coercion. Sentences of six years imprisonment were imposed for the sexual offences.
- [17] Also on 27 June 2008, the respondent was sentenced to a number of other property and drug offences.

Personal history

- [18] The respondent has a history of alcohol abuse from the age of 13, including bingeing on alcohol. His alcohol abuse became so heavy that he used to experience memory blackouts. His alcohol abuse ceased in about 2002, in the context of amphetamine use, which increased significantly from 2000, when he joined a motorcycle club. He reported ceasing all drug use while in gaol and urine drug tests during that period have been clear.
- [19] The respondent has had a number of heterosexual relationships. From the reports before the court, it appears that in addition to P, a domestic violence order was taken out in respect another young woman with whom the respondent had entered into a relationship.

Plans on release

- [20] The information provided by the respondent to the reporting psychiatrists about his plans on release indicated that he has applied for Department of Housing accommodation and that his uncle (who he says will not tolerate any problems) has offered to accommodate him. He has received job offers to commence upon his release from prison, installing and repairing fencing. He also has contacts in the mining industry and has indicated that he could gain employment on drilling rigs in Papua New Guinea. He prefers fly-in/fly-out jobs as that means he is not socially isolated. They include drug testing.
- [21] The respondent has contacted Mission Australia to assist him on his release having obtained their contact details through the Transitions Program. He has recently

made inquiries about drug assistance and has been advised about an organisation called QuIHN, which his mother registered him for at his request.

Dr James

- [22] Dr James assessed the respondent on 14 October 2010 for the purposes of a preliminary assessment report dated 8 November 2010. Dr James diagnosed the respondent as suffering substance abuse/dependence (alcohol and amphetamine), in remission on account of incarceration and anti-social personality disorder, in partial remission.
- [23] Dr James noted that the respondent's institutional behaviour was one of gradual progress and improvement over the years.
- [24] Dr James conducted a risk assessment of the respondent using various risk assessment tools. On the Static-99, he scored the respondent as a 6, indicating a high risk of future recidivism. On the Sex Offenders Risk Appraisal Guide ("SORAG"), the respondent's score was 20, placing him in a group of persons, 58 per cent of whom have a chance of re-offending sexually within seven years, and 80 per cent of whom have a chance of doing so within 10 years. On the Violence Risk Appraisal Guide ("VRAG"), the respondent scored 10, which placed him in a group of persons, 44 per cent of whom have a chance of re-offending violently within a seven year period and 58 per cent of whom have a chance of doing so within 10 years. He gave the respondent a score of 24 on the Hare Psychopathy Checklist – Revised ("Hare PCL-R").
- [25] Dr James opined that the majority of the offences committed in 2008 were largely attributable to the respondent's anti-social personality structure, with substance abuse acting as an exacerbating factor. In his view, some of the offending, particularly in relation to stalking charges, emanated from the respondent's "deeply imbued ... obsessive need to control". Dr James identified the respondent's controlling personality as a dynamic factor, relevant to the risk of re-offending. He was of the opinion that the respondent had some traits of an obsessive compulsive personality disorder and that his history of overt violent offending was coloured by the dynamic of control. Dr James saw the most likely risk of re-offending in the future would be in the context of a heterosexual relationship.
- [26] With respect to the risk of recidivism, Dr James considered any reinvolvement by the respondent with intoxicating substances would "greatly heighten" his risk of re-offending, simply by reason of the primary disinhibiting effect of intoxicants. In order to reduce the risk to a reasonable level, Dr James was of the opinion that the respondent would need to abstain completely from alcohol and in particular from amphetamine. He was of the view that it would be very important for such abstinence to be supported (by facilitating his attendance at appropriate programs) and for it to be carefully monitored and enforced. Dr James believed that the respondent could also "probably be engaged in dynamically informed style of psychotherapy", but considered that it was a "moot point" whether he would benefit from cognitive therapy in a group setting, such as the Sexual Offender Treatment Program.
- [27] Dr James opined that, given the respondent's past history and the inevitable uncertainties upon discharge of misuse of intoxicants and the vicissitudes of

relationships, the risk to the community in terms of the respondent's potential recidivism would be unacceptably high were he to be released without a supervision order. He was of the view that the risk could be lowered to a point that it could reasonably be managed in the community if an appropriate supervision order were in place.

- [28] In his addendum report of 10 May 2011, Dr James considered further a number of relevant dynamic factors including the respondent's maturation over time in terms of anti-social personality, the respondent's reported abstinence from nicotine and alcohol prior to his recent incarceration and his reported intention to have no contact with previous anti-social associates, such as those involved in the motorcycle club he had been a member of.
- [29] Dr James also revisited the question of the respondent's risk of re-offending in a sexually violent manner. Dr James opined that, in the absence of a return to abuse of intoxicating substances, the high level of risk of violent sexual offending derived from actuarial instruments alone would, bearing in mind the relevant dynamic factors, be reduced to moderate. However, he considered that if the respondent were to resume habitual use of intoxicants, such as amphetamines, the risk would increase to moderately high and if he were to associate with criminal or anti-social peers, this would also increase his risk of re-offending particularly, as it would increase his risk of use of intoxicants.
- [30] Dr James noted that the respondent's abstinence from nicotine and alcohol, his abstinence from drug use whilst in prison and his asserted intention to remain totally abstinent from intoxicants upon release as encouraging. However, Dr James also observed that the respondent's ability to maintain abstinence from all intoxicants was yet to be tested in an environment outside of prison and noted a number of relevant prognostic indicators which suggested a poor prognosis in that regard. In his opinion, in order to reduce the risk of resuming amphetamine use it was desirable that the respondent not be left entirely to his own devices in terms of maintaining abstinence and promoting community integration.
- [31] When challenged on the matter in the course of his oral evidence, Dr James maintained his opinion that the respondent's risk of serious sexual offending remained moderately high. He pointed out that, notwithstanding the significant period of time between the two episodes of serious sexual offending (20 years), there had been a substantial period during which the respondent had been in gaol. He reiterated that the respondent's main risk factor, which was a relapse in respect of substance use, remained a significant one and one which he saw as potentially quite high, but one which would reduce over time if abstinent outside the prison setting. Moreover, notwithstanding that Dr James accepted that the steps the respondent was taking in contacting Mission Australia and seeking drug assistance through the Transitions Program were excellent ones, he still adhered to the opinions expressed in his reports.
- [32] Dr James' oral evidence was that a supervision order was an appropriate protective strategy to respond to the risk that the respondent would resume habitual amphetamine use and the consequential risk of serious sexual offending. In Dr James' opinion, in the absence of intoxicants, which a supervision order would monitor and attempt to ensure, the respondent's risk of sexually violent re-offending would be moderately low.

Dr Beech

- [33] Dr Beech saw the respondent on 22 June 2011 for the purposes of his report dated 18 July 2011. Dr Beech also administered a number of tests to assess risk. On the Hare PCL-R, Dr Beech gave the respondent a score of 26 which he indicated, while not in the range of psychopathy in North America, probably rated as psychopathy in Australia and Europe. In assessing the respondent on the Static-99, Dr Beech gave the respondent a score of 6, which placed him in the group regarded as being at high risk of re-offending. In respect of the dynamic risk assessment, in Dr Beech's opinion, the respondent had throughout his life demonstrated the actual presence of 11 of the 22 items known to be dynamic factors associated with the risk for further sexual violence listed in the Risk for Sexual Violence Protocol ("RSVP"), and a possible presence of a further factor. Many of those, he opined, continued into the respondent's present circumstances, the most pertinent factors presently being:
- The use of extreme physical coercion.
 - The use of psychological coercion.
 - Minimisation or denial of the sexual violence.
 - Problems with self-awareness.
 - Deficits in some self-awareness regarding his offending.
 - Psychopathic personality traits.
 - Significant problems with substance use.
 - A history of violent behaviour and general criminality.
 - Problems in intimate relationships.
 - Difficulties with treatment.
 - Past problems with supervision.
- [34] Dr Beech was of the opinion that the respondent had a severe anti-social personality disorder which incorporated violence and a callous disregard for the rights and wellbeing of others. Dr Beech did not consider that the respondent had any sexual deviance. Dr Beech concluded that the respondent bordered on psychopathy and it was only the recent mellowing of some of his volatility and impulsivity that had really changed with time. He considered that there were essential elements of control in the current offences and a marked determination to intimidate and coerce the two victims.
- [35] Dr Beech noted the respondent's significant history of substance use in the community was reflected in his diagnosis of substance abuse and dependence (now in remission in custody). Importantly, he noted that intoxication had played a role in some of his violent offending and a role in his sexual violence. Dr Beech also noted that, although the respondent could be very productive and his behaviour had been good within the structure of prison, he did not last long in the community without getting into serious and often violent criminal behaviour.
- [36] In his report, Dr Beech assessed the risk of sexual violence as being in the moderate to moderate high range, noting that it had lessened with the passage of time. He modified that opinion in oral evidence, explaining that taking into account the ameliorating effect of the passage of time, he now assessed the risk to be in the moderate range. Dr Beech also stated that the risk of sexual violence was most likely to occur within a relationship or in the context of general domestic violence. Outside of that, sexual violence was most likely to occur when the respondent was intoxicated and resorted to violence to get his way. He opined the victim was likely

to be an adult female and that she could suffer severe physical harm. Although in his report he stated that weapons were likely to be used, he modified that view in oral evidence to one that weapons could be used.

[37] Dr Beech considered that the respondent had very little insight into his violence and in particular, to his recent offences with the two young women, P and B. Dr Beech also expressed a concern that the offences with the younger sister were driven in part by anger towards the older sister. (Dr Beech reported that the respondent told him that he “probably” was stalking P because he was angry with her for taking out the domestic violence order.) Dr Beech considered that the respondent minimised his offences, projected blame and distorted the nature of the intimidation, threats and coercion. He continued to maintain that the offences with P did not involve coercion and that she had minimised the extent of their relationship during their time together and felt that the charges were coerced from her in an effort to placate her mother.

[38] Dr Beech considered that, while the respondent was working well and of good behaviour in prison, he was ill-prepared for the stresses and demands of community life and prone to relapsing into substance use, difficult relationships, and criminal activity on release. In Dr Beech’s view, the respondent had not really addressed his offending in any rehabilitative course and had simply avoided dealing with it. In that regard, Dr Beech opined:

“It is possible now that Mr Hocking has tempered with the passing years and that he has taken stock. He may now, as he says, realise that he needs to be abstinent. He may now as he says avoid relationships and instead focus on being productive when released. In that scenario the risk of violence and sexual violence would be reduced. However he does not have a good track record in this regard. I believe that he underestimates the difficulties.

Importantly he has not done anything in his time to address these difficulties.”

[39] Dr Beech concluded that, if the respondent were to be released, he would need to be supervised and involved in appropriate programs to maintain abstinence from illicit drugs and to avoid general criminality. He stated that the concern was that he did not do well with community supervision and has not in the past demonstrated any interest in individual or group programs. In Dr Beech’s opinion, the risks of sexual re-offending could be reduced by his participation in programs that addressed violence, sexual violence, and drug use. The lack of appropriate program involvement in the past has tended to perpetuate his denial about his actions and behaviours.

[40] In oral evidence, Dr Beech reiterated that he saw the risk of serious sexual offending as moderate, notwithstanding the absence of sexual deviance. Dr Beech emphasised that the respondent had a significant history of violence and that in relation to the last episode of sexual offending, it had occurred against a background of quite significant violence within the relationship that he had with the complainant’s sister. He saw the respondent as a man prone to using violence to get his own way, including to get his own way sexually. Additionally, he did not consider that the risk factor of a return to the use of illicit substances had not been addressed in any rehabilitative program. Indeed, Dr Beech stated that the respondent seemed “to

eschew them". Dr Beech viewed the respondent's plans, including the respondent's contact with Mission Australia as positive, as was his contact with the Transitions Program, but did not see the latter as a rehabilitative course. Furthermore, he reiterated that the respondent minimised the extent of his violence and "the amount of coercion, intimidation and violence" involved in the last sexual offending. He saw the supervision order proposed as addressing the risk of serious sexual re-offending by requiring and enforcing abstinence and by requiring supervision. He considered that the appropriate duration for a supervision order was five years.

Dr Grant

- [41] In his report dated 16 July 2011, Dr Grant diagnosed the respondent as suffering from alcohol abuse (in remission), amphetamine abuse (in remission), and anti-social personality disorder. Dr Grant noted that the respondent was under the influence of amphetamines when the most recent sexual offences occurred. He noted that the respondent had started abusing alcohol as an early teenager, heavily abused alcohol until about 2002 and then between 2000 and 2005, in the context of his motorcycle club associations, abused amphetamines.
- [42] Dr Grant also outlined the various instruments he used to assist in his overall assessment of whether the respondent was at risk for violent and sexual re-offending. On the Static-99, the defendant returned a score of 6, which placed him in the high risk group for re-offending. On the Hare PCL-R, Dr Grant estimated the respondent's score as 24/40 (with 30 being the recognised cut-off point in Australia). Dr Grant considered that while the score was elevated and consistent with a diagnosis of anti-social personality disorder, it did not indicate a psychopathic personality disorder.
- [43] On the HCR-20, the respondent's scores in Dr Grant's opinion, indicated the respondent was a moderate risk of violence (non-sexual and sexual combined).
- [44] Dr Grant also administered the RSVP, an instrument which looked at such factors as sexual violence history, psychological adjustment, mental disorder, social adjustment and manageability. Under the section on sexual violence history, the respondent scored positively for past physical coercion and psychological coercion in sexual violence. Under psychological adjustment, he scored positively for past problems with self-awareness and stress or coping and also for problems arising from child abuse (physical), with some evidence of denial of sexual violence and attitudes that condoned sexual violence. Dr Grant noted all of these factors would possibly be relevant in the future. Under mental disorder, the respondent scored positively for past substance abuse and violent ideation, both of which might be relevant in the future. Under social adjustment he scored positively for past problems in intimate and non-intimate relationships, which might be relevant for the future. He also scored positively for non-sexual criminality, which was relevant to his future. Under the manageability, section he scored positively for past problems with planning and with supervision, both of which might be relevant in the future. Problems with treatment might also be relevant in the future. In terms of risk scenarios for future re-offending, Dr Grant opined it would appear most likely, using this instrument, that any sexual offending would involve intimidation to persuade a young female (over the age of consent) to have sexual activity. This would be motivated by sexual drive and a wish for control. There would be possible psychological harm to victims, but in Dr Grant's view physical harm would

likely be low or nil. Escalation of sexual violence was unlikely. Dr Grant opined that it was uncertain when any offence might occur and indeed that it might not occur at all, but it would be more likely if the defendant was using drugs or alcohol and suffering relationship instability. In Dr Grant's view, the overall risk using the RSVP was low to moderate for sexual re-offending. Case management would involve monitoring of alcohol and drug abstinence with counselling as necessary. He would also be encouraged to avoid former criminal associates and to make strong efforts to establish a stable social network.

- [45] In Dr Grant's opinion, the respondent was not paedophilic and did not have any other sexual paraphilia. His sexual offending appeared to have occurred primarily as a result of substance intoxication and underlying anti-social/immature personality disorder. Dr Grant considered that the respondent appeared to have matured over the last 10 years or so in relation to his attitudes and prison behaviour. This was commonly seen in people of his age with anti-social personality disorder.
- [46] Dr Grant considered that the respondent had a fair degree of insight in regard to the necessity of remaining drug and alcohol free in the future if he is not to risk further offences and potentially a sexual offence. Dr Grant concluded that the respondent presented a moderate to high risk of future violent non-sexual criminal re-offending and in regard to the potential for sexual re-offending, the risk in his view would be low to moderate. He considered that non-sexual re-offending was more likely than sexual re-offending. Dr Grant identified the most important risk factors for the respondent as his resumption of alcohol or drug abuse and his re-engaging with former criminal associates and an anti-social network.
- [47] In his report, Dr Grant stated that a supervision order would serve to increase the likelihood of successful, sustained abstinence from drugs and alcohol through regular urine testing, but that it may not be essential in managing the respondent's risk to the community in regard to sexual re-offending. In his report, Dr Grant indicated that he would see a supervision order in the respondent's case as of very marginal benefit. Nevertheless, in oral evidence, Dr Grant accepted that a supervision order would have an appreciable or tangible consequence in reducing risk factors to low. He also stated that the risk factors could be reduced to low if the respondent "realistically and enthusiastically engaged in the support of Mission Australia and got on with his life". Dr Grant did not, however, offer any clear view that the respondent would likely be so engaged and committed.
- [48] Dr Grant supported the view expressed by Dr Beech, that the respondent minimised his offending in relation to his 17 year old victim in that he did not accept that he had forced her to do anything and put blame on the mother that charges were eventually laid. He also agreed with the view expressed by Dr Beech, that the offending in respect of B involved some aspect of displaced anger towards P and that there was a link between the more general violence against P and the sexual violence against B.

Submissions

- [49] The applicant relied on the opinions expressed by Dr James, in combination with those of Dr Beech, in submitting that there was acceptable cogent evidence which would satisfy the court to a high degree of probability of the level that the

respondent represented an unacceptable risk of committing a serious sexual offence if released into the community without a supervision order.

[50] In the circumstances of the present case, the applicant submitted that the particular risk posed to the community by the respondent, was the risk of future serious sexual offending when intoxicated. It was submitted that the difference between the opinions expressed by Dr Beech and Dr Grant was best explained by their different views of the strength of the link between the risk of future sexual offending and the risk of the respondent's return to illicit drug use. It was contended that the respondent's criminal history suggested that a return to illicit drug use was a significant risk. In those circumstances, it was contended that the conditions in the proposed supervision order represented a measured response to the specific risk posed by the respondent; the primary purposes of which were to ensure that the respondent's risk of returning to illicit drug use was monitored and contained and to require the respondent to participate in programs designed to address his risk factors. It was submitted that despite the respondent's assurances, the adequate protection of the community required the imposition of a supervision order as proposed and that the suggested conditions did not intrude upon the respondent's personal liberty to any extent greater than necessary to achieve those purposes.

[51] On behalf of the respondent, it was submitted that there was an insufficient basis for the court to be satisfied to the requisite standard that the respondent presented an unacceptable risk of committing a serious sexual offence in the absence of a supervision order. Counsel for the respondent referred to Dr Grant's assessment that the risk of sexual re-offending was low to moderate and Dr Beech's revised assessment of risk as moderate. Counsel emphasised the following matters referred to by Dr Grant:

- The respondent has been abstinent from drug use since 2005 while incarcerated, and urine tests have been clear.
- The offence of attempted rape in 1983 occurred when the respondent was heavily intoxicated and after receiving a blow to the head, which may have resulted in concussion.
- Due to the 20 year gap between sexual offending and the absence of sexual paraphilia, there was little indication for a sexual offender treatment program.
- The respondent's good behaviour in prison together with increased maturity demonstrated hope that he could remain drug and alcohol free on release.
- It was uncertain whether there would be any further sexual offending and any risk of physical harm was considered by Dr Grant to be low or nil.

[52] Counsel also submitted that in addition to the 20 year gap between the episodes of sexual offending, the last episode, although involving intimidation and threats, had not involved physical violence and fell into the lower end of serious sexual offences.

Whether a Supervision Order should be made

[53] Section 13(4) of the Act provides a list of the following factors to which the court must have regard when deciding whether a prisoner is a serious danger to the community:

- reports under s 8A and reports prepared by psychiatrists under s 11 and the extent of prisoner co-operation during the examination;

- other medical, psychiatric, psychological or other assessments relating to the prisoner;
- information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;
- whether or not there is any pattern of offending behaviour on the part of the prisoner;
- efforts by the prisoner to address the cause or causes of the offending behaviour and his participation in rehabilitation programs;
- whether or not the prisoner's participation in rehabilitation programs has had a positive effect;
- the prisoner's antecedents and criminal history;
- the risk of the prisoner committing another serious sexual offence if released into the community;
- the need to protect members of the community from that risk;
- any other relevant matter.

- [54] The expert reports do not reveal any propensity to commit serious sexual offences. Unlike some persons who are subject to this Act, the respondent does not suffer from paedophilia or other sexual paraphilia. The respondent's serious sexual offending has occurred in the context of heavy substance intoxication and underlying anti-social personality disorder.
- [55] The respondent's last episode of sexual offending occurred against a background of an extensive criminal history of violence and the psychiatric opinion indicates that a significant dynamic to be considered, in terms of risk, concerns the respondent's anti-social personality traits reflected, in particular, in his tendency to control others through coercion and other violence. The sexual offending in 2005 involved violence whilst significantly intoxicated, directed at a 17 year old who was forcibly removed from her house. Moreover, that occurred against a background of a domestic violence order having been made in respect of her sister and, on some of the psychiatric opinion, the offending involved an element of displaced anger towards the sister for having obtained the DVO.
- [56] I note a major risk factor identified by the psychiatrists remains the respondent reverting to substance abuse, particularly amphetamine use.
- [57] As counsel for the respondent correctly submitted, the question for determination is not whether the respondent would benefit from the support and supervision provided by a supervision order. The issue is whether the risk of serious sexual re-offending is unacceptable in the absence of a supervision order.
- [58] Although only two episodes of serious sexual offending have occurred, I note that the respondent was in custody for a significant proportion of that period between the sexual offending in 1983 and 2005.
- [59] As to the risk of serious sexual re-offending in the community in the absence of a supervision order, Dr Beech's opinion was that is in the moderate range, with Dr James placing it at the high end of moderate if the respondent were to revert to substance abuse. Dr Grant placed the risk in the low to moderate range. Having considered the psychiatric reports, I am satisfied that the respondent presents a moderate risk of serious sexual re-offending in the absence of a supervision order.

In so finding, I take into account the views presented by Dr James and Dr Beech, including their assessment of the risk factor associated with substance abuse, which I find persuasive.

- [60] I accept that an assessment that a person presents as a moderate risk of serious sexual re-offending does not necessarily mean that he poses an unacceptable risk, although it may, depending on the individual circumstances of a case, constitute an unacceptable risk. However, on the evidence before me, I am persuaded that the risk of recidivism if the respondent is released from custody without a supervision order is unacceptable.
- [61] In the present case, the evidence is that, whilst the respondent's severe anti-social personality disorder and substance abuse and dependence has been well controlled in the prison environment, that has not been reflected in his behaviour once in the community. Rather, the respondent's history is one of resorting to illicit substance use, notwithstanding periods of enforced abstinence; the respondent has not in the past demonstrated sustained abstinence under any supervised release in the community. In this regard, I note that it is unfortunate that the respondent has not, prior to his release date, been able to have an opportunity to test his commitment to abstinence by being given a period of parole. I accept the submission made by counsel for the respondent, that a supervision order is not to be approached as a substitute for parole. Nevertheless, the determination as to risk must be made in the factual circumstances that are presented.
- [62] I note that the psychiatric evidence, particularly of Dr Beech, is that the respondent lacks insight into his offending and minimised his offending and the coercion and intimidation involved. He continued to maintain that the sexual conduct concerning B was consensual, notwithstanding that he was sentenced on the basis of forcibly depriving her of her liberty before engaging in the sexual conduct in question.
- [63] The respondent has not demonstrated a commitment to rehabilitation while in goal. Although the measures which the respondent is now seeking to put in place in terms of contact with Mission Australia and QuIHN are positive. I note Dr James' opinion that a supervision order would be required to reduce the risk of serious sexual re-offending to an acceptable level. That was also the tenor of Dr Beech's evidence, who was doubtful about the prospects of the respondent maintaining abstinence from substances in the community in the absence of a supervision order. While Dr Grant initially stated in his report that he saw a supervision order as having a minimal benefit, his oral evidence was to the effect that it would have an appreciable and tangible effect in reducing the risk factors to low. He also expressed the view that the same result could be achieved were the respondent to be committed to pursuing rehabilitation through Mission Australia and through QuIHN, but did not formulate a view as to the likelihood of that commitment being maintained. The evidence of Dr James and Dr Beech is that the respondent underestimates the difficulties of maintaining abstinence upon release.
- [64] In the circumstances, I am satisfied that the respondent poses an unacceptable risk of serious sexual re-offending in the absence of a supervision order. The reports and oral opinions of Dr Beech and Dr James, which I find persuasive, provide acceptable cogent evidence and satisfy me to a high degree of probability that the evidence justifies the making of a supervision order. I am satisfied that the risk of serious sexual re-offending can be adequately addressed by the imposition of a

supervision order, which on the basis of the psychiatric opinion, should be made for a period of five years.

- [65] The terms of the draft supervision order tendered were the subject of submissions. Counsel for the respondent contended that conditions 15 and 16 were not required as part of the measures needed to adequately manage the risk represented by the respondent in the community, having regard to the other conditions contained in the draft order. Being mindful that intrusions of the Act upon the liberty of the subject are exceptional and the liberty of the subject should be constrained to no greater extent than is warranted by the statute, I accept those submissions
- [66] I order that, upon his release from custody the respondent be subject to the requirements of the draft supervision order tendered, except for the two conditions mentioned, until 17 August 2016. That order as modified is annexed hereto.

Annexure

THE COURT, being satisfied to the requisite standard that the respondent, Paul Hocking, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”), ORDERS THAT:

1. The respondent be subject to the following requirements until 17 August 2016.

The respondent must:

- i. report to a Corrective Services officer at the Queensland Corrective Services Probation and Parole Officer closest to his place of residence between 9am and 4pm on the day of release from custody and at that time advise the officer of his current name and address;
- ii. report to, and receive visits from, a Corrective Services officer as determined by Queensland Corrective Services;
- iii. notify a Corrective Services officer of every change of his name, place or residence or employment at least two business days before the change happens;
- iv. be under the supervision of a Corrective Services officer;
- v. comply with a curfew direction or monitoring direction;
- vi. comply with any reasonable direction under section 16B of the Act given to him;
- vii. comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order;
- viii. not leave or stay out of Queensland without the permission of a Corrective Services officer;
- ix. not commit an offence of a sexual nature during the period of the order;
- x. notify a Corrective Services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the

address of the premises where he is or will be employed at least two (2) days prior to commencement or any change;

- xii. reside at a place within the State of Queensland as approved by a Corrective Services officer by way of a suitability assessment and obtain written approval prior to any change of residence;
- xiii. not reside at a place by way of short term accommodation including overnight stays without the permission of a Corrective Services officer;
- xiv. respond truthfully to inquiries by a Corrective Services officer about his activities, whereabouts and movements generally;
- xv. not have any direct or indirect contact with a victim of his sexual offences;
- xvi. abstain from the consumption of alcohol and illicit drugs for the duration of this order;
- xvii. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Corrective Services officer;
- xviii. disclose to a Corrective Services officer all prescription and over the counter medication that he obtains and, if he takes prescribed drugs, take them only as directed by a medical practitioner;
- xix. attend upon and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by a Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;
- xx. permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;

- xx. develop a risk management plan in consultation with a treating psychologist or psychiatrist and discuss it as directed with a Corrective Services officer; and
- xxi. advise a Corrective Services officer of the telephone number of any mobile telephone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use and must report any changes to mobile telephone details.