

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Valence*
[2011] QSC 304

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
KERRY PATRICK VALENCE
(respondent)

FILE NO/S: BS2941 of 2009

DIVISION: Trial Division

PROCEEDING: Application for review

ORIGINATING COURT: Supreme Court

DELIVERED ON: 10 October 2011

DELIVERED AT: Brisbane

HEARING DATE: 3 October 2011

JUDGE: Dick A/J

ORDER: **Order the Respondent continue to be subject to the continuing detention order made by Justice White on 13 August 2009 and continued by Justice Mullins on 8 September 2010.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT — OTHER MATTERS – where respondent has served a term of imprisonment for sexual offences – where respondent currently under a continuing detention order – application for review of continuing detention order by Attorney-General under s 27 *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (the Act) – where applicant sought an order pursuant to s 30 of the Act affirming the original decision that the respondent was a serious danger to the community in the absence of a division 3 order – whether evidence is of sufficient weight to affirm the decision – where decision was affirmed
Dangerous Prisoners (Sexual Offenders) Act 2003

COUNSEL: J Horton for the applicant

K P Valence in-person for the respondent

SOLICITORS: Crown Solicitor for the applicant

- [1] This application relates to a periodic review of a continuing detention order under s 27 of the *Dangerous Prisoners (Sexual Offences) Act 2003* (the Act).
- [2] On 13 August 2009, her Honour Justice White ordered that the Respondent be detained in custody for an indefinite term of care, treatment and control.
- [3] On a periodic review on 8 September 2010, her Honour Justice Mullins affirmed the earlier order. On that application, the Respondent instructed his counsel to not oppose the continuing detention order.
- [4] On this occasion, he appeared self represented. Apart from one factual matter relating to his alcohol consumption (which was accepted by the Applicant's Counsel) the Respondent was polite however no submission was made that the order should not continue.
- [5] The Respondent's criminal history is set out in detail in the judgement of Justice White. His sexual offending commenced when he was 18 and between that time and when he turned 23, he committed offences such as buggery and indecent assault with intent to commit buggery. His victims were aged 12 and 8.
- [6] In 1999 and 2000 he committed similar offences against a boy aged 10. He threatened to kill the child if he told anyone what had happened. Further offences of a similar nature occurred whilst he was on bail for those charges.

The Medical Evidence

- [7] Two psychiatrists assessed the Respondent for the purposes of this review and also for the previous review.
- [8] Dr Beech said that on the Risk for Sexual Violence Protocol he noted a number of pertinent factors that included:
 - Presence of severe sexual deviance
 - Chronicity of the offending
 - The use of physical coercion
 - Presence of attitudes that condone sexual violence
 - Deficits in self awareness
 - Problems with substance abuse
 - Problems with intimate relationships
 - Difficulties with treatment

- Past problems with supervision
- [9] Dr Beech diagnosed paedophilia but noted the Respondent was not exclusively attracted to young boys and had had sexual relationships with adult women and men. Dr Beech noted that the Respondent was, at the present time, comfortable and settled in his current prison conditions. The Respondent had decided not to go on the High Intensity Sexual Offenders Program (HISOP), mainly because it involved group work which he did not enjoy. He said that if he were offered an individual HISOP he would do it but he would need to know more information before he gave a commitment, in particular he would not move out of his unit in order to participate in any course.
- [10] In Dr Beech's opinion nothing much had changed since his previous assessment. The Respondent maintains distorted views about children, their sexuality and their consent which was an important, untreated and unmodified risk factor for further offending. Overall he considered the respondent at high risk of re-offending.
- [11] The Respondent has a history of cannabis and alcohol use which does not seem to be directly associated with his offending but which, in the view of Dr Beech, on release would be destabilising factors which might increase the risk of re-offending.
- [12] Dr McVie considered the Respondent has high risk factors for sexual re-offending. She also stressed the importance of the Respondent completing satisfactorily the HISOP so that a re-evaluation of his attitudes could be undertaken but at the time her report was prepared it was apparent that the Respondent was simply unwilling to undertake such a course.
- [13] The psychiatric evidence before me on this review application is acceptable, cogent evidence that satisfies me to the degree of probability required under s 30(2) of the Act that the evidence is of sufficient weight to affirm the decision of Justice White made on 13 August 2009.
- [14] I order pursuant to ss 30(1) and (2) of the Act, the decision of Justice Mullins made on 8 September 2010 that the Respondent is a serious danger to the community in the absence of a Division 3 order be affirmed and pursuant to s 30(3) of the Act, the Respondent continue to be subject to the continuing detention order made by Justice White on 13 August 2009 and continued by Justice Mullins on 8 September 2010.