SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Marama* [2011] QSC 422
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **PETER MARAMA** (respondent)
FILE NO:	10647 of 2009
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	23 December 2011 (ex tempore)
DELIVERED AT:	Brisbane
HEARING DATE:	23 December 2011
JUDGE:	Applegarth J
ORDER:	**That pursuant to s 21(4) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 the respondent be released subject to the terms of the supervision order made by Justice Douglas on 14 December 2009**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where respondent subject to a supervision order – where respondent contravened the order – application for release under s 21(3) pending determination of contravention hearing *Dangerous Prisoners (Sexual Offender) Act* 2003 (Qld), ss 21, 22 *Attorney-General v Francis* [2008] QSC 69 cited *Attorney-General for the State of Queensland v Friend* [2011] QCA 357 cited *Harvey v Attorney-General for the State of Queensland* [2011] QCA 256 cited
COUNSEL:	T A Ryan for the applicant J P Benjamin for the respondent
SOLICITORS:	Crown Law for the applicant Legal Aid Queensland for the respondent

[1] HIS HONOUR: The respondent seeks an order under section 21(4) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 that he be released from custody subject to his existing supervision order pending the final determination of the contravention hearing pursuant to s 22 of the Act.

[2] On 14 December 2009, Justice Douglas ordered that the respondent be released on a supervision order under the Act following his completion of the sentence imposed upon him for rape. His Honour's decision is reported as *Attorney-General for the State of Queensland v Marama* [2009] QSC 404.

[3] The respondent is a tribal Torres Strait Islander whose English is poor. He has intellectual deficits and he has poor literacy and numeracy skills.

[4] The application before Justice Douglas arose because of a background of convictions for assault or rape. Those were offences committed against women. There was one exception. He was convicted on 18 August 1987 for an attempted rape on 24 March 1987 of a three-year-old girl.

[5] As Justice Douglas observed, his offending was normally associated with abuse of alcohol. He began heavy drinking at the age of 17 and has regularly participated in binge drinking. Whilst in prison he completed a number of programs aimed at addressing his offending behaviour.

[6] He had been in prison since 17 June 2003. Some of the programs presented difficulties for him because of his lack of literacy, however, he participated positively in them. His behaviour in prison had been satisfactory.

[7] Justice Douglas heard from psychiatrists and identified on the basis of their evidence that the main risk associated with unsupervised release into the community related to alcohol abuse. The psychiatrists were of the opinion that the respondent would have difficulty in maintaining abstinence if it was not for a supervision order.

[8] The supervision order was for five years and Professor Nurcombe, amongst others, thought that was an appropriate period because, beyond that, the risk of rape by a man of the respondent’s age was virtually non-existent.

[9] Justice Douglas made a variety of orders. I note in passing that there was discussion before him as to whether there should be a condition that required the respondent to submit and discuss his plans on a weekly basis because of his poor literacy skills. In any event, the order that was made was subject to 41 conditions.

[10] Since his release, subject to that supervision order, the respondent’s behaviour has apparently been good. He comes before the Court because of a series of unfortunate events and his deliberate failure to disclose a relationship which he developed with a woman for fear that by making disclosure he would be returned to custody. Instead, the consequence of his late revelation of that relationship was his being arrested pursuant to a warrant in late September this year, and he has remained in custody pending a contravention hearing which is presently set down for 8 May 2012.

[11] It is appropriate that I deal, briefly, with those circumstances. The respondent met a female, who I will refer to as Ms B, through his niece at his niece's home in late 2010. He later met her at a shopping centre and attended her home in January this year. He then regularly attended her home on a weekly basis. The relationship was

not of a sexual kind. It was a friendly relationship. He would visit and they would have coffee and a chat. He says that they helped each other by lending each other money for things like bread and cigarettes.

[12] Ms B was aware of the charges for which the respondent had been previously incarcerated. She had children but he never spent any time alone with any of them.

[13] The respondent says that he did not advise Corrective Services that he was having contact with Ms B because he was scared of returning to custody. He thought that he already had breached his order by speaking with her at the shopping centre.

[14] I note, in that regard, that he was wrong about that and that is suggestive of someone who has, because of literacy problems or some other problems, a difficulty in understanding that the supervision order did not prevent him from forming a friendly relationship with an adult female such as Ms B. However, the respondent eventually decided to tell Corrective Services something about his contact with Ms B. He felt, at that stage, that Ms B knew him properly. In fact, he wanted to take her with him to a Corrective Services meeting as a friend and he wanted Ms B to talk to the officers of Corrective Services during those meetings.

[15] Shortly stated, what happened was that after his contact with Ms B became regular, he did not comply with his supervision order in a number of respects. Rather than comply with it, as he should have and disclosed a contravention of it some months ago, he permitted matters to drift. However, it is important to note that it was the respondent who disclosed his relationship with Ms B. It was not that Corrective Services found out about it by some other means.

[16] His initial disclosure of that relationship was incomplete and again that does not put the respondent in a good light, however, it must be said that once having revealed the matters that he did, there was a degree of inevitability that Corrective Services would make further inquiries of him or of Ms B and ascertain the true state of affairs.

[17] Having disclosed what he did in September 2011, he was asked questions about his relationship with Ms B. He told Corrective Services about his friendship, and the absence of any sexual relationship. He did not say that he visited her home on a weekly basis. He did say that she had two sons who were aged about 11 and 14.

[18] The Corrective Services officer confirms that he was invited to make contact with Ms B and to provide full disclosure to her at the respondent's request. On 23 September 2011 the respondent also advised that officer that Ms B had a four-year-old daughter as well as her two sons. At that stage, he denied having any contact with these children.

[19] On the same day, 23 September 2011, a Corrective Services employee contacted Ms B and she advised that she had met the respondent around January 2011. She confirmed that she had three children and that her children had been at her house on numerous occasions since January 2011 when the respondent had visited.

[20] She confirmed that she had been informed of the respondent's previous criminal offences by the respondent's sister and, as such, she had not allowed the respondent to have any supervised contact with the children.

[21] The actions of the respondent in not truthfully responding to inquiries of an authorised Corrective Services officer and having the repeated contact that he did with Ms B, means that he has contravened relevant conditions of his supervision order.

[22] The respondent has been in custody pursuant to the operation of the Act since late September 2011 when the matter came before Justice Mullins. Unfortunately, he has not been examined by any psychiatrist if that was thought necessary prior to now. Appointments for him to see psychiatrists have been scheduled for 6 February and 27 February 2012 in anticipation of a hearing of the contravention on 8 May 2012.

[23] The Act provides for a person to be detained in custody until the final decision of the Court under section 22. Section 21 makes provision for release prior to that final hearing. Pursuant to section 21(4) the Court may order the release of the released prisoner only if the prisoner satisfies the Court, on the balance of probabilities, that his or her detention in custody pending the final decision is not justified because exceptional circumstances exist.

[24] What is meant by exceptional circumstances has been discussed in authorities such as *Attorney-General v. Francis* [2008] QSC 69 at [7] and in *Harvey v Attorney-General for the State of Queensland* [2011] QCA 256 at [42] – [43]. It is unnecessary for me to add to those observations or the additional observations of White JA in *Attorney-General for the State of Queensland v. Friend* [2011] QCA 357 at [54] – 57].

[25] The statute does not provide that the circumstances of the breach be exceptional or that the contraventions only be minor. Instead, what the statute provides is as I have stated. Needless to say, the onus is on the released prisoner to demonstrate to the required standard that the circumstances are not ordinary, indeed, that the circumstances are exceptional.

[26] The importance of compliance with conditions of a supervision order hardly need be restated. As Justice Boddice observed in *Harvey* at [44], "Any contravention must be viewed against the background of a supervision order being a contract between the individual and the community." As his Honour said, "A course of failing to comply with a supervision order may evidence an unwillingness by the dangerous prisoner to submit to a regime of tight control."

[27] The application is opposed by counsel for the Attorney-General. Particular reliance is placed upon the fact that the contravention occurred over a period of some eight months. Even when disclosure was made in September 2011, the applicant still denied having met Ms B's children and attended her residence. Accordingly, it is submitted that the respondent has contravened various conditions of the order repeatedly over an extended period. It is said that the contraventions cannot, on any view of the material, be characterised as trivial.

[28] I do not characterise them as trivial nor does counsel for the respondent. Instead, the respondent submits that the circumstances of the contravention need to be understood in their context and that exceptional circumstances are demonstrated.

[29] I have already referred to the only offence involving a child which was in 1987. As is submitted by counsel for the respondent the age of that conviction is relevant.

However, that said, the risk posed to children and adults by the respondent if the respondent was to succumb to the temptation of consuming alcohol and reoffend is a real one. The regime for disclosure of relationships with the mothers of children is for the protection of those mothers and their children.

[30] It is relevant that the respondent has apparently conducted himself appropriately and abstained from alcohol since his release on the supervision order. Although I am not familiar with all of the contents of the voluminous reports that are in this matter, on the basis of the material which I have read it is no small thing for someone in the respondent's condition, with his background and previous problems with alcohol, to remain abstemious.

[31] Persons with much better education, social status, income and support often have trouble remaining abstinent. The fact that the respondent, through his sister, established a friendly relationship with Ms B is also to his credit. I would imagine the psychiatrists who appeared before Justice Douglas and any other similarly qualified and competent psychiatrists would say that the establishment of positive relationships with adult females is in the applicant's interests and in the interests of his remaining offence free.

[32] What appears to have happened here is that the applicant had a completely erroneous view of what was required of him under the Act. He thought that the Act prevented him from having the kind of initial contact that he had with Ms B and he was in error in that regard.

[33] It is a serious matter that, having permitted that relationship to develop and having regularly visited Ms B's home, he did not disclose this for fear that he would get himself into trouble. But he eventually made the limited disclosure which I have noted and that led, one might say inevitably, to where he is at the moment, namely, in custody.

[34] Had the respondent acted differently, if he had a greater degree of literacy, if he had properly understood the terms of the 41 conditions that are on the supervision order, then there is no reason to suppose that Corrective Services officers, acting reasonably, would not have permitted him to have the kind of friendly contact that he had with Ms B and, provided she was aware of his background (as she is) and the terms of his supervision order, to have contact with her and her children, being the kind of supervised contact that has occurred.

[35] The position has been reached that he finds himself in contravention of these orders and having been detained in custody since the end of September because of his stupidity and deliberate concealment of matters for fear of being found out. I do not make light of his contraventions or regard them as trivial, however, it is important to put these things in context. If he had behaved properly in early 2011, there is every reason to suppose that he would have been permitted to have appropriate contact with Ms B and her children subject to her supervision.

[36] Although it would be possible to have a long investigation into the circumstances of his contravention and a detailed analysis of why he acted as he did and a careful forensic assessment with the benefit of two or three psychiatrists of what this means in terms of the respondent's future and whether he should be subject to the same or a similar supervision order, it seems to me that the matter is a relatively simple one.

[37] The Act was passed many years ago and the legislature may have anticipated when it enacted the provisions which it did that contravention hearings would come on fairly quickly and that it was therefore appropriate for the Act to be cast in a way which, for the protection of the community, required respondents to contravention proceedings to be held in custody unless exceptional circumstances existed.

[38] Instead, what has happened, at least in this case and in my experience in many others, is a process by which contravention hearings take literally months to come on for hearing. That is because of a number of matters. One is limited judicial resources.

[39] When this Act was passed the Attorney-General, in introducing it, anticipated that there would only be a dozen or so offenders subjected to it at any one time. As it happens, there are well in excess of 100 and the number grows every year.

[40] There is limited judicial time available to conduct the regular hearings that have to be held in relation to continuing detention orders, applications under s 8, hearings of the kind that occurred before Justice Douglas, contravention hearings and other hearings.

[41] Apart from limited judicial time which also has to be devoted to important matters involving the liberty of the citizen, namely, criminal trials and sentences, and civil proceedings, there is the practice of having persons in the respondent's position examined by psychiatrists. That often may be a good idea. However, it was said to me at the hearing that there is only a small pool of psychiatrists who do this work. Why that is was not explained to me. It seems to me that the practice and the existence of only a small pool of psychiatrists leads to the situation in which a relatively straightforward contravention case like this results in someone in the respondent's position being in custody for about five months before they are even interviewed by a psychiatrist.

[42] That situation is surely unsatisfactory and it calls into question as to whether there should be an increased pool of psychiatrists to enable whatever psychiatric opinion is warranted to be obtained in a more timely fashion or reflection on whether reference of contravention cases to psychiatrists is always really necessary.

[43] Although I do not have the benefit of the reports of the psychiatrists at this stage, and would not be likely to have them until March given that the second appointment is on 27 February 2012, I would find it surprising if the psychiatrists regarded the respondent's admitted contraventions as indicative of an attitude which is completely resistant to the requirements of the supervision order or indicative of someone who resents being subject to a supervision order or has a determined attitude of not complying with the requirements of the supervision order.

[44] Accepting that this was a matter in which there was a sustained failure to comply with the supervision order, I still regard the matter on the material before me as one involving an individual who acted foolishly and did not disclose matters when he should have and then continued not to disclose them and, in fact, denied certain matters for fear that he would be caught. His fear was not misplaced.

[45] I do not propose to label his contravention in some fashion or other. However, it needs to be seen in the context of someone who has complied with his supervision order for a substantial period and in those circumstances I would be surprised if the

psychiatrists regarded this contravening conduct as fundamentally altering the assessment of risk that was undertaken for the purpose of the hearing before Justice Douglas.

[46] I would think, without the benefit of their opinion, that even someone with the limited intellectual resources of the respondent has surely learned by now the error of his ways in not strictly complying with his supervision order, he having been in custody now for three months as a result of these contraventions.

[47] It is unfortunate that matters have progressed as they have and a contravention hearing was not possible before now. It seems to me that the time that I have taken today would not be much less than the time taken to undertake a contravention hearing, with or without the benefit of psychiatric reports.

[48] In circumstances in which it seems almost inevitable that at the hearing which is presently programmed for 8 May 2012, that a supervision order will again be made. I consider that exceptional circumstances have been shown.

[49] The respondent has already suffered the consequences of his contravention, being consequences that are ordained by the Act, namely, his removal from the community and his incarceration. If he is charged - and he has not been - with having contravened his supervision order then he will face additional consequences. It will not be the function of the contravention hearing to impose those penalties. The function of the contravention hearing will be to decide whether he should be released on a supervision order.

[50] In circumstances where I consider that it is almost inevitable that that will occur, I consider that the protection of the community will not be advanced by his remaining in custody for a further period of four and a half or five months.

[51] It seems to me that his continued detention cannot be justified in circumstances in which he has already learned his lesson, where the contravention occurred in the circumstances that I have outlined and that he has been detained in custody for that period. His further detention is probably apt to undermine rather than advance his rehabilitation.

[52] The applicant expects that upon release, he will go to the contingency accommodation in Townsville or the contingency accommodation at Brisbane. If he is released on a supervision order then it will be a matter for him to observe all of the terms of his order including arrangements as to his accommodation. It will be for him then to re-establish, if Ms B wishes to re-establish contact, contact with her and to progress his rehabilitation.

[53] It seems to me that by that process, if he is to be examined by any psychiatrist there will be a better basis for the psychiatrist to reach any conclusions that he or she might concerning his contravention and his preparedness to abide by conditions in the future.

[54] I consider that exceptional circumstances exist where the applicant, if not released, will spend eight months in custody by reason of the contraventions that I have outlined. I consider that adequate protection for the community can be provided by continuing the supervision order that has already been made.

[55] If either party wishes the contravention hearing to be brought forward then they can approach the Court. However, I am making the order that I am on the basis that at least one of the parties thinks that the proper outcome of that contravention hearing will be assisted by the applicant being examined by psychiatrists on 6 February and 27 February.

[56] Accordingly, I consider that the applicant has discharged the significant onus that is placed upon him of showing exceptional circumstances and I will make an order in terms of the draft.