SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Qld v Valence* [2012] QSC 310
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **KERRY PATRICK VALENCE** (respondent)
FILE NO/S:	BS 2941/09
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	9 October 2012
DELIVERED AT:	Brisbane
HEARING DATE:	8 October 2012
JUDGE:	Philippides J
ORDER:	**1. Pursuant to s 30(3)(a) of the Act, the court affirms the decision made by White J on 13 August 2009 and affirmed by Mullins J on 8 September 2010 and Dick AJ on 10 October 2011.** **2. The court orders that the respondent, continue to be subject to a continuing detention order.**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – OTHER – SEXUAL OFFENDERS – where application for periodic review of a continuing detention order under s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 – whether the respondent remains a serious danger to the community in the absence of a Division 3 order – whether the respondent should continue to be subject to the continuing detention order
COUNSEL:	J M Horton for the applicant The respondent appeared on his own behalf, via video link
SOLICITORS:	Crown Law for the applicant The respondent appeared on his own behalf, via video link

The Application

[1] This is an application brought by the Attorney-General for a periodic review of a continuing detention order under s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (the Act).

[2] The respondent was first made subject to the Act when, by order of White J on 13 August 2009, he was held to be a danger to the community in the absence of a Division 3 order and detained for control, care or treatment (*Attorney-General for the State of Queensland v Valence* [2009] QSC 255).

[3] Subsequently that order has been twice affirmed, and continuing detention orders made, namely by Mullins J on 8 September 2010 ([2010] QSC 335) and by Dick AJ on 10 October 2011 ([2011] QSC 304).

[4] The applicant seeks the following orders:

(a) pursuant to ss 30(1) and (2) of the Act, the Court affirm the decision of Dick AJ made on 10 October 2011 that the respondent is a serious danger to the community in the absence of a Division 3 order; and

(b) pursuant to s 30(3) of the Act, the respondent continue to be subject to the continuing detention order.

[5] Section 30 of the Act provides:

"**Review hearing**

(1) This section applies if, on the hearing of a review under section 27 or 28 and having regard to the required matters, the court affirms a decision that the prisoner is a serious danger to the community in the absence of a division 3 order.

(2) On the hearing of the review, the court may affirm the decision only if it is satisfied—

(a) by acceptable, cogent evidence; and

(b) to a high degree of probability;

that the evidence is of sufficient weight to affirm the decision.

(3) If the court affirms the decision, the court may order that the prisoner—

(a) continue to be subject to the continuing detention order; or

(b) be released from custody subject to a supervision order.

(4) In deciding whether to make an order under subsection (3)(a) or (b)—

(a) the paramount consideration is to be the need to ensure adequate protection of the community; and

(b) the court must consider whether—

(i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and

(ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers.

(5) If the court does not make the order under subsection (3)(a), the court must rescind the continuing detention order.

(6) In this section—

required matters means all of the following—

(a) the matters mentioned in section 13(4);

(b) any report produced under section 28A."

The respondent's background

[6] The respondent is aged 55 and has a long history of sexual offences against boys.

[7] The material indicates that the respondent's sexual offending commenced when he was 18 and 23, committing offences including buggery and indecent assault with intent to commit buggery on a male. His victims were aged 12 and 8.

[8] Similar offences occurred in 1999 and 2000. The victim on those occasions was a boy aged 10. The respondent engaged in fellatio on the boy and threatened to kill him if he revealed what happened.

[9] Whilst the respondent was on bail (for the earlier offences) in 2004 the respondent fondled a boy's penis after having pulled down his pants.

[10] The offences which attracted the operation of the Act were ones for which the respondent was sentenced to 3 years imprisonment in 2006 on three charges of indecent treatment of children under 12.

The respondent's risk to the community

[11] In his report Dr Moyle diagnoses the respondent with paedophilia (predominantly homosexual and non-exclusive). He also opined that the respondent has a personality disorder with prominent features of impulsivity, risk taking, dependency and aloofness. He records the respondent's history of drug and alcohol dependence (but notes there is no apparent link between the substance abuse and offending behaviour). He additionally notes that the respondent has contracted Hepatitis C (which is of concern if he should sexually penetrate a child).

[12] Significantly, Dr Moyle has seen no change since his last assessment in which he found the respondent exhibited a high risk of offending. Dr Moyle says at p 5 of his report:

> "There has been insufficient change to result in a change of his assessed level of risk"
>
> …
>
> "[his] attitudes will not prevent him from indulging any sexual interest that remains active with male children."

[13] Dr McVie, in her report of 7 August 2012, also assesses the respondent at a high risk of re-offending. She notes at p 9 that this is despite the passage of time and interest in younger inmates:

> "This significant risk [to young boys] persists, even though he is getting older, as sexual preference for young boys does not abate with age."

[14] I note that Dr McVie strongly recommends that the respondent participate in the High Intensity Sexual Offending Programme (HISOP) prior to any supervised release. Dr McVie concludes (at pp 4, 9) that the respondent has made no plans for his future and has made it clear that he is not concerned about what will happen after his release.

[15] The respondent has refused to participate in the HISOP, which it was recommended he undertake after having completed the *Getting Started Preparatory Program* on 16 December 2009. The respondent, having being interviewed for the purpose of a sexual offending pre-program interview checklist and an offender management review by Ms Paula May (General Manager of the Capricornia Correctional Centre), indicated that he was not willing to enter the HISOP because he does not want to talk with others about their respective offences. The respondent who appeared on his own behalf, confirmed that position.

[16] Mr Acutt, a psychologist, has undertaken "motivational interviewing" on 10 and 17 August 2012. He observes that the respondent is firmly settled in the prison environment and that he has a sense of purpose at the prison and a degree of status there. He states in his report of 27 August 2012 p 2 that this has had a negative reinforcement role in that it has furthered the respondent's indifference to his position, to his past offending and to his future. For example, during the second interview with Mr Acutt, the respondent, when pressed about HISOP and any necessary group work, added: "I have nowhere to go and I'm quite happy to be here if that's the way it has to be…".

[17] It appears that there is no change in the level of motivation the respondent has to participate in a program which is considered on the expert evidence as directly assisting with the reduction of risk of sexual re-offending. It appears that Mr Acutt will continue to work with the respondent to encourage him to participate in the HISOP, however expert advice may be required as to whether a more individually tailored programme should be considered to ensure the respondent obtains the treatment which the psychiatrists indicate is needed.

[18] Counsel for the applicant submitted that the respondent remains just as much a danger to the community as he did when the matter came before Dick AJ. The applicant submits that there remains no combination of requirements of supervision which in the circumstances of this case is capable of reducing to an acceptable kind the likelihood of the respondent re-offending sexually against boys were he to be released.

[19] The respondent, who appeared by video link, did not seek to put any material before the Court or to make any submissions in opposition to those made by the applicant. Nor did he challenge the orders sought by the applicant.

[20] I am satisfied to the requisite high degree of probability that there is acceptable cogent evidence of sufficient weight to affirm the decision of Dick AJ.

[21] I accept the submission that there has been no material change to the degree of risk presented by the respondent and in the respondent's position from the last periodic review and that he maintains his refusal to undertake the HISOP (something which the expert evidence indicates is essential given the risk he presents to the community).

[22] Where supervised release can adequately ensure protection of the community it is to be preferred in principle over continuing detention (*Attorney-General (Qld) v Francis* [2007] 1 Qd R 396 at [39]). However, in the present circumstances, I do not consider that supervision would ensure adequate protection of the community as s 30(4) of the Act requires. The expert evidence indicates that, while the respondent has not undertaken HISOP or any equivalent, his risk of re-offending remains high and no less than detention will ensure adequate protection of the community.

Orders

[23] Being satisfied to the requisite standard that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act, on 8 October 2012 I made the following orders:

1. Pursuant to s 30(3)(a) of the Act, the court affirms the decision made by White J on 13 August 2009 and affirmed by Mullins J on 8 September 2010 and Dick AJ on 10 October 2011; and
2. The respondent, continue to be subject to a continuing detention order.