

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Dooley*
[2013] QSC 114

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
ROSS EDWARD DOOLEY
(respondent)

FILE NO: BS 761 of 2013

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 3 May 2013

DELIVERED AT: Brisbane

HEARING DATE: 29 April 2013

JUDGE: Applegarth J

ORDER: **Supervision order in accordance with annexure to these reasons**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY– application pursuant to s 13 of the *Dangerous Prisoner (Sexual Offenders) Act 2003* – where parties accept the evidence supports making of a supervision order – whether the supervision order should be of 5 or 10 years duration – whether supervision order should include certain conditions

Dangerous Prisoners (Sexual Offenders) Act 2003 ss 11, 13, 16

Attorney-General v Francis [2006] QCA 324; [2007] 1 Qd R 396, cited

COUNSEL: M Maloney for the applicant
C Cassidy for the respondent

SOLICITORS: Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

- [1] The applicant is aged 35. He has a criminal history, largely for property offences and assaults, dating back to 1995. He has been convicted of two serious sexual offences and is currently serving a period of seven years' imprisonment for the rape of a 13 year old boy. In 2001 he pleaded guilty and was sentenced to four years' imprisonment for offences of assault occasioning bodily harm and indecent assault. The rape and the 2001 offences were committed when he was affected by substances.
- [2] The Attorney-General seeks orders pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ("the Act"). The evidence of the three psychiatrists in the matter is that the risk of sexually re-offending presented by the respondent could be managed under a supervision order. The applicant submits that a supervision order should be imposed.
- [3] The respondent does not oppose an order that he be released subject to a supervision order. He acknowledges that there is sufficient evidence upon which this Court could be satisfied that there is an unacceptable risk that he would commit a serious sexual offence if released from custody without a supervision order being made.

Background

- [4] The respondent may have started inhaling petrol as young as seven years old, but this is unclear due to his poor memory of dates and events. He first presented at the Woorabinda Hospital after sniffing petrol when he was 12 years old. He reports sniffing petrol every day until at least 2005.
- [5] He began drinking alcohol at the age of 13. Each Friday his friends and family would get a carton of beer and two flagons of wine to share. During an alcohol and substance abuse program conducted by Queensland Corrective Services facilitators, the respondent was identified as a binge drinker. His inhalant abuse and alcohol abuse are currently in remission due to his incarceration.
- [6] His criminal history as an adult commenced in 1995 with property offences. It includes offences of assault occasioning bodily harm for which he was sentenced to imprisonment.
- [7] The offences of assault occasioning bodily harm and indecent assault for which the respondent was sentenced to four years' imprisonment on 1 November 2001 were committed after the respondent and his victim, a 34 year old single woman, not previously known to him, drank to excess. They left a hotel and went to a local school grounds. The victim recalls being severely assaulted, and her jeans and underclothing were removed during the incident. A medical examination did not indicate any sexual interference with the victim. The respondent admitted assaulting her after she refused to participate in sexual activity with him when he told her he did not have a condom.
- [8] The index offence was committed on 3 December 2005 against a 13 year old boy with whom the respondent came into contact as the boy was walking home. The boy was persuaded to go to a disused toilet block where he was threatened and raped. This violent episode included anal intercourse with the victim and forced oral sex, with threats of physical violence.

- [9] The applicant has completed a number of programs while in custody. They include programs which specifically address his principal risk factor of drug and alcohol abuse.

Statutory scheme

- [10] Section 13 of the Act provides that the Court may decide it is satisfied a prisoner poses a serious danger to the community only if satisfied by acceptable, cogent evidence, and to a high degree of probability that the evidence is of sufficient weight to justify the decision.
- [11] A prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody; or if released from custody without a supervision order being made.
- [12] A “serious sexual offence” is an offence of a sexual nature, whether committed in Queensland or outside Queensland, involving violence or committed against children.
- [13] Section 13(4) contains a list of factors to which the Court must have regard when deciding whether a prisoner is a serious danger to the community. These include:
- reports prepared by psychiatrists under s 11 and the extent of prisoner co-operation during the examination;
 - other medical, psychiatric, psychological 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;
 - the 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 on him or her;
 - the prisoner’s antecedents and criminal history;
 - the risk of the prisoner committing another serious sexual offence if released into the community; and
 - the need to protect members of the community from that risk.
- [14] These matters have been addressed in reports prepared by psychiatrists for the purpose of these proceedings, and in the parties’ submissions.

Psychiatric reports

Report of Professor Barry Nurcombe dated 14 May 2012

- [15] This report was obtained for the purposes of a risk assessment in relation to a possible application under the Act. It was based on Professor Nurcombe’s

interview with the respondent on 14 April 2012, as well as extracts from relevant files and transcripts.

- [16] Professor Nurcombe concluded that the respondent poses a high risk of re-offending if he reverts to inhalant abuse or the use of alcohol. If he can abstain from these substances, and if he is subject to a supervision order under the Act, then that risk is reduced to moderate. The most likely scenario of re-offending would occur after reversion to inhalant or alcohol abuse with breaking and entering and/or unruly behaviour. In such circumstances, he may be induced to indecently assault an intimate female partner. Alternatively, although less likely, he may be induced to sexually assault a male, probably underage. In either circumstance, the risk of physical and psychological harm to the victim would be great; but the offending is not likely to be life-threatening. Professor Nurcombe considered that the respondent is unlikely to resist supervision; however, he has had problems with supervision in the past.
- [17] During the interview, Professor Nurcombe found the respondent's dominant mood to be euphoric, touched with some sadness when reminiscing. However, Professor Nurcombe noted that despite his apparent fluency and affability, it was evident that the respondent had limited conceptual ability. Due to the respondent's poor memory for dates and events, amnesia for some events, and a tendency to minimise or rationalise problems, Professor Nurcombe did not regard the respondent's account of his history as reliable.
- [18] Upon administration of screening tests for cognitive functioning, Professor Nurcombe found that the respondent had intact intellectual functioning. However, he had below average performance for many of the tests, including a vocabulary knowledge test on which his score was equivalent to the performance of a nine year old child. Professor Nurcombe also considered his judgment to be deficient, and the respondent to be of below average intelligence.
- [19] Professor Nurcombe considered that the respondent showed significant minimisation, rationalisation and externalisation of blame. He opined that the respondent is highly sexually entitled but otherwise has no attitudes that are particularly supportive of sexual violence. The respondent has marked problems with self-awareness and with stress or coping, and tends to resort to petrol inhalation under stressful conditions. He also has marked problems with intimate relationships and with planning, and has an extensive history of non-sexual criminality. Professor Nurcombe considered the respondent's problems to arise not from childhood abuse, but rather from relative neglect in childhood associated with a diffusion of attachments.
- [20] Professor Nurcombe also found that the respondent had clear evidence of Antisocial Personality Disorder and Psychopathic Personality Disorder, but no evidence of major mental illness. He also has very serious problems with substance abuse, particularly inhalant abuse and dependence. Professor Nurcombe diagnosed the respondent as follows:
- “Axis I – Inhalant Abuse and Alcohol Dependence (in remission due to incarceration);
- Axis II – Antisocial Personality Disorder and Psychopathic Personality Disorder;

Axis III – Mild Mental Retardation and possible dementia due to inhalant use.”

- [21] Professor Nurcombe noted that if the respondent is released on a supervision order, he would require close, supportive supervision and assistance in obtaining an occupation. He would also be assisted by support from the Alcohol, Tobacco and Other Drugs Service and a requirement that he maintain complete abstinence from substance or alcohol use.
- [22] Professor Nurcombe applied a number of risk assessment instruments in formulating his clinical judgment and rating the respondent’s risk of recidivism. His summary of risk analysis and recommendations is as follows:

“XI Summary of Risk Analysis

86. If, after release from prison, Mr Dooley reverts to inhalant abuse or the use of alcohol, the risk of reoffending is *high*. If he can abstain from alcohol or petrol inhalation, and if he is under supervision, the risk would be *moderate*.

87. The most likely scenario of reoffending would occur after reversion to inhalant or alcohol abuse, with breaking and entering and/or unruly behaviour. In such a setting, he may be induced to assault an intimate female partner indecently. Alternatively, and less likely, he may be induced to sexually assault a male, probably underage. In either case of sexual assault, the risk of physical and psychological harm to the victim would be great. However, the offending is not likely to be life-threatening.

88. If Mr Dooley were to reoffend sexually, it would not be immediately after release. It would be most likely to occur after rejection by an intimate female partner, followed by reversion to inhalant or alcohol abuse. Social rejection and substance abuse would be warning signs of the possibility of reoffending sexually.

89. Because of Mr Dooley’s limited conceptual intelligence and psychopathic personality, it is questionable how much he could gain from educational programs. He is more likely to benefit from close, supportive supervision following release.

90. When I interviewed him he did not have a clear relapse prevention program, other than parroting a few relapse prevention platitudes. Attention should be paid to his obtaining occupation, though I anticipate that this will be difficult. The likelihood that he will be able to rely upon traditional dancing and guitar playing is slim.

XII Recommendations

91. I recommend that if, following treatment, Mr Dooley is released under the *DPSOA* on supervision the risk of reoffending could be reduced from *high* to *moderate*.

92. I recommend the following conditions be included in a Supervision Order:

- A duration of ten years.
- Regular supervision by a correctional officer.
- Assistance in obtaining occupation.
- Support by ATODS.
- Abstinence from substance or alcohol abuse, monitored by regular breath and urine screening.
- Adherence to a Relapse Prevention Plan of his own design.
- I see no purpose in the necessity for Mr Dooley to maintain a distance from schools or places where children congregate.
- However, he should avoid forming an intimate relationship with a partner who has adolescent children.”

Report of Dr Donald Grant dated 23 March 2013

[23] Dr Grant provided a risk assessment report for the purposes of this hearing, based upon the filed affidavit material. He interviewed the respondent on 7 March 2013.

[24] Dr Grant’s opinions are summarised in his report as follows:

“OVERALL CLINICAL RISK ASSESSMENT

1. Psychopathic Personality Disorder

He is an egocentric man who has demonstrated impulsive, aggressive behaviour in the past. He lacks in insight and empathy and he has a poor ability to maintain social and intimate relationships. He has demonstrated sexual entitlement in the past and has tended to react violently in response to rejection or perceived insults.

2. Social Instability

Mr Dooley has, in the face of social instability in the past, become insecure, frustrated, anxious, bored, lacking in purpose and has demonstrated employment problems and financial problems.

3. Alcohol Abuse and Inhalant Abuse

Mr Dooley has tended to turn to the drinking of alcohol and the sniffing of petrol and inhalants to try to manage stress, deal with isolation and boredom and as a tool to integrate with peers. His sniffing has probably produced a deterioration in cognitive function, and intoxication has produced disinhibition of behaviour, with release of anger and acting upon sexual impulses. In an intoxicated state he is more likely to demonstrate aggression and potential sexual assaultive behaviour.

Overall, Mr Dooley has a **high risk of exhibiting general violent behaviour and a moderate risk of sexual violent behaviour**. That risk for sexual violence would be increased in the presence of intoxication and social disruption but could be decreased if he was to

maintain sobriety and abstinence from sniffing. General violence is also likely to be reduced in those circumstances.

Management needs to address those factors that are treatable and potentially responsive to interventions. The most important intervention will be to achieve abstinence. Mr Dooley will need appropriate treatment and support in staying away from intoxication and sniffing. He will need appropriate treatment and monitoring.

Mr Dooley would also benefit from assistance with social rehabilitation. He should be helped with appropriate training, support and employment opportunities. He also needs a lot of guidance in developing appropriate relationships and increasing a positive social network.

Mr Dooley's psychopathic personality is not really treatable but one would hope that he is now starting to settle down, with less overt aggressive behaviour and more appropriate social interactions. This often occurs in the fourth and fifth decades of life in a person with Psychopathic Personality Disorder. Mr Dooley has embraced Christianity and this may be a positive factor in his ability to maintain the improvements on release from prison. However, it is yet to be assessed as to how translatable his improvements will be when moving from custody to the community.

If Mr Dooley is released from prison a supervision order would be indicated to reduce the level of risk in addressing the above issues. Mr Dooley's failures in the past to abide by non-custodial legal sanctions do not give rise to much confidence that he will comply with supervision, particularly in regard to alcohol and inhalant issues. However, he has done appropriate treatment in custody and future treatments can be delivered in the community. These treatments should specifically be addressed towards alcohol and drug issues and he should participate in a maintenance sexual offender program if released and if one is available.

Since Mr Dooley does not have a paraphilia and since his one-off offence against an adolescent is his only serious sexual offence, in my opinion this would not necessarily indicate that he would be banned from all unsupervised contact with children. There is also no known history of him accessing pornography, but past sexual entitlement issues might make it desirable that he not have access to such stimulation. It is notable that Mr Dooley is currently denying any preoccupation with sexual matters, any sexual drive and any sexual activity of any description. However, given his longitudinal history, these assertions are hardly credible and it is unlikely that he would remain disinterested in sexual matters once released into the community.

If Mr Dooley is placed on a supervision order I would recommend it be in place for five years. If by the end of that time he has been able

to maintain sobriety and be free from offending, his risk for sexual violence beyond that would be low.”

Report of Dr Scott Harden, Psychiatrist, dated 3 April 2013

[25] Dr Harden also provided a risk assessment report for the purposes of this hearing, having interviewed the respondent on 4 March 2013.

[26] His opinions are as follows:

“Opinion

At the time of this review Ross Dooley was a 34 year old man who had most recently seriously sexually assaulted a 13-year-old boy in an indigenous community while intoxicated with solvents. This had involved anal rape and oral sex and the use of some interpersonal aggression to gain compliance.

He had previously been convicted in 2001 of a very violent assault against a woman resulting in serious injuries and associated with an indecent assault of her.

He had a very long history of other criminal offences, quite a number of them involving violent physical assaults upon other people in the community and also in detention (in 2003) as well as a wide range of other criminal offences from his adolescent years onwards.

He had been first incarcerated as a 15-year-old adolescent and had been incarcerated on multiple occasions since that time.

In the community he has rapidly returned to solvent and alcohol abuse with subsequent criminal behaviour involving property crime and crimes against the person and has violated community-based interventions.

His early environment was characterised by care by extended family members although he does not describe a significant history of deprivation or abuse despite his mother’s difficulties in caring for him personally.

He had completed the preparatory and indigenous male sex offender programs successfully during the current period of detention. He had completed other programs while detained.

His interpersonal relationships appear to be characterised by a relative lack of emotional connection with other people and a paucity of close emotional relationships with other people. He does not appear to have sustained any significant long-term intimate relationships. He has had difficulty retaining consistent employment or motivation for this on his report.

Diagnoses

In my opinion he meets criteria for **Antisocial Personality Disorder**. He also has psychopathic personality features as demonstrated by his quite elevated score on the psychopathy checklist.

In my opinion he would meet a diagnosis of **Alcohol Abuse, in remission because of incarceration**, it is not clear whether he has ever met the criteria for alcohol dependence. He also meets criteria for **Solvent Abuse in remission because of incarceration**. The alcohol and solvent abuse is significant because of the disinhibiting effect of intoxication which has been intimately involved in facilitating his committing offences.

Risk statement

The actuarial and structured professional judgment measures I administered would suggest that **his future risk of sexual re-offence is high**. My assessment of this risk is based on the combined clinical and actuarial assessment. This assessment takes into account all information made available to myself.

The critical issues in this man in my opinion are substance intoxication, persistent violation of social rules and laws, lack of empathy for other people and lack of vocational and social structure in the community.

In my opinion the monitoring, supports and abstinence from substances associated with a supervision order would reduce his risk of recidivism to moderate.”

Psychiatric opinion – Summary

- [27] As noted, Dr Grant considers that the applicant presents a moderate risk of sexual violent behaviour. Professor Nurcombe considers that a supervision order could reduce the risk of re-offending from high to moderate. Dr Harden considers that the respondent’s future risk of sexual re-offence is high. Each psychiatrist considers that the risk of re-offending can be reduced by a supervision order, provided it contains certain conditions, including conditions that require the respondent to abstain from substance abuse.
- [28] Dr Grant considers that the respondent, upon release, will require:
- (a) treatment and monitoring for substance abuse;
 - (b) training and support for employment;
 - (c) guidance in developing appropriate relationships;
 - (d) guidance in developing positive social networks;
 - (e) participation in a maintenance sexual offender treatment program; and
 - (f) abstinence from access to pornography.

Dr Grant does not consider that the respondent should be necessarily banned from all unsupervised contact with children. Nor do the other psychiatrists.

[29] Professor Nurcombe considers that a supervision order should include the following conditions:

- (a) regular supervision by a correctional officer;
- (b) assistance in obtaining employment;
- (c) abstinence from substances or alcohol abuse, monitored by breath and urine screening;
- (d) support from ATODS;
- (e) adherence to a relapse prevention program of his own design; and
- (f) avoidance of intimate relationships with partners with adolescent children.

Professor Nurcombe sees no purpose in conditions of a supervision order that require the respondent to maintain distances from schools or places where children congregate.

[30] Dr Harden recommends that the respondent be released on a supervision order for a period of five years. He considers that the supervision order should include conditions requiring:

- (a) abstinence from alcohol and drug use and random testing;
- (b) individual therapy for sex offending;
- (c) individual therapy for substance abuse;
- (d) participation in the Sexual Offenders Group Maintenance program in the community; and
- (e) support to obtain employment.

Is the respondent a serious danger to the community in the absence of an order?

[31] I am satisfied to the standard required by the Act that the respondent is a serious danger to the community in the absence of an order under Division 3 of the Act. There is an unacceptable risk that he will commit a serious sexual offence if released from custody without a supervision order being made.

[32] A supervision order is capable of reducing the risk to an acceptable level.

The duration of the order

[33] Professor Nurcombe favoured a supervision order of ten years duration. Dr Grant, in his report, recommended a period of five years, observing:

“If by the end of that time he has been able to maintain sobriety and be free from offending, his risk for sexual violence beyond that would be low.”

Similarly, Dr Harden observed of the respondent:

“His difficulties are long-standing in nature and are unlikely to improve quickly, however if he were to maintain sobriety and a pro-social lifestyle for a five-year period of a supervision order, then his long-term prognosis would be substantially improved.”

- [34] The three experts gave oral evidence concurrently. I found their evidence, both written and oral, very helpful. Professor Nurcombe explained in his oral evidence that his recommendation for a ten year period was on the basis that the applicant is presently aged 35, and in ten years time might be expected to be sexually vigorous. The risk of his committing a serious sexual offence, such as rape, after the age of 45 would decline. Professor Nurcombe accepted that if the respondent complied with a supervision order for five years, then the risk of his re-offending would be substantially reduced.
- [35] Dr Grant explained that a supervision order of five years was the minimum. Dr Harden agreed with Dr Grant’s opinion that if the respondent abstained from alcohol for five years then this would represent an extraordinary change.
- [36] Counsel for the applicant in her submissions noted the different views of the psychiatrists about the duration of a supervision order, and did not press for an order of any particular duration, leaving the matter for the Court to decide on the basis of the evidence. Counsel for the respondent submitted for a period of five years, contending that a ten year period was not necessary, that a supervision order amounts to an infringement of the respondent’s personal liberty and that his liberty should not be infringed to any greater extent than is necessary to ensure the adequate protection of the community.
- [37] An infringement of the respondent’s liberty for a period of ten years might be justified to ensure adequate protection of the community, which is the paramount consideration under the Act. I would have no hesitation in ordering a period of ten years if it was necessary to provide adequate protection of the community, notwithstanding the infringement imposed by a supervision order on the respondent’s personal liberty.
- [38] If the respondent does not abstain from alcohol and other intoxicants, and thereby contravenes a condition of his supervision order, then he will be exposed in contravention proceedings to the making of a continuing detention order or the making of a new supervision order that extends the period of five years. If, however, he abstains from intoxicating substances for a five year period and does not offend during that period, then the evidence is that his risk of sexual violence after that time would be low. In the light of the evidence from the experts that compliance with a supervision order for five years would substantially reduce the risk that the respondent will commit a serious sexual offence, I consider that the supervision order should be for five years duration.
- [39] Compliance with a supervision order for five years, including a condition that the respondent abstains from the consumption of alcohol, illicit drugs and intoxicating substances for the duration of the order, does not guarantee that he will remain

abstinent and not commit further offences after the expiry of the order. The Act does not operate on the basis of guarantees that a supervision order will remove all risk that a person will abstain from alcohol during the term of the order.¹ A supervision order does not guarantee that a person will abstain from alcohol and not commit a further offence after the order has expired. In circumstances in which the evidence in this case indicates that the respondent's risk for sexual violence will be low if he remains sober and free from offending for five years, a supervision order for a period of five years is appropriate to ensure the adequate protection of the community and to assist the respondent's rehabilitation.

Conditions of the order

- [40] Section 16 of the Act provides that a supervision order must contain certain mandatory conditions. The order may contain additional requirements if the Court considers that they are appropriate to ensure adequate protection of the community or for the respondent's rehabilitation, care or treatment.
- [41] The evidence supports the inclusion of further conditions of a supervision order that the respondent:
- (a) abstain from drug and alcohol use;
 - (b) submit to drug and alcohol testing as directed;
 - (c) attend programs as directed regarding sexual offending;
 - (d) attend drug or alcohol abuse treatment programs as directed;
 - (e) attend programs directed towards obtaining or maintaining stable employment and accommodation;
 - (f) not access pornography;
 - (g) develop and abide by a relapse prevention program; and
 - (h) comply with any treatment or management program regarding sexual offending.
- [42] Counsel for the applicant and counsel for the respondent submitted alternative draft orders. There was common ground in relation to many of the proposed conditions. I had the benefit of the evidence of the experts concerning a number of contentious conditions. In the light of their evidence certain conditions were not pressed in final submissions, or the respondent's opposition to certain conditions was not pressed. Modifications were made to the terms of certain draft conditions. I shall refer to conditions that remained in contention, adopting the paragraph numbering that appeared in the applicant's draft order.

Employment

- [43] Paragraphs 10 and 11 of the applicant's draft order reads:

¹ *Attorney-General v Francis* [2007] 1 Qd R 396 at 405 [39].

- “10. seek permission and obtain approval from an authorised corrective services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
11. notify an authorised 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;”

Proposed condition 11 is not in dispute. Proposed condition 10 was opposed by counsel for the respondent on the grounds that the practical operation of that condition may involve unreasonable delay in obtaining permission to accept an offer of employment, by which time the employment opportunity is lost. The purpose of condition 10 is to avoid the respondent accepting employment in a field that is unsuitable, for example, work in a hotel where he would be exposed to the temptation of consuming alcohol. The condition does not require written approval. Nevertheless, the time taken to obtain approval could severely affect the respondent’s chances of obtaining casual employment, on short notice.

- [44] The respondent does not have a strong history of employment, and obtaining employment will be an important part of his rehabilitation. The experts’ evidence was to the effect that this form of condition consistently gives rise to problems. I consider that the legitimate concern that the respondent not commence employment of an unsuitable kind is adequately addressed by proposed condition 11. This requires the respondent to give at least two days notice prior to commencing any employment. If the authorised corrective services officer is concerned about the type of employment that has been notified, then, depending upon the circumstances, a reasonable direction might be given under the Act directing the respondent to delay such employment or not undertake such employment. Proposed condition 10 is unnecessary and is likely to reduce the respondent’s prospects of obtaining employment. Proposed condition 11 may even have that effect since the two day notice requirement may preclude the respondent from taking on work which is offered to him, for example, gardening work or cleaning work. I would expect the corrective services officers who supervise the respondent to waive the requirement for two days notice in suitable circumstances so that opportunities for employment, including menial forms of employment for a few hours at a time, are not lost to the respondent.

Disclosure of weekly plans and associates

- [45] Paragraphs 19 and 20 of the applicant’s draft orders read:
- “19. submit to and discuss with an authorised corrective services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
20. if directed by an authorised corrective services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by authorised corrective services officer who may contact such persons to verify that full disclosure has occurred;”

Professor Nurcombe identified a problem with the respondent being required to submit in writing a schedule of his planned activities. Nevertheless, each witness agreed that it was important for the respondent to develop plans about how he is to spend his time. In the past, the respondent has lived on a day to day basis and has poorly developed plans. His rehabilitation, and the minimisation of risk, will be enhanced by his developing plans for his future, and discussing these in advance with those who supervise him. It was agreed during the course of the hearing that draft paragraph 19 should be amended by the deletion of certain words. In its simplified form it will read:

“discuss with an authorised corrective services officer his planned and proposed activities on a weekly basis or as otherwise directed.”

- [46] As to proposed condition 20, the respondent submitted that it literally permitted any direction to be given, and was not conditioned by a requirement that any direction be a reasonable one given for the purpose of the adequate protection of the community or the respondent’s rehabilitation. I consider that any direction requiring disclosure should be conditioned by a requirement of reasonableness. A requirement to disclose has the potential to impede employment and the formation of positive relationships, including intimate relationships. That said, a requirement for the respondent to make complete disclosure may be necessary in certain situations to protect individuals. I consider that the need for legitimate disclosure for proper purposes in such instances can be served by inserting the word “reasonably” before the word “directed”. Such a qualification will reduce the potential for arbitrary and unnecessary directions.
- [47] Counsel for the respondent sought the inclusion of a longer form of words namely “reasonably directed for the purpose of the respondent’s rehabilitation or for the adequate protection of the community”. I consider that the simple word “reasonably” is more suitable. It may be implicit that any directions given by an authorised corrective services officer can only be made for the purpose of the Act, which concerns ensuring adequate protection of the community and facilitating the rehabilitation of persons who are subject to the Act. A direction is unlikely to be reasonable if it does not advance these objectives. The implicit requirement of reasonableness should be stated.

Visits to public parks

- [48] Proposed condition 25 is part of a suite of directions concerned with abstention from alcohol, drugs and other intoxicating substances. For example, proposed condition 24 provides:

“not visit hotels, pubs, clubs or nightclubs, without the prior written permission of an authorised corrective services officer;”

Proposed condition 25 reads:

“not visit public parks without the prior written approval of an authorised corrective services officer;”

Conditions of this kind are sometimes included in supervision orders to limit contact with children. However, the expert evidence did not support condition 25 on this basis and also saw no need for proposed conditions 30 and 31 in the applicant’s draft which relate to contact with children. The respondent is not a paedophile.

[49] A limitation on the respondent visiting public parks without prior written approval seeks to limit the respondent's access to places in which alcohol and drugs might be consumed, and also to limit his access to potential victims, particularly if he becomes intoxicated. It is to be recalled that both the index offence and the previous sexual offence were committed in public places. Nevertheless, the expert evidence did not support condition 25 in such a wide form. In their oral evidence the experts recommended its deletion, and a condition in this form was not pressed in final submissions. Still, an identified problem exists concerning the respondent's resorting to public parks and other public places in which he might come into contact with persons consuming alcohol to excess or consuming other intoxicating substances.

[50] A condition which precluded the respondent from visiting public parks without prior written approval has the potential to impede his rehabilitation, especially if he cannot find suitable accommodation. Rather than being confined to a depressing room in a hostel or some such place, the respondent might benefit from the opportunity to go to a public park and participate in law-abiding activities. The identified vice of coming into contact with alcohol and drugs might be addressed by a condition in the following form:

“not, without the prior written approval of an authorised corrective services officer, associate in public parks or other public places with persons who are consuming alcohol, illicit drugs or intoxicating substances, including, but not limited to, petrol, paint, glue and solvents.”

Such a condition would leave open the possibility of the respondent being given approval to visit a public park and associate with friends or family who are consuming alcohol, for example at a barbeque or other social event at which alcohol is consumed lawfully and in moderation. However, the process of obtaining prior written approval may be difficult to administer in practice. Also, such a condition might be inadvertently contravened if the respondent is approached in a park by persons consuming alcohol.

[51] On reflection, the potential problem of the respondent associating with persons in parks who consume alcohol to excess, illicit drugs or intoxicants is adequately addressed by conditions which:

- (a) require the respondent to disclose the identity of, and activities undertaken by, persons with whom he associates;
- (b) require the respondent to abstain from consuming alcohol, illicit drugs and intoxicants, and for him to be tested for those substances;
- (c) permit reasonable directions to be given.

[52] The sad fact must be faced that the respondent is likely to encounter, as many other citizens do, people in parks and other public places who are intoxicated. He should not be at peril of a return to custody because of a chance or fleeting association with such people. Instead, the directions he is given should minimise his association with persons affected by alcohol and drugs in parks and other public places. Testing of the respondent will deter him from consuming alcohol or illicit drugs, whether in public or private.

Violence and aggression

[53] Paragraphs 35 and 36 of the applicant's draft order provided as follows:

- “35. not engage in or demonstrate interpersonal violence or aggression against any other person, excluding acts of self defence;
- 36. not commit an indictable offence involving violence or against a woman during the period of the order;”

Paragraph 35 is too wide. It would prohibit the respondent from playing a contact sport such as rugby league, or possibly even punching his fist on a table if he was the victim of a blatant act of racial discrimination. The term “interpersonal violence” is somewhat vague. It might extend to violent language. Professor Nurcombe noted the respondent's history of violence and that violence might be an indicator of an increased risk of serious sexual offence. The expert evidence and the submissions, persuade me that proposed condition 36, with some modification, is apt and necessary to control violent conduct by the respondent. Containing violence (and a possible escalation to a serious sexual offence) can be achieved by a condition that requires the respondent to:

“not commit an indictable offence involving violence against any other person during the period of the order.”

Personal relationships

[54] Paragraph 38 of the applicant's draft provided:

“notify the supervising corrective services officer of all personal relationships entered into by him.”

Following evidence and submissions it was accepted that the term “personal relationships” is too broad and that the intent of the condition is that the respondent should notify of intimate personal relationships. Professor Nurcombe and Dr Harden thought that the disclosure should be, instead, of sexual relationships. When a sexual relationship starts may be a matter of debate in some cases. I consider that a suitable form of words is:

“notify the supervising corrective services officer of all intimate relationships entered into by him.”

[55] Again, there is potential for uncertainty about when a relationship becomes intimate. Despite that uncertainty, the purpose of protecting individuals is advanced by a requirement that the respondent notify of all intimate relationships, even ones which have not developed into a sexual relationship. Notification of such a relationship may be a precursor to a requirement for disclosure. A requirement to disclose to such a person the existence of the supervision order may imperil the development or continuation of such a relationship. One would not expect disclosure to follow automatically. Still, the supervising corrective services officer should be made aware of individuals with whom the respondent has formed an intimate relationship so that proper consideration can be given to the developing relationship and whether its continuation will foster or impair the respondent's rehabilitation.

[56] In some situations the relationship may be with a vulnerable individual who is ignorant of the fact of a supervision order, and where disclosure of the order is

appropriate. In many cases, the formation and continuation of a positive intimate relationship will be a sign of a person's rehabilitation and mark a reduction in the person's risk of re-offending.

- [57] The continuation of such a relationship should not be imperilled by unnecessary conduct by authorities. A requirement that the respondent notify of all intimate relationships entered into by him is appropriate, but should not be interpreted by those who administer the order as inevitably requiring the making of a direction that the respondent disclose matters. Whether a direction to disclose follows notification will depend on the circumstances that exist at the time.

Conclusion

- [58] I will make a supervision order in the terms appearing as an annexure to these reasons.

Annexure

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS761/13

Applicant **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**

AND

Respondent **ROSS EDWARD DOOLEY**

SUPERVISION ORDER

Before: Applegarth J

Date: 3 May 2013

Initiating document: Originating Application filed 29 January 2013

THE COURT, being satisfied to the requisite standard that the respondent, Ross Edward Dooley, 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, upon release from custody be subject to the following conditions until 6 May 2018:

The respondent must:

General terms

1. report to a corrective services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 9:00am and 4:00pm on the

- day of his release from custody and at that time advise the officer of his current name and address;
2. report to, and receive visits from, a corrective services officer at such times and at such frequency as determined by Queensland Corrective Services;
 3. notify a corrective services officer of every change of his name, place of residence or employment at least two business days before the change happens;
 4. be under the supervision of a corrective services officer;
 5. comply with a curfew direction or monitoring direction;
 6. comply with any reasonable direction under section 16B of the Act given to him;
 7. comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of the order;
 8. not leave or stay out of Queensland without the permission of a corrective services officer;
 9. not commit an offence of a sexual nature during the period of the order;

Employment

10. notify an authorised 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;

Residence

11. reside at a place within the State of Queensland as approved by an authorised corrective services officer by way of a suitability assessment and obtain written approval prior to any change of residence;
12. if this accommodation is of a temporary or contingency nature, comply with any regulations or rules in place at this accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services;
13. not reside at a place by way of short term accommodation including overnight stays without the permission of an authorised corrective services officer;

Reasonable directions and requests for information

14. respond truthfully to enquiries by an authorised corrective services officer about his activities, whereabouts and movements generally;
15. not to have any direct or indirect contact with a victim of his sexual offences;
16. disclose to an authorised corrective services officer upon request the name of each person with whom he associates and respond truthfully to requests for information from an authorised corrective services officer about the nature of the association, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;

Motor vehicles

17. notify an authorised corrective services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;

Disclosure of weekly plans and associates

18. discuss with an authorised corrective services officer his planned and proposed activities on a weekly basis or as otherwise directed;
19. if reasonably directed by an authorised corrective services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by an authorised corrective services officer who may contact such persons to verify that full disclosure has occurred;

Alcohol, drugs and other intoxicating substances

20. abstain from the consumption of alcohol, illicit drugs and intoxicating substances including, but not limited to, petrol, paint, glue and solvents, for the duration of this order;
21. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by an authorised corrective services officer;

22. disclose to an authorised corrective services officer all prescription and over the counter medication that he obtains;
23. not visit hotels, pubs, clubs or nightclubs, without the prior written permission of an authorised corrective services officer;

Treatment and counselling

25. 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 an authorised corrective services officer at a frequency and duration which shall be recommended by the treating intervention specialist;
26. permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose the nature 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;
27. attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by an authorised corrective services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;
28. develop a risk management plan in consultation with a treating psychologist or psychiatrist and discuss it as directed with an authorised corrective services officer;

Telephones and other devices

29. allow any device including a telephone or camera to be randomly examined. If applicable, account details and/or telephone bills are to be provided upon request of an authorised corrective services officer;
30. advise an authorised corrective services officer of the make, model and telephone number of any mobile telephone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use, which includes reporting any changes to mobile telephone details;
31. except with prior written approval from an authorised corrective services officer, not own, possess or regularly utilise more than one mobile phone;

Violence and aggression

- 32. not commit an indictable offence involving violence against any other person during the period of the order;

Pornography

- 33. not access pornographic images on a computer or on the internet or purchase or obtain pornographic material in any other format without the prior written approval of an authorised corrective services officer in consultation with the treating psychiatrist or psychologist; and

Personal relationships

- 34. notify the supervising corrective services officer of all intimate relationships entered into by him.

Signed:
Registrar of the Supreme Court of Queensland