SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney General for the State of Queensland v Gilchrist* [2013] QSC 199
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **DAVID KENNETH GILCHRIST** (respondent)
FILE NO/S:	SC 4946 of 2012
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	15 July 2013
DELIVERED AT:	Brisbane
HEARING DATE:	15 July 2013
JUDGE:	Atkinson J
ORDER:	**The supervision order made on 12 September 2012, be amended by:** **a) amending requirement (25) to read "not visit licensed bars or licensed nightclubs without the prior written permission of a Corrective Services officer"; and** **b) removing requirement (xxxiii) and inserting the following in lieu; *(33) not access, purchase or obtain pornographic material which depicts cruelty, violence or revolting or abhorrent behaviour in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults.***
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent was released on a supervision order pursuant to the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) - where contravention proceedings were brought against the respondent and he was detained in custody – where the contravention did not lead to any increased risk of the respondent's re-offending – whether the requirements of the

supervision order should be amended and the respondent released on those amended requirements

Dangerous Prisoners (Sexual Offenders) Act 2003, s 22(2)

COUNSEL:	J Rolls for the applicant
	J Lodziak for the respondent
SOLICITORS:	Crown Law for the applicant
	Legal Aid Queensland for the respondent

[1] This is a hearing of an application under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (the "Act") dealing with a contravention of a supervision order. The division of the Act relevant to this application must be read under the objects of the Act which are to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community and to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation. Both those objects of the Act are said to be equally important and each of the objects assists the other object, since the rehabilitation of prisoners is likely to ensure adequate protection of the community.

[2] Ordinarily, if the criteria set out in the Act are satisfied, then depending on the circumstances of the case, the person is released under a supervision order or is kept in continuing detention. The supervision orders are designed to ensure that the conditions are likely to assist the person to be rehabilitated and also to protect the community. One of the difficulties in imposing conditions is to ensure that the supervision order achieves those aims by imposing conditions which are sufficient to achieve those aims, but not so overly prescriptive so as to defeat the objectives of the Act. If the conditions are too proscriptive then they might well have the result of decreasing the prospects of rehabilitation rather than improving prospects of rehabilitation, by imposing a regime which is more likely to be contravened, notwithstanding that the risk of offending is not increased by that contravention.

[3] This is a case where the respondent has contravened and has admitted to contravening a requirement of the supervision order made on 12 September 2012. However, the evidence before me – and the Attorney accepts this – shows that that contravention did not lead to any increased risk of his re-offending. That is not to criticise the original order or those who imposed it but rather, it is a comment on the difficulty, as I have said, of fashioning orders which are sufficient to achieve the purposes of the Act and not so overly proscriptive so as to defeat the purposes of the Act. It is often a fine balance which is difficult to achieve.

[4] The application by the Attorney-General seeks orders in the alternative on a contravention being found either to rescind the supervision order and order that the respondent be detained in custody or, in the alternative, to amend the supervision order and order that the respondent be subject to those amended conditions. In his submissions, however, the Attorney-General accepted that this was a case where the requirements of the supervision order should be amended and the respondent released on those amended requirements.

[5] That submission is made on the basis that s 22(2) of the Act provides that unless the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention, be ensured by the existing order as amended, the court must rescind the supervision order and make a continuing detention order. The Attorney submits that the respondent has demonstrated that adequate protection of the community can be ensured by a

supervision order being made.

[6] Further psychiatric evidence has been obtained which is very useful to the court in determining the appropriate terms of a supervision order.

[7] Two of the clauses in the original order are viewed by those experts as problematic in terms of, firstly, the respondent's being able to comply with them and secondly, the utility of his complying with those conditions. Those conditions were condition 25, which provided that the respondent not visit licensed bars, licensed clubs, or licensed nightclubs without the prior written permission of a Corrective Services officer, and condition 33, to which I will return.

[8] With regard to the first condition concerning licensed premises, it is apparent that there are many licensed clubs that people in the community ordinarily attend for relatively inexpensive meals and social gatherings. There is not, on the material before me, the same risk attached to that as there might be in licensed bars and nightclubs, and accordingly, it is common ground that the requirement for the respondent not to visit licensed clubs can be deleted without in any way increasing the risk of his re-offending, and I will do so.

[9] The other condition which caused a problem in this case was condition 33 which provided that the respondent should:

> "not access pornographic images on a computer or on the internet or purchase or obtain any pornographic material in any other format without the prior written approval of a Corrective Services officer in consultation with the treating psychiatrist or psychologist. For the purposes of this requirement, 'pornographic' means sexually explicit material which is more explicit than would qualify it for classification under the National Classification Scheme at a rating of G, PG, M, or MA15+ or as an unrestricted print publication."

[10] The breach in this case involved the respondent having material on his mobile telephone which was sexually explicit material, exchanged between himself and his partner about themselves which fell within the prohibited definition. It appears that the respondent was endeavouring to comply very faithfully with all the terms of his supervision order, but failed to realise that that material would put him in breach of the supervision order. Dr Grant expressed the opinion that the sexual material shared between the respondent and his girlfriend and some other woman was not likely to lead to his having an increased risk of re-offending. His concern was more with the problem which might arise if the respondent were to access material which involved sexual violence, intimidation, or domination of women. That was not the case in the particular circumstances that bring the respondent to court in this instance.

[11] The question was then whether or not that requirement should be removed altogether or adjusted so it more accurately dealt with the particular risk. Dr Grant prepared a further supplementary report with regard to that particular matter, and I have had regard to all of his reports, and of course in particular to the full details of that supplementary report. The complexity of the issue can perhaps be best summarised by referring to Dr Grant's answer to one of the questions asked of him by the applicant, which was if the pornography requirement were to be removed, would this increase the respondent's risk of sexual reoffending, and how best could Queensland Corrective Services manage the respondent. It referred to a report prepared by Queensland Corrective Services which was tendered before me. Dr Grant said:

> "The removal of the pornography requirement would mean that QCS would have one less means of assessing sexual preoccupation, and probably the only really objective means. However, sexual preoccupation can also be assessed through supervision and therapy and information about his activities from other sources. In my opinion, in this case, the pornography clause is of quite limited

usefulness, and its removal would not significantly increase risk. It could indeed be argued that the removal of the clause in this case could be beneficial if it fostered Mr Gilchrist's development of healthy relationships."

[12] I have also had regard to the reports written by Dr Scott Harden, who favoured removal of the restriction all together. I have also had regard to the report prepared by Queensland Corrective Services.

[13] The reason that the respondent is subject to this regime is because of violent sexual offending in his past. That sexual offending is now well in his past, but nevertheless is part of his life story and that is the risk that must be managed, not the risk that he might engage in normal sexual relationships, which should not be discouraged. Accordingly, it seems appropriate to make the restriction in the order deal with that particular risk rather than being more widely drawn. Accordingly, the parties have endeavoured together to draw a clause which more specifically addresses that risk. I should say that the respondent's primary submission was that the clause should be removed altogether, but nevertheless he has engaged in the process of drawing with the applicant a more carefully defined restriction which concentrates on cruelty, violence or revolting or abhorrent behaviour.

[14] The particular clause uses the words from the National Classification Code which draws a distinction between material of that kind and material which involves sexual activity between consenting adults in which there is no violence or coercion or demeaning depictions. Accordingly, it appears to me that the condition which is proposed is apt to deal with this particular case, and, indeed, I should say that given the opinions of the psychiatrist, if the respondent is able to comply with this order, then it seems to me that there would be a good case for removing that particular requirement in future reviews of the order.

[15] Accordingly, the order will be that the court, being satisfied to the requisite standard that the respondent has contravened a requirement of a supervision order made by Justice Daubney of 12 September 2012, orders that:

(1) the supervision order made by Justice Daubney on 12 September 2012 be amended by

(a) amending requirement 25 to read: 'not visit licensed bars or licensed nightclubs without the prior written permission of a Corrective Services officer;' and

(b) removing requirement 33 and inserting the following in lieu: 'not access, purchase, or obtain pornographic material which depicts cruelty, violence, or revolting or abhorrent behaviour in such a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults.'