SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Armstrong* [2013] QSC 343
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) v **STUART WILLIAM ARMSTRONG** (respondent)
FILE NO/S:	BS 10494 of 2010
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	3 December 2013
DELIVERED AT:	Brisbane
HEARING DATE:	3 December 2013
JUDGE:	Philip McMurdo J
ORDER:	**The respondent be released subject to the supervision order made by the Court on 14 March 2011.**
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 from prison in 2011 under a supervision order – where the period of supervision fixed by that order was five years from 14 March 2011 – where respondent failed to provide a sample of breath and was charged with the wilful damage of his GPS monitor device in August 2012 – where respondent was arrested for these alleged contraventions of his supervision order – where the two psychiatric opinions obtained by the applicant differ in their opinion as to the level and nature of the risk the respondent would pose to the community if released on a supervision order – where one psychiatrist believes the respondent's risk of reoffending depends on controlling his rage – where the other psychiatrist believes the respondent's risk of reoffending depends on his willingness to comply with the conditions of his supervision order – where applicant did not seek a continuing detention order – whether the alleged contraventions of the supervision order are proved – whether

the respondent has satisfied the Court that he should be released under the present supervision order, or an amended supervision order, rather than being detained under a continuing detention order – whether the present supervision order should be amended to provide for a longer period of supervision

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

COUNSEL: J M Sharp for the applicant
The respondent appeared on his own behalf

SOLICITORS: Crown Law for the applicant
The respondent appeared on his own behalf

HIS HONOUR: In 2005, the respondent was convicted of an offence of assault with intent to rape. Originally, he was sentenced to eight years imprisonment, but, on appeal, that sentence was reduced to six years. He spent more than seven months in presentence custody.

An application was made under Division 3 of the Dangerous Prisoners (Sexual Offenders) Act 2003. A judge of this Court, on 14 March 2011, concluded that the respondent was a serious danger to the community, in the absence of an order under Division 3, and made an order for his supervised release. The period of supervision fixed by that order was five years from 14 March 2011. On that occasion, no order was sought by the Attorney-General for the continuing detention of the respondent.

On 8 December 2011, the respondent contravened a condition of the supervision order by returning a positive test revealing a relatively low level of cannabis consumption. He was then arrested and brought before the Court on 14 December 2011, when he was ordered to be detained in custody until a final decision of the Court, under section 22 of the Act. That hearing under section 22 was conducted by me on 30 March 2012. On that day, I ordered that he be released, subject to the supervision order which the Court had made in 2011. The Attorney-General did not suggest then that the supervision order should be rescinded; nor did he then suggest any change to that supervision order. The respondent was released on that day.

However, the respondent has again breached a condition, or conditions, of the supervision order. On 11 August 2012, officers of the Queensland Corrective Services attempted to conduct a random breath test. No sample of breath was supplied. The respondent is described as having been then in a state of extreme agitation, visibly shaking and acting aggressively towards the officers. A few days later, the respondent reported to his case manager, and, during that meeting, the case manager asked the respondent about his aggressive behaviour on 11 August. The respondent then acted aggressively, raising his voice and acting in what has been described as a threatening manner. And at that meeting, he placed his GPS monitor in front of him, punching it and then throwing it across the room. He continued to act aggressively. Police were called, and he was arrested for alleged contraventions of his supervision order, and he was charged with wilful damage of the GPS device.

The alleged particulars of contravention, or contraventions, of the supervision order are that he failed to comply with a curfew direction, or monitoring direction, failed to comply with a reasonable direction of a corrective services officer, and committed an indictable offence. The offence in question was the wilful destruction, or damage, of or to the GPS device. On that charge, upon his own plea of guilty, he was convicted in the Magistrates Court on 30 November 2012 and was sentenced to 108 days of imprisonment, which was the period between his arrest in August last year and the date on which he was sentenced in the Magistrates Court. He was then legally represented. Today, he is without legal representation.

As he has explained matters to me, the respondent says that the GPS device was already in a damaged condition prior to the meeting on 14 August 2012. He says that, by an accident, it had been damaged a few days earlier, and that he had endeavoured to explain this to corrective services officers. But he candidly concedes today that he did it further damage on 14 August, and from what he has said today, it appears that his plea of guilty in the Magistrates Court on this charge was appropriate. It follows that at least one of the

alleged contraventions of the supervision order is established, namely, the wilful damage to that GPS device. It also appears and I do find that he failed to comply with the requirement to provide a sample of breath.

It should be noted at this point that there was nothing about these contraventions which indicates a circumstance of imminent sexual offending. The relevance of these contraventions, apart from providing the legal basis for the present hearing under section 22 of the Act, is in what his behaviour then might indicate about his present mental state and the risk of his committing further offences. It was rightly conceded by Ms Sharp, for the Attorney-General, that, relatively speaking, the contraventions are not at the serious end of the scale. Those contraventions having been established, it is incumbent upon the respondent to satisfy the Court that he should be released under the present supervision order, or an amendment of that order, rather than being subject to a continuing detention order.

I go then to the psychiatric evidence, which comes from Professor James and Dr Moyle. In this case, there is a marked division of professional opinion. Professor James has diagnosed the respondent as suffering from bipolar disorder, which can be managed with appropriate medication and treatment, but which, if unmanaged, could make the respondent a dangerous man. The opinion of Dr Moyle is that the respondent does not have a mental illness, but has a personality disorder, and that, ultimately, the likelihood of his reoffending depends upon the respondent having a state of mind whereby he accepts his regime of supervised release and acts cooperatively and positively to the end of complying with the conditions of that release.

Each of the psychiatrists has prepared a number of reports in the period from late last year in which the respondent has been in custody, awaiting the present hearing. In broad terms, each psychiatrist is of the opinion that the relative risk from the release of the respondent is now less than it was earlier within that period. For example, in his report of 4 April 2013, Professor James wrote that, "In his present psychotic state, Mr Armstrong's ability to think and act rationally is seriously compromised, and given his past history of sexual and violent offending, his current risk of recidivism, were he to be released into the community, must be considered very high." He further concluded, within that report, "The presently existing degree of risk and the underlying causal factors are such that, in my opinion, they cannot be managed in the community, even if a supervision order were in place."

Professor James' most recent report is dated 18 November 2013. He examined the respondent on 7 October 2013. The most recent report of Professor James records a marked improvement in the mood of the respondent, but it does warn of the risks, from what he diagnoses as the respondent's bipolar affective disorder, of further episodes of mood disorder. Professor James explains that the likelihood and extent of such further episodes can be managed by medication. He wrote that, "The drugs which proved successful varied from person to person, and a carefully chosen and carefully monitored trial-and-error approach is currently the most appropriate strategy."

In his most recent report, Professor James wrote that, on 7 October 2013, the respondent's mental status was normal, and if he were to be released into the community and his current mental state were to be maintained, with a supervision order in place, his risk of reoffending, at least in the short term, would be no more than moderate. He advises that it would be essential for the respondent to be monitored by a forensically alert and

competent psychiatrist. He writes that any further episodes would be unpredictable, with respect to their timing, duration and severity, but that the respondent's history suggests that there would be at least some days of prodromal irritability before any point of overt aggression, which would allow active pre-emptive intervention, in the form of enhanced monitoring and the further use of therapeutic drugs, or even institutionalisation, to be implemented.

Dr Moyle's opinion, within his most recent report, which is dated 26 November 2013, is that the respondent's risk of further sexual offending in the next 10 years is high and that any change to his risk is going to be slow. He wrote that the "best measure of lowering risk is the amount of time spent in the community, at risk of reoffending, and not doing so." He also wrote that he could not see any evidence that the respondent's current state of mind was much different from that when he was last released, and that he would "feel more comfortable if the respondent was able to assure the Court that the respondent intends to adhere to all the restrictions of the supervision order and intends to contain his frustration and to discuss his frustrations in a reasonable manner with correctional staff, but not challenging the terms and conditions of the order." Dr Moyle thought that if the respondent could do this, "he would have a greater chance of success than in the past."

I find it difficult to conclude that one of these opinions is correct and the other is not. It is obvious to say that both are eminent psychiatrists, and it should also be said that each has approached the task of forming his professional opinion with traditional care and professionalism. The opinion of each is to be given considerable weight. As I see it, I should approach the present case on an alternative basis, that is, upon alternative premises of the correctness of one view or the other. In a sense, the opinion of Professor James is of more concern, because a condition as he has diagnosed, if not properly treated and monitored, could present a particularly serious risk of further episodes of mood disorder, manifested, in the respondent's case, by a level of irritability that can lead to rage. Much of the respondent's serious criminal history could then be seen to be related to an episode of that kind.

However, as I have explained, Professor James has described the ways in which the treatment and monitoring of what he sees as the respondent's mental illness could be effected. On Dr Moyle's view, the prospects of reoffending might be thought to largely depend upon the preparedness of the respondent to accept some responsibility for what has occurred and to accept the necessity to comply with his regime of supervised release. As would be expected, the respondent, in the context of today's hearing, gives no indication of not being prepared to comply with the order for supervision. That is not to say that he would always be so willing as various circumstances arise once he is released. But, at this point of the consideration of the risk of offending, it must again be said that the contraventions of the order for supervision which have led to the present application were, relatively speaking, not serious.

There is some extensive evidence of the mood or behaviour of the respondent for much of the time of his incarceration since August last year. I have mentioned already some of that in describing the psychiatric evidence. However, more recently, that conduct has not been apparent and, on either view, this is obviously a positive indication.

Upon the basis of this evidence, counsel for the Attorney-General, appropriately, in my view, does not make a positive argument for a continuing detention order. The Attorney, through his counsel, has left that question to the court. As I've said, it is a question upon

which, in this context, the respondent bears the onus of proof. But I am satisfied that that burden has been discharged.

The remaining question is whether the supervision order should be amended to provide for a longer period of supervision. The order which was made in March 2011 had provided for supervision for five years from the date of that order.

That period was fixed, having regard to psychiatric evidence which was not unanimous on that point and there was a real issue for the judge who made that order about the period of supervision. Ultimately, for reasons given by her Honour, a period of five years rather than 10 years was fixed. It seems to me to be necessary to give that previous determination of the court some weight although, of course, it must be considered in the light of subsequent events. The facts that the respondent has contravened his supervision order on several occasions, as I have described, are important in this respect. But, again, the relative seriousness of those contraventions must be considered.

The contravention that occasioned the hearing I conducted in March 2012 was not serious in the sense of suggesting a material change in the risk of reoffending and, as I've said, there was no suggestion on that occasion of an amendment of the duration of the order. The contraventions which have led to the present hearing, in my view, do not, of themselves, suggest the need for an extended period of supervision. There is Dr Moyle's opinion, which would clearly support a longer period of supervision than one expiring in March 2016. Dr Moyle did not give evidence on the occasion when the original supervision order was imposed. Although his evidence is to be given weight, I do have to also give weight, as I've mentioned, to the court's previous determination in relation to this question.

One relevant consideration is the fact that the respondent, if free of any supervision from March 2016, will not have had the benefit of the five years of supervised release for which the original order provided. Obviously that is because he has spent more than 15 months in custody awaiting present hearing. The purpose of these orders, of course, is not to punish the prisoner but to provide for the protection of the community as well as for the rehabilitation of the prisoner. I do not think that it would be appropriate for the court to consider that the 15 months or so which the respondent has spent in custody awaiting this hearing was of no benefit in relation to those considerations of protection of the public and rehabilitation.

Therefore, the fact that the period of supervised release would become effectively something less than four years because of the 15 months he has spent in custody, does not, in my view, require some extension of the period of supervision. Ultimately, the conduct of the respondent which has led to this hearing does not give such an indication of an increased risk of reoffending as to warrant the court's departing from its original conclusion which was expressed in the orders made in March 2011. And therefore I am persuaded that the respondent should be released and upon the terms of the original order. It will be ordered that the respondent be released subject to the supervision order made by the court on 14 March 2011.