

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Turnbull* [2014] QSC 132

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
GARY UNE TURNBULL
(respondent)

FILE NO: 3675 of 2014

DIVISION: Trial Division

PROCEEDING: Dangerous prisoner application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 13 June 2014

DELIVERED AT: Brisbane

HEARING DATE: 10 June 2014

JUDGE: Boddice J

ORDER: **The Court, being satisfied to the requisite standard that the Respondent, Gary Une Turnbull, is a serious danger to the community in the absence of an order made pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* orders that:**
1. Pursuant to s 13(5)(1) of the Act, the Respondent, be detained in custody for an indefinite term of control, care or treatment.

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 offender is a violent sexual offender – where application is made for the continued detention or, alternatively, release subject to supervision orders of the offender – whether the offender is a serious danger to the community – whether the offender poses an unacceptable risk of reoffending – whether conditions imposed under a supervision order would render the offender’s risk of reoffending acceptable
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)

COUNSEL: M Maloney for the applicant
A Nelson for the respondent

SOLICITORS: Crown Law for the applicant
Alexander Law for the respondent

- [1] The Attorney-General for the State of Queensland makes application, pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (“the Act”), for orders for the continued detention or, alternatively, release subject to supervision orders of the Respondent, Gary Une Turnbull. At issue is whether the Respondent represents a serious danger to the community and, if so, whether the risk to the community can be rendered acceptable by the imposition of a supervision order under the Act.

Background

- [2] The Respondent was born on 4 March 1974. He is presently 40 years of age. He has been incarcerated since June 2002 when he was sentenced to 20 years imprisonment for three offences of rape, one offence of attempted rape, two offences of assault with intent to rape, two offences of indecent assault, an offence of assault occasioning bodily harm and an offence of robbery with personal violence.
- [3] The Respondent’s release date from that sentence of imprisonment was 14 June 2021. However, on 19 June 2013 the Court of Appeal granted the Respondent’s application for an extension of time to appeal against those sentences. The ground of appeal was that the sentences were manifestly excessive. On 13 December 2013 the Court of Appeal allowed the appeal in relation to the three counts of rape only, and substituted shorter sentences of imprisonment in respect of those counts. The consequence of those orders was that the Respondent’s full term release date became 14 June 2014, seven years earlier.

Index offences

- [4] Prior to being convicted in 2002, the Respondent had a limited criminal history. None of his previous convictions related to sexual offences.
- [5] The index offences involved offending in what was essentially two series. The first (sexual assault and assault occasioning bodily harm) was committed on 6 October 1998. Both offences involved one female complainant. The second, committed over a five month period in 2001, involved three female complainants. All of the complainants were complete strangers to the Respondent. Each was approached on the street whilst going about their business.
- [6] In respect of the first series of offences, the Respondent was apprehended and granted bail. He then absconded to Victoria. He was not ultimately intercepted again until after his arrest for the second series of offences.
- [7] In the first series of offences, the Respondent followed a female complainant from a railway station before placing his arm around her throat and brushing his hand against her breast. That complainant screamed and struggled and was knocked to the ground. The Respondent decamped when the complainant screamed. Two

neighbours heard the scream and restrained the Respondent for a short period. He then broke free but was subsequently located by police through a taxi driver who had transported him from the scene. After initially denying involvement, he made limited admissions. He admitted brushing the complainant's breasts but denied grabbing her throat or using any violence or causing injury. The Respondent told police he had been smoking cannabis.

- [8] The second series of offences involved incidents in January, May and June 2001. The offences in January involved following a female complainant towards a shopping centre, grabbing her by the neck from behind and forcing her behind one of the buildings. The Respondent made threats and subsequently made the victim remove her clothing before thrusting his genitals against her buttocks. The Respondent was disturbed by an approaching couple and ran away. The complainant had scratches and abrasions. As a consequence of the complainant having scratched the Respondent, police were able to collect samples sufficient to identify the Respondent as the perpetrator.
- [9] The offences in May 2001 also involved the Respondent following a female and grabbing her from behind. The Respondent hit her on the back of the head causing her to fall to her knees. The Respondent then took her handbag and went to a nearby school. The complainant followed him and demanded the return of her handbag. At that point the Respondent struck her in the eye causing her to fall. He then put his knee to her throat and threatened to kill her before forcing her to move to an area at the back of the school building. Thereafter the complainant was severely assaulted resulting in a loss of consciousness. She had limited recall of what had taken place. There was evidence of blood on the ground and on the walls consistent with the Respondent having rammed her head into the wall. Her clothes were ripped off. A subsequent forensic examination identified seminal fluid in the vagina indicating an offence of rape. The complainant suffered a black eye, lacerations, bruises and abrasions to various parts of the body. The complainant subsequently identified the Respondent. He made limited admissions to police. He subsequently admitted taking her handbag, pushing her and trying to rape her but denied making threats to her or using other violence. The Respondent said he was under the influence of illicit substances.
- [10] The offences in June 2001 involved the Respondent following a female complainant from a railway station into parkland. The Respondent grabbed the female complainant from behind, threw her to the ground and pressed a piece of wood against her throat to stop her screams. He then directed the complainant to some nearby bushes. When she started to scream he hit her several times before dragging her into the bushes. He threatened to kill her if she did not remove her pants. He unsuccessfully attempted to penetrate her with his penis, then forced her to masturbate herself and him. He subsequently forced her to fellate him. At that stage she had a broken jaw, and he manipulated himself into her mouth. He subsequently licked her vagina before vaginally raping her.
- [11] On this last occasion the Respondent was observed by two women hitting the female complainant with a piece of wood. They called police who initially were unable to locate the victim but subsequently observed the Respondent run away. The complainant's blood was still on his clothes, genitalia and under his fingernails.

The complainant was found with extensive injuries to her face, head and other parts of her body. The Respondent made admissions to having attempted to rape the complainant. He later admitted to raping her and trying to have her fellate him. He again asserted he was under the influence of intoxicating substances.

Incarceration

- [12] The Respondent had been held as a high secure prisoner. His conduct and behaviour is reported as being generally acceptable. He has had six major breaches, and a minor breach since his incarceration. Most of the major breaches related to positive samples for illicit substances, or failing to provide a sample when requested. His attitude to work and supervision is said to be positive.
- [13] The Respondent has acted as a mentor and supporter of other inmates at various centres. He has facilitated alcohol and drug courses for fellow indigenous inmates. He has indicated in the past a willingness to undertake a sexual offenders treatment program. Having regard to what was his full time release date until December 2013, he had not been offered the opportunity to undertake such a program. He has been assessed as an appropriate candidate for such a program. It is the recommendation of officers of the corrective services department that he participates both in a preparatory program and in the high intensity sexual offender program. The Respondent has indicated a willingness to do so. He has also indicated a willingness to undertake an appropriate program in the community if he is released at his full term release date.

Reporting psychiatrists

- [14] The Respondent has been assessed by Dr Grant, Professor Nurcombe and Dr Aboud. Dr Grant had previously provided a report in 2002, for use in his sentencing proceedings.
- [15] Dr Grant undertook a risk assessment using a number of instruments. He also undertook a detailed interview with the Respondent. The assessment instruments placed the Respondent in the low to moderate risk group for future sexual reoffending. They also indicated the Respondent did not have any significant psychopathic personality traits.
- [16] Having regard to the results of those assessments, together with his clinical assessment, Dr Grant opined there were risks associated with future sexual offending motivated by anger and sexual drives. It was unclear whether such offending would actually occur in the future, having regard to his long period of incarceration, his satisfactory institutional behaviour, the forming of a stable relationship and his abstinence from illicit substances. However, whilst the potential frequency of sexual violence and the length of time the risk might exist was unclear, the psychological and physical harm to victims would be severe. Further information would be obtained if the Respondent undertook the high intensity sexual offender treatment program whilst subject to incarceration. Such a program would improve the Respondent's insight into past motivations, and assist in formulating an accurate supervision order.

- [17] Dr Grant maintained those opinions in evidence. Whilst he accepted consideration of different aspects of different assessment instruments may result in a different score for the risk assessment for future sexual offending, those changes did not impact on his overall assessment of the risk of future sexual offending. In Dr Grant's opinion, whilst a breakdown in relationship and the abuse of illicit substances were clearly potential triggers for further offending, the dearth of information as to what caused the Respondent to engage in escalating acts of violence and sexual aggression to total strangers randomly selected as they went about their business rendered the risk of reoffending such that it was appropriate for the protection of the public that the Respondent be required to undergo the high intensity sexual offenders treatment program whilst in custody before consideration of any release upon a supervision order.
- [18] Professor Nurcombe also undertook an assessment of risk by using appropriate statistical instruments together with a detailed interview of the Respondent. He also assessed the Respondent as a moderate risk of sexual reoffending. He noted that there was historical evidence of hostility towards women and that the acts were impulsive and disinhibited by the affects of alcohol and drugs.
- [19] Professor Nurcombe accepted the likelihood of reoffending was not immediate, and there were warning signs that could signal the risk, such as a breakup in a personal relationship and abuse of alcohol and substances. Whilst those risk factors could be militated against by the formation of a stable relationship and abstinence from abuse of illicit substances, Professor Nurcombe was of the opinion there was insufficient information as to what was precisely the trigger for the Respondent's escalating violence and sexual depravity. He considered there may well have been a sexual sadism, although there was no clear evidence of such a scenario on the present material. Professor Nurcombe opined the Respondent should complete the high intensity sexual offender treatment program prior to any release on a supervision order.
- [20] Professor Nurcombe maintained those opinions in evidence. Whilst he also accepted that a consideration of different assessment instruments and other factors may result in a change in the scores obtained using those assessment instruments, those changes did not alter his overall opinion that the Respondent represented a moderate risk or sexual reoffending in the future. Further, the unknown factors were such that the precise triggers for escalating violence had yet to be identified, including underlying anger towards women and sexual deviance. In his opinion, requiring the Respondent to undergo the high intensity sexual offender's treatment program prior to any release was important to ensure the identification of relevant triggers, and to inform as to what would be appropriate conditions for the protection of the public from future sexual offending.
- [21] Dr Aboud also undertook formal risk assessments using various instruments. He also clinically interviewed the Respondent. He assessed the Respondent's overall risk of both general violence and future sexual violence as moderate. He recognised the existence of a stable relationship, together with abstinence from abusing illicit substances, would minimise the risk but expressed concern as to the unknown triggers for his offending. He recommended the Respondent participate in a sexual offender treatment program as well as substance abuse and other programs.

- [22] In evidence, Dr Aboud opined that having regard to the matters raised by Dr Grant and Professor Nurcombe in their evidence, he was of the opinion it was essential for the Respondent to undertake the high intensity sexual offenders treatment program in custody, prior to any release. He considered the risk of sexual reoffending in the future could well be higher if the underlying triggers were able to be identified, and that undertaking the program would increase the chances of the identification of those underlying triggers.

Statutory scheme

- [23] It is for the Attorney-General to satisfy this Court that the Respondent poses a serious danger to the community. Such satisfaction can only be met by the tendering of acceptable, cogent evidence of sufficient weight to justify a decision requiring the incarceration of the Respondent beyond his full term release date. A high degree of probability is required in the circumstances.
- [24] The Respondent will represent a serious danger to the community if the Attorney-General establishes there is an unacceptable risk he will commit a serious sexual offence if released from custody or if released from custody, without a supervision order being made. Factors to be considered in determining whether the Respondent is a serious danger to the community include the opinions expressed by the reporting psychiatrists, together with other relevant medical information as to the propensity of the Respondent to commit serious sexual offences in the future, efforts towards rehabilitation, the Respondent's past criminal history, the risk of the commission of further offences and the need to protect members of the community from that risk. The Court is also to have regard to any other relevant matter.

Conclusion

- [25] Whilst the Respondent does not have any prior criminal history for sexual offences, the index offences involve sustained and escalating physical and sexual violence to total strangers, randomly selected by the Respondent as they went about their business. The final offences involved the use of a weapon, and acts of sustained brutality and sexual degradation on a helpless and injured female complainant.
- [26] The Respondent was co-operative throughout all of the psychiatric examinations. His prison records speak highly of him as a co-operative, respectful inmate within the correctional system. Despite the major and minor breaches, his behaviour has generally been positive and co-operative, and that he has been a willing participant in any programs or work related activities. He has completed a number of programs which have obviously increased his level of maturity and his respect for authority. However, the issue that ultimately must be addressed is the ongoing risk he may present to members of the community, and whether that risk represents a serious danger to the community in that he represents an unacceptable risk of future sexual offending.
- [27] The reporting psychiatrists unanimously opine that whilst the risk of sexual reoffending, based on statistical assessments using instruments, is low to moderate, and the identified triggers of a breakdown in personal relationship and the abuse of illicit substances can be addressed by maintaining a good personal relationship and

abstinence from illicit substances, there is insufficient information to identify the true triggers behind such disturbing acts of sexual violence. Each of the reporting psychiatrists opine there is a need to identify those underlying triggers before there can be a proper assessment of the risk factors, so as to structure any conditions on a supervision order.

[28] On that aspect, the evidence of the three reporting psychiatrists was highly significant. Whilst there was no evidence of psychopathic tendencies or sexual deviancy, and each accepted the Respondent was not an imminent risk of reoffending, each highlighted the nature of the offending and the unknown factors behind that offending. Each also highlighted the need for further exploration to understand what might be sadistic or other drivers lying dormant in his behaviour.

[29] As Dr Grant opined:

“... I think it’s is altogether insufficient to say this is due to drugs and alcohol or a relationship breakup. There are many people in the community that have those issues in their lives that don’t go out and commit a serial rape - a series of rape offences. And so we need to know what the actors are and we really don’t know without really a lot more exploration and that’s – that’s the whole issues”.

[30] Dr Grant further opined:

“... it remains to be seen what other things are revealed and can be talked about and whether, for instance, is there any sadism involved here? Are there sadistic drives that are lying dormant that we don’t know about that – I’ve indicated in my previous report and in this one that that’s a question mark. We don’t know how much things like sadism might be involved. So we need to – we need to be able to explore that further. It may be that we find that isn’t a relative factor and that there might be other issues simply related to anger with women and going back to his treatment by his mother and then his relationship break-up and, you know, that anger being made worse by using amphetamines and so on. That might be, in the end, all we find. But this is an unusual sequence of very serious offences in someone who doesn’t have psychopathy and doesn’t have a past criminal history of significance and we need to know more”.

[31] Dr Grant noted each of the Respondent’s offences involved attacking women randomly as they were going about their business walking along the street. It was, as Dr Grant observed, a worrying aspect that the Respondent awaited his opportunity to then attack them. As Dr Grant questioned, why would he do that. It was not to do with a particular relationship or anger with a particular person. It was obviously much more generalised anger towards women or a more sinister kind of sexual motivation. Dr Grant noted that if the Respondent was driven by strong sadistic impulses, further offending could occur at any time.

[32] Professor Nurcombe raised similar concerns. He opined that if there was a sexual deviance, it would be in the nature of sexual sadism which “is a condition in which the individual gets sexual satisfaction from hurting, degrading or humiliating people of either sex depending on the case”. Professor Nurcombe further opined that the

fact the Respondent was unable to achieve an erection during the attacks on the women may have been because he either was not sexually excited or because of the fear and excitement and turmoil of the situation. Those sorts of issues needed to be examined directly in therapy. The fact that each of the attacks involved picking strangers and pursuing them was very important. It indicated the Respondent “has a wellspring of anger against women generally”. Professor Nurcombe considered it was necessary to examine and understand the reason for those attacks.

- [33] Dr Aboud also considered the reasons behind the attacks were important to understand the risk the Respondent posed to the community. He was concerned that the severity and nature of the Respondent’s offending was such that he was a more complex and potentially serious offender who warranted a more intensive sex offender treatment program. That program would allow a better understanding of the risk he poses as whilst his overarching risk is moderate, that risk must be understood in terms of a number of foundation stones:

“One foundation stone is likelihood of reoffending and I would say that his likelihood of reoffending is – is actually about moderate. Then there is imminence and the imminence I would have categorised as – as low. But then there is nature and severity and taken together they can be gauged on past behaviour and his past behaviour was of a escalating level of frequency and severity with employing weapon use and serious injury to the victim escalating. So the nature and severity would be on the higher end of the risk spectrum. So looking at that together that nature and severity I believe places him with a group of individuals that require the high intensity program.”

- [34] Dr Aboud went on to note that sex offender treatment programs can be quite challenging and that as a result of the evidence he had heard he was increasingly concerned that the Respondent’s offending was not in fact well understood and that it might not be a safe model for him to be treated in the community with those types of emotional challenges placed upon him.

- [35] Dr Aboud also expressed a concern in relation to what Professor Nurcombe had described as “a wellspring of anger which heightens my own – my own concern which would be similar. I am not sure. At the time of my assessment I did not believe that Mr Turnbull harboured sexual sadism. I am less certain now but on balance I would suspect that he does not but I cannot be certain. In terms of his anger I would hypothesize that this purely speculation and it’s probably of – of little relevance”.

- [36] I accept the evidence of Dr Grant, Professor Nurcombe and Dr Aboud. I am satisfied, based on that evidence, that the Respondent represents a serious danger to the community in that there is an unacceptable risk he will commit a serious sexual offence in the future. Without the benefit of a proper assessment following completion of the high intensity sexual offenders treatment program, there are no conditions which could be imposed which would satisfy me that unacceptable risk of committing further sexual offences could be rendered acceptable. The triggers for the escalating sexual violence must be identified before any consideration can be

made as to whether any conditions can be formulated which would make the risk of sexual reoffending no longer unacceptable.

[37] It is most unfortunate that the Respondent, despite having previously indicated a willingness to undertake a sexual offenders program, has not been offered the benefit of that program. However, there are exceptional circumstances for that situation. His full term release date, until he decided to seek leave to appeal his sentence 11 years after its imposition, was some eight years away. The substantial reduction in his overall sentence has resulted in a full term release date much earlier than could have been anticipated by the authorities.

[38] The Court, being satisfied to the requisite standard that the Respondent, Gary Une Turnbull, is a serious danger to the community in the absence of an order made pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) orders that:

1. Pursuant to s 13(5)(1) of the Act, the Respondent, be detained in custody for an indefinite term of control, care or treatment.