

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Valence*  
[2014] QSC 242

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(applicant)  
v  
**KERRY PATRICK VALENCE**  
(respondent)

FILE NO: BS No 2941/09

DIVISION: Trial

PROCEEDING: Application

DELIVERED ON: 29 September 2014

DELIVERED AT: Brisbane

HEARING DATE: 29 September 2014

JUDGE: Peter Lyons J

ORDER: **The Court, being satisfied to the requisite standard that the respondent, Kerry Patrick Valence, 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 (Qld) (the Act)*, orders that:**

- 1. The decision made on 13 August 2009 that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act be affirmed;**
- 2. The respondent continue to be subject to the continuing detention order made on 13 August 2009.**

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 continuing detention order for the respondent is under review pursuant to s 27 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – where the respondent committed opportunistic sexual offences – where the respondent has not undertaken a sexual offenders treatment program – whether the respondent is a serious danger to the community – whether the respondent should remain subject to the

continuing detention order or be released from custody subject to a supervision order

*Dangerous Prisoners (Sexual Offenders) Act 2003*, s 13, s 27, s 30

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

SOLICITORS: Crown Solicitor for the applicant  
The respondent acted on his own behalf

- [1] This is a review under s 27 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (DPSOA) of a continuing detention order for the respondent, made under s 13 of the DPSOA.
- [2] The first question to be considered is whether the respondent is a serious danger to the community, in the absence of an order made under Division 3 of the DPSOA. If the respondent is such a danger, the second question is whether the respondent should continue to be subject to the continuing detention order; or whether he should be released from custody subject to a supervision order<sup>1</sup>.

### **Background**

- [3] The respondent is now 57 years of age. In 2006, he was convicted of several offences of indecent treatment of children, the offending said to have occurred between 1999 and 1 March 2000; and between 1 December 2004 and 25 December 2004. The earlier offending involved a 10 year old boy, and the later offending an eight year old boy. The respondent was sentenced to concurrent terms of imprisonment of varying lengths, the longest sentence being a term of four years.
- [4] However, the respondent committed earlier offences of a sexual nature, involving children, in 1976 and 1981.
- [5] The respondent's offending is predominantly against boys aged from eight to 10 years; the offending including a range of conduct<sup>2</sup>.

### **Dr Beech's report**

- [6] Dr Beech provided a report dated 25 August 2014 for this hearing. He described the respondent as "a recidivist child sex offender with a Paedophile attraction to young males, although he has been able to form and maintain adult relationships"<sup>3</sup>.
- [7] Dr Beech assessed the respondent's risk of re-offending by reference to actuarial and dynamic scales, which indicated that he is in the group at high risk of re-offending. The risk was attributable both to his paraphilia and anti-social traits, together with substance abuse, and the respondent's willingness to act opportunistically and to use

---

<sup>1</sup> See s 30(3) of the DPSOA.

<sup>2</sup> See the report of Dr Moyle dated 31 August 2014, p 3.

<sup>3</sup> Dr Beech's report p 9.

coercion<sup>4</sup>. Dr Beech noted the respondent's lack of community support<sup>5</sup>. He noted that the respondent had not engaged in treatment; and considered that there was little real understanding of the respondent's internal risk factors and needs except indications of paedophile attraction and markedly distorted views about child sexuality<sup>6</sup>.

- [8] Dr Beech considered that the respondent's risk of further offending remains high. He did not think that a supervision order would adequately reduce the risk<sup>7</sup>.
- [9] It appears that the respondent participated in 2009 in the Getting Started Preparatory Program. Dr Beech records the respondent's unwillingness to engage in any group program aimed at assisting him in avoiding further offending. The respondent has indicated some willingness to participate in an individual program of this kind; or a group program if he could undertake it in the general community<sup>8</sup>.

### **Dr Moyle's report**

- [10] Dr Moyle's report is dated 31 August 2014. His diagnosis of the respondent was a diagnosis of Homosexual Paedophilia, non-exclusive, Substance Abuse largely in remission in jail, and a Personality Disorder with prominent impulsivity, risk taking, dependency, and aloofness and detachment<sup>9</sup>. He considered that the risk that the respondent would commit another serious sexual offence, if released from custody, was moderately high even if he was subject to a supervision order<sup>10</sup>.
- [11] If the respondent were to be released from custody subject to a supervision order, its requirements should include participation in a sex offenders' program. Dr Moyle considers that that in itself would not be effective without the respondent's commitment to learn from the program<sup>11</sup>, something which Dr Moyle's report suggests is unlikely. A requirement would also be that the respondent abstain from alcohol and drugs, again something that seems to be unlikely on the basis of Dr Moyle's report. The respondent does not have any support network outside prison.

### **Review**

- [12] The respondent represented himself at the hearing. He made no submissions against the continuation of his detention order; nor did he identify anything which might favour his release.
- [13] The respondent's criminal history, involving further offending after previous convictions, and including previous sentences of imprisonment, is itself suggestive of a risk that he would commit further sexual offences against children, although I note the evidence of Dr Moyle that the re-offence rate for sexual offending is relatively low<sup>12</sup>. Further evidence of that risk is to be found in Dr Beech's opinion that the respondent has a paedophile attraction to young males; his assessment that

---

<sup>4</sup> Dr Beech's report p 9.

<sup>5</sup> Dr Beech's report p 9.

<sup>6</sup> Dr Beech's report p 10.

<sup>7</sup> Dr Beech's report p 10.

<sup>8</sup> Dr Beech's report pp 5-6.

<sup>9</sup> Dr Moyle's report p 34.

<sup>10</sup> Dr Moyle's report pp 7, 37.

<sup>11</sup> Dr Moyle's report p 7.

<sup>12</sup> Dr Moyle's report p 9.

the respondent has anti-social traits; and his observation that the respondent has been willing to offend opportunistically. Further evidence is to be found in the absence of community support if the respondent were released into the community. I also note the diagnosis of Dr Moyle.

- [14] The fact that the respondent has not undertaken a sexual offenders treatment program is of significance. It raises a real question about whether he has any firm commitment to avoid further offending. However, it might be explained by the respondent's concerns about difficulties he would experience from undertaking such a program, together with the fact that he appears to prefer life in prison to life in the community generally. Successful completion of a treatment program might reduce the significance of the diagnoses of Dr Beech and Dr Moyle, mentioned earlier; but that is not available to the respondent. Nothing has been identified to suggest that their conclusions should not be accepted.
- [15] On the basis of their evidence, I find that there is at least a moderately high risk that if the respondent were released from custody, he would commit a sexual offence against a child.
- [16] I am conscious that, in coming to a decision under s 30 of the DPSOA, I am required to consider whether the evidence is acceptable and cogent; and whether I am satisfied to a high degree of probability that it is of sufficient weight to determine positively the question raised by the section. Nevertheless, I am satisfied that I should affirm the decision that the respondent is a serious danger to the community in the absence of an order under Division 3 of the DPSOA.
- [17] I then turn to consider whether the respondent should be released from custody subject to a supervision order. I am conscious that the paramount consideration is the need to ensure adequate protection of the community.
- [18] On Dr Moyle's evidence, the level of risk that the respondent would commit another serious sexual offence is moderately high, whether or not the respondent were subject to a supervision order. Dr Beech does not consider that a supervision order would adequately reduce the risk that the respondent would further offend, which risk he considers to remain high.
- [19] I accept the evidence of Dr Moyle and Dr Beech on this question. Their conclusions were not challenged, and there is no evidence to the contrary. The fact that the respondent has offended opportunistically in the past is a matter of considerable concern. Dr Beech also draws attention to the fact that in the past the respondent has breached bail, and offended while on bail<sup>13</sup>. The absence of community support and a relapse prevention plan are also of concern. Although I am conscious of the respondent's age, that does not yet seem to be a factor of such significance as to overcome the concerns about the prospect that the respondent would commit a sexual offence against children, if released subject to a supervision order.
- [20] The diagnoses of Dr Beech and Dr Moyle, and their evidence as to his risk of re-offending even if released subject to a supervision order, lead me to conclude that I should order that he should continue to be subject to the continuing detention order.

---

<sup>13</sup> Dr Beech's report p 10.

**Conclusion**

- [21] I propose to order that the respondent continue to be subject to the continuing detention order made on 13 August 2009.