SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Roles* [2015] QSC 198
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **JAMES RICHARD ROLES** (respondent)
FILE NO/S:	No 1552 of 2015
DIVISION:	Trial
PROCEEDING:	Application for adjournment
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	13 July 2015
DELIVERED AT:	Brisbane
HEARING DATE:	13 July 2015
JUDGE:	Burns J
ORDER:	**The application for an adjournment is refused**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where an application under Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 has been filed – where there is a joint application for adjournment of the final hearing of the application pursuant to s 9A of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 – where the respondent has been recently charged with making child exploitation material in the form of written material whilst in custody in contravention of s 228B(1) of the *Criminal Code* 1899 (Qld) – where the fixed release date for the prisoner is imminent – where the adjournment is sought to a date three months after the release date – where the respondent is desirous of having the criminal charge heard and determined before the final hearing of the application – where the respondent wishes to pursue treatment options before the final hearing of the application – where both parties submit that it is appropriate that the respondent be detained in custody until the final hearing of the application pursuant to s 9A(2) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 – where the applicant is otherwise ready to proceed with the final hearing notwithstanding the new charge and application for

adjournment – where the authorship of the written material is not in issue – where the psychiatric evidence already takes into account the conduct that is alleged to be the subject of the criminal charge – whether the court should exercise its discretion under s 9A(1) to adjourn the final hearing of the application – whether it is in the interests of justice to adjourn the application

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 9A

Attorney-General (Qld) v Evans [2008] QSC 309, followed

COUNSEL: B H Mumford for the applicant
K T Bryson for the respondent

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

HIS HONOUR: On 13 February 2015, the Honourable Attorney-General filed an application under Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003. By that application, the Attorney-General seeks an order pursuant to s 13(5)(a) that the respondent, Mr Roles, be detained indefinitely for control, care or treatment. In the alternative, an order is sought pursuant to s 13(5)(b) that Mr Roles be released subject to a supervision order.

According to the outline of argument prepared by counsel for the Attorney-General and filed on 6 July 2015, the Attorney-General contends that, on the final hearing of the application, the Court will be satisfied to a high degree of probability, and by acceptable, cogent evidence, that Mr Roles is a serious danger to the community in the absence of the making of a Division 3 order and, further, that the Court will not be satisfied that the adequate protection of the community can be reasonably and practicably managed by the making of a supervision order. Put another way, the Attorney-General will ultimately submit that a continuing detention order should be made.

The application came before Martin J on 5 March 2015 on its first return. His Honour ordered that the application be listed for final hearing on 20 July 2015 and that Mr Roles undergo examinations by two psychiatrists, Dr Grant and Dr Beech, each of

whom was then required to prepare independent reports in accordance with the requirements of s 11 of the Act. In making those orders, his Honour must be taken to have been satisfied that there were reasonable grounds for believing that Mr Roles is a serious danger to the community in the absence of a Division 3 order – see s 8 of the Act. Put another way, those orders could not have been made unless a prima facie case for Division 3 relief was first made out on the material before his Honour.

Subsequently, a considerable body of affidavit material has been filed and served in support of the application, as have the reports prepared by Dr Grant and Dr Beech following their respective examinations of Mr Roles. I note also that the filed affidavit material includes a report from Dr Sundin, a psychiatrist who was engaged by Crown Law to conduct a risk assessment and report with respect to Mr Roles.

I conducted a pre-hearing review of the application this morning. At that time, a joint application was made by counsel for Mr Roles and counsel for the Attorney-General, by which an adjournment of the final hearing was sought until 9 November 2015. I have also heard further submissions from counsel this afternoon, particularly from counsel for Mr Roles, as to the bases for this adjournment application.

In that regard, two bases have been advanced. First, the adjournment is sought to allow for criminal proceedings which have recently been taken against Mr Roles to be determined prior to any final determination of the principal application and, secondly, it was submitted that an adjournment of the final hearing will allow Mr Roles to pursue some of his treatment options, with the consequence that the course of that treatment may be taken into account by the court in deciding whether a Division 3 order should be made and, if so, what order. A draft order in terms agreed by both counsel was provided for my consideration and, among the orders there proposed, is an order pursuant to s 9A(2)(b) of the Act to the effect that Mr Roles be detained in custody until the final determination of the principal application.

Mr Roles is 28 years of age. He has a number of previous convictions for sexual offences against children. It is not necessary for present purposes to set all of them out. It is, instead, sufficient to record that, on 20 December 2007, Mr Roles pleaded guilty

in the District Court at Beenleigh to two counts of indecently dealing with a child under the age of 12 years. For these offences, Mr Roles was sentenced to an overall sentence of 15 months' imprisonment, suspended after having served three months. The operational period for the suspended portion of that sentence was ordered to be five years. He was also placed on probation for three years.

On 16 July 2012, Mr Roles returned to the District Court at Beenleigh. On that occasion, he pleaded guilty to 13 offences of indecently dealing with two boys, which offences were committed during the operational period of the partially suspended sentence imposed on 20 December 2007. He was sentenced to concurrent terms of three years' imprisonment with respect to each of these offences, and the remaining 12 months of his suspended sentence was activated and ordered to be served cumulatively on that sentence. Mr Roles is currently held at the Wolston Correctional Centre with respect to those terms of imprisonment. His full-time release date is 5 August 2015.

In support of the application for an adjournment, reliance was placed on affidavits from two custodial correctional officers, Mr Ryan and Mr Kelly, both of which were filed on 30 June 2015. According to those officers, on 7 April 2015, they conducted a search of Mr Roles' cell. During the course of that search, the officers located a writing pad hidden under the mattress of Mr Roles' bed.

The pad contained approximately 30 pages of handwriting. The content is graphic, involving as it does some sort of fictional account about a range of fantasised sexual activities with boys of different ages. The writing pad was confiscated and, subsequently, Mr Roles was questioned about its contents by an acting supervisor at the Wolston Correctional Centre in the presence of Mr Ryan. According to Mr Ryan, Mr Roles admitted to the acting supervisor that he was the author of the writing in the pad. Further, and according to the reports prepared by Dr Grant and Dr Beech, Mr Roles made the same admission to them.

On 20 April 2015, Mr Roles was charged with making child exploitation material in contravention of s 228B(1) of the *Criminal Code* 1899 (Qld). That charge is listed for

committal mention in the Magistrates Court at Richlands on 15 July 2015. It is a charge that cannot be dealt with in any final way in the Magistrates Court.

The court brief with respect to that charge is exhibited to the affidavit of Mr Murray filed by leave today. According to it, the charge is solely based on the handwriting located in Mr Roles' cell on 7 April 2015. In that regard, it is alleged that Mr Roles was interviewed by police on 20 April 2015 and that he made:

> *full admissions to writing the story, stating that it was dreams that he was having and that he believed that by writing the story down, it would help him forget about it.*

On the face of the material to which I have referred, there may be little scope for Mr Roles to defend the charge. Admissions regarding authorship appear to have been made to two custodial correctional officers and, separately, to the two court-appointed psychiatrists. Indeed, during the course of submissions made by his counsel this morning, I was given to understand that defending the charge is a course that is most unlikely. Nonetheless, if Mr Roles elects to defend the charge, that is his right, and unless and until he is convicted of that charge, he is presumed to be innocent of it.

The application for the adjournment is made pursuant to s 9A. The discretion conferred on the court by that provision must, in my opinion, be read in the context of the other provisions of the Act and, in particular, the other provisions of Division 1 of Part 2 of the Act. One of those provisions is s 8. It provides that, if the court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a Division 3 order, the court must set a date for the hearing of the application for a Division 3 order. As I have noted earlier, that occurred on 5 March 2015 when Martin J set the application down for a final hearing on 20 July 2015. Again, as I have already noted, his Honour must be taken to have been satisfied that there were reasonable grounds for believing that Mr Roles was a serious danger to the community in the absence of a Division 3 order.

It is with that background that the discretion under s 9A falls to be exercised. In other words, the court hearing an application for an adjournment under that provision will have before it an application which has already been assessed by the court as

establishing a prima facie case for Division 3 relief. Bearing that in mind, it seems to me that, in determining whether or not the discretion under s 9A(1) should be exercised to allow an adjournment, it is necessary to consider the interests of justice and, when doing so, to have regard to the objects of the Act as expressed in s 3.

The discretion conferred by s 9A(2) is quite separate. It may arise for consideration if the discretion conferred by s 9A(1) has already been exercised to grant an adjournment. In that event, the court is empowered to make an order for the prisoner's release from custody under supervision or for the prisoner's detention in custody if satisfied that the application may not be finally decided until after the prisoner's release date. In this case, the prisoner's release date is 5 August 2015. If the application is adjourned to 9 November 2015, that will, of course, mean that the application cannot be finally decided until after 5 August 2015.

It should follow from what I have set out that one consequence of exercising the discretion under s 9A(1) to adjourn the final hearing in a case such as this where the adjournment which is sought post-dates the prisoner's release day is that the court will also need to consider the prisoner's release on supervision or alternatively the detention in custody of the prisoner until the final hearing of the application.

Here, under the terms of the proposed orders, both counsel have submitted, in effect, that this is an appropriate case for Mr Roles to be detained in custody until the application under Division 3 is finally determined. If I was to make such an order, it would result in Mr Roles' detention after his release date and before any final determination of the principal application. Although that is a circumstance which is clearly contemplated by s 9A(2), I would need it to be persuasively demonstrated that such a course is appropriate before I would be prepared to make such an order.

But, before that point is reached, it is first necessary to consider whether it is in the interests of justice to adjourn the application. In that regard, I shall deal with the two bases relied on by counsel for Mr Roles in turn.

It was submitted by counsel for Mr Roles that Mr Roles was desirous of having the criminal charge dealt with before a final hearing of the principal application. In circumstances where both of the court-appointed psychiatrists have proceeded on the understanding that the handwritten material the subject of that charge was authored by Mr Roles and, further, appear to have both taken that feature of the matter into account in the formation of their opinions, the fact that criminal proceedings have been separately taken with respect to that conduct does not seem to me to add much, if anything, by way of relevant evidence for the court's consideration when deciding whether a Division 3 order should be made and, if so, what type of order should be made. In this regard, during the course of argument this afternoon, I enquired of counsel for Mr Roles whether Mr Roles' authorship of that material would be an issue in this proceeding, and I was informed that it would not be. That is hardly surprising, in circumstances where admissions have been made to the custodial correctional officers to whom I have referred as well as, it seems, the two psychiatrists.

The position would be different if Mr Roles' authorship was flagged as an issue to be determined in the criminal proceedings. Such a circumstance might supply a proper basis for an adjournment, but that circumstance does not, for the reasons I have just expressed, arise here. I am not satisfied that the first basis advanced as justifying an adjournment is at all sufficient to warrant that course.

The second basis advanced by counsel for Mr Roles is that an adjournment of the final hearing would allow Mr Roles to pursue some treatment options and that the course of treatment so obtained by him could then be considered by the court in deciding the questions that arise on the hearing of this application. An application under s 9A was grounded in a similar way in *Attorney-General (Qld) v Evans* [2008] QSC 309. There, an adjournment was sought to allow the prisoner to undertake a number of programs whilst in custody and also to undergo psychiatric evaluation to determine which of the available programs would be suitable.

Martin J refused the application for an adjournment. In the course of doing so, his Honour expressed the view that s 9A does not extend to allowing an adjournment so that a different case may be considered. His Honour pointed out that the provisions

contained in Part 2, Division 1 of the Act were concerned with the practical requirements of an application such as the filing of material. His Honour then observed (at paragraph 19):

> *An adjournment could be granted, for example, to allow an expert to consider another expert's evidence or for clarification of issues relating to, say, where an offender intends to live. Adjournments have been granted to allow for the relevant authorities to report on the suitability of the person or persons with whom an offender proposes to reside. It does not, though, allow for an adjournment so that an entirely different case can be presented. That is the effect of the adjournment sought.*

His Honour then went on (at paragraph 21) to state:

> *The Act carefully sets out a set of procedures involving the provision of reports and regular reviews designed to achieve the objects of the Act. To allow an adjournment on the basis sought would be to ignore those procedures and be inappropriate.*

I respectfully adopt his Honour's observations. The second basis advanced by counsel for Mr Roles in support of the application for an adjournment must, for the same reasoning, fail.

The application for an adjournment is refused.