

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Hobbler*  
[2015] QSC 221

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF  
QUEENSLAND**  
(Applicant)  
v  
**LESLIE GLEN HOBBLER**  
(Respondent)

FILE NO/S: BS 4044 of 2015

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 3 August 2015

DELIVERED AT: Brisbane

HEARING DATE: 27 July 2015

JUDGE: Boddice J

ORDER: **The respondent be detained in custody for an indefinite term for care, control 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 applicant seeks orders that the respondent be detained indefinitely for control, care or treatment, or alternatively, that the respondent be released subject to a supervision order – where it is accepted that the respondent represents a serious danger to the community in the absence of a supervision order – whether the respondent represents such an unacceptable risk of further sexual offending that a supervision order would not be adequate protection to the community

*Dangerous Prisoners Sexual Offenders Act 2003*  
*Attorney-General v Francis* (2007) 1 Qd R 396

COUNSEL: BHP Mumford for the applicant  
RW O'Regan for the respondent

SOLICITORS: Crown Law for the applicant

## Legal Aid Queensland for the respondent

- [1] The Attorney-General for the State of Queensland makes application, pursuant to Division 3 of the *Dangerous Prisoners Sexual Offenders Act 2003* (“the Act”) for orders that the respondent be detained indefinitely for control, care or treatment or, alternatively, that the respondent be released subject to a supervision order.
- [2] It is conceded by the respondent that the Court would be satisfied, to the requisite standard, that he represents a serious danger to the community in the absence of an order pursuant to Division 3 of the Act. At issue is whether the respondent represents such an unacceptable risk of further sexual offending that a supervision order would not be adequate protection to the community such that this Court ought to order the respondent be detained indefinitely for care, control or treatment.

### **Background**

- [3] The respondent was born on 21 March 1974. He is now 41 years of age. He has a significant past criminal history for a variety of offences. He has also breached Court orders on numerous occasions in the past. Those breaches include breaches of community service orders, fine option orders, bail orders, a domestic violence order and a suspended sentence.
- [4] Relevantly, the respondent has a previous conviction for a sex offence against a child. On 14 September 1992, the respondent was sentenced to eight years imprisonment for one count of rape of a 10 year old girl. The respondent was 18 years of age at the time of the offence. He had seen the complainant walking along a bush track. The respondent followed her and forcibly effected penile penetration of her vagina.

### **Index offence**

- [5] On 12 January 2012, the respondent pleaded guilty to one count of rape of a 6 year old girl. The respondent was 37 years of age at the time of that offence, which occurred in a shed in the backyard of the complainant’s residence. The offence involved the digital penetration of the complainant’s vagina. The respondent was sentenced to four years

imprisonment. He was eligible for parole after serving 16 months. His fulltime release date is 14 August 2015.

### **Psychiatric reports**

- [6] The respondent has been psychologically assessed by Dr Moyle, Dr Aboud and Dr Hardin. The respondent has also been subject to a neuropsychological assessment by Dr Russell. That latter assessment revealed significant cognitive and intellectual deficits.
- [7] Dr Moyle interviewed the respondent on 7 April 2014. He noted the respondent had an organic brain syndrome with possible borderline intellect to low average intellect. The organic brain syndrome was probably due to alcohol induced dementia.
- [8] Dr Moyle opined that the respondent suffered from paedophilia in the context of a possible antisocial personality disorder and past polysubstance abuse and dependence. His intellectual and other difficulties resulted in behavioural issues whilst in custody, including a history of failing to behave co-operatively, although Dr Moyle noted the respondent was co-operative in his interview.
- [9] Dr Moyle opined that the respondent posed a moderately high risk of re-offending sexually against pre-pubertal girls especially if bored, intoxicated and under-employed. Dr Moyle further opined that if the respondent was not able to engage in appropriate programs to address his behaviour he would require close monitoring and supervision to lower the risk of future sexual offending against minors.
- [10] Dr Moyle recommended the respondent be further evaluated in relation to his cognitive skills and abilities. As a consequence, a neuropsychological evaluation was undertaken by Dr Russell. Dr Moyle, in a further reported dated 27 July 2015 considered that neuropsychological assessment. In his opinion, that evaluation showed the respondent was suffering from a brain injury which caused difficulty learning and controlling his behaviour. The respondent required the opportunity to address the consequences of his behaviour, particularly impulsive behaviour. Dr Moyle recommended consideration

also be given to whether the respondent would accept pharmacological assistance to lower his libido.

- [11] Dr Aboud interviewed the respondent on 8 May 2015. Dr Aboud opined that the respondent's overall risk, both of sexual violence and general non-sexual violence was currently between moderate and high. Having regard to very worrying aspects of his offending behaviour, Dr Aboud opined that consideration should be given to engaging the respondent in a sexual offender treatment program prior to his release into the community.
- [12] Dr Aboud made that recommendation in circumstances where the respondent had, in the course of his interview, revealed there was "an animal" inside him. Dr Aboud considered this revelation of considerable significance. In his opinion, it required addressing by way of a specific treatment geared program in the context of a sexual offender treatment program as well as anger management and therapy. There would also be important considerations by way of future management if and when the respondent was released back into the community. Attention would need to be paid to the respondent's intellectual and cognitive limitations in the context of ongoing therapy management, including monitoring and supervision.
- [13] Dr Hardin interviewed the respondent on 11 June 2015. He noted the respondent was reluctant to talk in any detail about his sexual offending and became agitated and distressed when those subjects were raised in the interview. Dr Hardin also noted the respondent had not undertaken any courses or intervention for sexual offending in recent times.
- [14] Dr Hardin opined that the respondent most likely met the diagnostic criteria for paedophilia, although there were signs his sexual offending may have been intoxication based and opportunistic in the context of an antisocial personality disorder and longstanding alcohol abuse. Dr Hardin further opined that the respondent's ongoing unmodified risk of sexual re-offence in the community was in the high range with the greatest risk factors being his interest in pre-pubertal females, his chronic alcohol intoxication, his impulsiveness, his antisocial problem solving style, his cognitive difficulties and his lack of pro-social connection in the community.

- [15] Like Dr Aboud, Dr Hardin opined that it was preferable the respondent undertake an appropriate sexual offending treatment program with the relevant cultural cognitive supports as well as an appropriate substance abuse program before the respondent was released into the community. Dr Hardin also recommended the respondent undergo an MRI scan and appropriate neurological testing. If released into the community, Dr Hardin opined the respondent would require ongoing psychological therapy with conditions that he have no unsupervised contact with girls under 16 and completely abstain from alcohol and substance abuse permanently.

### **Evidence**

- [16] Dr Moyle, Dr Aboud and Dr Hardin gave evidence at the hearing. Each maintained the opinions expressed in their reports.
- [17] Dr Moyle agreed it would be preferable that the respondent address his risk factors in custody better than had occurred to date before he was placed in the community. Dr Moyle accepted alcohol and substance abuse was a contributing factor to his offending in the past, and that there were concerns in relation to his current intellectual functioning. Dr Moyle further accepted the respondent's refusal to undertake a sex offender program may well be due to his embarrassment. However, Dr Moyle considered there was a significant risk in relation to non-compliance with any supervision order as the respondent did not have the intellect to understand conditions, let alone adhere to them.
- [18] Dr Moyle opined that the respondent's intellectual difficulties could pose problems in terms of participation in a sexual offenders treatment program but considered a carefully conducted program could properly accommodate those difficulties. Dr Moyle noted a risk factor in relation to such a program was that the respondent may find taking part in the program too stressful, and his acquired brain injury may increase the risk of a catastrophic reaction whereby he might find it too hard, over-react and "go wild".<sup>1</sup>
- [19] Dr Aboud reaffirmed that the appellant's admission there was an animal inside him was a revelation of considerable significant. In Dr Aboud's opinion, it required further

---

<sup>1</sup> AB1-7/23.

development in a therapeutic relationship. Whilst the respondent had intellectual deficits, Dr Aboud's assessment at interview was that the respondent functioned on a day-to-day basis at a higher level than was suggested by the neurological testing results. The sexual offenders treatment program could be adapted to accommodate those individual needs, including any cultural concerns.

- [20] Dr Aboud conceded the respondent's cognitive and intellectual difficulties would lessen the respondent's ability to problem solve and would leave him with negative emotions which he might seek to address through substance and alcohol abuse or other inappropriate behaviour. These risks further increased his risk of sexual re-offending in the future. In his opinion, the conditions in the proposed draft supervision order were appropriate but for the adequate protection of the public it would be better in the first instance if the respondent successfully engaged and completed the adapted sex offenders treatment program in custody.
- [21] Dr Hardin also opined that the respondent's intellectual deficits would not prevent him from completing the sexual offenders treatment program. Dr Hardin noted intellectual deficits and cultural factors were not an uncommon difficulty. Programs could be modified to provide additional support to overcome those difficulties. Dr Hardin accepted the intellectual deficits would impact on the respondent's ability to comply with a supervision order, including making it difficult for the respondent to avoid substance use whilst on a supervision order.
- [22] Dr Hardin maintained his opinion that prior to any release in the community it would be preferable for the respondent to undertake an appropriate sexual offending treatment program in custody. This was particularly as there was a real risk the respondent, if released currently on a supervision order, would breach that order relatively rapidly and be the subject of re-incarceration. Dr Hardin accepted a significant step in the respondent's risk reduction would be to abstain from the use of alcohol and intoxicating substances.
- [23] Dr Hardin opined that if the respondent had successfully undertaken the sex offender treatment program whilst in custody, that may alter his opinion about his release into the community. That would show his preparedness to participate in such a program, and

likely reveal a lot more about the nature of the respondent's sexual offending. Dr Hardin noted that the respondent had moments of insight into his behaviour but that it was a long process to help people to move from a position of understanding their behaviour to developing a plan to reintegrate into the community without an inappropriate risk of re-offending.

- [24] Significantly, Dr Hardin opined that one of the risk factors in exploring the revelation about the “animal” inside the respondent within a community environment is that that process is highly emotive, and there was a risk a person such as the respondent, who had very poor coping skills and a long history of criminal behaviour in the context of a major substance abuse problem, would find it too distressful and “do something unhelpful” in the community.<sup>2</sup> It was better for that work to be undertaken in a secure environment.

### **Submissions**

- [25] The applicant submits this Court would be satisfied the respondent represents a serious danger to the community having regard to the risk of serious sexual offending in the future. Further, in the context of a respondent with poor coping skills, a lengthy history of antisocial behaviour, a past history of breaching court orders and opportunistic sexual behaviour, the Court would be satisfied the respondent represented an unacceptable risk of serious sexual offending in the future even with the imposition of a supervision order.
- [26] As it is likely the respondent would not comply with the conditions of a supervision order, and there was a need for him to undertake a sexual offenders treatment program successfully prior to any release into the community, the applicant submits the Court would find a supervision order would not ensure the adequate protection of the community. The appropriate order is for the respondent's continued detention.
- [27] The respondent submits that whilst the Court would be satisfied, to the requisite standard, that the respondent is a serious danger to the community in the absence of a Division 3 order, the adequate protection of the community would be met by the imposition of a supervision order. The respondent has completed a number of courses

---

<sup>2</sup> AB1-17/30.

to date and is willing to abide with strict conditions in relation to any release into the community.

### **Applicable principles**

- [28] Section 13(2) of the Act provides that a prisoner is a serious danger to the community if there is an unacceptable risk that that prisoner will commit a serious sexual offence if released from custody, or if released from custody without a supervision order.
- [29] In determining whether the prisoner represents an unacceptable risk the Court is to have regard to the factors set out in s 13(4) of the Act:

“(4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following—

- (aa) any report produced under section 8A;
- (a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;
- (b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;
- (c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;
- (d) whether or not there is any pattern of offending behaviour on the part of the prisoner;
- (e) efforts by the prisoner to address the cause or causes of the prisoner’s offending behaviour, including whether the prisoner participated in rehabilitation programs;
- (f) whether or not the prisoner’s participation in rehabilitation programs has had a positive effect on the prisoner;
- (g) the prisoner’s antecedents and criminal history;
- (h) the risk that the prisoner will commit another serious sexual offence if released into the community;
- (i) the need to protect members of the community from that risk;
- (j) any other relevant matter.”

- [30] The applicant has the onus of establishing the respondent is a serious danger to the community. That onus can only be discharged by cogent evidence sufficient to establish to a high probability that the respondent represents a serious danger to the community if released from custody, or if released from custody without a supervision order.
- [31] In considering the sufficiency of the evidence, the observations in *Attorney-General v Francis*<sup>3</sup> are relevant:

“The Act does not contemplate that arrangements to prevent such a risk must be ‘watertight’; otherwise orders under s 13(5)(b) would never be made. The question is whether the protection of the community is adequately ensured. The supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principle, be preferred to a continuing detention order on the basis that the intrusions of the Act upon the liberty of the subject are exceptional, and the liberty of the subject should be constrained to no greater extent than is warranted by the Statute which authorised such constraint.”

### **Discussion**

- [32] Whilst the respondent’s past sexual offending occurred in the context of significant alcohol and substance abuse, that offending was opportunistic, violent and specifically related to pre-pubertal females. The assessments undertaken by Dr Moyle, Dr Aboud and Dr Hardin establish that notwithstanding attempts to address his offending behaviour the respondent continues to present a moderate to high risk of serious sexual offending in the future. That risk occurs in the context of intellectual deficits and significant personality and behavioural issues which impact on the respondent’s ability to comply with monitoring and supervision.
- [33] I found the evidence of Dr Aboud and Dr Hardin as to the importance of undergoing further programs before any release highly persuasive. Each opined it would be preferable the respondent successfully undertake a sexual offenders treatment program in custody prior to any release into the community. This was particularly so having regard to the revelation about the “animal” inside him, and the risks associated with

---

<sup>3</sup> (2007) 1 Qd R 396 at [39].

exploring that revelation in counselling or therapy whilst in the community. I accept the opinions expressed by Dr Aboud and Dr Hardin.

[34] Having regard to those opinion, the results of the neuropsychological testing, the risk arising from the respondent's propensity to commit serious sexual offending in the future, particularly in the context of his past opportunistic behaviour and his past substance or alcohol abuse, the consistent nature of the offending past sexual behaviour, the respondent's past refusal to undertake a sexual offenders treatment program, I am satisfied the respondent represents a substantial risk he will commit another serious sexual offence if released into the community. There is a need to protect members of the community from that risk in the future.

[35] Whilst the respondent has indicated a willingness to abide by many restrictive conditions of a supervision order, the evidence satisfies me that the respondent represents an unacceptable risk of serious sexual offending in the future should he be released into the community. The proposed conditions do not render that risk acceptable. It is essential the respondent's future risk factors be properly explored through appropriate programs, including a sexual offenders treatment program and therapy in a secure environment, before he is released into the community, even on a strict supervision order.

### **Conclusion**

[36] The applicant has established, to the requisite standard, that the respondent is a serious danger to the community, in the absence of a Division 3 order. The applicant has further established that the terms of a supervision order would not adequately protect the community from the serious risk of sexual offending posed by the respondent should he be released into the community. The applicant has established, to the requisite standard, that the respondent should be subject to a continuing detention order.

### **Order**

[37] I order the respondent be detained in custody for an indefinite term for care, control or treatment.