

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Solomon*
[2015] QSC 209

PARTIES: **ATTORNEY-GENERAL FOR STATE OF QUEENSLAND**
(Applicant)
v
DARRELL JOHN SOLOMON
(Respondent)

FILE NO/S: BS 5943 of 2015

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 5 August 2015

DELIVERED AT: Brisbane

HEARING DATE: 3 August 2015

JUDGE: Boddice J

ORDER: **Application dismissed.**

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 by the applicant that if the Court is satisfied that that the respondent is a serious danger to the community in the absence of a Division 3 order, adequate protection of the community can be reasonably and practically managed by a supervision order – whether the respondent is a serious danger to the community in the absence of such an order

Dangerous Prisoners (Sexual Offenders) Act 2003, Division 3

COUNSEL: B H Mumford for the Applicant
J J Allen QC for the Respondent

SOLICITORS: Crown Law for the Applicant
Legal Aid Queensland for the Respondent

- [1] **BODDICE J:** The Attorney-General for the State of Queensland makes application for orders under Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* (“the Act”) in respect of the respondent Darrell John Solomon. At issue is whether the respondent is a serious danger to the community in the absence of such an order. If the Court is so satisfied, it is accepted by the Attorney General that the Court would conclude that adequate protection of the community can be reasonably and practically managed by a supervision order.

Background

- [2] The respondent was born on 4 August 1943. He is now 72 years of age. He has four adult children and eight grandchildren. He reports a close and loving relationship with his children and grandchildren.
- [3] The respondent had an apparently happy and unremarkable upbringing in a loving family environment. He reports no concerns regarding drugs or alcohol abuse or violence. He served in the Armed Forces for two decades. He otherwise had a consistent employment history. He has been an active member of community based organisations and has in the past been a volunteer member of the bush fire brigade. The respondent has a past criminal history including weapons and drug offences. In respect of each of those offences the respondent was fined but it was ordered that there be no recording of a conviction. The respondent also has been convicted for a breach of a domestic violence order in the past. He was fined for that offence.

Index offence

- [4] In March 2007, the respondent was convicted on his own pleas of guilty of a number of sex offences committed on different occasions and in respect of female complainants.
- [5] The first complainant was a 39 year old female. The respondent pleaded guilty to two counts of rape in respect of that complainant. Those offences involved an occasion when the female complainant, who was known to the respondent as a family friend, was drinking with the respondent. She had little recall of the night but awoke the following morning in the respondent’s bed. As a consequence of a complaint, a search was undertaken of the respondent’s computer which revealed six digital images depicting the female complainant in various stages of undress. One picture recorded the respondent as digitally penetrating the complainant. Another picture recorded the respondent as using a can or cylinder to penetrate the respondent. Another photograph depicted the complainant, whilst unconscious being ejaculated upon by the respondent.
- [6] The second complainant was a female who was aged between 11 and 12 at the time the respondent committed five offences of rape, one offence of recording an indecent image of a child under 16, one offence of wilfully exposing a child under 16 to an indecent video tape, one offence of making child exploitation material, one offence of attempted rape, one offence of wilfully exposing a child under 16 to an indecent film, one offence of attempting to procure a child under 16 to commit an indecent act and one offence of exposing a child under 16 to an indecent act.

- [7] Each of the acts of rape involved digital penetration. Again, evidence of the respondent's offending was supported by digital images located on his computer. In total there were 12 images of the child complainant. These depicted the child complainant in various stages of undress and in various poses. The count of attempted rape involved an attempt at penile penetration of the child.
- [8] At sentence, the Crown contended that the respondent had taken advantage of his friendship with the adult female complainant and had violated her in a degrading manner for his own sexual gratification whilst she was unconscious.
- [9] The Crown submitted that in respect of the child complainant, the respondent had corrupted and sexualised her with an escalation in his sexual offending which also included degrading the child by recording images of his offending behaviour.
- [10] The respondent was sentenced to seven years imprisonment for the two offences of rape in respect of the adult female complainant and an effective head sentence of nine years imprisonment in respect of the child complainant. All of the sentences of imprisonment were ordered to be served concurrently. Allowing for 227 days of pre-sentence custody, it was ordered that the respondent be eligible for parole on 3 August 2009. The respondent was subsequently released on parole. His fulltime release date is 5 August 2015.

Psychiatric evidence

- [11] The respondent was interviewed by Professor Barry Nurcombe on 26 February 2015. Significantly, the respondent at that interview disputed his guilt in respect of all of the offences. He asserted he was innocent and claimed the complainants were motivated either by revenge or embarrassment. The respondent was unwilling to discuss the offending in any detail with Professor Nurcombe.
- [12] Professor Nurcombe noted that the respondent's approach to the interview rendered it difficult to make an informative diagnosis. Professor Nurcombe also noted that there were oppositional and defiant features to the respondent's personality. There was a possibility the respondent harboured a paraphilia involving scopophilia and an interest in underage females, but there was insufficient information to make a diagnosis.
- [13] Professor Nurcombe undertook a number of risk assessments in order to assess the respondent's risk of re-offending sexually. A consideration of the results of those assessments led Professor Nurcombe to opine that the respondent's overall risk of sexual re-offending was low and most likely to relate to adult female complainants in a context of sexual tension and stress. Professor Nurcombe did not consider the risk of re-offending was imminent and there was little chance it would escalate to a serious or life-threatening level, although it could result in serious psychological harm to a victim. Whilst Professor Nurcombe accepted that correctional supervision and support of psychotherapy would be the best means of preventing and monitoring the risk of future sexual offending, he questioned whether the respondent's risk of sexual re-offending reached a level sufficiently high to justify the application of the Act.

- [14] Dr Josephine Sundin interviewed the respondent on 29 June 2015. Again, the respondent asserted he was innocent of all of the offences. He claimed he had pleaded guilty to finalise the matter in the context of an inability to sustain the financial cost and noting the damaging effect the ordeal was having on his family.
- [15] Dr Sundin observed that the respondent presented as an emotionally avoidant and narcissistic man with fantasies of wanting to be a hero. There were strong themes of indignation and that he was the victim.
- [16] In Dr Sundin's assessment, there was insufficient evidence to make a diagnosis of a personality disorder, notwithstanding the personality traits referred to and the respondent did not meet the criteria for psychopathy. He also did not meet a diagnosis of any specific paraphilia. However, his history suggested that there should be serious questions as to his attitude to women.
- [17] Dr Sundin also undertook various risk assessments. Again, Dr Sundin assessed the respondent's overall risk of re-offending as low. The respondent's increasing age substantially diminished that risk and the respondent's refusal to participate in a sex offender treatment program did not raise his auctorial risk for re-offending. Like Professor Nurcombe, Dr Sundin queried whether the respondent's risk of sexual re-offending in the future represented such an unacceptable risk to the community as to warrant an order under the Act.
- [18] Dr Rober Moyle interviewed the respondent on 3 and 6 July 2015. The respondent continued to maintain his innocence of the offences. Use of risk assessment tools revealed the respondent's risk of sexual re-offending in the future as low to moderate.
- [19] In Dr Moyle's opinion the respondent was less likely than the average sex offender to re-offend sexually in the near future. However, if he did sexually re-offend it was likely to be against either female children approaching puberty or vulnerable adult women. Any offending is likely to be in the context of initially befriending those victims and after a long time developing a friendship with those victims.

Evidence

- [20] Each of the reporting psychiatrists gave evidence at the hearing. Each maintained that the risk of sexual re-offending in the future was low. Professor Nurcombe opined that the respondent was not a highly dangerous man and the fact that he denied the offences and was unwilling to talk about his offending did not bear upon the risk of re-offending at all.
- [21] Dr Sundin opined that the respondent's presentation was unusual in that he had no proceeding of sexual offences prior to the index offences, had a very solid work history and there was nothing in his childhood or adolescent history to explain his sexual offending. These were atypical elements and in themselves placed the respondent's risk of sexual re-offending in the low category.

- [22] Dr Sundin further noted that there were a number of protective factors present in the respondent's history which would render it sufficient for him to be managed in the ordinary way which meant that the respondent did not rise to the level of seriousness and unacceptable danger to the community such as to support a recommendation that he be subject to a supervision order under the Act. Those protective factors included the fact that he was in a stable relationship, the fact that he had spent more than two years on parole without any re-offending in a sexual way and the fact that he maintained good supportive relationships with his extended family who were aware of his past offending.
- [23] Dr Sundin further opined that although the offending against the child complainant involved offensive and appalling conduct, it did not raise the respondent to a level justifying the imposition of a supervision order under the Act. Further, the fact that it occurred when the respondent was of advanced years did not increase his risk of sexual re-offending as there was no evidence of a significant dementing process or a comorbid substance abuse problem. Dr Sundin considered the fact that the respondent's adult children, his adult siblings and his partner were now aware of what had happened created a protective environment into the future.
- [24] Dr Moyle opined that whilst his assessment of the respondent was that his risk of sexual re-offending in the future was low to moderate, it could now be said that that risk was lower given that the respondent had now been in the community for over two years on parole without any suggestion of re-offending sexually. There are also a number of protective factors in his favour.

Legislative scheme

- [25] The Act provides a scheme for the continued detention or supervision of offenders who have been convicted of serious sexual offending. If the Court is satisfied that that offender represents a serious danger to the community in respect of sexual re-offending in the future in the absence of an order for that offender's continued detention or ongoing supervision.
- [26] The jurisdictional requirement for the making of any such order is that the Attorney General establish that the respondent is a serious danger to the community in the absence of a Division 3 order. That satisfaction must be to a high degree of probability. It is only met by acceptable cogent evidence.
- [27] Section 13(4) of the Act lists the matters the Court must consider in deciding whether a respondent is a "serious danger to the community". Those factors are wide ranging and include not only the opinions expressed by the reporting psychiatrists and other relevant psychiatric or psychological assessments but also the pattern of offending behaviour, the respondent's past criminal history, his antecedence, his response to programs by way of rehabilitation and the risk that he will commit another serious sexual offence if released into the community and the need to protect members of the community from that risk.

Discussion

- [28] Whilst the respondent is now of significant advanced years, his sexual offending occurred when he was more than 60 years of age and in the context of no prior sexual offending whatsoever. It also occurred against the background of a good solid work history including extended service in the Armed Services and a significant past history of volunteering for community based organisations.
- [29] The sexual offending was also of a concerning and degrading nature against female complainants. The first complainant was an adult. The second complainant was a young child. The degrading nature was significant in respect of both complainants involving filming of the complainant and some of the sexual offending by the respondent.
- [30] Each of those factors are of significant concern. They suggest that notwithstanding the respondent's advanced years, he still represents a potential risk of sexual offending against female complainants of whatever age. His continued denial of responsibility for that offending in circumstances where there was objective evidence to support the offending and he pleaded guilty to those offences is also a concerning feature in relation to the respondent's efforts to address his offending behaviour in the future.
- [31] Those concerning features must, however, be considered in the context of the psychiatric assessments undertaken independently by three experienced psychiatrists. Each of those assessments resulted in an opinion being expressed that the respondent's risk of sexual offending in the future is low or at most low to moderate. Those assessments specifically had regard to the concerning features referred to above. Notwithstanding those features, each of the reporting psychiatrists opined that the respondent's risk of future sexual re-offending was not increased by those matters and that there were now a number of protective features in the respondent's life which meant that his risk of sexual re-offending in the future could not be said to be unacceptable. Indeed, both Professor Nurcombe and Dr Sundin opined that the respondent's risk of sexual re-offending in the future did not fall within the category which would support the conclusion that he warranted continued supervision under Division 3 of the Act.
- [32] I found Dr Sundin's evidence, in particular, in respect of the respondent's risk of sexual re-offending in the future highly persuasive. It was apparent that Dr Sundin had carefully considered the unusual features in the respondent's presentation, his personality traits and his denial of the offences in the context of the outcome of the risk assessments undertaken by her in her interview with the respondent. Further, Dr Sundin had carefully considered the protective features that now exist in the respondent's life, particularly in the context of a loving and supportive family who are well aware of the respondent's past sexual offending behaviour.
- [33] Having considered each of the factors set out in s 13(4) of the Act and, in particular, the considered opinions expressed by the reporting psychiatrists, I am not satisfied to the requisite standard that the respondent represents a serious danger to the community in the absence of a Division 3 order. The evidence led by the Attorney General to suggest that the respondent represents a serious danger to the community in the absence of a

supervision order is neither cogent nor compelling and is insufficient to meet the high standard of proof required under the Act.

Orders

[34] The application is dismissed.