

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Qld v Dicoski* [2015] QSC 275

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
ADRIAN MALCOLM DICINOSKI
(respondent)

FILE NO/S: SC 5465 of 2015

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court Brisbane

DELIVERED ON: 25 September 2015

DELIVERED AT: Brisbane

HEARING DATE: 25 September 2015

JUDGE: Ann Lyons J

ORDER: **Pursuant to s 13(5)(b) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, the respondent be subject to a supervision order in terms of the order in the attached Schedule for a period of 10 years.**

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 a Division 3 order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* that the respondent be detained indefinitely for control, care or treatment, or alternatively, that the respondent be released subject to a supervision order – whether the respondent should be subject to a Division 3 order
Dangerous Prisoners (Sexual Offenders) Act 2003, s 3, s 13, s 15, s 27, Schedule
Attorney-General v Van Dessel [2006] QSC 16, considered

COUNSEL: M Maloney for the applicant
S Ryan QC for the respondent

SOLICITORS: G R Cooper Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

ANN LYONS J:

- [1] The applicant, Attorney-General for the State of Queensland, seeks a Division 3 order pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the Act) for the respondent's, Adrian Malcolm Dicoski, continued detention or release subject to a supervision order under the Act.

Background

- [2] Mr Dicoski was born on 14 September 1971 in Longreach and is currently 43 years of age. He is currently serving a term of 12 years imprisonment for offences of rape, attempted rape and committing a malicious act with intent. Mr Dicoski's full time discharge date is 30 September 2015. His criminal history includes non-sexual and sexual offences and the relevant criminal history in relation to the prior sexual offending is as follows:

| Date | Description of Offence | Sentence |
|---|---|--|
| Longreach District Court 13/09/1995 | <ul style="list-style-type: none"> ▪ Rape | Imprisonment 8 years |
| Rockhampton District Court 9/11/2004 | <ul style="list-style-type: none"> ▪ Attempted Rape ▪ Rape ▪ Malicious Act with Intent | <p>Imprisonment 3 years</p> <p>Imprisonment 5 years (concurrent with the attempted rape sentence)</p> <p>Imprisonment 7 years (cumulative with the other sentences)</p> |

- [3] In relation to the rape in 1995 for which he was sentenced to eight years imprisonment reduced on appeal to seven years, the respondent grabbed a woman walking home from a hotel in the early hours of the morning. He then pinned the victim's arms to her chest and made a number of threats to the victim who attempted to fight back by biting the respondent's hand. The respondent then forcibly raped the victim who suffered abrasions to her face, neck and back area.

- [4] In relation to the offences for which he was sentenced in 2004, they related to one count of rape, one count of attempted rape and one count of malicious act with intent. He was sentenced to three years imprisonment for the attempted rape, five years imprisonment for the rape to be served concurrently with the attempted rape and seven years imprisonment for the malicious act with intent which was to be served cumulatively with the sentences imposed on the first two counts. Both the rape and attempted rape were committed against his fiancée. The attempted rape involved the forcible attempt to rape her anally and his subsequent rape of the victim vaginally. At the end of the episode, he indicated that his fiancée could call the police. His fiancée telephoned her mother who attended the residence and confronted the respondent who confirmed the rape and police were called.
- [5] The respondent was arrested and granted bail but, whilst on bail, he committed a serious offence of violence against a stranger. The victim had been at a hotel in Yeppoon and announced she was leaving. The respondent asked to accompany her home. He then accompanied her to the home of a friend and, as she was knocking on the door, the victim was grabbed around the front of her stomach by the respondent who had his arm over her right shoulder. She then felt something sharp on her throat and was told not to scream. She then felt her throat being cut from the centre outwards and slightly towards underneath her ear. She required 18 stitches to her throat.
- [6] Mr Dicoski reports to have begun to use alcohol between the ages of 14 and 16. Dr Whiteford's report identified a 'binge drinking pattern' whereby Dicoski would abstain from alcohol for weeks and months at a time between binges. Dicoski's first rape offence and the malicious act with intent offence both occurred following an alcohol binge.
- [7] Mr Dicoski claimed to have used marijuana from the age of 17 to his most recent offending in 2004. On the day of the most recent sexual offence, he had administered intravenous amphetamine.
- [8] The respondent has a history of depression which is related to his delayed sexual development and in 1996 he was identified as functioning within the high end of the mentally retarded classification of intellectual ability. During his period of incarceration, he has attempted to harm himself on two occasions.
- [9] He has had a number of breaches whilst in custody for refusing to work, behaving in an offensive manner, using indecent and insulting language as well as being involved in a number of assaults between fellow prisoners.
- [10] He has completed a number of programs whilst in custody. He also completed a sexual offending program on 12 June 2015.

Assessment by psychiatrists

- [11] The respondent has been interviewed by three psychiatrists, Professor Barry Nurcombe whose report is dated 30 August 2014 and 15 June 2015, Dr Michael Beech dated 3 September 2015, and Dr Scott Harden who report is dated 25 August 2015.

Professor Nurcombe's report

[12] Professor Nurcombe indicated in his report that the respondent has Gender Identity Disorder and is sexually deviant. He noted, however, that this paraphilia is not directly related to his offences and he does not have a Psychopathic Personality Disorder or a major mental illness. Whilst he did not have violent or suicidal ideation at the time of the report, he had attempted to commit suicide on three occasions. In terms of a diagnosis, Professor Nurcombe made the following diagnoses:

1. Paraphilia: transvestism; fetishism (women's underclothing)
2. Gender Identity Disorder
3. Substance Use Disorder (alcohol and cannabis), in remission
4. Mild mental retardation
5. Hypogonadism
6. Sleep apnoea

[13] Professor Nurcombe noted that the respondent does not minimise or deny the sexual violence in his criminal history. He noted an underlying aggressiveness towards women whom the respondent perceives as rejecting him. He noted attitudes that support sexual violence, problems with stress and other problems resulting from child abuse. Professor Nurcombe used a number of actuarial assessments in order to categorise the risk that the respondent presents in terms of committing a further sexual offence. Professor Nurcombe concluded that when the static historical factors are combined with dynamic factors, the respondent can be classified with offenders whose risk of sexually violent reoffending is high. He considered that if the respondent is released from custody without a supervision order, the risk of sexually reoffending is high but if he is released from custody after treatment and with a supervision order, the risk of committing another serious sexual offence could be reduced to moderate.

[14] In his supplementary report, Professor Nurcombe noted the respondent's attendance at the Sexual Offending Program and it was noted that his attendance was good and he contributed to the program. He noted that he was motivated to continue individual counselling.

Dr Beech's report

[15] Dr Michael Beech in his report noted that the respondent was 43 years old and was coming to the end of his sentence following a conviction in 2004 for the attempted rape and rape of his domestic partner. He also took into account the subsequent malicious wounding of a female stranger whilst on bail. Dr Beech noted, in particular, that the rape offences occurred soon after he had completed a very stringent period of supervised release and parole following his 1995 conviction for the rape of a woman at night.

- [16] Dr Beech considered that in the community and in custody he has been prone to depressive mood swings, self-harm and suicidal ideation and, in his view, he considered this represented a Borderline Personality Disorder in a man with limited intellectual capacity and poor cognitive skills that arose from a Borderline Intellectual Functioning. He noted that he had delayed sexual developmental as a result of an endocrine abnormality which has left him with a chronic sense of sexual inadequacy.
- [17] Dr Beech considered that matters were further aggravated by his sexual confusion, ambivalent sexuality, gender identity disturbance and likely transvestite fetish. He noted he developed significant problems with substances, particularly alcohol and cannabis, and developed a significant gambling problem. Dr Beech considered that both episodes of sexual offending appear to have been triggered by a sense of failure, rejection and anger which was then fuelled by intoxication. He also took into account the fact that the respondent had been problematic in prison and there was ongoing evidence of poor frustration tolerance, a demandingness and a propensity to outbursts or self-harm when he feels that he is being put off or not getting his way. He also noted that the respondent has not progressed to a residential setting in custody and he was unemployed in the prison.
- [18] Dr Beech stated that he has now completed an appropriate sexual offender treatment program, has developed appropriate cognitive behavioural strategies and has some insight into the nature of his difficulties. He also considered that he has some insight into the nature of specific risk factors, including substance use. Dr Beech stated that, following his earlier release, he appears to have done well under supervised and stringent parole conditions but things became frayed towards the end of his parole when he left home to start his relationship.
- [19] Dr Beech considered that, having utilised a number of the actuarial risk assessments, the respondent presented with a high risk of sexual offending in the community if he was to be released without a supervision order. He considered that the risk arises essentially from his limited cognitive capacity, his personality vulnerabilities and his vulnerability to a sense of rejection, inadequacy and anger, which, in times of stress or when socially isolated and intoxicated, he projects onto vulnerable women and attempts to manage his thoughts and feelings by sexually assaulting them. Dr Beech stated that in the community, the respondent struggles to live independently and when stressed turns to alcohol which inflames his sense of grievance. He also noted that the respondent would have limited support on his release, although he indicated that he would have the support of his mother.
- [20] Dr Beech considered that a supervision order would reduce the risk and that on an earlier period of stringent supervision whilst on parole he remained abstinent, found employment and did not return to offending. However, once the limits started to recede his behaviour became more difficult and once they were lifted he struggled, ultimately returning to substance use and offending.
- [21] Dr Beech considered that a supervision order which closely monitored his mental state through case management, abstinence from alcohol, ongoing therapy and counselling would contain the risk. He also considered that there should be limits on who he associates with, his accommodation and his gambling. Dr Beech considered it was important that if

he was to be released, he had ongoing individual counselling and he needed to attend a maintenance program for sexual offenders.

Dr Scott Harden's report

- [22] Dr Harden also considered that the respondent presented with a high risk of sexual reoffending. He considered that he had a Personality Disorder Not Otherwise Specified with dependent, avoidant, antisocial and borderline personality features. He also considered that he met the criteria for alcohol abuse in remission because of incarceration as well as mild mental retardation. He was not satisfied that he met the diagnostic criteria for gender identity disorder, but noted he did have paraphilia or fetishistic arousal to wearing women's underwear and possibly to women's urination.
- [23] Dr Harden stated that his assessment that the respondent presented with a high risk of sexual reoffending was based not only on the actuarial assessment but also on his clinical assessment. Dr Harden was concerned that the nature of the 1995 and 2003 offences were perpetrated on strangers, in public places without warning. He considered that the 2003 offence involved an extremely high level of violence which could have led to death. He considered that if recidivism occurs, then there was a substantial risk that it could involve high level violence and if it does occur, it is likely to be associated with alcohol intoxication. Dr Harden considered that high level compulsory supervision and treatment in the community under a supervision order would reduce the risk to moderate. Dr Harden also considered that he needed ongoing individual therapy focusing on, in particular, aggression management in association with problem solving difficulties and impulsive behaviour. He considered that he needed to abstain from alcohol and, as his potential victim group was adult women, there was no need to restrict his contact with children. Dr Harden considered that, given the risks were long term, the order should be for a period of 10 years.

The requirements of the Act

- [24] The objects of the Act are stated in s 3 of the Act as follows:
- “(a) to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection to the community; and
 - (b) to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.”
- [25] For the purpose of this application, a prisoner includes a person who is detained in custody, serving a period of imprisonment for a serious sexual offence. That term is defined as an offence of a sexual nature, whether committed in Queensland or outside Queensland, involving violence or against children.
- [26] Section 13 of the Act provides for the making of a continuing detention order or a supervision order. Before an order can be made pursuant to this section, the Court must be satisfied that the prisoner is a serious danger to the community in the absence of a

Division 3 order because there is an unacceptable risk that the prisoner will commit another serious sexual offence if released from custody or released without a supervision order being made. Furthermore, s 13(3) provides that a Court may only make a finding that a person is a serious danger to the community if the Court is satisfied by acceptable and cogent evidence. In *Attorney-General v Van Dessel*,¹ White J stated that what is at stake is a prisoner's fundamental legal right to unfettered personal liberty on the expiration of the term of imprisonment. The serious nature of the inquiry is emphasised in the Act by the requirement that a Court only make a finding that a person is a serious danger to the community if it is satisfied to a "high degree of probability".

[27] A continuing detention order is subject to periodic review.² A supervision order is made for a definite term.³ In determining whether to make a detention order or a supervision order, s 13(6) provides that the paramount consideration is the need to ensure the adequate protection of the community.

[28] Section 13(4) of the Act sets out the matters to which the Court must have regard in determining whether a prisoner is a serious danger to the community in the absence of a Division 3 order:

- the reports prepared by the psychiatrists;
- any other medical, psychiatric, psychological or other assessment relating to the prisoner;
- information indicating whether there is a propensity on the part of the prisoner to commit serious sexual offences in the future;
- whether or not there was a pattern of offending behaviour;
- efforts to address the cause or causes of the prisoner's offending behaviour, including participation in rehabilitation programs;
- whether the participation in the programs has had a positive effect on the prisoner;
- the prisoner's antecedents and criminal history;
- the risk that the prisoner will commit another serious sexual offence if released into the community; and
- the need to protect the members of the community.

[29] Pursuant to s 13(7) of the Act, the Attorney-General has the onus of proving that a prisoner is a serious danger to the community.

[30] Counsel for the respondent acknowledges the accuracy of the applicant's outline of submissions which summarises his background, his criminal history, his prison history

¹ [2006] QSC 16, [17].

² *Dangerous Prisoners (Sexual Offenders) Act 2003*, s 27.

³ *Dangerous Prisoners (Sexual Offenders) Act 2003*, s 15.

and the nature of his offences. It is clear that the respondent has completed a number of programs whilst in custody including trade courses, literacy programs, computer courses, first aid courses and workplace health and safety courses.

- [31] The evidence also indicates that he completed the Inclusion Sexual Offending Program on 11 June 2015 and was strongly motivated throughout the program. He engaged well and it became apparent that he was applying the strategies that he had been taught. He also took full responsibility for his behaviour, showed empathy for his victims, understood the role of alcohol and substances in reoffending and gained confidence in his ability to change.
- [32] Counsel for the respondent concedes that the evidence establishes that Mr Dicoski is a serious danger to the community in the absence of a Division 3 order. A prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody or released without a supervision order being made.
- [33] I am satisfied on the basis of the material before me, particularly the psychiatric reports, the history and nature of the respondent's offending, his rehabilitation and participation in programs whilst in custody together with his behaviour whilst in custody, that the applicant has discharged the onus of satisfying the Court that the respondent is a serious danger to the community in the absence of a Division 3 order.
- [34] What orders should be made? Can the adequate protection of the community only be ensured by the making of a detention order or can the risk of further offending be managed by the making of a supervision order?
- [35] All of the psychiatrists indicate that whilst the respondent presents with a high risk of sexually reoffending if released without a supervision order, that risk can be reduced to a moderate risk if he engages in a sexual offending program and is subject to a supervision order.
- [36] The affidavit of the respondent outlines his plans on release and it is clear that he has the support of his mother and her partner. Those plans are realistic.
- [37] I am satisfied that a supervision order is required and that the appropriate period is 10 years. In particular, it is important that the conditions contain the requirements that he abstain from the consumption of alcohol and that he participate in ongoing counselling sessions. I am satisfied that the draft supervision order addresses those requirements.

Order

Pursuant to s 13(5)(b) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, the respondent be subject to a supervision order in terms of the order in the attached Schedule for a period of 10 years.

The order of the Court is that:

THE COURT, being satisfied to the requisite standard that the respondent, Adrian Malcolm Dicoski, 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*, ORDERS THAT:

1. The respondent be subject to the following conditions until 30 September 2025:

The respondent must:

General Terms

1. report to an authorised Corrective Services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 9am and 4pm on the day of release from custody, and at that time advise the officer of his current name and address;
2. report to, and receive visits from, a Corrective Services officer at such times and at such frequency as directed by Queensland Corrective Services;
3. notify a Corrective Services officer of every change of his name, place of residence or employment at least two business days before the change happens;
4. be under the supervision of a Corrective Services officer;
5. comply with a curfew direction or monitoring direction;
6. comply with any reasonable direction under section 16B of the Act given to him;
7. comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order;
8. not leave or stay out of Queensland without the permission of a Corrective Services officer;
9. not commit an offence of a sexual nature during the period of the order;
10. not commit an indictable offence involving an assault, violence, or a weapon during the period of the order;

Employment

11. seek permission and obtain approval from an authorised Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
12. notify an authorised Corrective Services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed at least two (2) days prior to commencement or any change;

Residence

13. reside at a place within the State of Queensland as approved by an authorised Corrective Services officer by way of a suitability assessment and obtain written approval prior to any change of residence;
14. if this accommodation is of a temporary or contingency nature, comply with any regulations or rules in place at this accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services;
15. not reside at a place by way of short term accommodation including overnight stays without the permission of an authorised Corrective Services officer;

Activities and Associations

16. respond truthfully to enquiries by an authorised Corrective Services officer about his activities, whereabouts and movements generally;
17. not to have any direct or indirect contact with a victim of his sexual offences;
18. disclose to an authorised Corrective Services officer, upon request, the name of each person with whom he associates and respond truthfully to requests for information from an authorised Corrective Services officer about the nature of the association, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;
19. submit to and discuss with an authorised Corrective Services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
20. if directed by an authorised Corrective Services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by authorised Corrective Services officer who may contact such persons to verify that full disclosure has occurred;

Motor Vehicles

21. notify an authorised Corrective Services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;

Alcohol and Drugs

22. abstain from the consumption of alcohol and illicit drugs for the duration of this order;
23. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by an authorised Corrective Services officer;
24. not visit premises licensed to supply or serve alcohol, without the prior written permission of an authorised Corrective Services officer;

Medical and Courses

25. attend upon and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by an authorised Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;
26. permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services, if such a request is made, for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;
27. attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by an authorised Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;

Technology and Devices

28. notify an authorised Corrective Services officer of any computer or other device connected to the internet that he regularly uses or has used;
29. supply to an authorised Corrective Services officer details of any email address, instant messaging service, chat rooms, or social networking sites including user names and passwords;
30. allow any other device including a telephone or camera to be randomly examined. If applicable, account details and/or telephone bills are to be provided upon request of an authorised Corrective Services officer;
31. to advise an authorised Corrective Services officer of the make, model and telephone number of any mobile telephone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use and includes reporting any changes to mobile telephone details; and

Personal relationships

32. notify the supervising corrective services officer of all personal relationships entered into by the respondent.