

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Dawson*
[2015] QSC 291

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF
QUEENSLAND**
(applicant)
v
STEWART JAMES DAWSON
(respondent)

FILE NO/S: BS10682 of 2009

DIVISION: Trial Division

PROCEEDING: Application for contravention of supervision order

ORIGINATING
COURT: Supreme Court at Brisbane

DELIVERED ON: 6 October 2015 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 6 October 2015

JUDGE: Mullins J

ORDER: **Order in terms of the draft initialled by Mullins J and
placed with the file**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING
ORDERS – ORDERS AND DECLARATIONS RELATING
TO SERIOUS OR VIOLENT OFFENDERS OR
DANGEROUS SEXUAL OFFENDERS – DANGEROUS
SEXUAL OFFENDER – GENERALLY – where respondent
was under a supervision order made under *Dangerous
Prisoners (Sexual Offenders) Act 2003* (Qld) – where
respondent was required under the supervision order to
comply with a curfew direction and a monitoring direction –
where respondent failed to comply with the curfew direction
and removed the GPS monitor – where contravention of the
supervision order was admitted – whether the adequate
protection of the community can be ensured by the conditions
of the supervision order

CRIMINAL LAW – SENTENCE – SENTENCING
ORDERS – ORDERS AND DECLARATIONS RELATING
TO SERIOUS OR VIOLENT OFFENDERS OR
DANGEROUS SEXUAL OFFENDERS – DANGEROUS
SEXUAL OFFENDER – REGISTRATION, REPORTING
AND LIKE MATTERS – where respondent's offending was
linked to substance abuse – where the respondent was largely
compliant with the terms of the supervision order in the four

years before the contravention – where the respondent consistently returned negative drug and alcohol screens – where the respondent was suffering from depression and suicidal ideation at the time of the contravention of the supervision order – where psychiatric opinion was that continuation of GPS monitoring would be countertherapeutic – whether the monitoring requirement should be deleted from the supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 19A, s 22

A-G for the State of Qld v Dawson [2009] QSC 431, related

COUNSEL: J B Rolls for the applicant
S M Ryan QC for the respondent

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

5 HER HONOUR: On 17 December 2009, Mr Dawson was found to be a serious danger to the community in the absence of a Division 3 order under the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act) and he was ordered to be released on a supervision order for a period of 10 years, expiring on 24 December 2019: Attorney-General for the State of Queensland v Dawson [2009] QSC 431. It should be noted that at the hearing of the application that resulted in that supervision order, Mr Dawson did not oppose the finding that he was a serious danger to the
10 community in the absence of a Division 3 order.

15 Mr Dawson performed well in almost all respects under the supervision order, although he was frustrated by the continued frequency of the urine testing when he demonstrated over a period of some four years abstinence from illicit substances and alcohol. He also was frustrated by the requirement to wear the GPS monitor. The application before me arises out of events that were exacerbated by Mr Dawson's frustration with the requirements of the supervision order.

20 By the end of 2013 he was suffering from depression for which he was being medicated by his general medical practitioner. He had made an attempt at committing suicide in 2012 that was unsuccessful. By April 2014 he decided again to commit suicide. On 28 March 2014, he was advised by the supervising Corrective Services officer that he had progressed to a stage 5 curfew that required him to be at his nominated residence between 10 pm and 6 am. On 13 April 2014 at 10 pm the
25 Corrective Services officers confirmed that Mr Dawson was not at his residence at the commencement of the curfew. On 14 April 2014, police officers and others gained entry to Mr Dawson's residence and confirmed that he was not present at the residence.

30 Mr Dawson had removed his GPS monitor on the evening of 12 April 2014 as part of his plan to commit suicide by overdosing on heroin. But he had the money stolen from him that he had for purchasing drugs. He was in a highly depressed state, sleeping rough for a couple of nights. Then on 15 April 2014 he made contact with his church pastor and surrendered to police.

On 17 April 2014, the application that the Attorney-General made pursuant to section 22 of the Act was adjourned to a date to be fixed. Mr Dawson was ordered to be detained in custody until the final decision of the court. For reasons that are not
5 entirely clear but do not seem to be due to any issue within Mr Dawson's control, the final hearing of that contravention is taking place some 18 months later.

The contravention that is particularised of failing to comply with clause v of the supervision order "to comply with a curfew direction or monitoring direction" by
10 remaining absent from his nominated residence during curfew without approval of an authorised Corrective Services officer is admitted by Mr Dawson. The onus is therefore on Mr Dawson to show that adequate protection of the community is able to be ensured by his release on a supervision order.

15 Before referring to the psychiatric evidence, which does support releasing Mr Dawson on the supervision order again, I will refer to his antecedents. Mr Dawson was born in 1969. He's currently 45 years old. As a 14 year old, he committed a rape, for which he was convicted in the Supreme Court in September 1986 and held in custody.

20 Relevantly, when he was 20 years old, not that long after he had been released from custody, he was carrying out a series of break and enters when he attacked a woman in her home and attempted to rape her. Her husband returned to the house while Mr Dawson was still there, and Mr Dawson attacked the husband violently. For all the
25 offending that he committed at that time, Mr Dawson was given an effective head sentence of 18 years' imprisonment, which was the index offending at the time the supervision order was imposed in December 2009.

30 For the purpose of the application under the Act in 2009, Mr Dawson was examined by three psychiatrists, including Dr Sundin and Dr Nurcombe, who have examined Mr Dawson for the purpose of this contravention application. At the time of the first hearing in 2009, Mr Dawson had been diagnosed with an antisocial personality disorder without psychopathy. He also had a history of polysubstance abuse, and his sexual offending was linked to substance abuse.

35 Dr Sundin had found no evidence at the time of her initial assessment that Mr Dawson had any paraphilia, and that remains her opinion. Dr Nurcombe made a similar diagnosis in October 2009 to that of Dr Sundin. Dr Nurcombe considered Mr Dawson's risk of serious sexual recidivism was high if rated purely on static
40 historical factors, but was low if dynamic factors were taken into account, and in the moderate range, if both historical and dynamic factors were combined.

Mr Dawson appears to have understood the psychiatrists' concern about the link
45 between his sexual offending and substance use problems. He, on his release under the supervision order, engaged with Narcotics Anonymous, and took advantage of the counselling that was provided, particularly by psychologist Professor Ian Campbell, and showed that he was abstinent from use of illicit substances and also alcohol. Mr Dawson had the benefit of support from family members, and also was able to gain employment and responded well to employment opportunities that were
50 given to him. He is now keen to return to work at the bakery factory where he was working prior to April 2014.

For the purpose of today's hearing, Mr Dawson was interviewed at length by both Drs Sundin and Nurcombe, and their reports coincide as to the recommendations of support for release by Mr Dawson again on the supervision order. It should be noted that Mr Rolls of counsel on behalf of the Attorney-General concedes that the
5 psychiatric evidence demonstrates that adequate protection to the community can be ensured by the supervision order, and that notwithstanding Mr Dawson's antisocial personality disorder, there has been noted to be considerable improvement in his demeanour, behaviour and attitudes since his incarceration and admission to the
10 supervision order, and that Mr Dawson ought to be commended for his efforts in that regard. It is not often in these matters, Mr Dawson, that the counsel for the Attorney-General can endorse, without significant reservation, the opinions that have been reached by the psychiatrists.

Let me now turn to some aspects of the psychiatric evidence. Dr Sundin states:
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*I consider that Mr Dawson has benefitted during his period of time in the community from maintaining a good therapeutic relationship with his treating psychologist; from establishing pro-social supports through his church, his
20 family and his peer support network. He has benefitted by his decision to remain free of licit and illicit substances. He has benefitted from positive employment and positive attitudes towards others within the workplace. He has been reported to have a good work ethic. He has been vulnerable to episodic bouts of major depressive disorder, and on one occasion made a quite serious suicide attempt when he tried to hang himself. This most recent breach
25 was also part of a serious suicidal plan.*

*I find myself very much in sympathy with the attitudes expressed by Mr Campbell in his reports to QCS. I consider that the maintenance of GPS monitoring beyond the initial 12 months after release into the community has
30 been unhelpful and counter-therapeutic. Equally, I consider that the very high level of frequency of alcohol and urinary drug testing has been unhelpful. I understand that QCS is quite understandably risk-averse, but it seems to me that continued imposition of GPS monitoring and high-frequency urinary drug screening in Mr Dawson has aggravated the situation and has itself been quite
35 aversive.*

Dr Sundin later concluded:

*Should the Court decide that a supervision order is required, then I would
40 respectfully request that GPS monitoring be excluded from any new supervision order and that criteria be set for step-down alcohol and urinary drug testing so that testing is at a much lower frequency within 12 months of Mr Dawson's release back into the community, assuming the tests remain negative.*

45 Dr Sundin also notes the benefits that Mr Dawson has received from the regular input of a clinical psychologist and recommends that, given the fragility of his mood disorder, he be referred to a consultant psychiatrist for regular monitoring of his mental state and the need for appropriate antidepressant medications.

50 Dr Sundin remains of the view that Mr Dawson's primary diagnosis is that of antisocial personality disorder without psychopathy.

During the period immediately prior to Mr Dawson's breach and reimprisonment, there was some resort to use of pornography and access to child exploitation material by Mr Dawson, but the treating psychologist, Mr Campbell, considered that was an aspect of his relapsing major depression, and Dr Sundin also remains of the opinion that there is no evidence of a paraphilia.

Dr Nurcombe also recommends that Mr Dawson continue on the current supervision order. Dr Nurcombe notes that Mr Dawson can be classified with a group of prisoners whose risk of reoffending is at least moderate to high and possibly high, but then states:

Mr Dawson is a very different man today in personality from what he was 24 years ago. He has made genuine and significant gains in regards to self-knowledge, racial bigotry and the capacity to cope with anger. Nevertheless, he is inexperienced in intimate relationships and has felt considerable stress in that regard. His recent downward spiral, self-described, involved a suicidal depression precipitated by disintegration of a personal relationship and aggravated by correctional supervision. In the past, he was suffused with inchoate anger and racist sentiments. I found little trace of this now, but he has significant anxiety if he feels unjustly constrained or if he is affected by interpersonal stress.

Dr Nurcombe then expresses the opinion that the risk of sexual recidivism by Mr Dawson is low. Dr Nurcombe also states:

The time has come to lessen the restrictiveness of the current DPSOA order. The use of a tracking device is no longer indicated and is, in fact, counterproductive. Monitoring for alcohol or substance abuse should continue, but no more than once per fortnight. He should start psychotherapy with a forensic psychologist prior to his release from prison, and this should continue regularly thereafter. A plan should be designed involving all who work with Mr Dawson to recognise depression and refer him to treatment urgently if he is depressed. He should continue with Narcotics Anonymous. He does not require to be kept separate from underage children.

The psychiatric evidence aligns with the conduct that was largely to Mr Dawson's credit before he committed the breach of the supervision order in April 2014. It is understandable that Corrective Services had to act on the breach of curfew and the removal by Mr Dawson of his GPS monitor, but the fact remains that it was not risk of sexual reoffending that was flagged by the breach of the supervision order, but the suicidal ideation and depression, which Mr Dawson had not sought help for from the supervising Corrective Services officers and a treating psychologist. In fact, it is clear from the psychiatric reports that Mr Dawson now has the insight to realise that he should have sought help in that period from the end of 2013 until April 2014 instead of allowing the depression to overtake his judgment.

Overall, despite a couple of breaches during this last time in prison, and the issue that I mentioned that was highlighted in the psychiatric report that was coincident with the episode of depression, the material is very optimistic for Mr Dawson's future. Mr Dawson has therefore discharged the onus that he bears on this contravention application for showing that the adequate protection of the community can, despite

the contravention that was committed in April 2014, be ensured by the supervision order that was made originally by Justice Byrne in December 2009.

5 I would therefore be prepared to make the order, and in anticipation of that order that releases Mr Dawson from custody and allows him to continue to be subject to the supervision order made on 17 December 2009, Mr Dawson has made an application pursuant to section 19A of the Act that the monitoring requirement contained in clause v of the supervision order be deleted. That is supported by the psychiatric evidence, and it is helpful that a file note has been prepared by the Crown Solicitor's office of the outcome of recent teleconferences with the psychiatrists that will assist Corrective Services in the future supervision of Mr Dawson.

15 It is also to be noted that the Attorney-General has accepted the psychiatric evidence as to the quantum of the risk if the monitoring condition were removed, and it is noted by Mr Rolls of counsel that it is difficult in the light of that evidence to submit that the valid concerns articulated by Queensland Corrective Services as to the efficacy of GPS monitoring outweighs the benefits for Mr Dawson's rehabilitation by the removal of such monitoring. In view of the lack of opposition by the Attorney-General to the application for deleting the monitoring requirement and the strong support of the psychiatric evidence for that, which is supported by Mr Dawson's own performance under the supervision order prior to April 2014, I am also prepared to make the order sought by Mr Dawson that the monitoring requirement contained in clause v of the supervision order be deleted.

25 It will remain for Corrective Services under the supervision order to determine the frequency of urine analysis in the future. It is understandable that Corrective Services will need to see how Mr Dawson performs on his release again into the community. For a prisoner such as Mr Dawson who was performing well under a supervision order, it is surprising that there had not been a lessening of the supervision in respect of at least the urine analysis testing. It is the reality that supervision orders eventually come to an end. It is for the benefit of both the community and the offender that the supervision and the support under the order diminishes as the time passes under the supervision order, at least where there is compliance with the supervision order, so that the offender is in the best position to continue in the community without further offending when the supervision order expires.

40 I therefore make an order in terms of the draft order that has been prepared by the Attorney-General that covers both the application for the contravention and the application to delete the monitoring requirement. The draft order helpfully sets out the full set of requirements that the respondent is subject to as a result of the orders that are made today. I make an order in terms of the draft, initialled by me and placed with the file.
