

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Falkingham*
[2015] QSC 316

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
SCOTT DARRIN FALKINGHAM
(respondent)

FILE NO/S: BS9429 of 2013

DIVISION: Trial Division

PROCEEDING: Application for periodic review

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 2 November 2015 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 2 November 2015

JUDGE: Mullins J

ORDER: **Order in terms of the amended 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 detained under a continuing detention order pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* to facilitate the completion of a high intensity sexual offenders program – where psychiatrists of the opinion that the respondent posed a low to moderate risk to the community if released on a supervision order – whether respondent should be released on a 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 opinion of psychiatrists was that respondent’s paraphilia was exclusively attraction to peripubescent and pubescent males and was unlikely to pose a risk to younger children – where the draft supervision order

included a requirement prohibiting the respondent from visiting any establishment where there is a dedicated children's play area or child-minding area without the prior written approval of a Corrective Services officer – whether that requirement should be deleted from the supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 27

COUNSEL:

J M Sharp for the applicant

J W Fenton for the respondent

SOLICITORS:

G R Cooper, Crown Solicitor for the applicant

Legal Aid Queensland for the respondent

HER HONOUR: This is an application under section 27 of the Dangerous Prisoners (Sexual Offenders) Act 2003 (“the Act”) for the first review of the continuing detention order that was made in respect of the respondent, Mr Falkingham, on 13 January 2014. Mr Falkingham is a 45 year old man who has served all his sentences,
 5 but came under the regime of the Act because the court was satisfied that a Division 3 order should be made. The order that was made was a continuing detention order to facilitate Mr Falkingham to complete the high intensity sexual offenders program within the prison. Mr Falkingham has now completed that program.

10 For the purpose of this review, he was interviewed by psychiatrists Dr Beech and Dr Sundin. Both these psychiatrists had seen Mr Falkingham for the first application under the Act in relation to Mr Falkingham and were in a position to express their opinions in relation to the risk which Mr Falkingham presented for further sexual
 15 offending by reference to the progress they had seen Mr Falkingham make since he was interviewed in 2013 by each of them.

Mr Falkingham has a criminal history for sexual offences over the period 1993 to 2012. There was a period of a number of years when there were no entries in his history. His last sexual offence was committed against a 15 year old boy. That is
 20 consistent with the opinion of Dr Beech and the opinion of Dr Sundin that Mr Falkingham’s paraphilia is an attraction to young peripubescent or pubescent males. In the past, his victims had aged generally between 12 and 16 years.

The exit report from the sexual offenders program shows that Mr Falkingham did
 25 have some difficulties in engaging with it, but it has enabled him to develop some insight about himself, but more importantly it has alerted Corrective Services as to the areas where Mr Falkingham is most likely to be at risk of offending and the proposed supervision order addresses those risk factors. One of the risk factors is the use of alcohol. The proposed supervision order requires Mr Falkingham to be
 30 completely abstinent from alcohol and illicit substances.

Dr Beech is of the opinion that Mr Falkingham presents a high risk of re-offending, if he were released without supervision, because of the limitations on his insight and self-awareness and that he may be tested, if he finds himself in circumstances that are
 35 stressful for him. Dr Beech considered that, although there were only limited gains made as a result of the sex offenders treatment program, Mr Falkingham at least now has some idea about how to manage the risk of reoffending in the community and recognises the situations he has to avoid in order to avoid further offending.

40 Dr Beech has expressed the opinion that on a supervision order Mr Falkingham’s risk of re-offending would be significantly reduced to moderate or below. Dr Sundin considered that Mr Falkingham was at a moderate risk of re-offending in the absence of a supervision order. Dr Sundin agrees with the opinion expressed by Dr Beech that any supervision order would need to run for 10 years in order to ensure the
 45 protection of the community, but also to facilitate the support that Mr Falkingham will require in order to modify his past offending behaviour.

Both Dr Beech and Dr Sundin gave oral evidence about the conditions in the proposed supervision order. The one condition that was in issue was that Mr Falkingham:

5 *...not visit or attend on the premises of any establishment where there is a dedicated children's play area or child-minding area without the prior written approval of a Corrective Services officer.*

Both psychiatrists were of the opinion that such a condition was not one that
10 addressed the risk that is associated with Mr Falkingham and that including such a condition in the supervision order would give a false sense to Corrective Services officers that they had a condition that would assist in addressing the risks associated with Mr Falkingham. Dr Beech expressed the opinion that Mr Falkingham was more likely to be looking at being in an area where young males congregate, such as a
15 skate park or at the back of a shopping centre. Both psychiatrists considered that rather than a condition that was addressed to avoiding having Mr Falkingham in areas where young children are present, the risk associated with Mr Falkingham's past offending would be better addressed by a reasonable direction from the supervising Corrective Services officer that dealt with avoiding loitering by Mr
20 Falkingham around places where teenage boys frequent, such as bus stops outside schools or playing fields where boys' sport is played. It may be that reasonable directions will have to wait until the supervising Corrective Services officers get some indication of the sorts of places that Mr Falkingham will be visiting during the course of his usual day.

25 The high intensity sex offenders treatment program is an intensive program. Mr Falkingham participated between 28 January 2014 until 2 June 2014, completing approximately 390 hours of treatment over 141 sessions. He did miss 38 sessions, mainly due to medical reasons. At one stage, he was reluctant to continue, but a
30 facilitator in the program persuaded him to continue and Mr Falkingham has acknowledged his appreciation that he was encouraged to complete the program. It is recommended in the exit report that Mr Falkingham participate on a sexual offending maintenance program in the community when he is released under the supervision order in order to maintain some of the gains he started to make in the
35 program that he completed whilst in custody.

I have amended the supervision order to remove the reference to child care centre in the condition that relates to:

40 *...not, without reasonable excuse, being within 100 metres of any school without the prior written approval of a Corrective Services officer.*

Even though this condition was debated by the psychiatrists as to its effectiveness, I accept that it will assist the Corrective Services supervising officer in supervising Mr
45 Falkingham, if there is a clear exclusion zone in relation to 100 metres of any school. I deleted the condition that related to the dedicated children's play area, premises or child-minding area in any establishment, as that condition would give a false sense of security about the effectiveness of the supervision order that had nothing to do with the risk associated with Mr Falkingham.

The evidence of both Drs Beech and Sundin is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that Mr Falkingham's risk of sexual re-offending, which is estimated at somewhere between moderate and high, unless appropriately supervised, is an unacceptable risk as contemplated by section 30 subsection (2) of the Act.

The applicant appropriately acknowledged, on the basis of the psychiatric evidence, that the weight of the expert evidence favours Mr Falkingham's release, subject to a supervision order with appropriate conditions. I therefore am prepared to make the supervision order on the terms of the draft that has now been amended by me and will be initialled and placed with the file. That supervision order is for a period of 10 years and will provide for Mr Falkingham to be released from custody on 3 November 2015.

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