

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Vizzard*
[2016] QSC 13

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF
QUEENSLAND**
(applicant)
v
SIMON BLAIR VIZZARD
(respondent)

FILE NO: BS8432 of 2015

DIVISION: Trial Division

PROCEEDING: Application for a Division 3 order

DELIVERED ON: 1 February 2016 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 1 February 2016

JUDGE: Mullins J

ORDER: **As per the amended draft order 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 – GENERALLY -
where respondent currently serving a term of imprisonment
for sexual offences involving children – application pursuant
to s 13 *Dangerous Prisoners (Sexual Offenders) Act 2003*
(Qld) – where the applicant seeks the respondent’s continued
detention or release subject to a supervision order – where the
respondent diagnosed as meeting criteria of paraphilia:
paedophilia or hebephilia with an attraction to boys, non-
exclusive type – whether the respondent is a serious danger to
the community in the absence of a division 3 order – whether
a supervision order rather than a continuing detention order
can ensure adequate protection of the community – where
there is a moderate to high risk of sexual reoffending unless
appropriately supervised – where supervision order made for
a period of five years

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 13

R v Vizzard [2015] QCA 47, related

COUNSEL: J B Rolls for the applicant
J J Allen QC for the respondent

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

HER HONOUR: In this matter, I make an order in terms of the draft initialled by me and placed with the file. This is an application by the Attorney-General pursuant to section 13 of the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act) that the respondent, Mr Vizzard, be detained in custody for an indefinite term for care, treatment or control or, alternatively, that he be released from custody subject to a supervision order on such requirements as the court considers appropriate.

It was helpful that Mr Vizzard did not resist a finding pursuant to section 13, subsection (1) of the Act that he is a serious danger to the community, in the absence of an order pursuant to division 3 of part 2 of the Act. Such a finding is, in fact, strongly supported by the psychiatric evidence from Drs Nurcombe, Grant and Harden, to which I will refer in greater detail in the course of these reasons. Mr Vizzard also did not resist an order that he be released from custody subject to a supervision order. A large part of the hearing today was concerned with the content of some of the proposed conditions, assisted by the psychiatric opinion in relation to the likely effect of such proposed conditions on the risk of sexual reoffending by Mr Vizzard.

The criminal offending which resulted in Mr Vizzard's current period of imprisonment was traversed in his appeal against sentence, R v Vizzard [2015] QCA 47. The offences were committed between October 1997 and March 2001, when Mr Vizzard was aged between 26 and 30 years old. The offending was against three boys aged between 11 and 14 years and involved oral sex, attempts at anal sex, having the boys perform sexual acts with each other, and introducing the boys to sex toys and pornography. After Mr Vizzard was charged with those offences, he left Australia for Mexico. He committed further sexual offences in that jurisdiction, where it appears there were three male victims aged eight, 12 and 13 years. The offences were described as:

Comparable to rape, child prostitution and sexual assault.

Mr Vizzard was sentenced to a period of 10 and a half years imprisonment in Mexico, but after serving eight years of that sentence was discharged and, in February 2012, was extradited to Australia to face the charges for which he is presently in prison.

Mr Vizzard also has outstanding charges in relation to acts it is alleged he committed in the context of photographing an eight-year-old boy for providing modelling photographs. These offences are alleged to have been committed on 24 April 2002. Those charges could proceed only after Mr Vizzard returned to Australia.

Mr Vizzard has been in custody in Mexico or Australia since 6 November 2003. Whilst in prison in Mexico, he became a Jehovah's Witness, and he now has, it appears, some support from the community associated with Jehovah's Witnesses. He also relies on his conversion to Jehovah's Witness and his study of the bible as one matter in the armoury he proposes to employ against future reoffending.

Whilst in prison, he has undergone a preparatory sexual offenders treatment program and the intensive program that is known as HISOP. Relevant to the application by the Attorney-General is the recently available exit report from the HISOP program that shows that Mr Vizzard has gained some limited insight into his past offending and as to what he has to do in order to avoid risk situations in the future, but it is apparent from the detailed exit report that he will need to undergo future counselling and a maintenance program in order to build on the insights that he has obtained, in order to address the deficits in his insights, which have been highlighted in the psychiatric evidence.

Mr Vizzard has had some tertiary education in information technology. In fact, his use of computers and interest in computer games was part of his grooming activities in relation to some of the offending for which he is serving his current period of imprisonment. On the one hand, the psychiatric evidence recognises the relevance to Mr Vizzard's rehabilitation that he obtain gainful employment, which is likely to be in the area in which he has skills, which is information technology and computing, but on the other recognises that his capacity and skills with computers may itself be a future risk. One of the issues on the hearing was how the need to allow Mr Vizzard to resume gainful employment can be balanced with the need to monitor his use of the internet.

Dr Nurcombe prepared the psychiatric assessment that was used at the preliminary hearing under the Act. Dr Nurcombe is of the opinion that Mr Vizzard's risk of sexual reoffending is moderate to high and that it would be best monitored by correctional supervision and individual psychotherapy. The risk of reoffending if a supervision order is in place, according to Dr Nurcombe, would be low to moderate. Dr Nurcombe recommends a supervision order for five years and emphasises that Mr Vizzard should have no contact with adolescent males, that he not join organisations in which there are adolescent males, and that he have no contact with women who have adolescent children.

Dr Nurcombe diagnosed Mr Vizzard with the paraphilia of paedophilia and noted that there was no evidence of psychiatric disorder. Dr Nurcombe noted that Mr Vizzard is attracted to boys who are 12 years or younger, but is also attracted to older pubescent boys, but there is no category in the Diagnostic and Statistical Manual that covers a sexual attraction to boys over the age of 12 years. Dr Nurcombe pointed out that Mr Vizzard's sexual deviation is not exclusive, that he is capable of forming a relationship with adult women, and that he is not interested in adult homosexual partners. Dr Nurcombe's opinions were not altered by being provided with material relating to the outstanding 2002 charges or the exit report from the HISOP program.

Applying both assessment instruments and using the results of the interview that Dr Harden had with Mr Vizzard, Dr Harden concluded that Mr Vizzard was in the moderate to high risk category of sexual reoffending. Dr Harden also noted that Mr Vizzard has a clear sexual preference for boys in the period immediately after puberty, and the offences have involved a period of grooming behaviour and forming an emotional relationship with at least some of the victims, where he has also, in

general, gained the trust of caregivers. The psychiatrists are at one in describing the modus operandi of Mr Vizzard's sexual offending as in the nature arising after grooming rather than predatory behaviour. Dr Harden considers that the circumstances in which Mr Vizzard would be likely to reoffend would require victim
5 access over a substantial period of time to emotionally groom the victim and that he is unlikely to impulsively or suddenly offend against young people who are not known to him. Dr Harden also supported the placing of Mr Vizzard on a supervision order for a period of five years and considered that the risk of sexual recidivism would be reduced to low in the context of supervision under a supervision order.

10 Dr Grant noted that Mr Vizzard does not suffer from any significant psychiatric disorder, and nor does he have a psychopathic personality disorder. Dr Grant noted some personality traits of immaturity, dependence and limitations in his ability to empathise with others. As with the other psychiatrists, Dr Grant considered that Mr
15 Vizzard suffers from a sexual paraphilia, namely, that of paedophilia, with a specific attraction to boys approaching and going through puberty, but his primary attraction appears to be boys aged between 11 and 14 years. Dr Grant also places Mr Vizzard in the moderate to high risk group for sexual reoffending, but that the risk would be best monitored under a supervision order in the community, where he could also be
20 given treatment, such as individual counselling and a future maintenance sexual offender program.

Dr Grant also expresses the opinion that reoffending is likely to follow an extended
25 period of grooming and the development of a relationship with potential victims. It is his opinion that the risk of such reoffending could be reduced by a supervision order. Dr Grant expresses the opinion that Mr Vizzard's access to the internet will need to be closely monitored with strict limits applied, and he should not be allowed to access any pornography. Dr Grant expressly notes that he can see no clinical benefit or risk reduction in his being subject to electronic monitoring. A supervision
30 order, if complied with by Mr Vizzard, would, according to Dr Grant, reduce the risk of reoffending to low, and Dr Grant also recommends that any supervision order be in place for a period of five years.

35 The conditions, ultimately, about which there were different views expressed by the applicant and on behalf of Mr Vizzard, were in relation to whether there would be any relevant effect on risk of excluding Mr Vizzard from 100 metres of schools that educate male persons from grades 6 to 12 without the prior written approval of a Corrective Services officer, and whether there should be a condition that he not visit skate parks without the approval of a Corrective Services officer. The evidence of
40 the psychiatrists was not coincident in relation to these conditions.

Ultimately, I've borne in mind that it is opportunities for grooming that are what
45 need to be focused on in the supervision order, but that places where potential victims congregate is relevant to the risk, if Mr Vizzard is excluded from them. As Dr Harden expressed in the course of his evidence, Mr Vizzard has no place being around a school where boys in the age group to which Mr Vizzard are attracted could be congregating. That applies to skate parks as well, even though I acknowledge that

skate parks are only one of a number of places where vulnerable boys may gather from time to time.

5 There are other conditions in the proposed supervision order that will assist
Corrective Services officer in identifying whether Mr Vizzard is attending at places
where boys between 11 and 14 years are likely to congregate. In particular, I'm
referring to conditions 18 and 19. Condition 18 requires Mr Vizzard to submit to and
discuss with the Corrective Services officer a schedule of his planned and proposed
activities, and condition 19 requires Mr Vizzard to disclose to the Corrective
10 Services officer upon request the name of each person with whom he associates and
to respond truthfully to requests for information about any association with such
person and the activities that are undertaken by Mr Vizzard. The proposed activities
have to be provided on a weekly basis, and that will assist Corrective Services in
obtaining some overall picture as to whether Mr Vizzard is, in fact, attending on
15 places where boys in the relevant age group may also be in attendance.

The fact that there are places other than skate parks and in the vicinity of schools is
not a reason not to include those two particular places in the supervision order.
Those conditions give some specific places for Corrective Services to test Mr
20 Vizzard's compliance of the supervision order against. Overall, in the light of the
psychiatric evidence, I was satisfied that those two conditions that were the subject
of submissions should be in the order.

25 There was much debate over the standard condition of:

*Obtain the prior written approval of a Corrective Services officer before
accessing a computer or the internet.*

30 After the psychiatric evidence, Mr Rolls of counsel modified the condition by adding
the words "for personal use" to the end of the condition and explained that, in reality,
the Corrective Services officer cannot be contacted before any respondent under a
supervision order accesses the internet. Administratively, the condition is
implemented by looking at the computer at the outset and then usually giving a
blanket approval for using the particular computer that is then coupled with the
35 subsequent condition about supplying a password or access code that will permit the
Corrective Services to randomly access the computer to check on the usage, using a
data exploitation tool.

40 On the face of it, the condition is, in broad terms, about obtaining the prior written
approval of the Corrective Services officer before Mr Vizzard accesses a computer or
the internet for personal use. After hearing the submissions of Mr Allen of Queen's
Counsel for Mr Vizzard, I modified the condition, so that there will be power in the
Corrective Services officer to dispense compliance with that condition from time to
time, and also to make it clear that if, under condition 32, a mobile phone details
45 have been provided to the Corrective Services officer by Mr Vizzard, he can use that
mobile phone for accessing the internet without obtaining the prior approval of a
Corrective Services officer.

With the modifications that I have proposed, I am satisfied that it is appropriate to keep the condition in those terms in the order, in order to allow for the monitoring that the psychiatrists have recommended in relation to Mr Vizzard's personal use of a computer. It does have the flexibility, though, that if Mr Vizzard can show that he is compliant with the supervision order and does obtain work in a field that will require him to access computers, the condition will not apply to computers he is working on for work purposes, and the condition can be modified or dispensed with in any case because of the other amendments that have been made to condition 34.

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10 The evidence of Drs Nurcombe, Harden and Grant is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that the respondent's moderate to high risk of sexual reoffending, unless appropriately supervised, is an unacceptable risk, as contemplated by section 13, subsection (2) of the Act. That is the reason that I have made the division 3 order in the form of the
15 supervision order, which I am satisfied is adequate to address the risk of sexual reoffending by Mr Vizzard on the terms of the order, which I have initialled and placed with the file. The supervision order is for a period of five years, as the psychiatric evidence is at one in expressing the view that if Mr Vizzard is going to reoffend, it will be apparent that he is undertaking grooming activities in preparation
20 to reoffend within a period of five years from his release. I make an order in terms of the amended draft, initialled by me and placed with the file.
