

SUPREME COURT OF QUEENSLAND

CITATION: *A-G for the State of Qld v Wall* [2016] QSC 15

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
BENJAMIN JOHN WALL
(respondent)

FILE NO/S: No 370 of 2016

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 19 January 2016

DELIVERED AT: Brisbane

HEARING DATE: 19 January 2016

JUDGE: Dalton J

ORDER: **Application dismissed**

COUNSEL: B Mumford for the applicant
D C Shepherd for the respondent

SOLICITORS: Crown Law for the applicant
Legal Aid Queensland for the respondent

HER HONOUR: This is an application by the Attorney-General pursuant to section 8 of the Dangerous Prisoners (Sexual Offenders) Act 2003. The Attorney contends that I ought to be satisfied there are reasonable grounds for believing that Mr Wall is a serious danger to the community in the absence of a division 3 order and, therefore,
 5 have him psychiatrically examined and set a date for the hearing of a division 3 order.

On behalf of Mr Wall, Mr Shepherd contends that there are two reasons why I would not make such an order. The first point he raises is that Mr Wall is not a “prisoner”
 10 within the meaning of section 8(1) of the Act. I reject that submission.

Mr Wall offended in the following context. He visited a lady of his acquaintance and, after having left her house, then sent her some text messages indicating that he’d like to have sex with her. He then went back to her house. She got in a car with him,
 15 and they drove to a remote bush spot, at which point he stopped the car and indicated that he’d like to have sex with her then. She said that she didn’t want to have sex with him. He assaulted her very violently by strangling her to the point of unconsciousness. When she woke, all her clothing except for her T-shirt had been removed, and she had been dragged, unconscious, it would appear, for some length
 20 through the bush.

Mr Wall was originally charged with rape, but that proceeding for rape did not continue. He was charged with three offences: assault occasioning bodily harm in relation to the strangling, indecent assault in relation to the removal of the clothes,
 25 and assault occasioning bodily harm in relation to the dragging of the lady through the bush. He pled guilty to all those offences, and he received a sentence of five years for the first assault occasioning bodily harm, that is, the strangling; a sentence of 18 months for the removal of the clothes; and a sentence of two years for having dragged the lady through the bush. All those sentences were to be served
 30 concurrently.

Section 5(6) of the Dangerous Prisoners (Sexual Offenders) Act provides that a prisoner means:

35 *...a prisoner detained in custody who is serving a period of imprisonment for a serious sexual offence, or serving a period of imprisonment that includes a term of imprisonment for a serious sexual offence...*

The term “period of imprisonment” is defined in the Act as being the same as the
 40 definition in the Penalties and Sentences Act 1992, that is:

*Period of imprisonment means the unbroken duration of imprisonment that an offender is to serve for two or more terms of imprisonment, whether – (a) ordered to be served concurrently or cumulatively; or (b) imposed at the same
 45 time or different times; and includes a term of imprisonment.*

First of all, Mr Shepherd contended that there was no period of imprisonment for the time which Mr Wall spent in jail – five years – was a time referable to the first sentence for assault occasioning bodily harm and not a period of time referable to “two or more terms of imprisonment” within the section 4 Penalties and Sentences Act definition. I reject that interpretation. I think that the period of imprisonment of five years was one that Mr Wall was serving in relation to two or more terms of imprisonment, that is, all three of the sentences imposed. I think that is made perfectly plain by the words at subparagraph (a) of that definition, “ordered to be served concurrently or cumulatively”.

An associated point which Mr Shepherd raised on behalf of Mr Wall was that, after 18 months of his prison term, Mr Wall was no longer serving a period of imprisonment which included a term of imprisonment for a serious sexual offence, for, by that time, the term of imprisonment for the sexual offence was spent and he was only serving a period of imprisonment for offences which were not sexual offences. I also reject that construction. I think that the whole period of imprisonment of five years was one which, looked at globally, included a term of imprisonment for a serious sexual offence.

The second point which Mr Shepherd raised on behalf of Mr Wall was that, factually, in this case, there were no reasonable grounds for believing that Mr Wall was a serious danger to the community in the absence of a division 3 order. Those words in section 8(1) of the Dangerous Prisoners Act take their context from section 13(2) of that Act, which says that:

A prisoner is a serious danger to the community ... if there is unacceptable risk that the prisoner will commit a serious sexual offence if released from custody or if released from custody without a supervision order being made.

So that is the inquiry which is outlined at section 8(1) of the Act.

The hearing pursuant to section 8 is, of course, a preliminary hearing, and I’m not determining whether or not Mr Wall is a serious danger to the community within the meaning of the Act or not. I am just concerned with an anterior question of whether there are reasonable grounds for believing that he is. The matters relevant to that are probably not entirely defined by those listed at section 13(4) of the Act, but must be similar to them.

In relation to this matter, I think that there are not reasonable grounds for believing that Mr Wall is a serious danger to the community in the absence of a division 3 order. I will explain why.

As outlined, the sexual offending was the least of the three offences committed by Mr Wall in this case. That is reflected by the various terms of imprisonment imposed. It is true, I think, as Mr Mumford pointed out on behalf of the Attorney, that the violence involved in the strangling was in the context of a sexual rebuff, but, nonetheless, the sexual offending involved the removal of this lady’s clothes while she was unconscious.

Mr Wall, has a very limited criminal history. He has one conviction prior to this offending for the possession of marijuana. He was fined \$300 for that in the Magistrates Court. Prior to this offending, he also had a conviction for obstruct police. That resulted in no conviction being recorded and a \$350 fine. After this offence, in 2015, he was convicted of two counts of failing to stop a vehicle and one count of false declaration. None of those offences, either before or after this offending, have any sexual element to them.

It is true that apparently in 2009 Mr Wall was charged with rape. However, that charge did not proceed, and when it came to Court, police offered no evidence. So I disregard that.

It is true that Mr Wall lives a lifestyle which is somewhat unsteady or unstable, but there's nothing in any of that to cause me concern that he has a propensity to commit sexual offences.

In prison, Mr Wall completed the Getting Started sex offenders program successfully. He enrolled in the Medium Intensity Sex Offenders Program and walked out of it after attending five or six sessions, apparently on the basis that the person running the program challenged the honesty of his claims that he could not remember the facts of his offending.

Notwithstanding that, Mr Wall has engaged with a psychologist in prison regularly. He was also given parole at a relatively early stage in his sentence, and that was on the basis of a psychologist's assessment that his risk of further offending was acceptable, and, as I say, while on parole, he committed those offences of failing to stop and false declaration but no further sexual offending.

I have a report from Dr Grant on this application, which is dated the 15th of December 2015. Dr Grant outlines at the bottom of page 20 and the top of page 21 the facts which I have outlined earlier in this set of reasons as to the offending and concludes:

Legally, therefore, it would appear to me that Mr Wall is only serving a sentence for a low-level sexual offence, but in the context of a serious physical assault for which he got the longer sentence. This conviction is the only sexual violent offence on his record.

Dr Grant found that Mr Wall had no evidence of significant mental illness and no evidence of any sexual paraphilia. He commented that he seemed to have quite a high sexual drive and led a promiscuous lifestyle and:

There is a degree of sexual entitlement in his attitude.

Dr Grant administered four clinical risk assessment tools as part of his assessment of Mr Wall. The results of those and the result of his having an interview Mr Wall are summarised in his report as follows:

5 *Taking into account the formal risk assessment instruments and my review of the material and interview with Mr Wall, I assess the risk of future sexual violence as low to moderate. If sexual violence were to occur, it would be in the context of intoxication, relationship breakdown and stressors from other possible factors in his life. Motivations for such an offence would most likely be mixed anger and sexual drive; however, as Mr Wall's sexual offending has occurred only once, it is difficult to predict with any certainty that any future sexual violence will actually occur at all.*

10 At the conclusion of his report at page 24, Dr Grant says:

15 *Supervision under the DPSOA would have limited value in preventing the relatively low risk that he represents ... Taking all this into account, I am of the opinion that the risk represented by Mr Wall is insufficient to warrant placement under the Dangerous Prisoners (Sexual Offender) legislation.*

20 That last part of that quotation is, of course, Dr Grant really giving an opinion on the issue which I must decide, and I just want to make it clear that my own opinion, having regard to not only Dr Grant's opinion, but all the other factual matters I have outlined in these reasons, is what I'm acting upon. I'm not just adopting Dr Grant's conclusion in that final sentence. All right.

25 So for all those reasons, I don't think that there is or there are reasonable grounds for believing that Mr Wall is a serious danger to the community in the absence of a division 3 order, and I will not make the order sought by the Attorney.

 All right. That's all I need to do that on, is it? All right. Thanks very much for your assistance, both of you.

30 MR MUMFORD: Thank you, your Honour.

 MR SHEPHERD: Thank you, your Honour.

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