SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Currie* [2016] QSC 48
PARTIES:	**Attorney-General for the State of Queensland** (Applicant) **v** **Joel George Currie** (Respondent)
FILE NO/S:	No BS10864 of 2015
DIVISION:	Trial Division
PROCEEDING:	Application for a Division 3 order
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	11 March 2016
DELIVERED AT:	Brisbane
HEARING DATE:	29 February 2016
JUDGE:	Byrne SJA
ORDER:	**That the respondent be detained in custody for an indefinite term for control, care or treatment**
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 an order pursuant to s 13 of the Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) for the continued detention of the respondent – whether the respondent should be subject to a Division 3 order
COUNSEL:	M Maloney for the applicant The respondent appeared in person
SOLICITORS:	Crown Law for the applicant The respondent appeared in person

Continuing detention sought

[1] The Honourable the Attorney-General seeks an order pursuant to Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ("the Act") that the respondent be detained in custody for an indefinite term for care, control of treatment.

Sexual offending

[2] The respondent was born on 7 January 1984. His extensive criminal history began when he was 11 years old.

[3] Less than a fortnight after his 14th birthday, the respondent approached a five year old girl and led her to an enclosed courtyard, promising to play a game. There he forcibly raped his victim. She was so severely injured that she required surgery for vaginal lacerations. He was sentenced to detention for six years.

[4] In October 2004, the respondent climbed a wall, forced open the grill of a child's bedroom window and climbed through into the room where the child was asleep in her bed. The child woke up and called out to her mother. The respondent had touched the child on her legs and nightclothes while she was asleep. He was intoxicated at the time.

[5] At 2.00am on 29 March 2006, taking a condom with him, the respondent broke into the house of a 48 year-old woman and her 17 year-old daughter. He walked through the house and into the girl's room. He placed his hand over the girl's mouth and told her that if she made a noise he would slit her throat and, if she woke her mother, he would slit her throat too. He got into bed with his victim. He began touching her and rubbing his penis against her buttocks. She pleaded with him to stop. He would not. He put his fingers in her vagina. Next, he demanded that the girl rub and suck his penis until he ejaculated. She refused. Hoping that she could get him to stop, she told him that she was 14. He replied, with excitement, that he had never had such a young girl before.

[6] The girl began making noises to wake her mother up. The respondent told her: "If you wake your Mum, I'll get my gun out and shoot you. I'll get my knife out and stab you through the heart and then I'll kill your Mum too". The girl screamed and punched him in the head. He reacted by punching her with such force that she struck the wall. He tried to leave the house but the front door was dead-locked. The mother woke on hearing her daughter's screams, ran to the girl's bedroom to see the respondent jump through a glass window and flee.

[7] The respondent, who was subject to a suspended sentence of imprisonment when that offending occurred, gave a version of events, beginning with an assertion that he intended to break in because he needed money. Asked why the suggested attempted theft resulted in the sexual assault of the girl, he said that when he saw her lying in bed he thought that he "might get lucky" and decided to "crack onto her" in a "respectful manner".

Sexual offending continued

[8] The respondent was in custody in mid-September 2009 when he encountered an Aboriginal liaison officer during an interview. She was assisting him with a parole application. While she was reading some papers, the respondent masturbated and subsequently ejaculated on the woman's hand and trousers.

Psychiatric assessments

[9] Three psychiatrists have assessed the risk that the respondent might commit an offence of a sexual nature involving violence or against a child.

[10] Dr Beech interviewed the respondent in June 2015 when an application under the Act was in contemplation. The interview, which lasted about 45 minutes, was terminated when the respondent became angry and aggressive. Dr Beech concluded:

> "Currie has an Antisocial Personality Disorder which has arisen from a highly prejudicial childhood, abuse, poor education, delinquency, substance misuse, and problems with anger management. There are ongoing problems with affective instability and behaviour. He harbours an attitude of resentment and injustice, and he seems to minimise or misunderstand his offences. There is evidence of sexual preoccupation, and notably his sexual offences commenced in adolescence.
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> In custody he has required prolonged placement in MSU or DU, and although he has said that he has wanted to do courses he has yet to undertake any intensive courses directed at anger management, violence or sexual offending.
>
> The assessment of risk is hampered by the limited interview. However based on the material I am able to provide an actuarial assessment (Static-99) and a preliminary assessment of dynamic factors (RSVP) and Psychopathy. These are instruments that have been shown to have validity in the assessment of risk of violent sexual reoffending (see attachment).
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> On the Static-991 I gave Mr Currie a score of 9. I used the 2010 conviction as the index offence. This score places him in the group of offenders seen as high risk of reoffending.
>
> On the RSVP I noted:
>
> - Chronic sexual offending
> - Some diversity in offences
> - The use of violence
> - Denial
> - Problems with self-awareness
> - Problems with stress
> - Child abuse
> - Problems with relationships
> - Criminality

- Problems with supervision

> On the Hare Psychopathy Checklist I gave him a preliminary score of at least 24, but I was unable to score many items and realistically it is likely to be in a higher range indicating significant psychopathic traits.
>
> It is my opinion that Mr Currie is at present a high risk of violent sexual offending and violent offending if he were to be released into the community. The victim is likely to be a female, probably an adult or adolescent. The offence could occur during the course of a burglary, and intoxication might play some role. The risk of harm is high. He may also assault someone sexually when he is angry, or sexually preoccupied. He is at risk of making indecent acts in public.
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> At present there is little to indicate that in custody the risk has substantially reduced although there might be some evidence that his behaviour has started to settle. However he still seems volatile. He has little understanding of the offences and he now acts to minimise them. The material does not show that he has made any realistic plans for his release.
>
> In my opinion he requires programs to address his affective instability and anger, and then an intensive sexual offender program. He is likely to need individual therapy. He might benefit from medical review and medication."

[11] Dr Sundin is one of two court-appointed psychiatrists to have made the report required by s.11 of the Act. She interviewed the respondent for two hours on 5 December 2015.

[12] Dr Sundin records an extensive history of misconduct in custody. Between April 2006 and September 2009, the respondent was involved in 22 incidents, including assaults on staff, a sexual assault on a staff member, offensive behaviour, threats to staff, a minor assault on another offender and attempts to assault staff. Seven incidents involved exposing genitals to staff or masturbating in front of a staff member. There were multiple threats of physical harm to staff.

[13] During the interview with Dr Sundin, the respondent was focused on perceived mistreatment of him at the hands of "racist" correctional centre staff. When Dr Sundin tried to discuss his serious sexual offences, the respondent became agitated and angry, ending the interview with a rant against alleged historical and institutional racism which he claimed was aimed at him. At the same time, Dr Sundin reports, the respondent "actively sought to minimise the seriousness of his offending…and repeatedly fixated on the ways in which he believes he has been unfairly victimised by various institutions and authority figures over the whole of his life".

[14] The respondent had a disturbed family history. Five members of his extended family died by suicide. He started consuming alcohol at age nine and often drank alcohol in combination with ingesting cannabis. He continued to binge drink regularly through early adolescence, breaking into bottle shops every few weeks to get alcohol.

[15] There was enforced abstinence from cannabis on incarceration in 2002. But the respondent rapidly resumed cannabis use upon release and became a heavy user of

cannabis. He started using "speed" at age 10. He claimed to have stopped using amphetamines in 1998.

[16] Commenting upon the respondent's post-release plans, Dr Sundin wrote:

> "Mr Currie stated that it was important for him to stay away from the Beaudesert area, as this was the region in which he offended. He does not want to return to this area as he feels that he was exploited by one of his uncles, and states that one of his uncles engages in regular binge alcohol abuse, which he dislikes.
>
> In discussing his family he stated "*we own Mt Barney*". This is his family's cultural heritage and country. He states that his family is going to give him the job of being a Mount Barney caretaker and that the plan is to build him a three-level house where he will live. (Comment: This plan appears something of a fantasy and is at odds with his stated desire to stay away from the Mt Barney area and from his past history of receiving little support from his family when released.)
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> He went on to say, *"I have done enough time in prison. It's been 18 years. I don't want to be on my own. I don't want to be around my family, my mother; you guys keep putting me with her. I can't take being around with her. I don't want to be part of drugs. I don't want to smoke".*
>
> When I asked Mr Currie if he would be agreeable to participating in a sexual offender's treatment programme, he stated that he did not believe that the programme would be in any way helpful to him. He said he would do the programme if it was a condition of his parole, but stated that he would not do any of these programmes if he was required to stay in gaol to undertake the programme.
>
> He stated that his full release date is 13 March 2016 and he expects to be released at that time."

[17] Dr Sundin found the respondent difficult to interview: he was preoccupied with his perceived victimhood; and he repeatedly sought to minimise his responsibility for his actions: in particular, he denied responsibility for serious components of several offences. As Dr Sundin put it, "he shifted blame for his offending behaviour onto a number of his victims…". There was, wrote Dr Sundin, a "virtual absence of remorse; rather, he focused almost entirely on the adverse consequences to himself…he had a great difficulty in demonstrating any capacity for empathy and was preoccupied only with his own needs.".

[18] Dr Sundin observed that, while in the community, the respondent had supported himself through crime rather than through purposeful employment. He had poor anger controls, was short-tempered, irritable, highly reactive and tended to respond with threats with verbal and physical aggression. There was a significant history of impulsivity.

[19] Dr Sundin concluded that the respondent met the full criteria for attracting the label of psychopath, scoring 33 out of 38 on the Hare Psychopathy Rating Scale.

[20] On the Static-99, an historical instrument used to assess risk of sexual offending in individuals over 18, he scored 9, which indicates that he is among a group of offenders considered to be at high risk for future sexual offending.

[21] Dr Sundin considered that the respondent's sexual offending occurred against a background of juvenile delinquency and significant juvenile and adult criminal behaviour. She characterised his criminal history as involving convictions for violence and weapons offences, a history of assaultive behaviour and of threatening and aggressive behaviour whilst in custody. She reported:

> "The Corrective Services material demonstrates ongoing sexual pre-occupation and sexual acting-out behaviour.
>
> As a result of the volatility of his behaviour, his threats and aggressive outbursts, he has as yet failed to reach a stage of sufficient affective stability for him to be deemed stable enough to participate in any of the treatment programmes directed at his anger management issues, polysubstance abuse and sexual offending. All such programmes involve a degree of challenge of participants to acknowledge their behaviour and to acknowledge both their permission statements and the ways in which they have denied and minimised their offending in the past.
>
> Thus far, Mr Currie's institutional record has been such that he would not have been sufficiently affectively stable to meaningfully participate in such a programme; and indeed there is a risk that he may have become physically violent and threatening to other participants or facilitators in such programmes.
>
> It is my opinion that Mr Currie continues to be at high risk for violent sexual offending, violent offending in general, and general anti-social behaviour. I consider that this is an accurate assessment of the risk he poses to the community at the current time.
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> From a sexual offence perspective, the victim will be female but may be of any age. She could be a child or an adult. She could be a stranger or a person known to him. The offence may occur as part of intoxication, or contemporaneous to another offence such as a burglary. There is a high degree of risk that the victim would be seriously physically as well as sexually harmed at the time of the offence.
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> As things currently stand, there is some early evidence that Mr Currie's behaviour has settled a little, with his transfer back to the Wolston Correctional Protection Centre out of the maximum security unit; although I note his continuing volatile behaviour and easy reversion to aggressive outburst. I note his absent and/or minimal understanding of the nature of his serious offences and of the pathway to offending.
>
> I consider that his post-release plans are completely unrealistic.
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> In my opinion, he is currently not a suitable person to be released into the community. I consider that he poses an unacceptable risk to the community.
>
> …

> I recommend that Mr Currie should be detained in prison for treatment that would be designed to reduce the current risk he poses to the community for sexual and violent offending.
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> I consider that he needs to participate in programmes designed to assist him to achieve greater self-regulation of his emotions, better management of his anger, assist him to develop alternative pro-social cognitive skills to deal with stressful situations; and upon completion of these, to then participate in both the Pathways Programme and the High Intensity Sexual Offenders Treatment Programme.
>
> I concur with the suggestion of Dr Beech that it may be necessary for Mr Currie to engage in individual therapy to be made ready for participation in such programmes."

[22] Dr Harden also provided a report in accordance with s.11 of the Act.

[23] Dr Harden mentions the respondent's claims that people were "denying me the sex offender course" despite his having filled out forms and applied to undertake it. He perceives some conspiracy among Corrective Services staff in this "to keep me in jail longer" and told Dr Harden that he was not a significant risk of re-offending.

[24] Dr Harden reported that the respondent:

> "Appeared to have very limited insight into his own functioning with regard to his prior sexual offences. He seemed to use a range of cognitive distortions and defences including partial denial, minimisation, rationalisation and others. He also had limited insight into the effect of his behaviour on others particularly his aggressive, threatening and out of control behaviour. He always had a rationalisation to explain this and an external locus of control to defray his responsibility for his actions…
>
> On the STATIC 99R Mr Currie scored 9 on this risk assessment instrument. This placed Mr Currie in the High (>6) risk category relative to other adult male sexual offenders.
>
> On scoring the Stable 2007 he had a score of 17 out of a possible score of 26 which placed him the High needs group in terms of sexual offender's dynamic risk. Areas of particular concern included capacity for relationship stability, hostility towards women, lack of concern for others, impulsivity and cooperation with supervision.
>
> On the Sex Offender Risk Appraisal Guide, I have given Mr Currie a score of 39 which placed him in the category 9. This is a very high score on this actuarial instrument. In general people that are in this category in the study populations had a 100% rate of violent or sexually violent re-offending at 7 years and a 100% rate at 10 years. This is a pure actuarial scale and will not alter over time.
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> On the Hare Psychopathy Checklist I have given Mr Currie an overall score of 34. This score is very elevated compared to custodial populations and elevated enough to meet the USA arbitrary threshold of 30 for psychopathic

personality disorder. On the facet scores it was particularly elevated with regard to affective, interpersonal style and antisocial behaviour.

On the SVR-20 I assessed Mr Currie as being positive for 14 items out of 20 (victim of child abuse, psychopathy, substance use problems, relationship problems, employment problems, passed nonsexual violent offences, past nonviolent offences, passed supervision failure, multiple offence types, physical harm to victims, uses weapons or threats of death, extreme minimisation/denial of offences, attitudes of support or condone offences and negative attitude toward intervention) and possibly positive for 1 items (lacks realistic plans). In my opinion this places him clearly in a High risk category on this measure of Sexual Violence Risk…

Currie is a 32-year-old man who has a long history of general, property, violent and sexual offending. This started in the primary school range. He has been convicted of sexual offences against a five-year-old female, a 17-year-old female, an adult female and an offence against an under 10-year-old female resulting in his blood being on her after a break and enter that he states was nonsexual in nature.

Although there have been child victims there is no other material to suggest a sexual paraphilia. The sexual offences appeared to have largely been opportunistic while intoxicated and committing other criminal offences.

He has long-standing substance abuse problems predominately associated with alcohol and marijuana use.

He has been in custody for most of his life since early adolescence. He has recurrently breached supervisory processes, bail and fixed release order in the community and has a conviction for escape. When rereleased into the community he has immediately resumed alcohol and marijuana use and criminal behaviour usually in the form of break and enters and assaults.

He has a history of generally poor institutional behaviour with threatening and aggressive behaviour involving other inmates and staff and including criminal convictions for such.

There are clearly identified outstanding treatment needs. He says he has attempted to comply with these by undertaking sexual offender programs in custody and has been frustrated by custodial authorities but also gives many reasons why he should not have to comply with interventions. He has little or no insight into the risk he poses to others in the community, nor any genuinely expressed concern regarding this.

He makes limited emotional connection with other people and has little regard for the rights of others apart from immediate family members.

He was a victim of childhood sexual, physical and emotional abuse as well as associated poor educational exposure and opportunity and early criminal offending resulting in lack of vocational training and employment opportunities.

He describes community support via his mother and possibly other family members. This community support seeks likely to be less robust than he

describes and he acknowledges his mother has ongoing issues with alcohol use.

Diagnoses

He would meet diagnostic criteria for Antisocial Personality Disorder with significant psychopathic personality features.

He has poly-substance abuse in remission because of incarceration.

There is no convincing evidence of a sexual paraphilia at this point in time.

Risk

His ongoing unmodified risk of sexual re-offence in the community is in my opinion in the High range.

His unmodified risk of violent offence in the community is in my opinion very high.

His greatest risk facts are in my opinion, his general criminal behaviour, lack of concern for others, substance misuse, attitudes that support sexual assault including attitudes to women, general failure to comply with previous community supervision or similar and restlessness and impulsivity associated with his personality structure.

If he were to be placed on a supervision order in the community, in my opinion the risk of sexual recidivism would be reduced somewhat to moderate. Such a supervision order would be best prepared for and informed by his undertaking the High Intensity Sexual Offending Program in custody prior to any consideration of release on any kind of order.

Recommendations

I would recommend that he undertake the High Intensity Sex Offender Program in custody prior to any release into the community."

Other evidence

[25] The material which the respondent himself adduced in evidence confirms the assessments of the psychiatrists that he minimises his violent sexual offending, lacks empathy with victims, has little or no remorse, is fixated on his own difficulties, and has unrealistic post-release plans.

Section 13(4)(e) and (f): Programs

[26] The respondent has participated in rehabilitation programs in custody, but not since 2008. Without justification, he blames others for this, asserting that "corrupt officers keep refusing me the right to do the sex offenders program". However, the respondent has yet to participate in appropriate sexual offender programs for reasons related to his own behaviour and attitudes.

[27] Ashley Phelan is the Acting Manager with Offender Rehabilitation and Management Services – Special Operations within Queensland Corrective Services. He previously worked as a sexual offending programs delivery officer. Since July 2007, he has had more than 3,000 hours of experience in clinical endeavours with adult male sexual offenders. He has received extensive post-graduate training in assessment and treatment of sexual offenders.

[28] Mr Phelan deposes that the respondent has not been offered a place on any sexual offending programs because he has been "assessed as an unacceptable risk, and being unable to demonstrate a significant period of appropriate behaviour whilst in custody".

[29] The respondent has "32 breaches in his current custodial episode", as Mr Phelan records things. He was accommodated in the maximum security unit in September 2009 as a result of the sexual assault on the Aboriginal liaison officer. Attempts were made to reintegrate him back into the general prison population. But he engaged in sexually inappropriate behaviour, exposing himself to a female nurse and masturbating in front of her. He was returned to the maximum security unit in September 2010. He remained there until February 2013.

[30] Despite being accommodated in the maximum security unit, the respondent continued to engage in inappropriate behaviours, including threatening comments towards staff and families, attempting to strike an officer through his meal hatch, presenting a letter to a psychologist which contained sexually inappropriate text, throwing faeces, and making reference to his genitalia during an interview with a female psychologist.

[31] The respondent returned to the general prison population in February 2013 and, Mr Phelan reports, thereafter "was involved in 15 breaches and 24 incidents".

[32] In December 2013, concerns were raised by the general manager of a correctional centre about escalation of the respondent's behaviour and threats towards staff and possible program participants. He was then housed in the centre's detention unit.

[33] A prisoner cannot participate in a program whilst held in a maximum security or detention unit.

[34] In March 2014, the respondent was transferred to a New South Wales correctional institution. He returned to custody in Queensland in May 2015. By that time he had 82 prior incidents "in his current custodial episode", Mr Phelan reports. These included failing to comply with directions, possessing pornographic material, violent and threatening behaviours towards staff, exposing himself to staff members, masturbating in front of female staff, and sexual assault of a correctional officer.

[35] There are programs available to reduce the unacceptable risk the respondent poses of committing a serious sexual offensive were he to be released into the community. The respondent needs to complete them, in custody.

Serious danger to the community

[36] On a consideration of the evidence and the s.13(4) factors that the Court must take into account, it is proved by acceptable, cogent evidence, and to a high degree of probability, that the respondent is a serious danger to the community in the absence of a Division 3 order: he poses a high risk of committing a sexually violent offence against females, young and older, if released into the community at this stage.

Supervision inadequate

[37] A supervision order cannot adequately address the high risk that the respondent would, if released, commit a "serious sexual offence": see schedule definition and s.13(6)(b) of the Act.

[38] To protect females from serious sexual offending at his hands, the respondent needs to complete, satisfactorily, a High Intensity Sexual Offenders Program ("HISOP").

Pre-release HISOP

[39] HISOP is designed for offenders who, like the respondent, are at high risk of sexually re-offending. It is predominately a group-based program that aims to stop sexual re-offending by assisting participants to identify the thoughts, feelings and behaviours associated with offending behaviour and help develop skills and strategies to address recidivism, as Mr Phelan describes it.

[40] Before the respondent could undertake a HISOP, he needs to complete a preparatory program called Getting Started: Preparatory Program ("GS:PP"). It motivates offenders to participate and address offending in a more intensive treatment program, reduce anxiety about being in a group environment, identify barriers to offenders participating in a more intensive sexual offending program, and increase the belief of offenders in ability to change.

[41] The respondent could only join a GS:PP once there is confidence that he does not present a risk of sexual or physical assault against female staff.

[42] The individual therapy that the respondent requires to enable him to participate in treatment programs can be facilitated in a custodial environment: he can be offered psychological treatment with a suitably qualified psychologist as soon as practicable. Queensland Corrective Services would liaise with any treating psychologist regarding the nature and effectiveness of treatment and, as the affidavit of Cassandra Cowie, Acting Manager of the High Risk Offender Management Unit within Specialist Operations, Queensland Corrective Services, establishes: "referrals to other relevant service providers will be considered as necessary. The future frequency of treatment sessions will depend upon the respondent's needs and will be determined by the treatment provider in consultation with" Queensland Corrective Services.

[43] The HISOP consists of 116 sessions of three hours duration. It runs for about nine months. There are no vacancies on the HISOP until October/November this year.

[44] If he continues to be detained, the respondent has no prospect of being accepted for the HISOP in October/November. Before then, there is a long way to go to prepare the respondent for participation in HISOP. His limited insight into his offending and his current attitudes to prison staff indicate that even one-on-one interventions will initially be problematic. Mr Phelan's assessment is that the respondent would "probably burn through a number of clinicians" because, when he does not like what he is hearing, he would likely ask for another clinician. Appreciable delay is likely to be involved before the respondent can join the GS:PP that must precede the HISOP.

[45] When the respondent is admitted to a HISOP, Mr Phelan does not expect him to complete it at the first attempt. His anticipation is that, after some months, there would be an incident which would result in the respondent's withdrawal for the protection of staff and other participants. After that, there would be re-engagement with the respondent in efforts to enable him to complete another HISOP. That prediction receives support from the respondent's attitude to the HISOP. He believes, he testified, the program is "crap" and that he does not "reckon it helps much offenders, after seeing people like…Robert Fardon and all that re-offend after doing it. It's just a stupid program put there to stop people from getting out, such as myself."

[46] If detained in custody for treatment, there is no realistic prospect that the respondent will complete a HISOP within 18 months.

[47] Still, the evidence – in particular, that of the psychiatrists – establishes that satisfactory completion of the HISOP is necessary to ensure the adequate protection of the community: see s.13(6)(a).

[48] The HISOP is only available for those detained in a correctional centre.

Disposition

[49] So there will be an order that the respondent be detained in custody for an indefinite term for control, care or treatment.