

# SUPREME COURT OF QUEENSLAND

CITATION: *A-G (Qld) v Jackway* [2016] QSC 74

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(applicant)  
v  
**DOUGLAS BRIAN JACKWAY**  
(respondent)

FILE NO/S: SC No 7422 of 2011

DIVISION: Trial Division

PROCEEDING: Application for periodic review

DELIVERED ON: 7 April 2016

DELIVERED AT: Brisbane

HEARING DATE: 4 April 2016

JUDGE: Holmes CJ

ORDER: 

- 1. The decision of Acting Justice O'Brien made on 28 February 2012 that the respondent is a serious danger to the community in the absence of a Division 3 Order is affirmed.**
- 2. It is ordered that the respondent continue to be subject to the continuing detention order made by Acting Justice O'Brien.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DELCARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent is detained under a continuing detention order under the Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) – where the applicant applied for the order to be reaffirmed under section 30 of the Act – where the reporting psychiatrists' opinion was that the respondent remained given to impulsive behaviour with a risk of absconding, substance abuse and sexual offending – whether the respondent remains a serious danger to the community – whether the respondent should continue to be detained under the Act

COUNSEL: P Davis QC, with AD Scott for the applicant  
JJ Allen QC, with C Morgan for the respondent

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

- [1] The respondent, Mr Jackway, is subject to a continuing detention order made on 28 February 2012 under the *Dangerous Prisoners (Sexual Offenders) Act 2003* and twice continued upon annual reviews under s 30 of the Act. Mr Jackway accepts that the evidence supports a conclusion that he is a serious danger to the community in the absence of an order under Division 3 of the Act. In light of the evidence as to his history of offending and prison behaviour and the psychiatric opinion from Drs Grant and Beech, that concession is properly made. I will explore that evidence (which I find cogent and accept) in more detail subsequently, but its weight is sufficient to satisfy me to a high degree of probability that the original decision that Mr Jackway is a serious danger to the community in the absence of an order should be affirmed. The real contest is as to whether I should order that Mr Jackway continue to be subject to the continuing detention order or be released from custody under a supervision order.
- [2] Mr Jackway is 39 years old and has spent most of his adult life in prison. He has a long history of offences of dishonesty, but the critical offences for present purposes are one of rape committed against a female child in 1991, when he was 14 years old, and a series of offences against a male child committed in 1995, when he was 18 years old. The latter set of offences were, assault occasioning bodily harm, taking a child for immoral purposes with a circumstance of aggravation, three counts of indecent dealing with a child under 12 and two counts of attempted carnal knowledge by anal intercourse of a child under 12. He had abducted the boy, stripped him, assaulted him, threatened him and performed the sexual acts on him. Those events occurred after Mr Jackway had had a falling out with family members and had become very intoxicated. He was sentenced to eight years imprisonment and was not released until 2003. His criminal history indicates that he was out of custody by August 2003 (when he stole a car) but was returned to prison on remand in January 2004. During his brief period of liberty, he did not commit any sexual offences but did commit the offence of stealing a motor vehicle as well as dangerous driving, stealing and wilful damage. He was sentenced for those offences at the same time he was dealt with for the 1991 rape, in January 2005, receiving a total term of imprisonment (as varied on appeal) of seven years.
- [3] Dr Beech and Dr Grant have been reporting psychiatrists for all the applications made under the Act in respect of Mr Jackway. Both consider that he suffers from an anti-social personality disorder and exhibits psychopathy. Those conditions, his impulsivity and his

history of substance abuse are all highly relevant to the risk of his reoffending in a sexual way.

- [4] By the time of the first annual review, in December 2013, Mr Jackway had completed a preparatory sexual offender's programme and the High Intensity Sexual Offender's Treatment Programme. Justice Daubney, who undertook that review, noted the concern expressed by Dr Grant and Dr Beech that relapse into drug and alcohol abuse would place him in a high risk category for sexual offending. His Honour was not satisfied that Mr Jackway was able to manage the risk of exposure to drugs and alcohol and control his violent behaviour were he released on a supervision order. He noted, too, that Mr Jackway had declined to complete the Transitions programme, designed to assist with reintegration into the community.
- [5] By the time of the next review, by Justice Mullins in February 2015, Mr Jackway had completed the Transitions course, but not a proposed substance abuse programme, the Pathways programme. Her Honour noted that over the course of 2014, there had been 10 incidents and breaches recorded in respect of Mr Jackway, including threats to assault correctional officers, threatening language and damaging his cell. Dr Grant considered it particularly important that Mr Jackway complete the Pathways course because of the potential for a combination of his personality disorders, psychopathy and drug or alcohol abuse to result in reoffending. The desired effect was that the Pathways programme would provide him with the skills needed to deal with stresses without returning to alcohol or drugs. Dr Beech considered that Mr Jackway's history over the preceding year of responding with aggression and impulsivity to stressors in the prison environment made the prospect of supervision problematic; he considered that a sustained period without breaches would provide some indication that Mr Jackway could comply with the requirements of the supervision order.
- [6] Largely because of Mr Jackway's failure to complete the Pathways course and his prison behaviour over the preceding 12 months, in a context which the risk of sexual offending was, on the expert opinion, related to the combination of personality disorder, impulsive behaviour and the prospect of disinhibition through alcohol or drug use, Justice Mullins concluded that the community could not be adequately protected by a supervision order.

- [7] In the year since Justice Mullins' decision to maintain the continuing detention order, there have been further breaches by Mr Jackway of prison discipline. In February 2015 he was seen to go to a cell which was out of bounds to him and pass something under the door. In March 2015 he falsely claimed to have swallowed a battery, something he has done on other occasions. In April 2015 he covered the cameras in his cell and did not comply with directions to uncover them. In June 2015 he was seen to have concealed his prescribed medications rather than taking them. Between March and September 2015 there were, altogether, 13 incidents of offensive behaviour, possession of prohibited articles and making threats.
- [8] Between 23 August 2015 and mid-December 2015, Mr Jackway undertook the Pathways programme, in which he appears to have engaged satisfactorily and with some benefit in understanding the risks of relapse. However, on 14 December 2015, his birthday, he accepted a "shot" of medication from a fellow prisoner, with the result that he returned a positive result for morphine in a urine screen performed the following day. The injection site became infected, requiring his hospitalisation, but he insisted on returning to the prison to complete the last three days of the Pathways course. The completion report for the programme noted Mr Jackway's commitment to it, and his development of strategies other than substance abuse and violence to cope with problems.
- [9] In February 2016, Mr Jackway was apprehended trying to leave his unit with a broomstick with the intention of assaulting another prisoner who had falsely implicated him in a serious offence. In the following days he abused staff, threatened to burn his cell, urinated through a vent into the corridor outside, smashed his television and a window of his cell, covered his cell cameras and threatened that he would "slash up". He falsely claimed to have swallowed a battery, threatened to throw boiling water over any officer who came into his cell and, on ultimately being taken for medical attention, threatened to harm any paramedic who tried to treat him.
- [10] Mr Jackway has been treated by a psychologist, Mr Nick Smith, with whom he has had 18 sessions between mid-2012 and the end of November 2015. He was last seen by Mr Smith on 17 February 2016, soon after the events I have just described. At that time he had been placed on a safety order and moved to another correctional centre; the details of his behaviour leading to the making of the order were not available to Mr Smith at the time of that interview. In his report and evidence, Mr Smith said that Mr Jackway had

improved in his level of engagement, insight and judgment. He appeared willing to continue to accept treatment and support if he were placed on a supervision order.

- [11] In response to a question as to whether Mr Jackway was more likely to cooperate with a case manager while on a supervision order than he would be with custodial staff, Mr Smith said that his ability to deal positively with both custodial and clinical staff was variable; he had described enjoying interaction with some individuals in both categories, but not with others. Mr Smith endorsed a point made in the Pathways programme completion report to the effect that Mr Jackway could use problem-solving skills and think matters through when he was calm but when he became agitated or frustrated was more likely to fall back into destructive aggressive behaviours. The threshold at which he destabilised, Mr Smith said, was “not a very high one”.
- [12] In his most recent report of 10 March 2016, Dr Beech said that he regarded Mr Jackway as at high risk of sexual reoffending if he were released in the community because of his anti-social personality disorder, his tendency to use violence to get his way, his volatility and vulnerability to stress and the risk of his resorting to drug use. The prospect was that in an angry intoxicated state he might sexually assault a victim. Frustration was also likely to lead to behaviour of the kind that had recently occurred in prison. Dr Beech would have more confidence that Mr Jackway would perform better (as he claimed) in the community than in prison if he had demonstrated a consistent period of settled behaviour. He might benefit from anti-depressant medication; as to that, Mr Jackway said he would consider it if it were readily available and there were no side-effects. Dr Beech recommended focussed psychological therapy.
- [13] In evidence, Dr Beech said that the things which provoked or frustrated Mr Jackway could be relatively minor, and a supervision order would hold its own stressors. He thought also that Mr Jackway responded poorly when he was moved from one setting to another or from one level of supervision to another; that had been manifested when he was moved between different regimes in the prison. Dr Beech was concerned that on a supervision order where the level of constraint around him was reduced, Mr Jackway might become destabilised in a way which would manifest itself either in a covert breaking of rules or in violence and aggression, with escalation if any attempt were then made to place limits on him. His behaviour in February 2016 exemplified conduct of the latter kind: he had responded then to being put on a safety order and being moved to the detention unit. On

a supervision order, for example, if a curfew were imposed on him, there was a risk that he would similarly escalate his behaviour; in that context, by absconding.

- [14] Dr Grant's most recent report is dated 2 March 2016. As before, he considered the major risk factors in relation to Mr Jackway to be: his personality disorder and his tendency to act in an anti-social way on impulse when stressed or provoked; the prospect of a recurrence of his drug and alcohol abuse, which had played a large part in his previous offending; and his institutionalisation and the difficulties of adapting to life outside prison. Dr Grant agreed with Dr Beech that there would be advantages to Mr Jackway's treatment with medication, but an improvement in his ability to control his impulsivity could not be guaranteed and would depend on his accepting treatment and complying with it. He would benefit from psychological support from Mr Smith who had been treating him previously. Dr Grant considered that a supervision order would reduce the risk that Mr Jackway posed for sexual offending to a moderate level if he were able to comply with the order, remain drug and alcohol free and cooperate with efforts to assist him. The risk for sexual offending would rise to high if he were to revert to substance abuse, had relationship difficulties or was suffering from "high emotionality" as result of stressors.
- [15] In evidence, Dr Grant said that Mr Jackway's lapse into drug use just before the end of the Pathways programme was not unusual in a person with drug and alcohol problems and did not mean that he would not overcome them. But the timing was of concern, because he was just about to finish the course, with the hope of release from prison after its completion. Mr Jackway was motivated to try and stay away from drugs and alcohol, but he himself recognised that he was not always able to implement the strategies he had been taught. He wished to stay abstinent, but had a tendency to become stressed, angry and upset and to give in to the impulse to use drugs to relieve his feelings. There was a significant risk that that would happen in the future. If Mr Jackway were released on a supervision order, the risk was that he would feel emotionally unstable because of the stressors of adapting to community life and possible inter-personal stressors and difficulties with supervisors, causing him to use drugs to relieve his feelings. Becoming severely intoxicated would rapidly raise the risk of an impulsive sexual offence. His 1995 offending had been in a state of significant intoxication and disinhibition, and if he were

to become intoxicated to that extent again, he would not be in control of his behaviour in terms of potential sexual offending.

- [16] Dr Grant agreed that Mr Jackway had some potential to engage with people like Mr Smith with whom he established a rapport; on the other hand, he could also develop antagonistic responses to persons supervising him. It was difficult to predict how he would react. The escalation in his behaviour could occur rapidly, as it had done in the 1995 incident. There was some evidence of his increasing maturity, but he still had a significant history of prison breaches. Supervision orders could work well with a person who worked at dealing with his own behaviours and was able to do so; but if an individual did not have the ability to control his behaviour, a supervision order would not be able to do it for him.
- [17] Mr Jackway told Dr Grant when he interviewed him that if he were released on a supervision order, he would need to live at the Wacol precinct, because he has no alternative accommodation. He informed him that he maintained contact with his mother and step-father, who live interstate, and anticipated the support of his older sister, who lives on the Sunshine Coast. It was possible that her husband would give him a job. There was, however, no material to support those assertions.
- [18] Mr Andrew Wilson, the acting manager of the High Risk Offender Management Unit within Queensland Corrective Services, provided an affidavit sworn 24 March 2016 in which he said that there were currently no available beds at the Wacol precinct, and the precinct in any event does not cater for long term accommodation. He raised some concerns in relation to the prospects of supervising Mr Jackway effectively, including that GPS tracking may not be effective where there is opportunistic offending against a victim and that while alcohol and drug testing can be undertaken up to twice per week, there was no assurance that the individual concerned would not engage in substance abuse between tests.
- [19] Mr Allen QC, for Mr Jackway, made the obvious and strongest point in his client's favour: that his last sexual offence occurred more than 20 years ago. It was somewhat speculative, he submitted, to suggest a risk of Mr Jackway's sexually offending based on something that happened so long ago. He had completed appropriate programmes, and the completion report for the Pathways programme showed a determination on his part to address substance abuse. He had expressed positive attitudes to Mr Smith about accepting

clinical support and his willingness to comply with a supervision order. If, in fact, he was non-compliant or breached the order, the result would either be increased restrictions upon him or his return to prison.

- [20] I have some sympathy for the argument that Mr Jackway's sexual offending was a very long time ago, committed by someone who was then a teenager and is now a middle-aged man. The difficulty is that one cannot say that his disposition to sexually offend must have changed through that lapse of time, because the simple fact is that, having been incarcerated for almost the whole of it, he has not had the opportunity. Both psychiatrists considered the risk of sexual reoffending to remain high. There is much that is unfortunate about Mr Jackway's background and his long institutionalisation, but recognition of those factors cannot distract from the issue of what community protection requires.
- [21] The question is whether a supervision order can effect adequate protection of the community against the risk which the psychiatrists identify. I cannot be satisfied that it would, in light of Mr Jackway's inability to control his impulsive behaviours, even when it was so clearly in his interest to do so. It should be said that he has demonstrated considerable motivation to cooperate by undertaking appropriate courses and receiving assistance from Mr Smith; but he has not, to date, been able to consistently put what he has learned into practice. His acceptance of a "shot" while still on the Pathways programme illustrates the gap between his ability to recognise strategies he should use in dealing with situations of risk and his ability to apply them. One could almost suspect that the events of February were a form of self-sabotage; but whatever the reason for Mr Jackway's behaviour then, it augurs very badly for the prospects of a supervision order's being effective. As Dr Grant said, such orders can work well, but not when the individual concerned does not have the capacity to control his impulses.
- [22] The statute does not mandate an absolute guarantee of protection, of course, but in light of Mr Jackway's recent history, one could have no confidence that he would not give way to irrational and impulsive behaviour, resulting in absconding and/or drug or alcohol use, with the outcome being further sexual offending. That could occur quite quickly and without sufficient warning to prevent it, notwithstanding the constraints of a supervision order.

- [23] That is not to say that Mr Jackway might not in the future be able to demonstrate a level of stability which could give greater confidence about his ability to comply with a supervision order. Certainly his involvement with Mr Smith appears to have been beneficial and I would recommend that Corrective Services both ensure that he has regular sessions with Mr Smith (ideally, fortnightly) and give Mr Smith access to Mr Jackway's conduct records, so that he has a full appreciation of what he is dealing with. Mr Jackway should also be given the opportunity, if he wishes, to try a course of anti-depressants, which might have a stabilising effect. But for the present, I am not satisfied that adequate protection of the community can be reasonably and practicably managed by a supervision order.
- [24] Accordingly, I affirm the decision of Acting Justice O'Brien made on 28 February 2012 that Mr Jackway is a serious danger to the community in the absence of a Division 3 Order and I order that Mr Jackway continue to be subject to the continuing detention order made by Acting Justice O'Brien.