SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Sands* [2016] QSC 225
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **ERIC SANDS** (respondent)
FILE NO/S:	BS No 11025 of 2010
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	4 October 2016
DELIVERED AT:	Brisbane
HEARING DATE:	4 October 2016
JUDGE:	Burns J
ORDER:	**Application dismissed**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where a supervision order was made with respect to the respondent under Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where it was later suspected that the respondent was likely to contravene a requirement of the supervision order – where a warrant was issued for the arrest of the respondent pursuant to s 20 of the Act – where the applicant sought orders under s 22 of the Act with respect to the respondent – whether, at the date of the final hearing of the application, the respondent was likely to contravene a requirement of the supervision order *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 16, s 20, s 21, s 22 *Attorney-General (Qld) v Downs* [2014] QSC 140, cited *Attorney-General (Qld) v Friend* [2011] QCA 357, cited *Attorney-General (Qld) v Griffin* [2015] QSC 31, cited
COUNSEL:	J M Sharp for the applicant C R Smith for the respondent

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

[1] The respondent, Eric Sands, comes before the court pursuant to a warrant issued under s 20 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld).

[2] Section 20 of the Act applies if a police officer or a corrective services officer reasonably suspects that a prisoner who is the subject of a supervision order or interim supervision order made under the Act is "likely to contravene, is contravening, or has contravened, a requirement of" that order: s 20(1). In any such case, the officer may, by complaint made on oath, apply to a magistrate for a warrant to arrest the prisoner and, if such a warrant is issued[1] and then executed, the prisoner will be brought before the court to be "dealt with according to law": s 20(2).[2]

[3] When a prisoner is brought before the court under a warrant issued under s 20 of the Act, the court must either order that the prisoner be detained in custody pending the final decision of the court pursuant to s 22 of the Act or release the prisoner if satisfied (the onus being on the prisoner) that his detention in custody pending the final hearing is not justified because "exceptional circumstances" exist: s 21(4).[3] If the court orders the prisoner's release, he will be released subject to the conditions of the existing supervision order and any other requirements the court considers necessary to comply with s 16(1) of the Act[4] or that are appropriate to ensure the adequate protection of the community: s 21(7).

[4] On the final hearing pursuant to s 22 of the Act, the court may make a further order but only if satisfied, on the balance of probabilities, that the prisoner is "likely to contravene, is contravening, or has contravened, a requirement of the supervision order or interim supervision order": s 22(1). Because the Act confers a right on the Attorney-General to appear at the final hearing (and any earlier hearing pursuant to s 21 of the Act) to make submissions, call evidence and test the evidence before the court (s 22A), the filing of an application by the Attorney-General to be heard on what is effectively a final hearing on the return of the warrant is not strictly necessary. However, in practice, an application is invariably filed on behalf of the Attorney-General and served on the prisoner.[5] That is a commendable practice because, by doing so, the prisoner is given clear notice of the

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1 The Magistrate must issue the warrant if satisfied that grounds (for the reasonable suspicion on the part of a police officer or corrective services that the prisoner is likely to contravene, is contravening, or has contravened, a requirement of his supervision order) exist: s 20(3).

2 Not every contravention of a supervision order will necessarily lead to an application for a warrant. Some contraventions may rightly be regarded as aberrations. Others may be trivial. Some may be considered peripheral to be true objects of the supervision order, that is to say, managing the risk the prisoner would otherwise pose to the community in the absence of the order. On the other hand, a contravention that is of such a nature that it serves to undermine the effectiveness of the suite of conditions contained in the supervision order to manage that risk will usually result in the making of an application for a warrant *or* the prisoner being charged with an offence against s 43AA of the Act (contravention of relevant order) *or* both.

3 See *Attorney-General (Qld) v Friend* [2011] QCA 357 at [57] per White JA. And see s 20(3) of the Act, which allows for the released prisoner to independently make an application for release pending the final hearing.

4 Section 16 sets out a number of requirements that must be included in every supervision order or interim supervision order.

5 And that is what occurred in this case, the Application having been filed on 14 April 2016.

orders that will be sought by the Attorney-General at the final hearing as well as the factual basis for the alleged contravention or likely contravention. Furthermore, by doing so, the Attorney-General takes on the onus of establishing that the prisoner is likely to contravene, is contravening, or has contravened a requirement of the relevant supervision order, something about which the Act is silent.

[5] The Act is not however silent on the question of who bears the onus if the court is satisfied that the prisoner is likely to contravene, is contravening, or has contravened a requirement of a supervision order. In that event, the onus is cast on the prisoner to satisfy the court, again on the balance of probabilities, that the adequate protection of the community can, despite "the contravention or likely contravention", be ensured by the terms of the existing supervision order and any other requirements the court considers necessary in order to comply with s 16(1) of the Act or that are appropriate to ensure adequate protection of the community or for the prisoner's rehabilitation, care or treatment: s 22(2) and s 22(7).

[6] In any case where it is alleged that a prisoner is "likely to contravene" a requirement of a supervision order or interim supervision order, the court must make an assessment of the likelihood that the prisoner will contravene the relevant order at some future time within the unexpired portion of the relevant order. In making that assessment, the focus of the court will not be on the position that existed at the time when the warrant was issued (or at any other, earlier time) but, rather, on the position revealed by the evidence before the court at the time of the final hearing.[6] Such a conclusion flows from the language used in s 22(1), requiring as it does for the court to be satisfied that the prisoner "*is* likely to contravene" the relevant order, as well as the feature that such an assessment sits at the threshold of any hearing under s 22.

[7] It follows that, whatever may have been the position so far as the likelihood of a released prisoner contravening a requirement of his supervision order at the time when the warrant for his arrest was issued under s 20 of the Act, that position may well have changed by the time of the final hearing. In fact, that is precisely what appears to have occurred in this case.

[8] The respondent was first made the subject of a supervision order under Division 3 of the Act by Byrne SJA on 10 January 2011. In April 2011, the respondent contravened the order in a number of minor respects. Then, in June 2011, he again contravened the order but, on these occasions, the nature of the contraventions was more concerning. The respondent was returned to detention pursuant to a warrant and a contravention hearing took place on 5 December 2011. Atkinson J found the contraventions proved and, although her Honour ordered that the respondent be released back on supervision, the order was amended in a number of respects through the addition of various conditions. In October 2013, the respondent was again returned to detention pursuant to a warrant after it was alleged he had contravened a number of the requirements of his amended supervision order. On 14 July 2014, Applegarth J found these contraventions proved, rescinded the supervision order and ordered that the respondent be detained in custody for an indefinite term for care, control or treatment. On 18 January 2016, that order was

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6 See *Attorney-General (Qld) v Downs* [2014] QSC 140 at [32]; *Attorney-General (Qld) v Griffin* [2015] QSC 31 at [21].

reviewed as required under Part 3 of the Act by Dalton J. Her Honour rescinded the continuing detention order and released the respondent subject to a supervision order containing some 40 separate conditions.

[9] The respondent is 40 years of age and has a significant adult criminal history stretching back to 1993 comprising many offences of violence including very serious assaults on females. He was diagnosed in 2004 as suffering from paranoid schizophrenia and, prior to his return to custody in April of this year, he was under the care of Dr Moyle, a psychiatrist, and Mr Smith, a psychologist.

[10] After his release from custody on 19 January 2016, the respondent was accommodated at the Wacol precinct. However, by March 2016, his mental state had deteriorated and he began to threaten corrective services officers. The respondent was in a state of high agitation and there was understandable concern about his behaviour. He was also becoming increasingly preoccupied with inappropriate sexual fantasies. On 12 April 2016, during the course of a telephone conversation with a corrective services officer, the respondent expressed a desire to kill his adult daughter and nephew. The corrective services officer then travelled to the Wacol precinct to speak with the respondent in an attempt to calm him. When that strategy was unsuccessful, the officer successfully sought the issue of a warrant the very next day for the respondent's arrest pursuant to s 20 of the Act. The basis for the issue of the warrant was that officer's reasonable suspicion that the respondent was "likely to contravene" the terms of the supervision order made on 18 January 2016 and, in particular, the condition that he "not commit an indictable offence during the period of the order". The respondent was arrested pursuant to the warrant and returned to custody.

[11] I have no doubt that, at the time when the warrant was sought and issued, there were proper grounds for reasonably suspecting that the respondent was likely to contravene his supervision order. However, since being taken into custody, the respondent has received psychiatric and psychological treatment and has made good progress. He has also been examined by two psychiatrists for the purposes of this hearing, Dr Lawrence and Dr Aboud, and a report from each psychiatrist is in evidence before me.

[12] Before finalising her opinion, Dr Lawrence consulted with Dr Moyle and also reviewed a range of material concerning the respondent's progress under treatment and especially since being returned to custody. Dr Lawrence opined that, although the respondent's return to custody was prudent "at that time of crisis", there is little benefit to be gained from his further detention. She considered that the respondent's behaviour has "moderated in recent months" and that he will be "a manageable risk if returned to the community on conditions of a supervision order similar to the previous one". Dr Lawrence also made a number of recommendations for the respondent's ongoing management and treatment whilst on supervision.

[13] Similarly, Dr Aboud noted that, when the respondent was returned to custody, his "risk of causing harm to others was escalating", but with "enhanced support", "therapeutic measures" and "stringent monitoring and supervision in the community", he considered the respondent's overall risk of sexual re-offence would reduce from "high" to "below moderate and potentially manageable". Like Dr Lawrence, Dr Aboud also made a number of recommendations regarding the respondent's ongoing management and treatment.

[14] The affidavit material before the court supports the opinions expressed by Drs Lawrence and Aboud. Since being returned to custody, the respondent continued to receive regular treatment from Mr Smith (until 9 June 2006) and, thereafter, from Mr Madsen, another psychologist. The respondent was "transitioned" to the care of the Prison Mental Health Service on 22 April 2016 and, in consequence, received treatment from a psychiatrist (Dr Tie).[7] He has attended all appointments, been compliant with his prescribed medication and actively participated in a handful of programs. If released on supervision, the respondent will return to the care of Dr Moyle.[8] He will also receive treatment from Mr Madsen as well as assistance from the Inala Community Mental Health Service. Importantly, each of the recommendations made by Drs Lawrence and Aboud are capable of being implemented and, if necessary, enforced under the terms of the existing supervision order.

[15] In an affidavit sworn by the respondent in response to this application, he deposed to his willingness to continue his treatment under Dr Moyle and Mr Madsen if released on supervision. Otherwise, it does appear that he is genuinely motivated to comply with the requirements of his supervision order if given the chance.

[16] In summary, the evidence before the court is such that the respondent's release on supervision is supported and, to the point of the threshold question under s 22(1) of the Act, it cannot be concluded that he is likely to contravene the requirements of his supervision order. Indeed, on the hearing of the application, counsel for the Attorney-General did not submit otherwise.

[17] I am therefore not satisfied on the balance of probabilities that the respondent is likely to contravene a requirement of the supervision order made by Dalton J on 18 January 2016.

[18] It follows that the application must be dismissed, and the respondent released from custody subject to the conditions of that supervision order.

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7 The respondent's treating psychiatrist in the community, Dr Moyle, was not engaged by Queensland Corrective Services to provide treatment to the respondent whilst he was in custody: Affidavit of Cassandra Cowie filed on 2 August 2016 at par 20.

8 Ibid par 25.