

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Armstrong* [2016] QSC 298

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
STUART WILLIAM ARMSTRONG
(respondent)

FILE NO: BS10494 of 2010

DIVISION: Trial Division

PROCEEDING: Application to review continuing detention order

DELIVERED ON: 12 December 2016 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 12 December 2016

JUDGE: Mullins J

ORDER: **As per the 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 – DANGEROUS SEXUAL OFFENDER – GENERALLY – where respondent currently in custody under a continuing detention order – where supervision order had expired – application pursuant to s 27(2) *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – where the respondent diagnosed with personality disorder and displayed previous symptoms of bipolar disorder – where the respondent had repeated contraventions in relation to drug use, but had engaged in a substance-abuse program – where the psychiatric evidence supports release from custody subject to a supervision order – where there is a moderate to high risk of sexual reoffending unless properly supervised – whether a supervision order rather than a continuing detention order can ensure adequate protection of the community – where supervision order made

Attorney-General for the State of Queensland v Armstrong
[2011] QSC 40, related

Attorney-General for the State of Queensland v Armstrong
[2012] QSC 93, related

Attorney-General (Qld) v Armstrong [2013] QSC 343, related

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 27

COUNSEL: J M Sharpe for the applicant
L C Falcongreen for the respondent

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

5 HER HONOUR: The applicant applies, pursuant to section 27 subsection (2) of the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act), for a review of the continuing detention order that was made by Justice Applegarth on 23 November 2015.

10 This matter has some unusual aspects, in that Mr Armstrong was made the subject of a supervision order by Acting Justice Dick on 14 March 2011: *Attorney-General for the State of Queensland v Armstrong* [2011] QSC 40. The period of the supervision order was five years. That has since expired. It expired whilst Mr Armstrong was in custody under the continuing detention order. There is no dispute that the way the Act works is that, although the term of that original supervision order expired, because Mr Armstrong was under a continuing detention order, it is possible for the court, on the application today, under section 30 subsection (3) of the Act, to order
15 either that Mr Armstrong continue to be the subject of the continuing detention order or that he be released from custody, subject to a supervision order.

20 I will refer to the evidence that is relevant to the issue, but it is common ground between the applicant and Mr Armstrong that the psychiatric evidence supports Mr Armstrong's release from custody, subject to a supervision order. Apart from the original reasons for the imposition of the supervision order by Acting Justice Dick, further material about Mr Armstrong's offending prior to the supervision order and difficulties with not contravening the supervision order can be gained from the contravention decisions: *Attorney-General for the State of Queensland v Armstrong* [2012] QSC 93 and *Attorney-General (Qld) v Armstrong* [2013] QSC 343.
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30 After Mr Armstrong was released from custody on 5 December 2014 after another contravention, he was found to have contravened again by the use of cannabis in either late December 2014 or early January 2015, and was taken back into custody on 7 January 2015. The reason that Justice Applegarth did not release Mr Armstrong on a supervision order when the matter was before Justice Applegarth in November 2015 was that the repeated contraventions by Mr Armstrong in relation to drug use indicated the strong need for an intervention program that would assist Mr Armstrong in addressing one of the underlying causes of his past sexual offending,
35 and that was substance abuse.

40 Mr Armstrong was willing to engage in the Pathways program, which is a high-intensity substance abuse program, and for that purpose was transferred to Townsville Correctional Centre in order to undertake the program between 14 January 2016 and 3 June 2016. The exit report from that program shows that Mr Armstrong was willing to engage in the program and endeavour to develop strategies

for avoiding amphetamines, cannabis and alcohol on his release from custody. It is to Mr Armstrong's credit that by the end of the program he was able to recognise positive changes that he had to make, and had commenced making, in relation to his attitudes, in order to assist him in avoiding illicit substances and alcohol on his release.

5 For the purpose of the review hearing, Mr Armstrong was interviewed by psychiatrists Doctors Moyle and Grant. Both have provided written reports for the review hearing. Mr Armstrong is now 46 years old. The main concern for the psychiatrists is the risk of sexual reoffending, if Mr Armstrong were under the influence of
10 amphetamines, alcohol or cannabis sativa.

There is a difference in diagnosis between the psychiatrists. Dr Moyle acknowledges the possibility of Mr Armstrong suffering from bipolar disorder, but does not diagnose Mr Armstrong as suffering from that condition. Dr Grant, who has
15 provided five previous reports in respect of Mr Armstrong under this regime in 2010, 2012, 2014, and two reports in 2015, remains of the view that Mr Armstrong displayed symptoms in 2012 during a period in prison that strongly indicated that he suffers from bipolar affective disorder, but notes that there has been an absence of symptoms in the last few years, and that he does not require any current treatment for
20 the disorder.

Both Doctors Moyle and Grant interviewed Mr Armstrong for the purpose of this hearing. Dr Moyle is of the opinion that Mr Armstrong is no more at risk currently than he was on the previous occasion that he was released. Dr Moyle diagnoses Mr
25 Armstrong as suffering from a significant drug and alcohol dependence and abuse problems, and that he has a serious personality disorder. Mr Armstrong's high risk of sexual reoffending, if he were feeling humiliated and neglected, or intoxicated by drugs or alcohol, would be reduced to moderate under a supervision order, according to Dr Moyle.

30 Dr Moyle recommends that Mr Armstrong be subject to a supervision order with similar conditions to the last order, for the next five years. Dr Moyle is of the view that if, on this release, Mr Armstrong exhibits signs of not coping with the restrictions in the community, which is a warning sign, that will be detected by
35 Corrective Services under the supervision order before there is an opportunity for Mr Armstrong to offend again sexually.

Dr Grant notes that Mr Armstrong suffers from chronic back pain from previous injuries, and diagnoses Mr Armstrong as having a personality disorder, with
40 significant anti-social and possible narcissistic traits. Apart from bipolar affective disorder, which appears to be in remission, with no active symptomatology, Dr Grant notes that substance abuse has been a particularly relevant issue in terms of determining Mr Armstrong's future risk of sexual reoffending. Dr Grant considers the overall risk for sexual reoffending is, at this stage, moderate, and that risk could
45 be contained in the community by a supervision order, particularly mandating abstinence from substance use.

The proposed supervision order is on the same terms as the original supervision order that applied to Mr Armstrong, which includes the provision for abstinence from

consumption of alcohol and illicit drugs, and that Mr Armstrong will be subject to any form of drug and alcohol testing, including random urinalysis and breath testing, as directed by an authorised Corrective Services officer. The evidence of both Drs Moyle 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 risk of sexual reoffending, ranging somewhere between high to moderate unless appropriately supervised, is an unacceptable risk as contemplated by the Act.

I am satisfied, however, that appropriate conditions can be formulated for a supervision order that will address the need to ensure the adequate protection of the community, and that a supervision order, rather than a continuing detention order, should be made. I make an order in terms of the amended draft, initialled by me and placed with the file.
