

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Yeo* [2007] QSC 274

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
RAYMOND YEO
(respondent)

FILE NO/S: BS9323 of 2005

DIVISION: Trial Division

PROCEEDING: Application for review

DELIVERED ON: 2 October 2007

DELIVERED AT: Brisbane

HEARING DATE: 23 August and 13 September 2007

JUDGE: Mullins J

ORDER:

1. The Court is satisfied to the requisite standard and affirms the decision that Raymond YEO (the respondent) is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
2. The continuing detention order made on 3 April 2006 is rescinded.
3. The respondent is subject to the following requirements until 2 October 2017.

The respondent must:

- (i) be under the supervision of an authorised corrective services officer (authorised corrective services officer) for the duration of this order;
- (ii) report to an authorised corrective services officer at the Queensland Corrective Services Probation and Parole office closest to his place of residence within 24 hours of the day of release from custody and at that time advise the officer of the respondent's current name and address;
- (iii) report to, and receive visits from, an authorised corrective services officer at such times and at such frequency as determined by Queensland Corrective Services;
- (iv) notify and obtain the approval of an authorised corrective services officer for every change of the respondent's name at least two business days before

- the change occurs;
- (v) notify an authorised corrective services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed;
 - (vi) seek permission and obtain approval from an authorised corrective services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
 - (vii) reside at a place within the State of Queensland as approved by a corrective services officer by way of a suitability assessment;
 - (viii) not reside at a place by way of short term accommodation including overnight stays without the permission of an authorised corrective services officer;
 - (ix) seek permission and obtain the approval of an authorised corrective services officer prior to any change of residence;
 - (x) not leave or stay out of Queensland without the written permission of an authorised corrective services officer;
 - (xi) not commit an offence of a sexual nature during the period of this order;
 - (xii) not commit an indictable offence during the period of this order;
 - (xiii) comply with every reasonable direction of a corrective services officer;
 - (xiv) respond truthfully to enquiries by a corrective services officer about his whereabouts or movements;
 - (xv) not have any direct or indirect contact with a victim of his sexual offences;
 - (xvi) notify an authorised corrective services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;
 - (xvii) attend upon and submit to assessment and/or treatment by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by an authorised corrective services officer at a frequency and duration which shall be recommended by the treating professional, the expense of which is to be met by Queensland Corrective Services;
 - (xviii) agree to undergo medical testing or treatment (including the testing of testosterone levels by an endocrinologist) as deemed necessary by the treating psychiatrist or an authorised corrective services officer, and permit the release of the results and details of the testing to Queensland Corrective

Services, if such a request is made for the purpose of amending the supervision order or for ensuring compliance with this order, the expense of which is to be met by Queensland Corrective Services;

- (xix) permit any medical, psychiatric, psychological or other mental health practitioner to disclose details of treatment, intervention and opinions relevant to the respondent's level of risk of reoffending and compliance with this order to Queensland Corrective Services, if such a request is made for the purpose of amending the supervision order and/or ensuring compliance with this order;
- (xx) attend and participate fully in any program or course conducted by a psychologist, counsellor or other professional, in a group or individual capacity, as directed by an authorised corrective services officer in consultation with any treating medical, psychiatric, psychological or other mental health practitioner where appropriate, with any expense of such program to be met by Queensland Corrective Services;
- (xxi) submit to and discuss with an authorised corrective services officer a schedule of his planned and proposed activities on a weekly basis or at such other interval as directed by an authorised corrective services officer, which must if required by the authorised corrective services officer disclose the identity of any person who will accompany the respondent during any of those activities and the extent to which that person has been advised by the respondent of the nature of his sexual offences;
- (xxii) not undertake any trip, visit or other activity away from his approved place of residence without the prior written approval of an authorised corrective services officer, unless an authorised corrective services officer dispenses with this requirement;
- (xxiii) report to an authorised corrective services officer on a weekly basis or at such other interval as directed by an authorised corrective services officer on the trips, visits and other activities that the respondent has undertaken since last reporting to an authorised corrective services officer and the identity of any persons in whose company the respondent undertook such trips, visits or activities, unless an authorised corrective services officer dispenses with this requirement;
- (xxiv) not initiate or maintain any supervised or unsupervised contact with any child under 16 years of age or with any physically or intellectually impaired person (other than a sibling of the respondent), except with the prior written approval of an authorised corrective services officer. The respondent is

- required to disclose the terms of this order and details of his convictions for sexual offences to the guardians and caregivers of the child or impaired person before any such contact can take place; provided that Queensland Corrective Services may disclose that the respondent is subject to this supervision order and the terms of this order to guardians or caregivers of the child or impaired person and external agencies (eg. Department of Child Safety) in the interests of ensuring the safety of the child or impaired person;
- (xxv) not join, affiliate with, attend on the premises of or attend at the activities carried on by any club or organisation in respect of which there are reasonable grounds for believing there is either child membership or child participation without the prior written permission of an authorised corrective services officer;
 - (xxvi) not visit or attend at a caravan park without the prior written permission of an authorised corrective services officer;
 - (xxvii) not visit a public park without the prior written permission from an authorised corrective services officer;
 - (xxviii) comply with every reasonable curfew direction or monitoring direction of a corrective services officer;
 - (xxix) not access pornographic images whether on the internet or otherwise;
 - (xxx) abstain from the consumption of alcohol without the prior written permission of an authorised corrective services officer;
 - (xxxi) submit to alcohol testing including breath testing as directed by an authorised corrective services officer, the expense of which is to be met by Queensland Corrective Services.

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGEMENT AND PUNISHMENT – OTHER MATTERS – where respondent has served a term of imprisonment for sexual offences involving children – where respondent currently under a continuing detention order – application for review of continuing detention order by Attorney-General under s27 *Dangerous Prisoners (Sexual Offenders) Act 2003 (Q)* – where the respondent is a serious danger to the community in the absence of a division 3 order – where Attorney-General seeks continuation of continuing detention order – whether a supervision order rather than a continuing detention order can ensure adequate protection of the community – where continuing detention order rescinded and supervision order with stringent requirements made for a period of 10 years

Dangerous Prisoners (Sexual Offenders) Act 2003, s 13, s 16, s 16A, s 27, s 30, s 43B

COUNSEL: JM Horton for the applicant
BHP Mumford for the respondent

SOLICITORS: CW Lohe, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

- [1] **MULLINS J:** The respondent's most recent convictions were for sexual offences against boys. He was sentenced in total to imprisonment of five years, which he served in full. The respondent has remained in custody since 4 April 2006, under a continuing detention order that was made under the *Dangerous Prisoners (Sexual Offenders) Act 2003: Attorney-General for the State of Queensland v Yeo* [2006] QSC 63.¹
- [2] As required by s 27 of the Act, the Attorney asks the court to review the continuing detention order. The Attorney seeks a continuation of the continuing detention order on the basis that there has been no material change in the respondent's position since the 2006 decision. The Attorney asserts that the respondent's continuing refusal to accept responsibility for his sexual offences makes him an unacceptable risk of reoffending.
- [3] The central issue on this application is whether a supervision order rather than a continuing detention order can ensure adequate protection of the community. Under s 30(4) of the Act the paramount consideration in deciding whether to make a continuing detention order or a supervision order is the need to ensure adequate protection of the community. It is relevant to consider the respondent's antecedents and criminal history, the respondent's future plans, the psychiatric evidence, what requirements may be appropriate for a supervision order for the respondent and whether compliance by the respondent is likely or able to be monitored.

The respondent's antecedents and criminal history

- [4] The respondent is 62 years old. His antecedents and criminal history are set out in paragraphs [8] to [16] of the 2006 decision.
- [5] The pattern of the respondent's sexual offending can be summarised as one in which he made contact with a parent or the parents of an intended victim that put him in a situation where he was alone with or physically next to the victim that enabled him to commit the offences. The relationship with the parent facilitated the preparatory contact with the victim that can be described as "grooming style conduct" on the part of the respondent. His offending was brazen and impulsive.
- [6] The respondent has remained at the Wolston Correctional Centre since the making of the continuing detention order.
- [7] The respondent commenced the Getting Started: Preparatory Program in April 2006. That is a psycho-educational program for offenders who are resistant to undertaking programs to address their sexual offending. After attending eight

¹ An appeal from this decision was dismissed by the Court of Appeal: *Yeo v Attorney-General for the State of Queensland* [2007] QCA 32. The High Court has granted special leave to appeal from that decision: *Yeo v Attorney-General for the State of Queensland* [2007] HCATrans 326.

sessions the respondent was asked to leave the program because of his inability to discuss his sexual offending behaviour.

- [8] In June 2006 an Individual Management Plan (IMP) for the respondent was prepared by Queensland Corrective Services (the Department) to provide for his management while he was subject to the continuing detention order. The IMP proposed that the respondent participate in pre-release planning for reintegration into the community.
- [9] At the time the continuing detention order was made, the respondent was employed in the prison in furniture assembly. That remained the position at the time the IMP was prepared. The IMP noted that the respondent was encouraged to continue to maintain this employment. That employment was terminated in July 2006 as a result of an allegation that the respondent was smoking. The respondent was unsuccessful in obtaining other employment in the prison until 18 April 2007.
- [10] In August 2006 the respondent participated in a Transitions Needs Assessment which identified needs to be addressed as part of his preparation for reintegration into the community. These included needs such as dealing with Centrelink, getting identification, and issues relating to employment, training and housing.
- [11] The respondent was offered a place in a Transitions Program that began on 3 September 2007, after this application was part heard.
- [12] After the hearing of this application on 23 August 2007, a draft IMP was prepared for the future management of the respondent, if the continuing detention order were affirmed. This draft IMP was prepared by Ms Roberta Embrey, the manager of Offender Development at the prison, by reference to the prison's file relating to the respondent and with the assistance of the probationary psychologist who has been working with the respondent. The draft IMP cannot be implemented until it has been reviewed and endorsed by the relevant personnel at the prison. The draft IMP recommends that the respondent participate in the Getting Started: Preparatory Program again, if he indicates a willingness to accept responsibility for his sexual offending.

The respondent's future plans

- [13] The respondent prepared a document setting out his future goals and plans that is dated 27 November 2006. It looks like it has been produced from a proforma document that has been modified as the respondent has selected the alternatives or paragraphs that he considers are applicable to him. There is a small amount of information in the document that is personal to the respondent.
- [14] The goal that the respondent sets for himself is not to return to prison. Despite the respondent's denial of sexual offending, he acknowledges the link between children giving evidence against him and his imprisonment. He notes in his plans that he must not involve himself in activities that bring him into contact with children. He states that he wants to live a Christian lifestyle.
- [15] If released on a supervision order, the respondent proposes residing with his brother who lives alone in a house within walking distance of a suburban Probation and Parole District Office. He is prepared for the respondent to live with him for up to six months. The respondent's brother has an intellectually disabled son aged 30

years who lives in supported accommodation, but whom he brings home for an overnight stay on occasions. The respondent's brother proposes that, whilst the respondent resides with him, he will not have his son stay overnight. He also will not have his grandchildren visit his home. The respondent's brother has been interviewed by an officer of the Department. The Department has approved his residence as suitable for the respondent to live in after release from prison.

- [16] The respondent plans, while living with his brother, to seek assistance from agencies nominated by him for locating suitable accommodation after he completes his stay with his brother.
- [17] The respondent's brother does not consider that the respondent committed the sexual offences for which he has been imprisoned. The respondent's brother does, however, understand the nature of the restrictions that would apply to the respondent, if he were released on a supervision order. The respondent's brother wishes to assist the respondent to get his life back in order. He is willing to accompany the respondent on outings, while the respondent resides with him, if he has no other commitments and is able to do so.
- [18] Although none of the sexual offences was committed by the respondent when he was affected by alcohol, he is prepared to consent to a requirement in the supervision order that he abstain from alcohol.
- [19] The respondent has continued with the Bible studies that he began during his imprisonment. He has contact with members of a Church community and is hopeful that Church members will provide a support network for him. He wishes to continue with his Bible studies.

Psychiatric evidence

- [20] In accordance with s 29(1) of the Act the respondent was examined by psychiatrists Dr Rob Moyle and Dr Michael Beech for the purpose of the review. Both psychiatrists prepared extensive written reports and gave evidence at the hearing on 23 August 2007.
- [21] Dr Moyle had prepared a risk assessment report for the purpose of the hearing that resulted in the 2006 decision. After his further interview of the respondent in February 2007, he concludes that the respondent is of no less risk of reoffending than he was when interviewed 15 months earlier.
- [22] Dr Moyle identifies the respondent's impulsivity, disobedience to rules and minimal regard for others as factors relevant to reoffending. Dr Moyle describes the respondent's defiance as a life long problem. Dr Moyle did not do a mental state examination during his recent interview with the respondent, because there was nothing to suggest any mental deterioration on the part of the respondent and there was no evidence of any serious mental disorder affecting the respondent's cognition in the past. Dr Moyle had previously concluded that the respondent's "intellect would not be high but it would not be mentally disabled either". Dr Moyle describes the respondent as being "rather concrete", in that it is unlikely he would change his attitudes readily, but that he was capable of learning new information.
- [23] Dr Moyle suggests that as the respondent's proclivities apply to boys or disabled youthful males, he should not be in any situation where he could be in contact with

children under the age of 16 years or disabled persons. Dr Moyle considers that the respondent's refusal to acknowledge his sexual offending precludes intervention strategies based on any recognition by the respondent of the triggers of such offending. Dr Moyle therefore suggests that a supervision order must set conditions that leave the respondent in no doubt as to the expectations of him and that will facilitate the supervising correctional officer responding quickly to any breach by the respondent of the requirements of the supervision order. This is so that the external constraints of the supervision order may address to some extent the risks associated with the lack of the respondent's own internal constraints. Dr Moyle considers that the respondent is adept at working around conditions that are placed on him and this requires the external constraints (the requirements of the supervision order) to be clearly and unambiguously articulated.

- [24] Dr Moyle considers that the release of the respondent from prison on a supervision order incorporating appropriately stringent requirements would reduce the risk of sexual reoffending from a high risk to a moderate risk. Dr Moyle suggests that the period for such a supervision order should be at least 10 years.
- [25] Dr Beech expresses similar views to Dr Moyle that the respondent's failure to follow rules, show empathy or take responsibility for his actions affects his risk of reoffending. Dr Beech considers that the respondent's likelihood of reoffending is enhanced by his plausible manner and glib social interactions. Dr Beech judges the respondent to be of average intelligence.
- [26] From the respondent's history, Dr Beech diagnoses the respondent as having an anti-social personality disorder and that he operates within the range of psychopathy. Dr Beech agrees with Dr Moyle that the respondent's sexual offending history is consistent with homosexual paedophilia.
- [27] Dr Beech is sceptical of any mitigation of the respondent's risk of reoffending due to his wanting to live a Christian lifestyle. Dr Beech expresses concern about the respondent attending a church service or functions at which children may be present.
- [28] Dr Beech considers that the respondent needs to be restricted from opportunities of befriending parents of young boys or from situations where young boys come into contact with him. Dr Beech considers that a supervision order would reduce the respondent's risk of reoffending only from high to moderately high and emphasises the need for close monitoring of the respondent's compliance with the requirements of the supervision order. Dr Beech suggests that a supervision order should continue for at least five years and up to 10 years.

What requirements may be appropriate for a supervision order

- [29] Although the Attorney did not support the making of a supervision order, a draft supervision order was prepared for the purpose of the application (Exhibit 4) on which the psychiatrists were invited to comment.
- [30] For the purpose of the review application, the Attorney relied on material that was before the court when the 2006 decision was made. Both Dr Moyle and Dr Beech referred back to this material and their reports and opinions were largely consistent with those of Dr Moyle and Dr Lawrence that were relied on for the 2006 decision. One of the factors that influenced the 2006 decision was that the respondent at that

stage had not even started any sexual offender program. Although the respondent's failure to complete the Getting Started: Preparatory Program keeps his assessed risk of reoffending high, that failure crystallises the risks of reoffending that have to be addressed by any supervision order that would apply to the respondent. It means that there is no treatment that is presently able to be accessed by the respondent within the prison for his sexual offending. It also highlights the futility of the draft IMP prepared for the respondent while this application was part heard, as it recommends that the respondent participate in the Getting Started: Preparatory Program, if he indicates a willingness to accept responsibility for his sexual offending, but it is clear from the psychiatric evidence that he will not be doing so.

- [31] In view of the respondent's refusal to acknowledge his past sexual offending or his propensity for sexual offending, the strategy that must underpin any supervision order is a series of stringent requirements that, if complied with, will make it unlikely that the respondent will come into contact with potential victims, but also provide the means for the respondent's compliance with the requirements to be checked by the Department. It is critical to the strategy that the respondent must be fully aware of both the stringent requirements to which he would be subject under the supervision order and that the Department has the means to check on his compliance with the requirements and act on any non-compliance.
- [32] During the hearing of the application, in response to the concerns expressed by the psychiatrists, a requirement was proposed that the respondent submit on a weekly or other regular basis to his supervising corrective services officer for discussion and approval of a schedule of his planned activities and disclose the identity of any person who would accompany the respondent or in whose company he would expect to be. It was then proposed to restrict the respondent in his activities that take place outside his home to those for which the prior written approval of the supervisor is obtained.
- [33] The onus would then be on the respondent to obtain the prior written approval of his supervisor before undertaking any trip, visit or other activity outside his home that was not in the approved schedule. This would give the supervisor a defined timetable of activities against which the whereabouts of the respondent at any time could be checked. The respondent could therefore not make a spur of the moment decision to go to the shops or the cinema or undertake any activity outside his home for which he did not have prior written approval, without being in breach of a requirement of the supervision order.
- [34] The importance of a set of requirements for prior approval of the respondent's outings is illustrated by a discussion the respondent had with Dr Beech that is recorded in Dr Beech's report. The respondent was telling Dr Beech that he would have to keep out of "risky situations" which he saw as ones where he would need to act to prevent anyone saying that he touched a child. The respondent gave Dr Beech an example "that in cinemas he would make sure that he did not sit next to a child and would always sit with adults". The respondent did not recognise that if he were to be released under a supervision order, he should not be going to a cinema by himself. The proposed requirements must enable the supervising corrective services officer to impose the constraints on the activities undertaken by the respondent that the respondent may not have otherwise recognised the need to do himself.

- [35] In order to emphasise for the respondent the importance of planning his activities and obtaining the supervisor's prior written approval to undertaking any outside activities, there should be a further requirement that the respondent then report to his supervisor on what activities outside the home he actually undertakes and provide details of the persons who accompanied him and any other details requested of him by the supervisor. Having to report on what he has done should also discourage the respondent from undertaking any approved activity in a way that would not have been approved.
- [36] Those stringent restrictions would need to apply to the respondent, at least in the early months or years of the supervision order, to address the risks of reoffending identified in the psychiatric evidence. There also needs to be flexibility in the application of such restrictions, if over time the respondent shows that he is able to avoid putting himself in situations where he may come into contact with young boys or disabled persons. I therefore consider a qualification should be added to the proposed requirements that permits the authorised corrective services officer to dispense with the requirements for the prior written approval of the supervisor to the respondent's activities outside his home and the subsequent reporting by the respondent to the supervisor on his activities.
- [37] Because of the disinhibiting effect of alcohol, the psychiatric evidence supports imposing a restriction on the use of alcohol by the respondent that is enforceable by random testing.
- [38] As the first hearing date for this review application was prior to the commencement of the *Dangerous Prisoners (Sexual Offenders) Amendment Act 2007*, the draft supervision order incorporated a requirement for electronic monitoring of the respondent and a curfew to facilitate electronic monitoring. The curfew was specified as between 7:30am and 9:30am and between 2:30pm and 4:30pm Monday to Friday of each week. The rationale for those hours was that those are the times of day when children are likely to be travelling to and from school. The 2007 *Amendment Act* makes such specific requirements unnecessary in a supervision order. There is now a mandatory requirement set out in s 16(1)(da) of the Act that must be included in every supervision order that the released prisoner must comply with a curfew direction and a monitoring direction that are set out in s 16A of the Act. That empowers the supervising corrective services officer to impose a curfew that is appropriate for the respondent and to require the respondent to wear the monitoring device that will enable the Department to confirm compliance with the curfew.

Whether compliance with the supervision order is likely or able to be monitored

- [39] The incentive for the respondent to comply with the requirements of the supervision order is the desire to remain out of prison. Consistent with that goal, he is at least prepared to acknowledge that he must avoid children.
- [40] Although the Act has always provided for a mechanism for a released prisoner to be dealt with for contravention of a supervision order, the 2007 *Amendment Act* has added to the options available to the authorities when there is a contravention of a requirement of a supervision order. Section 43B of the Act makes it an offence for a person subject to a supervision order to contravene a requirement of the order,

without reasonable excuse. The offence can be dealt with summarily and the maximum penalty imposed is two years' imprisonment.

- [41] The psychiatric evidence shows that the respondent is sufficiently intelligent to understand the nature of the restrictions imposed on his conduct and activities by a supervision order and to understand the consequences that will follow if he contravenes a requirement.
- [42] At the time the 2006 decision was made, the respondent did not have the support that is now offered by his brother, both in terms of accommodation and in providing assistance to the respondent in meeting the requirements of a supervision order.
- [43] There was no suggestion from the Attorney that the Department was unable to provide the supervision contemplated by the draft supervision order.
- [44] The respondent's denial of his sexual offending which makes him at least a moderate risk of reoffending if released under a supervision order has to be considered in the context of all matters that are relevant to managing that risk of reoffending. There is protection for the community in the stringency of the requirements of the draft supervision order and that the least indication that the respondent is not complying with them should be apparent to the Department as soon as it occurs.

Orders

- [45] The question of whether the continuing detention order continues or a supervision order is made arises after the court has been satisfied and affirms the decision that the respondent is a serious danger to the community in the absence of a division 3 order: s 30(1) of the Act.
- [46] Little time was spent during the hearing of the application on this threshold issue, because it was implicit in the submissions that the threshold issue was satisfied. The focus of the application was on the next stage as to whether a continuing detention order or a supervision order should be made.
- [47] The court is still required to have regard to the matters prescribed in s 13(4) of the Act in deciding whether the respondent is a serious danger to the community. The evidence of Dr Moyle and Dr Beech is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that the respondent's high risk of sexual reoffending is an unacceptable risk in terms of s 13(2) of the Act. It is therefore appropriate to affirm the decision that the respondent is a serious danger to the community in the absence of a division 3 order.
- [48] The requirements for the supervision order which are set out in the orders at the commencement of these reasons substantially reflect the requirements in the draft prepared by the Attorney which were modified during the course of the hearing to reflect matters that were raised in the evidence. Additional amendments have been made by me that reflect these reasons and also to try to make the requirements as clear as possible. After taking into account all matters relevant to deciding whether the continuing detention order should continue or whether a supervision order should be made, I am satisfied that adequate protection of the community can be ensured by the release of the respondent on an appropriately stringent supervision order for a period of 10 years. I will make an order in terms of the orders set out at

the commencement of these reasons which includes the requirements of the supervision order that are set out in paragraphs (i) to (xxxi).