SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Shapland* [2007] QSC 344
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (Applicant) **v** **CLAUDE EDWARD SHAPLAND** (Respondent)
FILE NO/S:	S3237 of 2007
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court
DELIVERED ON:	5 November 2007
DELIVERED AT:	Brisbane
HEARING DATE:	5 November 2007
JUDGE:	Byrne J
ORDER:	**It is ordered that:**

1. **pursuant to section 13(1) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, I am satisfied that the respondent, Claude Edward Shapland, is a serious danger to the community in the absence of a Division 3 order.**
2. **pursuant to section 13(5)(a) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* the respondent Claude Edward Shapland, be detained in custody for an indefinite term for control, care or treatment.**
3. **pursuant to section 14(1)(b) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 the respondent, Claude Edward Shapland, be detained in custody until the continuing detention order is rescinded by the order of this Honourable Court.**

CATCHWORDS: CRIMINAL LAW — JURISDICTION, PRACTICE AND PROCEDURE — JUDGEMENT AND PUNISHMENT — OTHER MATTERS — where the respondent served a term of imprisonment for the indecent treatment of a child under the age of 12 and other sexual offences — where the applicant sought a continuing detention order under s 13(5)(a) of the Dangerous Prisoners' (Sexual Offenders) Act 2003 — whether there is an unacceptable risk that the respondent will commit a serious sexual offence if released or if released without a supervision order — whether continuing detention order appropriate

Dangerous Prisoners (Sexual Offenders) Act 2003, s 13; s 13(3); s 13(4); s 13(5)(a)

Attorney-General for the State of Queensland v Beattie [2007] QCA 96

COUNSEL: B W Farr for the Applicant.
D C Shepherd for the Respondent.

SOLICITORS: Crown Law for the Applicant.
Legal Aid Queensland for the Respondent.

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BYRNE J

No 3237 of 2007

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND	Applicant
and	
CLAUDE EDWARD SHAPLAND	Respondent

BRISBANE

..DATE 05/11/2007

ORDER

HIS HONOUR: The Honourable the Attorney-General applies for an order pursuant to section 13(5)(a) that the respondent be detained in custody for an indefinite term for controlled care or treatment or else that, if he is to be released from custody, the release be subject to conditions to be contained in a supervision order.

It is common ground, and I am satisfied by the evidence to the requisite standard, (see section 13(3) of the Dangerous Prisoners (Sexual Offenders) Act 2003) that, in the absence of an order under Division 3 of that Act, the respondent is a "serious danger to the community" within the meaning of that expression in section 13 of that Act.

The respondent is aged 69. In March 2004, he was sentenced to four years' imprisonment on his pleas of guilty to three charges of indecent treatment of a child under the age of 12. The offences were committed whilst on parole for 10 other sexual offences committed against an 11 year old girl in 1994 and 1995. In the Lismore District Court in September 1995, he was sentenced to eight years' imprisonment in respect of these offences. He was released on parole in 2002 with the condition that he have no contact, directly or indirectly, with children. The offences of which he was convicted in March 2004 involved a breach of the conditions of that parole order. His parole was subsequently revoked.

The Queensland offences involved digital examination of the genitalia of at least one child. The respondent had been

invited into the house where the offence occurred, apparently to negotiate the sale of a motorcycle. The parents of the victims, girls aged 10 and 7, were in the house at the time. While the parents were distracted, the respondent entered the bedroom with the children. He was discovered shortly afterwards by the girls' mother inspecting the anal and genital areas of the older girl. She was on all fours exposing herself. The younger child was found under the blankets of the bed wearing no pants.

By the time these offences took place, the respondent had participated in a community-based sex offenders treatment course whilst on parole.

His earlier offending concerned an 11 year old girl the respondent met when her parents delivered furniture to the house where he was living. While the parents were distracted, he put his hand on the outside of her underpants and rubbed her genital area. A few days later, he waited in his car for the child outside her school. He gave her a drink and a packet of chips and drove her to a bushland park. There the first episode of sexual misconduct occurred. About a week later, he waited outside her school. Again she went with him to the same location. This time he gave her $3. Again sexual misconduct occurred. That kind of behaviour continued up to three times a week between July 1994 and February 1995. The sexual activity involved incidents of anal and vaginal intercourse.

Three psychiatrists have expressed opinions concerning the

risk that the respondent might commit sexual offences against children were he to be released into the community.

Professor Nurcombe interviewed the respondent in June 2006. He had available to him earlier psychological and psychiatric reports. He concludes that the respondent is at high, or moderate to high, risk of sexual re-offending. Matters of particular concern are the respondent's lack of any friendship network in the community, the difficulty he will have in forming an intimate personal relationship, his obdurate denial of involvement in the offences committed in Queensland, a general sense of social rejection, loneliness, childhood emotional deprivation and subtle attitudes that favour child molestation: for example, he thinks that children are capable of enjoying sex with adults physically, if not mentally, by between 11 and 15 years of age. If the respondent were to re-offend, the likely victims would be emotionally needy female children aged between 10 and 14 years.

Professor Nurcombe considers that, although the respondent is in his late sixties and his libido is waning, re-offending is possible into his seventies, and that close supervision would be required after any release from prison. In Professor Nurcombe's view the respondent should not live or work in the vicinity of children.

Professor Nurcombe considers that it is very important that the respondent develop a realistic post-release plan.

A sexual offenders treatment program would have involved the completion of such a relapse prevention plan. But the respondent has in recent years refused to participate in such a program while in custody.

In his report, the psychiatrist, Dr Beech, mentions that one of the justifications the respondent advances for having refused to undertake a sexual offenders treatment program in prison is that he finished such a course at Maroochydore whilst on parole in respect of the New South Wales offences. The respondent, also Dr Beech sensed, felt that he had learned a few things - "mainly common sense" - and could not remember much about the strategies by the time Dr Beech spoke to him in late June.

Like Professor Nurcombe, Dr Beech is concerned about the absence of well-considered plans for release. When asked specifically what he would do to prevent further imprisonment, the respondent replied that he would keep away from children: "just refrain".

Dr Beech's report discusses a long-standing history of criminal behaviour that dates back to the respondent's teenage years. It has included property offences, assault, drug related offences.

Dr Beech considers that the respondent is at high risk of re-offending by sexually abusing children if released into the community. He points out that the Queensland offences

occurred whilst on parole in respect of the New South Wales offences. Within 13 months of release, and following participation in the community in a sexual offender program, the offences occurred (as Dr Beech describes the situation) in the context of the respondent's isolation and lack of support. In Dr Beech's view, little has changed in those respects. He also considers that the lack of a realistically thought through release plan is "most worrying", reflecting a denial by the respondent of having committed the Queensland offences, minimisation of his sexual misconduct with children, and lack of insight. Dr Beech thinks that the basic intimacy problems that the respondent has in relation with adults have not been addressed and that the respondent has no cogent strategies for avoiding re-offending with children, other than refraining from contact with them. His plans on release are "desultory", in Dr Beech's opinion.

Dr Beech therefore considers that it is likely that, on any release, the respondent would find himself in similar circumstances to those that prevailed when he offended against the children and would be likely to seek out young girls again to gratify a need for affection and intimacy.

Dr Beech considers that the risk of re-offending, which would be expected to involve trying to befriend and entice a young girl he has met through some contact with her parents, could be reduced to moderately high by the development of a more realistic plan for the respondent's release. The plan would need to address loneliness, idleness and isolation and assist

the respondent to be aware of those risk factors for offending so that he could make preparations. Dr Beech considers that the respondent should have no direct contact with children, should not reside near them, and should not go to places that children may frequent.

In the community, the respondent would also require regular supervision, as well as ongoing counselling in a sexual offender maintenance program. He also considers that, although alcohol and drugs did not appear to play a role in the sexual offending with children, the respondent has a history of substance related offences, and alcohol and drugs may act to inhibit him: he should refrain from their consumption.

In testifying, Dr Beech expressed the opinion that the respondent did not require a high intensity sexual offender treatment program. Indeed, he was poorly motivated to attend such a program, denying the commission of the Queensland offences. But Dr Beech did consider that it was necessary for the respondent to participate in a program that provides for his release: in particular, one which would cause him to develop considered plans for the way he would live his life were he to be released now, dealing with such things as where he would live and, realistically, what he would do to address loneliness, idleness and isolation.

Another psychiatrist, Dr James, assessed the risk of re-offending sexually with children at moderately high. Were the respondent to re-offend, Dr James expects the

offences would be similar to those so far committed with some brief period of cultivating the victim before the offence occurred.

Dr James also considers that the respondent ought to participate in a collaborative program directed towards facilitating his rehabilitation, speaking of the kind of transition program to which most prisoners about to be released are, if they wish, exposed. A good rehabilitation plan, if implemented and supported actively, could reduce the risk of relevant re-offending by about 20 per cent, Dr James thinks.

At the conclusion of the testimony of the psychiatrists, the respondent communicated, through his counsel, a willingness to participate in a rehabilitation plan. Although the respondent had previously refused to participate in such a plan, he would, it was said, join in one and make a genuine effort to participate effectively in it.

Such a transition program was to commence on 3 September and to occupy about a month. These proceedings were adjourned to facilitate his participation in the program.

The respondent has participated in such a program. But he has not taken any useful advantage of it, even though he will have appreciated the objects of the program and his need to develop a detailed, realistic plan for his release which addresses the concerns raised by the psychiatrists. None of that has

happened.

A report from the Director of the Sex Offender and Dangerous Offender Unit, Department of Corrective Services dated 2 November 2007 describes what has happened.

The transition program offered to offenders pending release to facilitate re-integration into the community involves a number of modules. The respondent elected not to attend the housing module. That is by the way. Of more significance is the nature and extent of his participation in the program otherwise.

At the conclusion of the program, the respondent submitted a plan which scarcely addresses the many concerns raised by the psychiatrists. This is consistent with the absence of genuine participation in the program.

The report indicates that the respondent was "generally a disruptive presence" in the program. It describes him as "a reluctant participant", who often commented that he did not need support on any release because this had already been arranged for him. On one occasion, other group members suggested that the respondent leave the group if he did not wish to participate. His response was that the facilitators would not allow him to leave. Although he was not rude or offensive in dealing with facilitators, he did display an aggressive manner at times.

The transitions program facilitator met with the respondent

personally on 24 October. The respondent said that he had contacted the Catholic prison ministry regarding support but did not find that service helpful and would not access it again. He did not plan to use other community support agencies upon release and said that he would not register with Career Employment Australia as he would be able to find casual work easily.

A few days ago, a teleconference was held between the respondent and the re-integration support officer to obtain an update concerning his accommodation and release plans. It seems that he indicated that he had registered with the Department of Housing but expected Queensland Corrective Services to provide him with suitable accommodation. That expectation is justified. Emergency accommodation can be provided for a short while until more appropriate accommodation is obtained were he to be released.

The absence of an effective plan on release shows that the risks identified by the psychiatrists have not been reduced by a comprehensive plan to which the respondent was committed.

Confronted with the opportunity to participate genuinely in a program to facilitate his re-integration into the community - one which might have appreciably reduced the risk of recidivism - the respondent has not taken advantage of the opportunity.

It is said on his behalf that the conditions which would be imposed on his release afford adequate protection to the

community. In many respects, they are detailed. And if there were any substantial chance of compliance with those particularly directed to reducing the risk of recidivism, there might be a justification for release. For non-compliance with the conditions would result in the respondent's early return to prison. But there are clear indications in the respondent's conduct over several years now that it is highly unlikely that the respondent would comply with conditions of a supervision order, except to the extent to which, as it seemed to him from time to time, that they suited him.

So the risk of recidivism remains high. I accept the views expressed by the psychiatrists and, in particular, the identification of the nature and extent of the risks by Dr Beech.

The respondent's unwillingness to accept and commit himself to comply with the strictures of a supervisory regime persuade me that the adequate protection of the community requires his continuing detention for control (cf Attorney-General for the State of Queensland v. Beattie [2007] QCA 96, at paragraphs 31 and 32).

I should also record that the matters which, pursuant to section 13(4) of the Act the Court must consider in deciding whether a prisoner is a serious danger to the community beyond the information contained in the reports of the psychiatrists supported under section 11 of the Act, have been taken into

account.

The Court therefore orders that:

(1) pursuant to section 13(1) of the Dangerous Prisoners (Sexual Offenders) Act 2003, I am satisfied that the respondent, Claude Edward Shapland, is a serious danger to the community in the absence of a Division 3 order;.

(2) pursuant to section 13(5)(a) of the Dangerous Prisoners (Sexual Offenders) Act 2003 the respondent, Claude Edward Shapland, be detained in custody for an indefinite term for control, care or treatment;.

(3) pursuant to section 14(1)(b) of The Dangerous Prisoners (Sexual Offenders) Act 2003 the respondent, Claude Edward Shapland, be detained in custody until the continuing detention order is rescinded by the order of this Honourable Court.
