

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ATKINSON J

No BS1736/06 of 2007

ATTORNEY-GENERAL FOR THE STATE OF
QUEENSLAND

Applicant

and

SHANE EDWARD HARVEY

Respondent

BRISBANE

..DATE 03/12/2007

ORDER

HER HONOUR: On the 7th of August 2006, the Supreme Court
ordered that Shane Edward Harvey be detained in custody for an
indefinite period for controlled care and treatment, pursuant
to division 3 of the Dangerous Prisoners (Sexual Offenders)
Act 2003 "(the Act)".

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Under Part 3 of the Act, such a prisoner's continued detention
is required to be subject to regular review. Section 27(1) of
the Act provides that:

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"If the court makes a continuing detention order, the
court must review the order at the end of 1 year after
the order first has effect and afterwards at intervals of
not more than one year after the last review was made
while the prisoner continues to be subject to the order."

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An application pursuant to that provision was made to this
Court, and was set down for hearing before me today.

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The order of Justice Byrne and the reasons for that order set
out in some detail why his Honour made the order which he did.
There was a particular concern that the respondent had failed
to complete two sexual offender treatment programs and that
without doing those programs he remained a serious risk to the
community, and his continuing detention was required.

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Mr Harvey has taken full advantage of the time spent in prison
under that continuing detention order. He has undertaken the
required sexual offender treatment programs - two programs,

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and has positive exit reports from them, which are exhibit 1
in this application.

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Mr Harvey was reviewed by two psychiatrists for the purpose of
this application by the Attorney, Dr Lawrence and Dr James,
two very experienced psychiatrists in this area, whose opinion
I am able to rely upon without question. It is not necessary
to go through those opinions in detail, except to say that Dr
James explains exactly what led to Mr Harvey's offending, and
the maturation process that he has undergone, and the
reduction in his risk of reoffending because of that and the
benefit that he would gain from the sex offenders treatment
program. At the time when Dr James examined the respondent in
June 2007, he had not yet undergone the second program.

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Similarly, Dr Lawrence examined the respondent, and she had
the advantage of having previously examined him for the
purposes of the first application. At that time, the
respondent had not done the second sexual offenders treatment
program, and was, as Dr Lawrence observed, eager to commence
it. His eagerness to commence it can also be seen in letters
which he wrote which were on his prison file expressing his
keen desire to do the sexual offenders treatment program for
two reasons: firstly, because he was eager not to spend the
rest of his life in prison, which is understandable; and,
secondly, because he wanted to understand why he had offended
and how he could prevent himself from offending again.

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Dr Lawrence noted that he had taken whatever steps were available to him to address his offending behaviour, and recommended release under supervision and conditions, once the second sexual offenders' treatment program was completed.

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That program, as I said, has now been completed, and both Dr Lawrence and Dr James, in their oral evidence before me, were of the opinion that there would be no benefit to the community or Mr Harvey by continuing his detention. However, both were of the opinion that it would be necessary for him to be released subject to conditions.

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The necessary conditions involve supervision by a authorised corrective services officer, as well as the creation and maintenance of a relationship with a mental health professional who could assist him, and, also, the need for him to undergo a maintenance program with regard to sexual offending. They were both of the opinion that those conditions could best take place in the community.

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The Attorney's submissions record, with regard to the sexual offenders treatment programs that he has undertaken, that he appeared motivated towards successful completion of the programs, maintained attendance at the programs, and demonstrated some new found skills. It was considered that his commitment would go a long way towards minimising feelings of anger and helplessness and deal with problems which he has identified as a risk factor in his offending.

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The Attorney also submitted that the risk presented by the respondent can best be managed by release from custody, subject to conditions, and that the psychiatrists who've examined the respondent seemed to agree that the most effective means by which the respondent can be managed, or, more accurately, the risk that he is released would create can best managed by the imposition of conditions. The applicant, therefore, sought that an order be made rescinding the order of Justice Byrne of 17 July 2006, and, instead, making an order as per the draft, which was provided to the Court.

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Both psychiatrists have examined the conditions which were suggested as well as the duration of that order. I am satisfied to the requisite standard that the respondent is a serious danger to the community in the absence of order made pursuant division 3 of the Dangerous Prisoners and Sexual Offenders Act 2003. I make that finding because without the conditions which will be imposed on his release, he would be an unacceptable risk, and he would be a serious danger.

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I should, however, immediately say that there has been no opposition by Mr Harvey to the imposition of those conditions which he appears to accept are necessary. He appears to be motivated himself not to reoffend.

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Both psychiatrists agreed that the conditions should continue for a period of seven years. Dr Lawrence said the minimum should be five years, and that ten years was too long, and

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that seven years was appropriate. Dr James also agreed that seven years was the appropriate duration.

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There was discussion during submissions and the evidence as to the appropriate conditions. As Dr James says, the significant ones are that he maintain a relationship with a authorised corrective services officer, and that he establish and maintain a relationship with a mental health professional who can assist him if he has any sort of crisis which might lead him to reoffending, and also assist him with coping strategies, and it is important that he undergo a maintenance program.

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The psychiatrists agreed that it was not necessary that he be required to abstain from the consumption of alcohol for the duration of this order, or not visit licensed premises. The consumption of alcohol played no part in his offending, and both psychiatrists thought that such conditions would be unduly restrictive. The Attorney did not then seek the imposition of that condition.

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Similarly, the psychiatrists were both of the opinion that it was not necessary for him to undergo testing of testosterone levels by an endocrinologist since that was not necessary and had nothing to do with his offending behaviour. And, again, the Attorney General did not press for that condition.

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There was some debate about whether or not he should seek permission and obtain approval prior to entering into any

employment or engaging in any volunteer work, paid or unpaid
employment. Dr Lawrence thought that was unnecessarily
restrictive. Dr James thought it was necessary to have some
condition in place to prevent him from taking up or continuing
employment in an unsuitable environment. And, so, with the
assistance of counsel I have reworded that condition so that
he can be prevented from taking up or continuing employment
rather than he needs to seek permission or obtain approval
each time he enters into employment. Obtaining permission
positively and approval each time might be difficult in a
situation where he proposes to undertake farm labouring jobs.

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HER HONOUR: The order will be as follows:

(1) The order made on 17 July 2006 be rescinded.

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(2) The Court being satisfied to the requisite standard that
the respondent, Shane Edward Harvey, is a serious danger to
the community in the absence of an order, pursuant to division
3 of the Dangerous Prisoners Sexual Offender Act 2003, the
respondent be released from custody, but subject to the
following conditions until 3 December 2014.

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The respondent must:

(1) Be under the supervision of an authorised corrective
services officer for the duration of this order.

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- (2) Report to an authorised corrective services officer at Queensland Corrective Services Probation and Parole Office at Inala within 24 hours of his release from custody and at that time, advise the officer of his current name and address. 1
- (3) Report to and receive visits from an authorised corrective services officer at such times and at such frequency as determined by Queensland Corrective Services. 10
- (4) Notify and obtain the approval of the authorised corrective services officer for every change of his name at least two business days before the change occurs. 20
- (5) Notify an authorised corrective services officer of the nature of any paid or unpaid employment, or volunteer work, and 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. 30
- (6) Not accept or continue with any employment or volunteer work considered unsuitable by an authorised corrective services officer. 40
- (7) Reside at a place within the state of Queensland as approved by a corrective services officer by way of a suitability assessment. 50

- (8) Not reside at a place by way of short term accommodation, including overnight stays, without the permission of an authorised corrective services officer. 1
- (9) Seek permission and obtain the approval of an authorised corrective services officer prior to any change of residence. 10
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- (10) Not leave or stay out of the State of Queensland without the written permission of an authorised corrective services officer.
- (11) Not commit an offence of a sexual nature during the period of the order. 30
- (12) Not commit an indictable offence during the period of the order. 40
- (13) Comply with every reasonable direction of an authorised corrective services officer.
- (14) Respond truthfully to inquiries by authorised corrective services officers about his whereabouts and movements generally. 50

(15) Not have any direct or indirect contact with a victim of his sexual offences without the prior approval of an authorised corrective services officer. 1

(16) 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. 10

(17) Abstain from illicit drugs for the duration of this order. 20

(18) Take prescribed drugs as directed by a medical practitioner.

(19) Submit to any form of drug and alcohol testing, including both random urine analysis and breath testing as directed by an authorised corrective services officer. 30

(20) 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 intervention specialist, the expense of which is to be met by Queensland Corrective Services. 40

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(21) Permit any medical, psychiatric, psychological, or other mental health practitioner to disclose details of treatment,

intervention, and opinions relating to the level of risk of reoffending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order, and/or ensuring compliance with this order.

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(22) Attend any program, course, psychologist, or counsellor in a group or individual capacity as directed by an authorised corrective services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate.

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(23) Comply with a curfew direction or monitoring direction.

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