

SUPREME COURT OF QUEENSLAND

CITATION: *A-G for the State of Qld v Wright* [2008] QSC 237

PARTIES: **ATTORNEY GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
DAVID WRIGHT
(respondent)

FILE NO/S: 7384/06

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 1 October 2008

DELIVERED AT: Supreme Court, Brisbane

HEARING DATE: 29 September 2008

JUDGE: Douglas J

ORDER: **Upon release from prison, the respondent be subject to the following requirements until 29 January 2022, or further order of the Court:**

The respondent must:

- i. be under the supervision of a Corrective Services Officer (the Supervising Corrective Services Officer) for the duration of this order;**
- ii. report to the Supervising Corrective Services Officer at the Department of Corrective Services Area Office closest to his place of residence between 9:00 am and 4:00 pm within 1 business day of his release from prison and advise the officer of the respondent's current name and address;**
- iii. report to and receive visits from the Supervising Corrective Services Officer at such frequency as determined necessary by the Supervising Corrective Services Officer;**
- iv. notify the Supervising Corrective Services Officer of every change of the respondent's name at least two business days before the**

change occurs;

- v. notify the Supervising Corrective Services Officer of the nature of his employment, the hours of work each day, the name of his employer and the address of the premises where he is employed;**
- vi. seek approval from a Corrective Services Officer within 24 hours of entering into an employment agreement or engaging in volunteer work or paid or unpaid employment and cease such employment or work if such approval is refused;**
- vii. notify the Supervising Corrective Services Officer of every change of the respondent's place of residence at least two business days before the change occurs;**
- viii. not leave or stay out of the State of Queensland without the written permission of the Supervising Corrective Services Officer;**
- ix. not commit an offence of a sexual nature during the period for which these orders operate;**
- x. reside at a place within Queensland as approved by a Corrective Services Officer by way of a suitability assessment;**
- xi. comply with a curfew direction or monitoring direction;**
- xii. abstain from illicit drugs for the duration of this order;**
- xiii. take prescribed drugs as directed by a medical practitioner the expense of which, if not available under the Pharmaceutical Benefits Scheme, is to be met by the Department of Corrective Services;**
- xiv. submit to drug testing as directed by a Corrective Services Officer, the expense of which is to be met by the Department of Corrective Services;**
- xv. attend a psychiatrist, psychologist or counsellor, who has been approved by the Supervising Corrective Services Officer at a frequency and for the duration which shall be recommended by the treating psychiatrist, psychologist or counsellor, the expense of which is to be met by the Department of**

Corrective Services;

- xvi. permit any treating psychiatrist, psychologist or counsellor to disclose details of medical treatment and opinions relating to his level of risk of re-offending and compliance with this Order to the Department of Corrective Services if such a request is made in writing for the purpose of updating or amending the supervision order and/or ensuring compliance with this Order;**
- xvii. attend any program, course, psychologist or counsellor, in a group or individual capacity, as directed by the Supervising Corrective Services Officer in consultation with the treating psychiatrist, the expense of which is to be met by the Department of 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 and Supervising Corrective Services Officer, and permit the release of the results and details of the testing to the Department of Corrective Services, if such a request is made in writing for the purposes of updating or amending the supervision order, the expense of which is to be met by the Department of Corrective Services;**
- xix. comply with every reasonable direction of a Corrective Services Officer;**
- xx. respond truthfully (and with detailed information where requested) to enquiries by the Supervising Corrective Services Officer about his whereabouts and movements generally;**
- xxi. 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;**
- xxii. not be on the premises of any shopping centre, without reasonable excuse, between 9 am to 9.30 am and between 2.30 pm and 4.30 pm on school days other than for the purposes of:**

- (i) employment; or
 - (ii) attending a bona fide pre-arranged appointment with a government agency, medical practitioner or the like;
- xxiii. not visit public parks without prior written permission from the Supervising Corrective Services Officer;
 - xxiv. not without reasonable excuse be in the area within 100 metres of a school, children's playground or child care area at any time;
 - xxv. not undertake unsupervised care of children under 16 years of age;
 - xxvi. not establish and maintain contact with a child under 16 years of age; except in the case of the respondent's daughter A by way of supervised contact and communications in writing or by telephone if agreed between the respondent and the mother of the child or approved by order of a court under the *Family Law Act 1975*;
 - xxvii. not enter into, or maintain a relationship with, a person with children under 16 years of age in her care;
 - xxviii. not access, view or possess pornographic material on a computer, the Internet or in any other format;
 - xxix. not to make direct or indirect contact with the victims of his offences;
 - xxx. make available to a Corrective Services Officer upon request all necessary passwords and access codes to permit the respondent's use of any computer or device to which he has had access to be examined from time to time and not to delete or erase any content from such a computer without the prior written approval of a Corrective Services Officer.

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – MISCELLANEOUS MATTERS – SEXUAL OFFENDERS – where the respondent completed a term of imprisonment for the commission of numerous serious sexual offences against children – where a supervision order pursuant to Division 3 of the *Dangerous Prisoners (Sexual*

Offenders) Act 2003 was made upon the respondent's release from prison – whether the respondent breached the requirements of the supervision order – whether respondent should be subject to continuing detention or a further supervision order.

Acts Interpretation Act 1954, s.36

Criminal Code Act 1899, s.207A

Dangerous Prisoners (Sexual Offenders) Act 2003, ss.3, 13, 16(1)(da), 22(7)

Attorney-General (Qld) v Wright [2006] QSC 389, cited

Attorney-General (Qld) v Francis [2006] QCA 324, applied

COUNSEL: J.M. Horton for the applicant
S. Hamlyn-Harris for the respondent

SOLICITORS: C.W. Lohe, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

- [1] **Douglas J:** The respondent, Mr Wright, was released from prison in January 2007 subject to certain requirements imposed by Skoien AJ on 15 December 2006 under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. His Honour had found that Mr Wright posed an unacceptable risk to the community in the absence of such an order. The offences for which Mr Wright had been imprisoned included 16 counts of indecent treatment of a child under 12, 6 counts of indecent treatment of a child under 14 and 64 counts of possession of images classified as child abuse computer games. His Honour observed that there was a pattern to his offending namely “his apparent ability to ingratiate himself with adults, to gain their confidence and thus to gain access to a potential child victim.”¹
- [2] His Honour's order included requirements that he not establish and maintain contact with a child under 16 years of age and not access pornographic images containing photographs or images of children on a computer or on the internet or in any other format. He was reincarcerated for alleged breaches of those requirements on 27 May 2008 and an order was made that he be examined by two psychiatrists. Each of them, Professor James and Dr Grant, have diagnosed Mr Wright with paedophilia and Dr Grant also believes that he suffers from obsessive compulsive personality with his obsessional traits having been modified by his current medication and therapy.
- [3] The first issue is whether he has breached the requirements of the order made by Skoien AJ.

Contact with a boy under 16

- [4] Mr Wright attended a party upon the invitation of a 25 year old friend whom he had met in prison. He went there with a 17 year old male friend. There were four or five other people, male and female, at the party including a 13 year old boy. He reported to Professor James that he had contemplated leaving the party immediately upon discovering the presence of that youth. Apparently there were difficulties with

¹ *Attorney-General (Qld) v Wright* [2006] QSC 389 at [25](d).

his obtaining transport to leave. He did not do so for more than an hour and had a conversation with the boy when he was at the party. It appears that there was a general conversation among some people there, including the boy, about the sexual interests of pubescent boys. He said something to the boy along the lines of “isn’t that what all boys think about” (meaning sex), thinking that the boy was aged 14 or 15 and sex would be a prominent thing on his mind. The boy replied that he thought about cars. He denied being alone with the boy at any time during the evening but told Dr Grant that there could have been a time when there was only one other person present.

- [5] It was submitted on his behalf that that conduct did not amount to establishing and maintaining contact with a child under 16. It seems to me to be clear that he did establish and maintain contact with the boy contrary to his Honour’s order. One of the meanings of “contact” is “immediate proximity or association”² and the *Oxford English Dictionary* defines it in relation to the phrase “to come in contact with” as “to meet, come across, be brought into practical connexion with.”³ The contact initially made at the party was maintained during a significant part of the period he was there and he engaged in quite inappropriate conversation with the boy when one takes into account the objects of his Honour’s order and the offences for which Mr Wright had previously been imprisoned.
- [6] Mr Wright also argued to Dr Grant that what he referred to as his brief conversation with the boy did not constitute a breach of the order. It is significant that Dr Grant concluded that Mr Wright “would have known that this was not a wise or acceptable course of action in the context of his Supervision Order, even though he might deny that it technically constitutes a breach of the precise wording of the Order”.⁴ He went on to say that Mr Wright’s attitude to supervision has been somewhat ambivalent, with him paying attention to obeying the letter of the law according to his interpretation although at times apparently not being willing to fully satisfy the spirit of the order. Dr Grant also said:⁵
- “In this regard he shows some sense of grandiosity and entitlement, these being personality traits which have been noted by the other assessing psychiatrists.”
- [7] He was concerned that the breach indicated an ongoing vulnerability and risk that there would be future offending.

Accessing pornographic images of children

- [8] Mr Wright admitted to both psychiatrists and to a police officer that he viewed images of underage boys on his computer but claimed to have done so accidentally. That is unlikely as the uncontradicted forensic evidence from a computer examiner was that there must have been a deliberate downloading of images because the images he referred to were found in the computer’s cache, which required user selection to download a file there.⁶ The names of the sites through which the images were accessed also suggest that they were not accessed accidentally.

² *The Macquarie Dictionary* (2nd ed., 1981) meaning 2.

³ See the second definition of “contact” as a noun in *OED Online*.

⁴ Exhibit 1 p. 18.

⁵ Exhibit 1 p. 18.

⁶ Affidavit of Jason Wright filed by leave 29 September 2008 para. 15.

- [9] He was charged before a Magistrate with contravening that requirement of Skoien AJ's order but found not guilty on the basis that the learned Magistrate was not satisfied beyond reasonable doubt that the images were of boys under 16. She formed the view that the order should be construed as if it referred to children under 16 because of references in other conditions prescribed by his Honour to children under 16 years of age and because of the terms of s. 207A of the *Criminal Code* dealing with material that depicts a child under 16 years. The alternative argument was based on the *Acts Interpretation Act* 1954 that the reference in the requirement to "children" was a reference to persons under 18.⁷
- [10] I was told that decision is the subject of an appeal but it is unnecessary for me to consider the issue for the purpose of these reasons. Her Honour, the learned Magistrate, otherwise took the view that it was more probable than not that some of the images were of children under the age of 16 years. On that civil standard and on my perusal of those images it seems quite clear to me that some of them are of children under 16 and, whatever the appropriate interpretation of the word "children" in that requirement of Skoien AJ's order, it has been met on the material produced to me. In my view that condition has been contravened also.

Consequences of the contraventions

- [11] Although counsel for the applicant argued in his written submissions that there was a basis on which continuing detention may be ordered, there seems little further that could be done for Mr Wright in prison and better prospects exist for his rehabilitation outside prison particularly where the conditions of his supervision order are clear and supervised well. It is acknowledged by the applicant that supervision, if appropriate to ensure the adequate protection of the community, is in principle to be preferred over detention.⁸ The main debate was over the nature of the conditions that should be imposed on Mr Wright in a varied order to meet the risks of his further offending.
- [12] Those risks were assessed by the psychiatrists as at least moderate and in certain circumstances high. The circumstances in which the risks would be high are particularly those comparable to the offences for which he was imprisoned. They were cases where he had ingratiated himself with the parent or parents of young boys whom he then abused.⁹
- [13] The conditions debated before me were such as to address those and other risks. There were two conditions the subject of particular debate. They related to approval of work that he might undertake and the regulation of his access to pornographic material.

Employment notification

- [14] The first debate, about notification of changes in employment, was raised by proposed condition (vi). The draft for the Attorney-General was to this effect:
 "The respondent must:

....

⁷ See s. 36.

⁸ See *Attorney-General (Qld) v Francis* [2006] QCA 324 at [39].

⁹ The facts are related by Skoien AJ in *Attorney-General (Qld) v Wright* [2006] QSC 389 at [2]-[4].

- (vi) obtain approval from a Corrective Services Officer before entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;”

[15] That proposed condition was to replace a condition in the existing order that he notify the supervising corrective services officer of every change of employment at least two business days before the change occurred. That condition was aimed at ensuring that Mr Wright not work at premises where his access to vulnerable children might create the risk of further offending by him. There had been some dispute between Mr Wright and the supervising corrective services officers about his obligations, for example, to disclose pay slips to enable them to have evidence of his employment.¹⁰

[16] It was argued for Mr Wright that the existing condition was too restrictive in circumstances where he may receive an offer of employment that required an immediate response or if he was working for a labour hire organisation and worked at different premises from day to day. It seems to me that an appropriate solution to the problem is to reformulate the condition proposed for the Attorney-General to read as follows:

“The respondent must:

...

- (vi) seek approval from a Corrective Services Officer within 24 hours of entering into an employment agreement or engaging in volunteer work or paid or unpaid employment and cease such employment or work if such approval is refused.”

[17] Both parties were willing to accept a condition phrased in those terms.

Access to pornographic material

[18] The other contentious order related to the ability of Mr Wright to access pornographic material. The Attorney-General proposed this requirement:

“The respondent must:

- (xxviii) not access, view or possess pornographic material on a computer, the Internet or in any other format.”

[19] Mr Wright is now a student and needs access to the internet for the purpose of his studies. The alternative formula proposed for him was as follows:

“The respondent must:

...

- (xxviii) not access, view or possess;
 - (a) any pornographic images on a computer or the internet or in any other format;

¹⁰ See the affidavit of Pauline Sheppard filed by leave on 20 May 2008 at pp. 39-41 of the annexures.

(b) any pornographic material (which does not include images) concerning children under 18 years of age.”

- [20] The psychiatric evidence from both witnesses was that access to internet pornography was an important avenue for Mr Wright’s paedophilic impulses as people in his position often use the internet to stimulate themselves. Mr Wright had spent many hours accessing such material before the charges were laid against him, from seven to eight hours per day. He had also accessed pornographic material one to two hours per week since his release. Dr Grant thought that it was more likely that he would access child pornography if he were permitted to access pornography generally on the internet. He said that the boundary between lawful and unlawful internet pornography can be vague because of doubt as to the ages of the people shown in relevant images.
- [21] He was willing to concede that exchanges on gay chat rooms could be different and that it could be important for him to re-establish his social life by having access to such chat rooms but he believed that there was a risk if such chat rooms dealt with paedophilic content.¹¹
- [22] Professor James was more reluctant to concede the benefits of Mr Wright accessing chat rooms, partly on the basis that most 43 year olds, as Mr Wright is, can get by without the benefit of such a medium. More importantly he was concerned that it was very difficult to monitor the content of chat rooms, they could be used for the “grooming” of young people, Mr Wright was prone to blur the boundaries between acceptable and unacceptable behaviour and because it was important to divert him to things other than sex to try to separate him from the risks associated with his paedophilia. He believed that it was very likely that Mr Wright would reoffend without strict and diligent supervision.¹²
- [23] I raised with counsel in argument the possibility of a requirement precluding Mr Wright from accessing any pornographic material including any internet chat room devoted to such material but leaving the proviso that if such pornographic material should appear in any other such internet chat room that he had accessed he not copy it to the hard drive of a computer or any storage device accessible through a computer and not engage in any discussions in that chat room in respect of paedophilia or pornography.
- [24] There would be real difficulties in supervising such an order. It is also relevant that Mr Wright has a demonstrated tendency to try to stretch the boundaries of the orders applying to him. In that context Dr Grant referred to his “pedantry, his legal knowledge, his attention to detail and his tendency to challenge authority and control over his life” as a reason for phrasing the requirements of the order precisely.¹³
- [25] I have decided that the appropriate requirement is that proposed for the Attorney-General as more clear, definite and less doubtful in its application. One risk associated with that formula is that the word “view” in respect of material on the internet assumes some deliberation in the person using a computer. Common experience establishes that web browsers can produce “pop-ups” involuntarily on

¹¹ See the transcript at pp. 1-15 to 1-16.

¹² See the transcript at pp. 1-24 to 1-25.

¹³ Exhibit 1 p. 19.

the part of a user but common sense should also dictate that such an event may not necessarily infringe the requirement, depending on the nature of the sites visited by Mr Wright. The intention of the condition is, however, clear that he not access pornography in any form. That seems to me to be an appropriate condition to apply because of the probable effects of such material on him and the associated risks of his commission of further offences.

Conclusion

[26] When orders such as these are amended the existing order must now be varied to include a requirement that the prisoner comply with a curfew direction or monitoring direction.¹⁴ Dr Grant's evidence was that it was important for Mr Wright's rehabilitation to maintain a normal social life and that, for Mr Wright, it could entail going out late at night to places such as gay hotels, bars and clubs which need not necessarily create a risky setting for his social behaviour. It was submitted by Mr Hamlyn-Harris, for Mr Wright that it would be appropriate for me to refer to that evidence in respect of the administration of such a curfew. The evidence is there but it is a question for those supervising the curfew to be satisfied as to the nature of any venues to be visited by Mr Wright and the possibility that they may provide an occasion that would put Mr Wright at risk of further offending. That will require a balancing act between helping his rehabilitation and avoiding the risk that might be posed of his further offending.

[27] Accordingly I shall make an order in the terms annexed to these reasons.

¹⁴ See s. 16(1)(da) and s. 22(7) of the Act.

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 7384/06

Applicant **ATTORNEY-GENERAL FOR STATE OF QUEENSLAND**

AND

Respondent **DAVID WRIGHT**

ORDER

Before: Skoien AJ
Date: 15 December 2006
Initiating document: Application filed 31 August 2006

Amended by: Douglas J
Date: 30 September 2008
Initiating document Application filed 27 May 2008

Upon release from prison, the respondent be subject to the following requirements until 29 January 2022, or further order of the Court:

THE ORDER OF THE COURT IS THAT:

The respondent must:

- (i) be under the supervision of a Corrective Services Officer (the Supervising Corrective Services Officer) for the duration of this order;

Order
Filed on behalf of the applicant

Per Lisa Evans

C W Lohe
CROWN SOLICITOR
11th Floor, State Law Building
50 Ann Street
Brisbane Qld 4000
Telephone 07 3239 6167
Facsimile 07 3239 6022

- (ii) report to the Supervising Corrective Services Officer at the Department of Corrective Services Area Office closest to his place of residence between 9:00 am and 4:00 pm within 1 business day of his release from prison and advise the officer of the respondent's current name and address;
- (iii) report to and receive visits from the Supervising Corrective Services Officer at such frequency as determined necessary by the Supervising Corrective Services Officer;
- (iv) notify the Supervising Corrective Services Officer of every change of the respondent's name at least two business days before the change occurs;
- (v) notify the Supervising Corrective Services Officer of the nature of his employment, the hours of work each day, the name of his employer and the address of the premises where he is employed;
- (vi) seek approval from a Corrective Services Officer within 24 hours of entering into an employment agreement or engaging in volunteer work or paid or unpaid employment and cease such employment or work if such approval is refused;
- (vii) notify the Supervising Corrective Services Officer of every change of the respondent's place of residence at least two business days before the change occurs;
- (viii) not leave or stay out of the State of Queensland without the written permission of the Supervising Corrective Services Officer;
- (ix) not commit an offence of a sexual nature during the period for which these orders operate;
- (x) reside at a place within Queensland as approved by a Corrective Services Officer by way of a suitability assessment;
- (xi) comply with a curfew direction or monitoring direction;
- (xii) abstain from illicit drugs for the duration of this order;
- (xiii) take prescribed drugs as directed by a medical practitioner the expense of which, if not available under the Pharmaceutical Benefits Scheme, is to be met by the Department of Corrective Services;
- (xiv) submit to drug testing as directed by a Corrective Services Officer, the expense of which is to be met by the Department of Corrective Services;
- (xv) attend a psychiatrist, psychologist or counsellor, who has been approved by the Supervising Corrective Services Officer at a frequency and for the duration which shall be recommended by the treating psychiatrist, psychologist or counsellor, the expense of which is to be met by the Department of Corrective Services;

- (xvi) permit any treating psychiatrist, psychologist or counsellor to disclose details of medical treatment and opinions relating to his level of risk of re-offending and compliance with this Order to the Department of Corrective Services if such a request is made in writing for the purpose of updating or amending the supervision order and/or ensuring compliance with this Order;
- (xvii) attend any program, course, psychologist or counsellor, in a group or individual capacity, as directed by the Supervising Corrective Services Officer in consultation with the treating psychiatrist, the expense of which is to be met by the Department of 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 and Supervising Corrective Services Officer, and permit the release of the results and details of the testing to the Department of Corrective Services, if such a request is made in writing for the purposes of updating or amending the supervision order, the expense of which is to be met by the Department of Corrective Services;
- (xix) comply with every reasonable direction of a Corrective Services Officer;
- (xx) respond truthfully (and with detailed information where requested) to enquiries by the Supervising Corrective Services Officer about his whereabouts and movements generally;
- (xxi) 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;
- (xxii) not be on the premises of any shopping centre, without reasonable excuse, between 9 am to 9.30 am and between 2.30 pm and 4.30 pm on school days other than for the purposes of:
 - (i) employment; or
 - (ii) attending a bona fide pre-arranged appointment with a government agency, medical practitioner or the like;
- (xxiii) not visit public parks without prior written permission from the Supervising Corrective Services Officer;
- (xxiv) not without reasonable excuse be in the area within 100 metres of a school, children's playground or child care area at any time;
- (xxv) not undertake unsupervised care of children under 16 years of age;
- (xxvi) not establish and maintain contact with a child under 16 years of age; except in the case of the respondent's daughter Aimee by way of supervised contact and communications in writing or by telephone if agreed between the respondent and the mother of the child or approved by order of a court under the *Family Law Act 1975*;

- (xxvii) not enter into, or maintain a relationship with, a person with children under 16 years of age in her care;
- (xxviii) not access, view or possess pornographic material on a computer, the Internet or in any other format;
- (xxix) not make direct or indirect contact with the victims of his offences;
- (xxx) make available to a Corrective Services Officer upon request all necessary passwords and access codes to permit the respondent's use of any computer or device to which he has had access to be examined from time to time and not to delete or erase any content from such a computer without the prior written approval of a Corrective Services Officer.