

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General v Bryde* [2008] QSC 94

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)

v

BRYDE, Charles Frederick
(respondent)

FILE NO/S: No 938 of 2008

DIVISION: Trial Division

PROCEEDING: Trial

ORIGINATING COURT: Brisbane

DELIVERED ON: 30 April 2008

DELIVERED AT: Brisbane

HEARING DATE: 30 April 2008

JUDGE: Dutney J

ORDER: **1. I am satisfied to the requisite standard that the respondent, Charles Frederick Bryde, 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 respondent is to be subject to the following conditions until the 1st of May 2018, or further order of the Court

3. The respondent must:

- a. report to a Corrective Services officer at the place closest to his place of residence between 9 a.m. and 4 p.m. on the day of release from custody, and, at that time, advise the officer of the respondent's current name and address;**
- b. report to, and receive visits from, an authorised Corrective Services officer at such times and at such frequency as determined by the officer;**
- c. notify a corrective services officer of every change of his name, place of residence or employment at least two business days before**

the change happens;

- d. be under the supervision of a Corrective Services officer;**
- e. comply with a curfew direction, or monitoring direction;**
- f. comply with every reasonable direction of a Corrective Services officer;**
- g. not leave or stay out of Queensland without the permission of a Corrective Services officer;**
- h. not commit an offence of a sexual nature during the period of the order;**
- i. attend, at the expense of Queensland Corrective Services, 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;**
- j. permit any medical, psychiatric, psychological or other mental health practitioner to disclose details of treatment, intervention and opinions relating to level of risk of re-offending, 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.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – OTHER MATTERS – QUEENSLAND – whether the *Dangerous Prisoners (Sexual Offenders) Act 2003* applies to the respondent – application by the Attorney-General for an order pursuant to Division 3 of the Act – whether respondent is a ‘serious danger to the community’ – whether respondent should be released subject to restrictive conditions

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), Division 3

COUNSEL: Mr B Mumford for the applicant

Ms C Morgan for the respondent

SOLICITORS: Attorney-General of the State of Queensland for the applicant

Legal Aid Queensland for the respondent

- [1] This is an application pursuant to section 5 of the *Dangerous Prisoners (Sexual Offenders') Act* of 2003 seeking a division 3 order against the respondent.
- [2] The respondent is a 22 year old man born on the 5th of November 1985. On the 26th of September 2005, the respondent was convicted of offences against two women, three weeks apart, in October and November 2004.
- [3] In each case the woman was alone on a secluded beach wearing swimwear. The first woman was 31 years old and the second considerably older. In both cases the woman involved fought off the respondent, but the second involved at least digital rape and the respondent punching the woman in the eye.
- [4] According to the psychiatric evidence, aspects of the respondent's background were relevant to the commission of the offences.
- [5] The respondent came from a generally supportive family. He is the second youngest of five children spread over a long period of time. His father was well over 60 when the respondent was born. The respondent and his younger sibling are children of his father's second marriage to a much younger woman.
- [6] Soon after birth, the respondent was diagnosed with an unusual condition which manifests itself in blotches or lumps around the skin, and, in the respondent's case, in a larger than normal head. Unsurprisingly, this condition resulted in the respondent being the object of ridicule and abuse at school.
- [7] The respondent is of low intellect, but not retarded. This did not make his acceptance by his peers any easier. The respondent displayed aggression as early as preschool where, according to Dr Moyle, he was expelled for aggressive behaviour.
- [8] Doctor Moyle opines that even without the difficulties the respondent faced at school as a result of his appearance and intellect, he may well have exhibited overly aggressive tendencies. In any event the combination has resulted in a level of impulsive aggressiveness, although not to such a level that apart from the offences for which he is presently incarcerated the respondent has any other criminal convictions.
- [9] As a 12 year old the respondent came to the attention of authorities for stealing women's underwear and masturbating, and on another occasion for confronting an older woman in a public toilet, naked, and making improper suggestions. On both occasions the respondent was cautioned.
- [10] At the age of 16, the respondent developed a tumour in the brainstem region which may be life threatening if it continues to grow, although it may never develop further. A consequence of this has been the development of a right facial palsy which has further reduced the respondent's self esteem and some eye problems requiring surgery. The tumour causes bad headaches and engenders an apathy in the respondent towards rehabilitation, occasioned by his unsupported belief that his lifespan is limited.
- [11] The respondent's full time release date is 2nd May 2008.

- [12] A pre-sentence report prepared by Dr Woolridge suggested that the respondent lacked remorse or empathy with his victims. Because of its age, however, the report is only at present relevant as a starting point.
- [13] While in custody the respondent completed the High Intensity Sexual Offender Program. His exit report provides some useful insight.
- [14] On the negative side, the report records the risk factors as follows:
1. Due to the respondent's limited cognitive abilities, he was unable to grasp clearly the central issues of the program, or to gain clear insight into his offending behaviour. Failing to understand the causes of behaviour would make it more likely that this behaviour would be repeated.
 2. Whilst the respondent does have support, people and his family, particularly his father, his father's advanced age (87) limits his ability to help his son in practical terms.
 3. The respondent remains young in age (and mental ability). His immaturity has to feature as a risk factor.
 4. 4. Low self esteem, which seems to have been a clear factor in his offending.
- [15] On a positive note the following appears:
1. The respondent's father is clearly concerned to seek support for his son, although his age limits his practical ability to undertake the primary care role himself.
 2. The respondent presents as lacking in deliberate malevolence and as having a pleasant and cheerful personality.
 3. The respondent has a good work history and a clear motivation and focus to obtain jobs with good remuneration, accepting that he might have to undertake further training to acquire the skills to advance further.
- [16] In summary the report states:
- "Due to his cognitive problems, combined with fairly low social skills, the respondent had difficulty both in grasping and retaining the core elements of the program. It was difficult for facilitators to know exactly how much he was taking on board, or engaging with, as his contributions were minimal, and he hardly ever asked for clarification. When facilitators did check with him for comprehension, again this appeared to be minimal. As he could not remember what he had said from one session to another, he tended to directly contradict himself.

It is very difficult to perceive any kind of linear progress with the respondent given that he admitted to not being able to remember statements he had made, or insights developed in previous sessions. Therefore, it is impossible to know exactly what positive impact the HISOP program had on the respondent.

Shortly before he completed the program, he did make the statement that he wanted to change, which is a positive starting place, but in general terms it was hard to see what impact the program had in changing his thinking. However, the session at the end of the program, which used a more visual and simplified approach to producing a new future plan, that the respondent then was able to present to the group, enabled him to complete the program

on a high positive note. Participants commented how much more accessible and effective this way of identifying high risk factors and appropriate interventions had seemed for the respondent."

- [17] These conclusions seem to fairly closely correspond with the conclusions drawn by Dr Moyle independently of the report to which he did not have access. At page 34 of his report, Dr Moyle summarises his conclusions as follows:

"The respondent has a low intellect and poor social skills, and gave me a history of much more extensive aggression from preschool years, when he was expelled, to school years. Yet in certain work situations he does seem to survive well, although he has felt particularly aggressive to women in one workplace. I have commented on ongoing hostility towards certain women behaving in certain ways, and a sense that he has that he has a terrible temper, and that one should not rile him up because it might tip him over the edge as regards violence. It is wise to heed his warning. Therefore, there are good features and negative features.

On the positive side he does have a reasonably good work history; does seem to have good social support from his own family who seem to love and respect and feel for him, while at the same time are desperate in the sense that they feel incapable to change his situation and seek help for him. In the past he has had a good work history.

On the negative side it looks like he will not be able to live at home. He is still very youthful. He still harbours quite a degree of hostility and negativity and he is identifying more and more with an institutional subgroup instead of his much more socially appropriate father. This may be in preparation for separating from his parents' influence.

This, coupled with his life history of impulsivity and intellectual slowness but not intellectual disability means that he is unlikely to understand sophisticated concepts and would therefore probably respond better to a more direct intervention as well as a psychotherapeutic approach. He does seem to comply with what he is told to do by and large."

- [18] Dr Sundin's report is not materially different. She also considered him a moderate to high risk of re-offending.
- [19] Each of the psychiatrists conducted tests to assess the potential for recidivism on the part of the respondent. These tests are of limited utility, and I place greater weight on the psychiatrists' professional judgment.
- [20] Counsel for the Attorney argued, although somewhat faintly, that I should be satisfied that the respondent is an unacceptable risk if released and that I should order his continuing detention. He rightly conceded, however, that none of the consultant psychiatrists' reports supported such a result. In essence, his submission was that I should release the respondent under supervision.
- [21] Counsel for the respondent submitted, again somewhat faintly, that I should not be satisfied to the required standard that her client was a serious danger to the

- community unless a division 3 order was made. She rightly conceded that such a conclusion would not sit well with the psychiatric evidence.
- [22] Having considered the psychiatric evidence, I am satisfied that the respondent would be a serious danger to the community if released without a division 3 order.
- [23] This is not an easy case. The respondent is not a recidivist. Neither alcohol nor drugs were relevant to the commission of the offences for which the respondent is incarcerated.
- [24] There is evidence that, despite his aggressiveness, some abuse of alcohol as a teenager did not lead the respondent to antisocial activities. According to Dr Moyle, the respondent's most likely period of re-offending is within 12 months of release. The respondent is not a paedophile, and there is no suggestion he presents as any risk to children.
- [25] It is unfortunate that the respondent was not given the opportunity of parole. A period of supervision on parole may well have alleviated the risk factors in this case.
- [26] Regrettably the absence of a controlled reintegration by the respondent back into society under conditions of parole has not been offered.
- [27] It is the lack of empathy with women and the immaturity of his social interactions which make the uncontrolled release of the respondent an unacceptable risk.
- [28] There were problems with the respondent obtaining entry into the sex offender course in this case. Without completing such a course, the respondent's release on parole was problematic in the light of Dr Woolridge's assessment. Nonetheless it should not be thought that supervision orders under this legislation should act as a substitute for proper staged release of prisoners on parole. If parole authorities refuse parole to sex offenders as a matter of course, it may be that society will have to accept a higher level of risk than might now be thought to be acceptable.
- [29] In this case the factors which create the risk are the respondent's lack of social maturity, isolation from social contact, and lack of empathy with women. These risks are likely to be reduced by proper counselling and greater positive social interaction. The conditions of supervision should be directed to specifically addressing these issues.
- [30] The respondent had a good work history prior to his incarceration. He worked on rural properties and as a meat worker. Both activities involve significant contact with co-workers with potential to improve his socialisation. Among his social activities were drinks with co-workers after work. Throughout his life, and until his incarceration, the respondent's principal recreation appears to have been pig shooting.
- [31] I do not consider that any condition which inhibits or restricts the respondent's ability to pursue social activities will assist in the management of his risk. Prohibiting alcohol where it played no part in either the relevant offences or any other offences is likely to be counterproductive.

- [32] Conditions, the breach of which duplicates criminal offences, but which are unrelated to any offending behaviour, should not be imposed. To do so is to gratuitously impose a double punishment on the respondent without any identifiable benefit to the community.
- [33] Accordingly, I order as follows:
1. I am satisfied to the requisite standard that the respondent, Charles Frederick Bryde, 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 respondent is to be subject to the following conditions until the 1st of May 2018, or further order of the Court. The respondent must:
 - (a) report to a Corrective Services officer at the place closest to his place of residence between 9 a.m. and 4 p.m. on the day of release from custody, and, at that time, advise the officer of the respondent's current name and address;
 - (b) report to, and receive visits from, an authorised Corrective Services officer at such times and at such frequency as determined by the officer;
 - (c) notify a corrective services officer of every change of his name, place of residence or employment at least two business days before the change happens;
 - (d) be under the supervision of a Corrective Services officer;
 - (e) comply with a curfew direction, or monitoring direction;
 - (f) comply with every reasonable direction of a Corrective Services officer;
 - (g) not leave or stay out of Queensland without the permission of a Corrective Services officer;
 - (h) not commit an offence of a sexual nature during the period of the order;
 - (i) attend, at the expense of Queensland Corrective Services, 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;
 - (j) permit any medical, psychiatric, psychological or other mental health practitioner to disclose details of treatment, intervention and opinions relating to level of risk of re-offending, 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.