SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Williams* [2010] QSC 248
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** **(applicant)** **v** **STEPHEN NATHANIEL WILLIAMS** **(respondent)**
FILE NO:	BS3592 of 2010
DIVISION:	Trial Division
PROCEEDING:	Originating Application
DELIVERED ON:	12 July 2010 (ex tempore reasons)
DELIVERED AT:	Brisbane
HEARING DATE:	12 July 2010
JUDGE:	Mullins J
ORDER:	**Order as per draft initialled by Mullins J and placed on the file.**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – OTHER MATTERS – where respondent currently serving a term of imprisonment for sexual offences involving children – application for orders pursuant to s 13 *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – whether the respondent is a serious danger to the community in the absence of a division 3 order – whether a supervision order rather than a continuing detention order can ensure adequate protection of the community – whether a condition requiring the respondent not to commit an indictable offence is an appropriate condition of the supervision order – where supervision order made for a period of 10 years
COUNSEL:	MA Maloney for the applicant TA Ryan for the respondent
SOLICITORS:	GR Cooper Crown Solicitor for the applicant Legal Aid Queensland for the respondent

HER HONOUR: This is an application under section 13 of the Dangerous Prisoners Sexual Offenders Act 2003 (the Act) made by the Attorney-General for orders that either Mr Williams be detained in custody for an indefinite term for care, control or treatment, or that he be released from custody subject to the conditions that the Court considers appropriate and that are stated in the order.

Mr Williams was born in 1972. He is presently serving a period of imprisonment for sexual offending. The current period, which is due to expire on 16 July 2010, includes a term of imprisonment of 4 years for the offence of rape and a concurrent term of imprisonment of 12 months for indecent treatment of a child under the age of 16 years. Both offences were committed against the same victim in early 2005.
The sentences were imposed in the Cairns District Court on 15 September 2006.

For the purpose of this application, a psychiatric report was obtained initially from Dr Harden. Subsequent reports were obtained from psychiatrists Professor James and Professor Nurcombe. The three psychiatrists were available to give evidence to the Court on the terms of a proposed supervision order that was made Exhibit 2 in the proceeding. They were able to express their opinions not only on what was the appropriate way of resolving this application, whether by way of detention order or supervision order, but also, to provide helpful evidence on the conditions of a proposed supervision order that were not able to be agreed between the applicant and the respondent.

The Attorney-General, helpfully, acknowledged that the terms of the psychiatrists' reports were such that the imposition of a supervision order was supported as being able to address the respondent's risk of sexual re-offending. Mr Williams, helpfully, did not challenge a finding that the Court would be satisfied on the acceptable, cogent evidence of the psychiatrists that there is an unacceptable risk of his re-offending in the absence of a Division 3 order.

That said, it is still incumbent upon me to consider the material in detail before reaching a conclusion that I consider appropriate on the material. I therefore need to refer to some history of Mr Williams' offending and some aspects of the opinions expressed by the psychiatrists as a framework for the findings that I need to make in this matter.

Mr Williams' criminal history dates back to 1990 and is primarily concerned with offences that were committed whilst he was under the influence of alcohol or drugs. There is, in fact, no sexual offending as such on his history until the conviction in the Cairns District Court in June 2003 of multiple counts of indecent treatment of children under 16 years.

There was an earlier entry in the Cairns Magistrates Court on 28 October 2002 where Mr Williams was convicted of wilful exposure, although not sentenced by the Court on the basis that it was a sexual offence. The circumstance of the offending of urinating on a beach near a 5 year old has been

the subject of consideration by the psychiatrists as an example of the type of sexual offending that Mr Williams embarked on and then continued with, followed by an escalation of that type of sexual offending.

The first set of offences, for which he was dealt with in the Cairns District Court in 2003, did not involve physical contact with the children involved. The charges arose from Mr Williams exposing his penis to his female relatives, all aged under 7 years, while watching a video in their lounge room.

The other offences, for which he was dealt with on the same occasion, concerned children in a household where he was present and he masturbated in the lounge room in front of one of the complainants. On another occasion, in relation to the same complainant, he touched her on the breasts when he went into her bedroom. Mr Williams' sentence on that occasion of imprisonment for 8 months was not of a sufficient length of time to enable him to receive the treatment in relation to his sexual offending that was recommended by the sentencing Judge, even though the length of imprisonment was appropriate to the type of offending that he had committed at that stage.

The offences for which Mr Williams is presently in prison were committed against a girl aged 10 years. Mr Williams was introduced to the complainant through the partner of the complainant's older sister. There were therefore opportunities for Mr Williams to have contact with the complainant. The rape conviction resulted from his conduct of

inserting a finger into the complainant's vagina. Mr Williams had consumed a substantial amount of alcohol on the occasion that he committed this offence. He also rubbed the complainant's chest and nipples and that resulted in the conviction for the offence of indecent treatment.

Whilst in prison for this period of imprisonment, Mr Williams has undertaken a number of courses. Apart from those that are relevant to equipping him for employment, he undertook the Getting Started Program, which is a preparatory program for a sexual offender treatment program. He then undertook the Indigenous High Intensity Sexual Offending Treatment Program. He participated in that between 2 July 2008 and 29 June 2009. It comprised 94 sessions.

The exit report on Mr Williams' completion of that program indicates that there were some positive signs of changing attitudes on Mr Williams' part as a result of participating in that program. He was initially disruptive and resistant in the program, but he became more responsive to suggestions from the facilitators as he participated in the different activities that the program requires of participants and showed poitive involvement. Relevantly, he was able to identify contributing factors to his offending including his own background of being sexual abused as a child and his abuse of alcohol and cannabis sativa and his strategy of distancing himself from his offending conduct, so that he did not acknowledge what he was doing to his victims.

The longer the course went on, there were signs that the

respondent gained some understanding of the effects of his offending on his victims, although he did have difficulty with the issue of consent and, as was echoed by the opinion expressed during the course of evidence today, he has difficulty in understanding the concept that a child does not think like an adult and that a child's actions should not be compared to an adult doing the same acts.

The future plan that Mr Williams has prepared for his release has identified key factors associated with his offending that will be able to be used by him in developing strategies to avoid being in a position where he finds himself tempted to offend again. These factors include being deprived of sex when in a relationship, perceived sexualised behaviour of young girls and being unemployed. I note that it is recommended that Mr Williams complete the Sexual Offender Maintenance Program upon release into the community and it is apparent that Corrective Services will be provided with the material in the psychiatrists' reports that support this plan for further treatment.

Starting with Dr Harden, he diagnosed Mr Williams as meeting a diagnosis of antisocial personality disorder and suffering from alcohol abuse and cannabis sativa abuse and that Mr Williams also met the diagnostic criteria for paedophilia, attracted to females, non-exclusive type. The actuarial and structured professional judgment measures administered by Dr Harden suggested that Mr Williams' future risk of sexual re-offending is high. Dr Harden therefore recommended that Mr Williams be monitored in the community by means of a

supervision order and that he not be allowed unsupervised contact with females under the age of 16 years under any circumstances.

Each of the psychiatrists today confirms that, because of the high risk of re-offending that applies to Mr Williams, it is not only for the community's benefit, it is also for his benefit that a supervision order be of a lengthy period and the period that has been recommended is 10 years, which I accept is appropriate in the circumstances.

Professor Nurcombe examined Mr Williams on 26 April 2010. Professor Nurcombe suggested that if Mr Williams were to re-offend sexually, his behaviour would be most likely to involve familiar females under the age of 12 years whom he will groom and sexually molest. Based on Mr Williams' history, Professor Nurcombe suggested that Mr Williams' risk of re-offending should be regarded as moderate to high. Professor Nurcombe considers, with an appropriate and effective supervision order, Mr Williams' risk of re-offending would drop to a moderate level and that the key elements of a supervision order and relapse prevention plan are the avoidance of families with under-age female children, distance from schools, parks and other places where children congregate, individual psychotherapy, a sex offender maintenance program, regular correctional supervision, indigenous counselling for alcohol/drug abuse, regular alcohol drug screening, employment planning, and encouragement of Mr Williams' identification with his cultural heritage.

Professor James interviewed Mr Williams on 4 May 2010. Professor James also supported a supervision order and that if Mr Williams were released from prison without a supervision order, the likelihood of his re-offending would be high.

When it came to the evidence today, much of it was focused on individual conditions of the proposed supervision order. One with which I had difficulty was a condition xv in the draft order, that was Exhibit 2, that stated that the respondent not commit an indictable offence during the period of the order. That was one amongst, at that stage, 46 conditions of the proposed order.

All members of the community must observe the criminal laws that regulate the conduct of persons and are directed to preventing antisocial activities and to protect the community generally from those who would commit antisocial activities, whether sexual offences, violent offences, fraudulent offences or any other offences that the Parliament has chosen to be the subject of the criminal laws. The failure to comply with criminal laws results in the offender being punished and punishment often includes imprisonment.

Professor James felt that there was a purpose to be served with such a broad restriction on the respondent in that it would encourage lawfulness and Professor James was concerned that if Mr Williams breached the criminal law in any way, not necessarily sexually offending, but by stealing or by violence, it would be a sign of increased risk of sexual re-offending. Professor Nurcombe and Dr Harden were not quite

as wedded to the need for a condition such as one that proscribed committing any indictable offence, although both were concerned about any offences against children, not limited to sexual offences, and violent offences, as strong indicators of increased risk of sexual offending.

From the applicant's point of view, each of the conditions in the supervised order goes to setting up a scheme for behaviour that, if breached, will bring the respondent back to Court. Each proposed condition, however, has to be considered in the context of the whole order. Although I am referring at the moment to condition xv in Exhibit 2, there were other conditions in the order that would catch conduct that would amount to an indictable offence, for example, condition xiv "not commit an offence of a sexual nature during the period of the order".

The psychiatrists' concerns about triggers in Mr Williams' behaviour that might alert the authorities to the pending commission of a sexual offence are present in many of the conditions such as the prohibition on contact with a child under the age of 16 years, except with the prior written approval of an authorised Corrective Services officer. An indictable offence could not be committed against a child under 16 years without the condition preventing the contact with the child under 16 years being breached as well. There are many of the conditions that are likely to be breached before the commission of an indictable offence.

After taking into account the psychiatric evidence, I am not

persuaded that there should be the unlimited condition in the terms in which it was proposed in Exhibit 2. I am mindful that the purpose of this legislation is the need to protect the community from the risk that the prisoner will commit another serious sexual offence. I am satisfied that the existence of triggers within the supervision order that should alert the supervising Corrective Services officer of the increasing likelihood of that occurring is sufficiently covered by many of the conditions in the proposed order and that it is sufficient if the condition concerning indictable offences is limited to one in terms of "not commit an indictable offence involving violence during the period of the order."

It is important to remember that the supervision order is a package and the conditions provide a framework of restrictions on the activities of the respondent, once released into the community under a supervision order, that will assist Mr Williams in his adjusting to the return to life in the community with the supervision of Corrective Services, but will also ensure that there is adequate protection to the community from the risk that the respondent will commit another serious sexual offence.

There was debate in the course of the hearing on the wording of other conditions. Ultimately, when the concern of either the applicant or the respondent was made clear in argument, the wording of the conditions was able to be moderated to achieve the purpose of the condition and ensure that the order is sufficient for its purposes without resulting in greater

control than is required for the protection of the community.

The evidence of the three psychiatrists is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that the respondent's moderate to high risk of sexual reoffending, unless appropriately supervised, is an unacceptable risk in terms of section 13(2) of the Act.

In light of the psychiatric evidence, I am satisfied that appropriate conditions can be formulated for a supervision order that will address the need to ensure the adequate protection of the community and that a supervision order should be made for a period of 10 years on the terms of the order which is initialled by me and placed with the file.

I therefore make an order in terms of that draft as I have indicated. Now, was there anything I didn't cover that I meant to?

MS MALONEY: No, your Honour.

MR RYAN: No. I think your Honour's covered everything.

HER HONOUR: So, Mr Williams, I've made an order in terms of the draft that no doubt your lawyers will speak to you about. You will need to understand the conditions that you're subject to. They are very stringent, but hopefully with the assistance of the Corrective Services officer who will be supervising you, you will be able to establish a routine that

will enable you to comply with the orders as you make the transition from the prison environment to the community.