

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Qld v Liverton* [2011] QSC 357

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
GARRY LESLIE LIVERTON
(respondent)

FILE NO/S: BS6623/11

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 24 November 2011

DELIVERED AT: Brisbane

HEARING DATE: 22 November 2011

JUDGE: Ann Lyons J

ORDER: **Order as per attached schedule.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS - ORDERS AND DECLARATIONS RELATING TO VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – where the applicant seeks an order pursuant to s 13(5)(a) or s 13(5)(b) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) for the respondent be (a) detained in custody for an indefinite term for control, care or treatment (a continuing detention order); or (b) released from custody subject to the requirements the court considers appropriate and that are stated in the order (a supervision order) – whether the respondent is a serious danger to the community in the absence of a division 3 order.

Dangerous Prisoners (Sexual Offenders) Act 2003, s 5, s 8, s 13, s 16

COUNSEL: J M Sharp for the applicant
C Cassidy for the respondent

SOLICITORS: Crown Law for the applicant
Legal Aid Queensland for the respondent

ANN LYONS J:**This Application**

- [1] The applicant seeks an order pursuant to s 13(5)(a) or s 13(5)(b) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (the Act) that the respondent be (a) detained in custody for an indefinite term for control, care or treatment (a continuing detention order); or (b) released from custody subject to the requirements the court considers appropriate and that are stated in the order (a supervision order).
- [2] On 16 September 2011 orders were made pursuant to s 8 of the Act for the appointment of two psychiatrists, namely Dr Joan Lawrence and Dr Scott Harden to examine the respondent. Dr Donald Grant had also prepared a report dated 9 December 2010 in relation to an application by the applicant that there were reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a Division 3 order and for orders appointing the psychiatrists to examine the respondent.
- [3] All the psychiatrists gave evidence at the hearing and commented in particular on the Draft supervision order proposed by the Crown.

The index offences

- [4] The respondent pleaded guilty to two counts of rape and one count of grievous bodily harm on 18 February 2005 and was sentenced by Judge Forde. Those offences all occurred on 4 December 2003. He was sentenced to a total of eight years' imprisonment and the convictions were declared to be serious violent offences. Mr Liverton's full time release date is 5 December 2011.
- [5] The background to those offences was that the respondent had been living in a de facto relationship with the complainant for about six weeks. They had had some consensual violent sex on previous occasions but the complainant had never consented to anal intercourse. The offences involved the respondent drugging the complainant with Alprazolam in a glass of wine. She consented to bondage. He commenced using a dildo in her vagina. When she said he was hurting her and asked him to stop and untie her, the respondent refused and the complainant bit him on the testicles. He became angry and started punching and slapping the complainant. He completely lost control and slammed the dildo into her anus repeatedly. She was bleeding and in pain.
- [6] The following day the respondent took the complainant to hospital where she required surgery. She sustained injuries to her anus, bowel, colon and vagina. Her colon was perforated and severe damage was inflicted on her anal sphincter muscle. She required a colostomy bag for 12 months after the incident. She also had a split lip and bruising to her face, throat and the left side of her body. Her jaw was dislocated and she could not speak for four days after the attack.
- [7] The respondent's criminal history began in 1992 when he was a minor. In January 1996, he was sentenced to four months' imprisonment for stalking. In 1998, he had convictions for breaching intervention orders, criminal damage, burglary, theft, unlawful assault and assault by kicking. In 1998 he grabbed his then girlfriend by

the throat during an argument. In 2000 he assaulted his mother after she attacked him with a baseball bat and he was sentenced to prison for two months.

- [8] In sentencing the respondent in February 2005, Judge Forde noted the respondent's violent criminal history and specifically referred to the unlawful assault in July 2000 and that he had also been sentenced to six months for assaulting a police officer in 2002.

The reports of the psychiatrists

Dr Scott Harden

- [9] Dr Harden prepared a report for the court dated 10 November 2011. Dr Harden indicated that at the time of his interview with Mr Liverton he was a 36 year old man who had been incarcerated for rape and grievous bodily harm against his partner. He noted that the offence had involved drugging his partner and then out of control sexual and violent behaviour after initially consensual sex.
- [10] Dr Harden noted that the respondent has no previous history of sexual offences but he did have a history of violent, out-of-control or stalking behaviour towards two previous partners in a context of a relationship breakdown. He also noted that the respondent had been suicidal and had self-harmed at that time of the relationship breakdown.
- [11] Dr Harden indicated that the respondent has a long history of polysubstance abuse with a preference for marijuana and alcohol. He also noted a long and extensive history of criminal offences across a range of offending. He also has a long history of failure to comply with community supervision and has had multiple incarcerations. Dr Harden indicated that the respondent's family or origin was marked by physically and sexually abusive behaviour as well as chaotic relationships and substantial involvement in drug use and other criminal behaviour. The early history of the respondent indicates that he supported himself through the sale of drugs and prostitution. Dr Harden indicated that the respondent has had two emotional relationships with women that were serious and these have been chaotic abusive and have ended badly. Dr Harden also noted that he had extremely limited social supports and this is of concern in relation to his release from prison.
- [12] In terms of diagnosis, Dr Harden considers he meets a diagnosis of personality disorder not otherwise specified under DSM IV criteria with antisocial and borderline personality features. He indicated he had a history of polysubstance abuse but no clear history of dependence.
- [13] In terms of risk Dr Harden considered his future risk of sexual re-offence is moderate to high overall, and that he has unmet treatment needs because of his failure to complete the moderate intensity sexual offending program. He noted that Mr Liverton had completed the preparatory program for sexual offenders. That program commenced on 8 February 2010 and concluded on 24 March 2010 and consisted of 12 sessions. It was recommended that he complete the medium intensity sexual offender's program.
- [14] It is clear that he did not complete that medium intensity sexual offender's program. He commenced on 3 June 2010 but his attendance was inconsistent and he had

inappropriate behaviour during the sessions as well as non engagement. On 7 October 2010 he was suspended indefinitely from the program. It was clear that he had missed two full sessions and four half sessions and that he had made highly inappropriate and offensive comments in the group that day. Whilst he recommenced on 26 October 2010 he was not fully engaged. He attended for one session in December but missed the following three sessions due to illness. Dr Harden noted that it was subsequently determined that his non-attendance at the program could not be fully explained by his medical condition of impacted wisdom teeth.

- [15] In relation to the formal assessment instruments, on the Static 99 the respondent scored on the moderate to high risk category. Dr Harden considered that based on a review of other risk factors, he believed that the Static 99 accurately represented Mr Liverton's risk.
- [16] On the Stable 2007 he had a score of 18 out of 24, which placed him in the high needs group in terms of sexual offenders' dynamic risk.
- [17] On the Sexual Offender Risk Appraisal Guide (SORAG), he was placed in category 7 which indicates that in general people in this category have a 58 per cent rate of violent re-offending, including sexually violent re-offending at 7 years and an 80 per cent rate at 10 years. Dr Harden indicated that at the first assessment he had a score of 20, but that this reduced to 19 because of reductions in his score on the Psychopathy Checklist, which then reduced him to category 6. In general, people in that category have a 58 per cent rate of violent re-offending at 7 years and a 76 per cent rate at 10 years.
- [18] On the Hare Psychopathy Checklist Dr Harden scored Mr Liverton at 20 which is not an elevated score.
- [19] In the SVR-20 assessment Dr Harden indicated that Mr Liverton was positive for 9 out of 20 items which placed him in a moderate risk category. Dr Harden considered that overall his future risk of sexual re-offence is moderate-high particularly considering his unmet treatment needs. Dr Harden indicated there is recent evidence to suggest that beginning a program and failing to complete it may increase the risk of recidivism.
- [20] Dr Harden considered that a stringent supervision order which included appropriate intervention would most likely decrease the risk to low-moderate if he were to be released into the community. He indicated that there should be high level monitoring, ongoing practical support in obtaining and sustaining employment and continued attempts to address ongoing criminogenic needs via appropriate sexual offender treatment initially. Dr Harden stated that the respondent needs to complete the moderate intensity sex offender program and then be in a group maintenance program.
- [21] Dr Harden also considered he should have concurrent individual therapy with a practitioner skilled in dealing with adult sexual offenders with personality disorders as his personality function and dynamics interferes with his completion of group programs and he is likely to require additional support to meet his treatment needs.

- [22] Dr Harden considered he should be abstinent from alcohol and drugs and undergo appropriate testing. He also indicated that he should complete the Medium Intensity Sexual Offending Intervention Program (MISOP) in custody or in the community and then the maintenance program and further psychological treatment. He stated in his oral evidence that it was important that he develop a risk management plan in consultation with the treating psychiatrist. He also noted that the real risk of further offending arose when he entered into a relationship with a woman.

Dr Joan Lawrence

- [23] Dr Lawrence interviewed Mr Liverton and completed a report dated 31 October 2011. Dr Lawrence indicated that the respondent was pleasant and cooperative in the interview and when he became angry and defensive one and a half hours into the interview, he left the interview to calm himself and returned within a short time. He was able to continue to discuss the topic and calmed himself down in the process. Dr Lawrence accepted the respondent's assertions of heterosexual orientation and also accepted his longstanding low self-esteem, poor self concept, significant narcissistic traits along with impulsivity and poor control of impulses and emotional responses. She also considered he had some hostility to older women and ambivalence in all relationships with females.
- [24] Dr Lawrence also scored the respondent on a number of risk assessment tools. On the PCL-R scale she scored him at 24 which falls short of the accepted cut-off point for psychopathic personality with its implications for recidivism. However, she considered there are some significant antisocial and psychopathic-like traits which need to be taken into account.
- [25] In relation to the HCR-20, in the historical factors his scoring equated to a high risk which highlighted his relationship instability, his employment problems as well as substance abuse problems and prior supervision failure. She also noted his personality disorder and his early maladjustment as well as violence at a young age. In terms of the present factors, she considered that he scored relatively low with continuing limitations on his insight and negative attitudes to treatment, as well as a continuing degree of impulsivity and unresponsiveness to treatment. In terms of future risk management, he scored as a high risk which related to his plans lacking any degree of feasibility as well as a lack of personal support.
- [26] Dr Lawrence considers he will be exposed to considerable stress on release and will be undoubtedly ultimately exposed to destabilising influences such as drugs. She also indicated that his degree of non-compliance with sexual offending mediation programs also remains of concern. In terms of the Violence Risk Appraisal Guide (VRAG) Dr Lawrence scored the respondent at category 6.
- [27] In relation to SORAG she scored him at category 8, which indicates there is a 75 per cent probability he will reoffend within 7 years and an 89 per cent probability he will reoffend within 10 years. In relation to the SVR-20 his overall risk of reoffending was moderate which indicated that the same risks were apparent in the HCR-20. In relation to the STATIC 99 she considered that the risk translated to a moderate-high risk of sexual and/or recidivism.
- [28] In terms of the summary of the risk, Dr Lawrence indicated that the most likely scenario should he reoffend sexually would be against an adult female in relation to

anger and the failure to meet his needs. She considered this could be impulsive but would be more likely to occur if he had been using drugs. She also considered the risk of psychological and physical harm to his victims would be high. She did not consider that there would be a significant likelihood of escalation to life threatening violence except with escalating drug use. She did not expect that these risks were imminent but early warning signs of a return to drug use, particularly marijuana or amphetamines or other stimulants, would be of great concern. She considered that the risk of recurrent sexual violence is chronic and she would not expect that to be imminent but considered that there was a long term risk of that happening.

- [29] Dr Lawrence in particular noted his relationship with his mother had been significantly problematic and she was portrayed as instrumental in many of these difficulties because of her failure to protect him from a series of abusive or controlling stepfathers, her extensive use of and probable dealings in drugs and his early introduction to regular and frequent use of drugs from an early age. She also noted that his development was characterised by a range of claims of sexual abuse from both male and females, including his mother and stepmother. She noted that 20 years of very limited employment as well as a reliance on male prostitution and a disrupted and violent relationship with his one partner over a four to five year period during which his partner bore him a son. He also was charged with stalking of another woman who was known to him in his adolescence.
- [30] She considered that his life since puberty appeared to have been influenced by his abuse of marijuana and other substances. Dr Lawrence also noted that he displayed antisocial behaviour, including some violence. Dr Lawrence considered that the setting of the index offences with his older female victim was exploitative. He had recently prematurely left a drug rehabilitation unit and was drifting. She considered that the sexual offending was violent in the extreme and would appear to be the result of a degree of premeditation involving drugging the woman. His lack of providing assistance to the victim initially Dr Lawrence considered indicated callousness and a lack of empathy, however, she noted that he did eventually seek assistance and turn himself into police and accepted responsibility with a plea of guilty.
- [31] Dr Lawrence noted that his eight years in prison have been trouble free and he has had a good work ethic and few breaches. There has been no evidence of any substances being used during the period and he has completed a substance abuse program. Whilst there were periods of male prostitution in society and in his earlier imprisonments Dr Lawrence noted that there was no evidence of this in his most recent imprisonment. Dr Lawrence considered that she would speculate that on the night of the index offence, his disinhibition and added aggression from dexamphetamine and the rage against his mother, fuelled his behaviour and led to the extreme brutality of the physical attack on his victim. She considered that his imprisonment has provided him with an opportunity to re-evaluate himself and his life.
- [32] Dr Lawrence considered that he is motivated to change and remain drug-free and crime-free and that his motivation is sincere. She referred to his efforts to rehabilitate himself and to change in order to lead a more stable and productive life. However, Dr Lawrence considered he underestimates the extent of psychological difficulties which he struggles with as a result of his early childhood experiences.

He continues to have difficulty identifying and accepting the extent of his criminal behaviour and overestimates his ability to deal with issues alone.

- [33] Dr Lawrence indicated this difficulty is best illustrated by his efforts when he commenced the MISOP program having found the preliminary program helpful and beneficial. She noted that he has failed to complete the MISOP and seems to be unwilling to complete the program. Dr Lawrence believes mandatory completion would be of doubtful benefit. She considers he would have difficulties in establishing a trusting relationship with therapy providers which is a further product of his disturbed early life and parental relationship. She notes it provides a barrier to treatment and progress and reinforces his own belief that he can do it alone without help.
- [34] Dr Lawrence considered that in view of a significant number of risk factors and the lack of a supportive background or any protective factors as he faces the future, were he to be released without a supervision order, the risk of reoffending, would be high. If released without supervision, he would return to his home town where he has had no contact with his family for at least a decade. He has a poor reputation and no provision of support services, accommodation or employment and is likely to encounter significant hostile responses for which he is not prepared. Dr Lawrence considered that if released he should be released on a supervision order which required him to report to a parole officer, preferably male, with whom he can develop a satisfactory supportive relationship. She also considered he needed stable accommodation and employment.
- [35] Whilst she considered he could drink alcohol sparingly, she thought regular alcohol use should be forbidden. She also noted in her oral evidence that the real issue with alcohol use was that it was hard to monitor its use. The real concern was that should he use alcohol to excess he would become disinhibited.
- [36] Dr Lawrence considered that he would benefit most by individual therapy with a psychiatrist and/or psychologist on a regular basis. Dr Lawrence stated that the therapy should be predicated on the ability to develop a therapeutic alliance and a degree of therapeutic trust which ultimately may lead to an exploration or greater attention to understanding the effects of his early childhood abuse of all kinds. She considers that he would need attention to learn strategies to help him deal with all kinds of emotional regulation and increase his self-awareness and ability to adapt to the inevitable frustrations of life. Difficulties with sexuality should be dealt with within that context. She considered the therapist should be experienced, male, and have peer support and supervision.
- [37] Dr Lawrence did not consider that he needed to inform his employer of his previous offending or the supervision order as employment did not increase his risk. Dr Lawrence's evidence was that it was important that the respondent find employment and that he be assisted in this regard. Her view was that the real risk arose when he entered into a relationship with a woman and in was in that situation that he should be required to advise of his past offending and the fact of the supervision order.

Dr Grant

- [38] Dr Grant also considered the history of the respondent's offending, including the index offence. He also reviewed his past medical history and noted that he had had a

number of involuntary mental health admissions in the context of several suicide attempts.

- [39] In terms of the risk assessments Dr Grant report indicated that the STATIC -99 which uses purely static factors puts him in the moderate to high risk group. The HARE PCL-R psychopathy checklist indicated that he was well below the cut off point for psychopathy and the HCR-20 indicated that he was in the moderate to high risk group for future violence but with a greater risk for violence rather than sexual offences.
- [40] In terms of the RSVP assessment, which uses both static and dynamic factors, Dr Grant initially indicated that he was a low to moderate risk of sexual violence in the future although he considered that the fact he did not complete the MISOP was of concern as it could in fact increase the risk of recidivism. Dr Grant also noted that since he has only offended on one occasion it is difficult to know whether any such future sexual offence will ever occur. Dr Grant considered such an offence would likely take the form of rape and sodomy directed against a current sexual partner. He considered that his motivation would be sexual desire and the expression of anger but that the imminence of any such re-offending is unpredictable.
- [41] Dr Grant stated that in terms of an overall risk assessment he considered that the instruments would indicate at least a low to moderate risk and possible moderate to high risk of future violence but the respondent's history would indicate that there would be a higher risk of non-sexual violence than sexual violence. Given that the index offence was his first sexual offence, and the salutary effects of his eight year prison sentence and the courses which he has undergone, it is difficult to predict whether a future sex offence will ever occur. If such a sexual offence does occur it would be likely to occur in the context of a current relationship and be an expression of his conflict, ambivalence and rage about his very abused background and early sexual experiences.
- [42] Dr Grant in his oral evidence at the hearing stated that a crucial aspect of his future is that he not have inappropriate relationships that might lead to difficulties. He also considered that he needed to receive help and assistance when he's in a relationship to make sure that problems are dealt with and that he doesn't get into inappropriate either sexual or violent behaviour. He considered that it was important for those supervising him that they know what relationships he's getting into and the nature of those relationships. He considered that the crucial relationships were personal relationships between him and a woman that were likely to become sexual which would include having repeated contact with a woman and forming a friendship.
- [43] In terms of treatment Dr Grant considered that he needed individual treatment preferably with a psychiatrist as he was receiving medication. He also indicated that he needs to undertake a group sex offender program at the medium intensity level in the community. He also needed to develop a risk management plan in consultation with a treating psychologist or psychiatrist as it is a very important part of him coming to an understanding of his condition and his offending. Such a plan is essential to prevent anything happening again in the future.

Is the respondent a serious danger to the community?

- [44] The applicant bears the onus of establishing that the respondent is a serious danger to the community if the respondent is released from custody or released from custody without a supervision order being made.
- [45] Pursuant to s 13(2) of the Act a prisoner is a serious danger to the community to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody without a supervision order being made.
- [46] A serious sexual offence is defined as an offence of a sexual nature involving violence or against children.
- [47] Section 13(3) provides that the court must be satisfied on the basis of acceptable, cogent evidence and to a high degree of probability.
- [48] Section 13(4) then outlines the material that the court must have regard to with respect to that determination which includes, the reports prepared by the psychiatrists, other assessments, information with respect to the prisoner's propensity to commit sexual offences in the future, whether there is a pattern of offending behaviour, participation in rehabilitation programs, antecedents, criminal history and the risk that the prisoner will commit another serious sexual offence.
- [49] Section 5(a) specifies that if the court is satisfied the prisoner is a serious danger to the community then the court needs to make a determination about whether the prisoner should be detained in custody pursuant to s 5(a) or released subject to a supervision order pursuant to s 5(b). In coming to that determination s 6(a) provides that "the paramount consideration is the need to ensure adequate protection of the community".
- [50] Having considered the material that I am required to pursuant to s 13(4) I am satisfied that the respondent is a serious danger to the community in the absence of a division 3 order. It would seem clear that the psychiatrists all agree that the respondent is at least a moderate risk of further serious sexual offending. None of the psychiatrists consider that the respondent should be detained in custody and their evidence at the hearing indicated that the risk to the community could be managed by the imposition of a supervision order which contained stringent conditions. All agreed that the term of such an order should be 5 years.

What requirements should the supervision order contain?

- [51] Section 16 sets out the conditions which must be contained in a supervision order as follows:

16 Requirements for orders

- (1) If the court or a relevant appeal court orders that a prisoner's release from custody be supervised under a supervision order or interim supervision order, the order must contain requirements that the prisoner—
- (a) report to a corrective services officer at the place, and within the time, stated in the order and advise the officer of the prisoner's current name and address; and

- (b) report to, and receive visits from, a corrective services officer as directed by the court or a relevant appeal court; and
- (c) notify a corrective services officer of every change of the prisoner's name, place of residence or employment at least 2 business days before the change happens; and
- (d) be under the supervision of a corrective services officer; and
 - (da) comply with a curfew direction or monitoring direction; and
 - (daa) comply with any reasonable direction under section 16B given to the prisoner; and
 - (db) comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of the order; and

Examples of direct inconsistency—

If the only requirement under subsection (2) contained in a particular order is that the released prisoner must live at least 1km from any school—

- 1 A proposed direction to the prisoner would be directly inconsistent if it requires the released prisoner to live at least 2km from any school.
- 2 A proposed direction to the prisoner would not be directly inconsistent if it requires the released prisoner to live at least a stated distance from something else, including, for example, children's playgrounds, public parks or child care centres.
- 3 A proposed direction to the prisoner would not be directly inconsistent if it requires the released prisoner not to live anywhere unless that place has been approved by a corrective services officer.

- (e) not leave or stay out of Queensland without the permission of a corrective services officer; and
 - (f) not commit an offence of a sexual nature during the period of the order.
- (2) The order may contain any other requirement the court or a relevant appeal court considers appropriate—
- (a) to ensure adequate protection of the community; or

Examples for paragraph (a)—

 - a requirement that the prisoner must not knowingly reside with a convicted sexual offender
 - a requirement that the prisoner must not, without reasonable excuse, be within 200m of a school
 - a requirement that the prisoner must wear a device for monitoring the prisoner's location
 - (b) for the prisoner's rehabilitation or care or treatment.

- [52] It is clear therefore that there are 9 compulsory conditions and that s 16(2) provides that the order may then contain any other requirement that court considers appropriate “to ensure adequate protection of the community or the prisoner’s rehabilitation or care or treatment”.
- [53] Accordingly any additional conditions must be directed to managing the risk or providing specific conditions directed to the particular rehabilitation or care or treatment that the respondent requires.
- [54] Counsel for the applicant tendered a draft order which contained thirty three conditions. Many of those conditions were repetitive and not clearly expressed. In my view the conditions of a supervision order need to be drafted with clarity and be concise so they can be readily understood by a released prisoner. A released prisoner needs to know precisely what is required of him and the conditions set out in the order should be expressed in a way that a released prisoner can understand.
- [55] Furthermore conditions other than the required conditions should only be added to the order if they meet the requirements of s 16 (2). A condition should only be added if it is required to manage the risk or necessary for the purposes of rehabilitation or care or treatment. I also consider the conditions should not descend into such detail that they are in fact treatment plans or case management plans. They are general conditions imposed by a Court to manage risk or care I consider that the detail of such orders needs to be worked out by appropriate professionals in response to an individual respondent’s needs. Many of the current draft conditions try and anticipate remote possibilities and I do not consider they are strictly in accordance with s 16 (2) in terms of managing actual risk.
- [56] All psychiatrists agreed that the conditions needed to completely ban the use of drugs and to either ban or at least limit the respondent’s consumption of alcohol. All psychiatrists considered that the respondent needed individual therapy from a skilled psychiatrist who had experience with sex offenders and that he should do a MISOP course in a group at a time indicated by the treating psychiatrist which should then be followed up by a maintenance course. They all considered that the greatest risk would arise within an evolving relationship with a woman. All considered that it was important to have the respondent complete a risk management plan in consultation with his treating psychiatrist.
- [57] In terms of the draft tendered I can see absolutely no basis for draft conditions (x) or (xi) which require the respondent to:
- “x seek permission and obtain approval from a Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
 - xi notify a Corrective Services officer of the nature of his employment, or 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 at least two business days prior to commencement or any change”
- [58] All psychiatrists agreed that it was important that the respondent obtain employment and all considered that employment would not increase the risk to the community of the respondent re-offending sexually. In my view given the nature of employment,

particularly casual employment as a welder which he hopes to obtain, the requirement that the respondent provide two days notice prior to commencing employment is cumbersome and counterproductive. Employment particularly, casual employment, often needs to be responded to as the opportunity arises. Productive employment should not be dependent on a requirement that 2 days notice of the possibility of employment be given. Such a lengthy approval process effectively means the job prospect is gone.

- [59] Furthermore in my view draft condition (xvi) which requires that the respondent “respond truthfully to enquiries by a Corrective Services officer about his whereabouts, movements and activities generally” is appropriate and sufficiently manages any risk which could attach to the respondent forming relationship with women in an employment situation.
- [60] Draft conditions (x) and (xi) should therefore be deleted.
- [61] The evidence clearly indicates that the risk of further serious sexual offending arises within the context of an ongoing relationship with a woman. Draft condition (xviii) requires that the respondent must:
- “disclose to a Corrective Services officer upon request the name of each person with whom he associates and respond truthfully to requests for information from Corrective Services officer about the nature of the association, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour”
- [62] In my view such a condition is far too wide and is not necessary to cover the actual risk posed. I do not consider that the evidence before me establishes any reason why the respondent should disclose every person he associates with and indicate whether he has disclosed his prior offending. There is no risk of serious sexual offending with ‘associates’ but rather with women he is in a relationship with. Accordingly the condition should require that the respondent notify the Supervising Corrective Services Officer of any personal relationship that he enters into with a woman.
- [63] Similarly in terms of the requirement that he disclose the fact of the supervision order and his prior offending to “any person nominated by the Corrective Services Officer” it would seem clear that such disclosure is far wider than is strictly required to manage the risk posed. The disclosure should be limited should be to any woman he has a personal relationship with and a Corrective Services Officer may contact such persons to ensure that such disclosure has occurred.
- [64] I consider that given the supervision order is for a period of 5 years it is more appropriate that the respondent be permitted to drink alcohol in the context of control and management by health professionals during the term of the supervision order rather than requiring complete abstinence and then unrestricted access to alcohol at the end of the 5 year period. I consider that the risk to the community is far better managed by a condition which allows him to drink alcohol after he has obtained the consent of his psychiatrist or health professional in writing. In that way he can be tested after use to ensure moderation. The proposed condition should read “not consume alcohol without the prior written consent of an authorised Corrective Services Officer”.

[65] I consider the current draft conditions (xxvi), (xxvii) and (xxviii) are confusing and repetitive.

- “xxvi attend upon and submit to assessment, treatment and/or medical testing by a psychiatrist, psychologist, social worker, social worker, counsellor or other mental health professional as directed by a Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;
- xxvii 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;
- xxviii attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate”

[66] The term health professional could be used to avoid the necessity to specify every professional and can be combined so that it can be clearly understood. Furthermore such a wide and rambling condition actually says nothing about the treatment all psychiatrists indicate is vital. That is individual treatment from a psychiatrist familiar with personality disorders and sex offenders. The key to the respondent’s future rehabilitation and care is individual one on one therapy preferably psychoanalysis. Furthermore all psychiatrists consider that he should undertake the MISOP in a group situation if possible but that will depend very much on the views of the treating psychiatrist. It is also considered that it would be beneficial in the future if he undertook a sex offender maintenance program.

[67] It is clear that s16 (2) allows conditions to be added if they are directed towards rehabilitation, treatment or care. In my view there should be a specific condition that he receives individual therapy from a skilled psychiatrist experienced with sex offenders with personality disorders. Initially the evidence indicated that such treatment should be with a psychiatrist as he is currently on medication however both Dr Lawrence and Dr Harden considered that in the future such therapy may appropriately be undertaken with a psychologist.

[68] The conditions should also foreshadow the possibility of the need to complete the MISOP and a maintenance program if considered appropriate by the treating psychiatrist. If there are specific conditions to that effect I consider that it will more appropriately address the respondent’s specific treatment needs as identified by all the psychiatrists who have provided reports.

[69] The condition should therefore read:

- “submit to individual psychiatric assessment and treatment as reasonably directed by a Corrective Services officer. That treatment will initially include individual treatment by a psychiatrist experienced in the treatment of sex offenders but may include other assessment, treatment or medical testing by a mental health

professional as recommended by the prisoner's treating psychiatrist. That treatment will also include group therapy in the form of a medium intensity sex offender treatment programme considered appropriate by the treating psychiatrist."

- [70] Similarly I consider that based on the evidence of the psychiatrists there should be a risk management plan developed if recommended by the treating psychiatrist. The condition should be in the following terms.
- "if recommended by a treating psychiatrist, develop a risk management plan in consultation with a treating psychiatrist or psychologist, and discuss it as directed with a Corrective Services officer."
- [71] The supervision order has been amended to take into account those changes.
- [72] I am therefore satisfied to the requisite standard that the respondent, Garry Leslie Liverton 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*.
- [73] The respondent be subject to the conditions contained in the Schedule attached until 5 December 2016.

SCHEDULE

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS6623/11

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

AND

Respondent **GARRY LESLIE LIVERTON**

SUPERVISION ORDER

Before: Justice Ann Lyons
Date: 24 November 2011
Initiating document: Originating Application filed 1 August 2011

THE ORDER OF THE COURT IS THAT:

1. The Court is satisfied to the requisite standard that the respondent, Garry James Liverton, 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* (“the Act”).
2. The respondent be subject to the following conditions until 5 December 2016.

The respondent must:

- i report to a Corrective Services Officer at Brisbane within 48 hours of his release from custody and advise his current name and address;
- ii Report to, and receive visits from a corrective services officer as directed;
- iii notify a Corrective Services officer of every change of the prisoner’s name, place of residence or employment at least two business days before the change occurs;

- iv be under the supervision of a Corrective Services officer for the duration of the order;
- v comply with a curfew direction or monitoring direction;
- vi comply with any reasonable direction under section 16B of the Act given to the prisoner;
- vii comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order;
- viii not leave or stay out of Queensland without the permission of a Corrective Services officer;
- ix not commit an offence of a sexual nature during the period of the order;
- x reside at a place within the State of Queensland as approved by a Corrective Services officer by way of a suitability assessment and obtain written approval prior to any change of residence;
- xi not reside at a place by way of short term accommodation including overnight stays without the permission of a Corrective Services officer;
- xii not commit an indictable offence during the period of the order;
- xiii respond truthfully to enquiries by a Corrective Services officers about his whereabouts, movements and activities generally;
- xiv not to have any direct or indirect contact with a victim of his sexual offences;
- xv notify a 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;
- xvi submit to and discuss with a Corrective Services officer a schedule of his planned and proposed activities as reasonably directed;
- xvii if reasonably directed by a Corrective Services officer, make disclosure of the terms of this supervision order and the nature of his past offences to any female with whom he has a personal relationship. A Corrective Services officer who may contact such persons to verify that full disclosure has occurred;
- xviii notify the Supervising Corrective Services officer of any personal relationship with a female entered into by the prisoner;
- xix abstain from the consumption of illicit drugs for the duration of this order;
- xx not consume alcohol without the prior written approval of an authorised Corrective Services officer;

- xxi submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Corrective Services officer;
- xxii disclose to a Corrective Services officer all prescription and over the counter medication that he obtains;
- xxiii not visit premises licensed to supply or serve alcohol, without the prior written permission of the authorised Corrective Services officer;
- xxiv submit to individual psychiatric assessment and treatment as reasonably directed by a Corrective Services officer. That treatment will initially include individual treatment by a psychiatrist experienced in the treatment of sex offenders but may include other assessment, treatment or medical testing by a mental health professional as recommended by the prisoners treating psychiatrist. That treatment will also include group therapy in the form of a medium intensity sex offender treatment programme and maintenance programme considered appropriate and necessary by the treating psychiatrist;
- xxv permit any medical, psychiatric, psychological or other mental health practitioner to disclose details regarding any increased level of risk of sexual re-offending to Queensland Corrective Services;
- xxvi if recommended by a treating psychiatrist, develop a risk management plan in consultation with a psychologist or treating psychiatrist, and discuss it as directed with a Corrective Services officer;
- xxvii allow any other devices including a telephone to be randomly examined. If applicable, account details and/or phone bills are to be provided upon request of a Corrective Service officer;
- xxviii advise a Corrective Service officer of the make, model and phone number of any mobile phone owned, possessed or regularly utilised by you within 24 hours of connection or commencement of use and includes reporting any changes to mobile phone details;
- xxix not engage in or demonstrate interpersonal violence or aggression against any female with whom he is in a personal relationship, excluding acts of self defence.

Signed:
Registrar of the Supreme Court of Queensland