

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Carpenter*
[2011] QSC 377

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
HAROLD JAMES CARPENTER
(respondent)

FILE NO/S: BS 3830/08

DIVISION: Trial

PROCEEDING: Application pursuant to s 27 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* that the continuing detention of the respondent Harold James Carpenter be reviewed.

DELIVERED ON: 5 December 2011

DELIVERED AT: Supreme Court, Brisbane

HEARING DATE: 21 November 2011

JUDGE: Dick AJ

ORDER: **I order the decision of A Lyons J made on 22 September 2008 that Harold James Carpenter is a serious danger to the community in the absence of an order pursuant to Division 3, Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* and order that the respondent continue to be subject to the continuing detention order made on 22 September 2008.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – MISCELLANEOUS MATTERS – SEXUAL OFFENDERS – *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – where the respondent’s continuing detention order is reviewed under section 27 of *Dangerous Prisoners (Sexual Offenders) Act 2003* – where psychiatric evidence confirms respondent is serious danger to the community – whether respondent should be subject to continuing detention or supervision order – where circumstances justify order for continuing detention
Dangerous Prisoners (Sexual Offenders) Act 2003

COUNSEL: J B Rolls for the Applicant

R East for the Respondent

SOLICITORS: Crown Law for the Applicant
Legal Aid Queensland for the Respondent

- [1] **Dick A/J:** This is an application by the Attorney-General for the State of Queensland pursuant to s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (“the Act”) that the continuing detention of the respondent Harold James Carpenter be reviewed.
- [2] On 22 September 2008, A Lyons J ordered that the respondent be detained in custody for an indefinite term for control, care or treatment pursuant to Div 3 of the Act.
- [3] On 14 December 2009, Byrne SJA affirmed the decision that the respondent was a serious danger to the community in the absence of the Div 3 order and ordered that the respondent continue to be subject to the continuing detention order made earlier.
- [4] On 29 November 2010, P Lyons J affirmed the decision that the respondent was a serious danger to the community under the absence a Div 3 order and further ordered that the respondent continue to be subject to a continuing detention order for control, care or treatment.

Background

- [5] The respondent has served three periods in prison for rape. He served periods of imprisonment in both New South Wales and South Australia. The first rape conviction was in 1973 in South Australia and he was sentenced to three years and 10 months in prison. On 26 May 1977 he was sentenced to 10 years imprisonment for rape. On 15 February 1989 he was sentenced in Queensland to 20 years for rape. In addition he has been charged with rape on at least two other occasions; one charge proceeded to trial where he was found not guilty and the other charge lapsed while he was in prison. All the allegations of rape have been characterised by use of violence.

- [6] He has other criminal history and has served other periods in custody including a conviction on 22 November 1984 for which he was sentenced five years imprisonment for offences of break, enter and steal with offensive weapon with intent to commit robbery and possessing a shortened firearm.

The most recent offence

- [7] The circumstances surrounding the offence for which he was sentenced in Queensland were as follows. The female complainant was waiting for a taxi to go to a hotel in Townsville when he stopped to offer her a lift. He did not drive her to her destination but drove around for awhile and ultimately turned onto a dirt track leading to a bush where the car became bogged. He then inflicted serious violence on the complainant by punching her, he indecently assaulted her and he raped her. He then walked her to a friend's house but when a car passed and the complainant attempted to call for help he punched her in the face. On arriving at the house, he again indecently assaulted and raped her. He then got into a taxi with her, taking with him items he had stolen from the house.

Medical evidence

- [8] Dr Harden assessed the respondent on 22 September 2007 and has again examined the respondent and prepared a report dated 29 September 2011. He applied a number of formal assessment instruments to assess the risk that the respondent presents and has come to the view that there is no difference between the results in 2007 and the present time.
- [9] Dr Harden observed that on the Static-99 the respondent achieved a score which placed him in the high risk category of re-offending. On the Sexual Offender Risk Appraisal Guide he achieved a score which placed him in a category where there is a 75 percent risk of re-offending in seven years and 89 percent risk at ten years. On the Hare Psychopathy Checklist the respondent has achieved a score which was high but did not place him in the category of a psychopath.
- [10] Dr Harden considers the respondent to be at high risk of re-offending violently or sexually violently if released into the community.

- [11] Dr Harden noted the “appalling early environment that the respondent was subjected to including sexual abuse by two family members”. Later he was subjected to sexual abuse in juvenile detention and he meets the criteria for alcohol abuse.
- [12] On the other hand Dr Harden notes that during most of his time in custody he has been a model prisoner, contributing to the lives of other prisoners in the organisation as well as achieving significant educational goals. He notes the respondent is more functional in the structured environment of a detention centre than he is in the general community.
- [13] Dr Harden notes the respondent has avoided doing a sexual offenders treatment program despite his lengthy incarceration. He did complete a preparatory program and did well but Dr Harden notes that that program is extremely limited.
- [14] It has been recommended on many occasions that he undertake the high intensity program. Her Honour A Lyons said:
- “It is also of significant concern that he has not completed a sex offender treatment program which would give him some insights into his behaviour.”
- [15] He refuses to do so giving a variety of reasons including ill health, dislike of child sexual offenders and refusing to be in a protection prison. It appears that when Dr Harden probed the reason for the reluctance by the respondent to undertake the program, part of his response was that he would get a knife and just “Do what I had to do”. This appears to be a reference to the fact that he would feel constrained to take action against child sex offenders.
- [16] In another area, Dr Harden asked the respondent about his present state of sexual interest and was told that he had “lost interest” and that his interest was “nonexistent”. This description was at odds with what the respondent told Dr Grant. The significance is that Dr Harden is of the opinion that if the respondent does have an ongoing sexual interest it may increase the risk of sexual offending slightly.
- [17] It also highlights the need for long term assessment in a program such as the High Intensity Sexual Offenders Program (HISOP) where such a program would be likely

to provide a better understanding of the immediate precursors to the respondent's offending. The program would also show what would be regarded as acute risk and the type of program and conditions that might be put in place to reduce the risk.

- [18] Dr Harden was of view that individual counselling would be substantially less effective in both areas. He said:

“The frequency and severity of his recidivism in the past suggests that close supervision alone may not be enough to reduce his risk to any substantial degree in the community without consideration of the further information that might be available if he were to complete a high intensity intervention program for his sexual offending.”

- [19] Later Dr Harden said:

“Prior to any consideration of him being released into the community, all efforts should be made for him to undertake the High Intensity Sexual Offenders' Treatment Program. The material that emerges from the program would provide additional information about further risk and reducing risk.”

- [20] Dr Grant also examined the respondent and prepared a report dated 2 August 2011. He had prepared three previous reports in 2008, 2009 and 2010. He considers the respondent has an anti-social personality disorder and assesses him on the Psychopathy Checklist in 2008 as achieving a score of 29, just below the recognised cut off point for psychopathy.

- [21] Dr Grant assesses the risk associated with the respondent's release into the community remains moderate to high.

- [22] He notes the respondent's past history of heavy alcohol abuse and use of and possible dependence on amphetamines. He does observe that the respondent shows some insight into the relevance of alcohol and drug abuse to his offending.

- [23] The respondent's behaviour in prison has been satisfactory and he has shown some evidence of maturing in regard to his anti-social personality traits. He has expressed some remorse and self-loathing for his previous behaviour. Dr Grant notes that he also demonstrates institutionalisation but has expressed a wish to leave prison and establish a more comfortable life in the community.

- [24] Dr Grant describes his plans on release from prison as being “vague”. He also noted the inconsistency in his disclosures as to his interest in sexual matters and is of the view that the failure of the respondent to complete a high intensity sexual offender program means that the increased insights into his sexual offending patterns and arousals are not available. The respondent has not had the opportunity to develop his understanding of his offending or to formulate a relapse prevention plan and that remains a significant barrier to the formulation of a coherent management plan if the respondent is to be released into the community. His assessments have placed him in either the moderate to high or high category for reoffending.
- [25] In summary, both psychologists have indicated that if the respondent does not participate in the HISOP program then the factors which are relevant to his risk profile are unclear and accordingly neither practitioner could be confident that a supervision order would be effective in managing the risk. In addition it makes it difficult if not impossible to compose a supervision order with conditions until he undertakes the program.
- [26] One of the objections by the respondent to doing the program is that he would have to do so at Wolston and he is concerned that he will be returned from “protection” to “mainstream”. He fears this will lead to resentment from other mainstream prisoners. The program is only available at Lotus Glen and Wolston. The program at Lotus Glen is particularly designed for the Aboriginal and Torres Strait Islander population. At the present, time the only other place HISOP is offered is at the Wolston Correctional Centre because there has not been a demand to run it outside of that Centre. There is a requirement that there be at least ten offenders to accept a place in a HISOP as it is a very demanding program that requires high skills set and the present call at Wolston is already taxing on Corrective Services.
- [27] Mr East for the respondent made oral submissions before me. He has conceded that an impasse has been reached. The respondent will not undergo the program as it is presently offered. Mr East does not argue that the respondent should be released at the present time and he suggests that the respondent be detained in custody but he makes a submission that an order be made that the respondent undergo individual treatment, not to replace the HISOP program but to help him overcome some of the attitudes that he has towards undergoing the program.

His Attitude

- [28] The respondent has consistently refused to undertake the HISOP course. He has given various reasons for doing so including a problem with air conditioning during a preparatory program, the fact that he does not want to go to the Wolston Correctional Centre and an expression of fear that he may be tempted to assault child sex offenders who are in the program.
- [29] As said earlier, the HISOP program is only offered at the Wolston Correctional Centre and there is evidence that there is no demand to run such a course outside the Wolston Correctional Centre. There are insufficient staff/facilitators to operate such a course at any other correctional centre and there are “security issues” with running sex offender program in a main stream prison.
- [30] The respondent has placed much emphasis on the case of *The Attorney-General for the State of Queensland v Gregory Alan Hynds* [2010] QSC 436. In that case the respondent was reluctant to undertake a high intensity sexual offenders program. In that case, Fryberg J had made a continuing detention order in December 2007, it had been reviewed in 2009 by P Lyons J who ordered it continue and in 2010 there was a further review before Applegarth J.
- [31] P Lyons J was not prepared to be critical of the respondent’s attitude towards undertaking a HISOP course at Wolston Park. Applegarth J was not prepared to find otherwise.
- [32] In this case, I am somewhat sceptical of the reasons proffered on behalf of the respondent. He has not provided any evidence before me and he is not obliged to do so, however, evidence from him might have been helpful in my assessment as to the sincerity of his objections.

Objections to Wolston Park

- [33] The evidence of Mr Phelan, a principal advisor at Qld Corrective Services was that should the respondent consent to undertake the HISOP commencing February 2012, the course would run for approximately nine months or perhaps a little longer and that would mean the end of any course would coincide with the periodic annual

review contemplated by s 27 of the Act. That would mean that if HISOP was successful and was found to have ameliorated the risk to the extent that the psychiatric evidence allowed that he might be able to be adequately managed by a supervision order, the respondent may be eligible for release on condition which would mean he would be released from Wolston and would not have to return to Borallon.

Concern about his reaction to Child Molesters

- [34] The respondent also has suggested that he might lose control if required to do HISOP.
- [35] Mr McNairn, the centre director of the Borallon Correctional Centre, considered that the respondent would have been, during the course of his incarceration, housed with a convicted child sex offender and, presumably endured this without incident.

Dr Grant

- [36] Dr Grant also expressed the view that the dynamics of group therapy are more likely to bring out emotions and make those emotions accessible which is one of the goals of the therapy. The group can be both confronting and supportive. He also said it was difficult to assess the genuineness of the respondent's objections
- [37] Dr Grant was asked about this matter and responded as follows:

“What about a suggestion that “Oh look I might lose control and hit someone or do something like that or do something unpleasant in the HISOP, therefore I shouldn't do it. I should do it elsewhere in a mainstream prison, I should do it individually,” or those sorts of notions which Mr Carpenter now seems to be advancing?

Answer: Well, when you consider someone for a HISOP you obviously do consider their capability of doing that and any problems that might arise in that sort of setting. Now, Mr Carpenter has **demonstrated good behavioural controls** for many years now in prison, housed with a lot of other prisoners, and hasn't shown any serious problems with temporal behaviour towards anybody and it's clear that in a HISOP program in that sort of group, strong emotions are going to be elicited, antagonisms will be expressed and people come to be aware of feelings that they have repressed or suppressed in the past. So it is a program that is likely to be hard emotional work for somebody, confronting, difficult and **its not uncommon for**

people to get angry or very distressed in that group program, but that's what the facilitators are there to help deal with and to help people understand what that's all about.

It's not a reason not to do a course?

Answer: No, it's not a reason. In fact **it's an expectation that you will find difficult (sic) emotionally to do this course.** It's going to be hard work and a lot of people are avoidant of doing that because they fear confronting their own emotions."

[38] Dr Harden gave evidence as follows:

"It would be not unreasonable for him to have serious concerns about his ability to deal with people who are disclosing to him details of their offending?

Answer: That would be consistent.

And there's a real possibility, is there not, that Mr Carpenter might have some severe reaction to that that might begin with abusive or threatening language, that might go on to even greater extreme, and that is possibly assaulting someone who is part of the group he is involved with?

Answer: Yes. I know that's the view Mr Carpenter has expressed, and it's possible. My interaction with my and **my reading of his record, however, suggests that he's able to exercise a fair degree of control of his aggressive impulses,** even when aggravated in his current setting.

[39] Dr Harden was unsympathetic to the suggestion that the respondent's resistance to undertaking HISOP might be addressed by intensive psychotherapy. He said:

"It would be best addressed by him confronting the issues and doing the program, to be quite frank...he may well accept such assistance but still refuse to continue to undertake a high intensity program, which I think would leave us in a very similar position to where we are now."

[40] Dr Grant was similarly sceptical. He said he did not see in the respondent any particular kind of limitations or issues that would require individual therapy. He thought it was simply a matter of the respondent being specifically motivated to move on to the next step.

- [41] In that sense, the case is distinguishable from *R v Hynds* where the evidence of Professor James was that he thought it unlikely that the respondent there would benefit from undertaking HISOP and Professor James supported the proposal that an experienced psychologist provide individual therapy. The evidence of Professor James was accepted. There is no such evidence here.
- [42] In that case, the respondent's Individual Management Plan noted that the respondent had attended regular sessions with a psychologist in training at Borallon at which he had demonstrated a positive attitude and in which he actively participated. These sessions were said to be designed to motivate him to participate in the recommended HISOP program and to continue with his release plans which were much better formulated than in the case of this respondent.
- [43] Here, the overwhelming evidence is that the respondent is a high risk of re-offending in a violent or sexually violent way if released into the community. The factors relevant to that risk will remain unclear until he participates in a program such as HISOP. It is difficult, if not impossible, to compose a conditional supervision order until he undertakes the program. The program will be more effective than individual counselling and his resistance would be best addressed by undertaking the program. Having said that, there appears to be no good reason Corrective Services would refuse such assistance except that it is unlikely that it could be offered before February 2012, and may delay his participation in HISOP. That may affect the result of the next review.
- [44] There is no evidence before me as to the reason no such arrangements have been made in this case. It appears from the judgement in *Hynds* that the arrangements in the first instance were not pursuant to an order and it has not been explained to me why some similar step has not been envisaged in respect of this respondent. The tenor of the submissions on behalf of the applicant suggest that it is because the respondent's refusal to undertake HISOP is considered recalcitrant rather than real. It would seem a simple enough matter to arrange such counselling as the Department considers appropriate in case his reasons are genuine. If they are the impasse may never be solved.

The exercise of discretion

[45] The evidence here provides sufficient evidentiary basis for a finding to be made that the decision made by A Lyons J on 22 September 2008 that the respondent Harold James Carpenter is a serious danger to the community in the absence of a Div 3 order under the Act be affirmed. I am satisfied by acceptable, cogent evidence from Drs Harden and Grant and I am satisfied to a high degree of probability. That being so the court may order that the respondent continue to be subject to the continuing detention order or be released from custody subject to a supervision order.

[46] In deciding to make such an order:

(1) the paramount consideration is the need to ensure adequate protection of the community; and

(2) whether

(a) adequate protection of the community can be reasonably and practically managed by a supervision order; and

(b) the requirements under s 16 can be reasonably and practically managed by a Corrective Services Officer.

[47] The appropriate order must ensure adequate protection of the community. The purpose of the legislation is to protect and guard against risks presented by the release of persons who are considered a present serious danger to the community.

[48] The onus of demonstrating the supervision order affords inadequate protection of the community is on the applicant. In this case I am not satisfied that a supervision order would be sufficient to ensure adequate protection of the community.

[49] I order the decision of A Lyons J made on 22 September 2008 that Harold James Carpenter is a serious danger to the community in the absence of an order pursuant to Division 3, Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* and order that the respondent continue to be subject to the continuing detention order

made on 22 September 2008. I have initialled and placed with the papers the draft order.