

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Fardon*
[2013] QSC 12

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF
QUEENSLAND**
(applicant)
v
ROBERT JOHN FARDON
(respondent)

FILE NO: BS5346 of 2003

DIVISION: Trial Division

PROCEEDING: Application for review

DELIVERED ON: 13 February 2013

DELIVERED AT: Brisbane

HEARING DATE: 15 October 2012 and 7 February 2013

JUDGE: Mullins J

ORDER: **THE COURT, being satisfied to the requisite standard that the respondent, Robert John Fardon, 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), ORDERS THAT:**

- 1. The decision of the Court of Appeal made on 1 July 2011, that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act, be affirmed;**
- 2. The continuing detention order made on 1 July 2011 be rescinded upon the respondent's release from custody in accordance with order 3 below;**
- 3. The respondent be released from custody by 4pm on 14 February 2013 and from that time be subject to the requirements set out in the draft order initialled by Mullins J and placed with the file until 13 February 2018.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the applicant seeks review of a continuing detention order – where the respondent has a history of sexual offending and

drug and alcohol abuse – where the respondent has been diagnosed with an antisocial personality disorder – where the respondent has participated in counselling with a psychologist – where there is an unacceptable risk that the respondent will commit a serious sexual offence upon release without a supervision order being made – where the onus is on the applicant to show that adequate protection of the community cannot be reasonably and practicably managed by the respondent being released subject to a supervision order – whether the respondent should be released on a supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003, s 13, s 16, s 22, s 27, s 30.

Attorney-General for the State of Queensland v Fardon [2011] QCA 155, related
Attorney-General v Francis [2007] 1 Qd R 396, followed
R v Fardon [2010] QCA 317, related

COUNSEL: J M Horton for the applicant
D P O’Gorman SC for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
Patrick Murphy for the respondent

- [1] On 1 July 2011 the Court of Appeal ordered that the supervision order that had been made on 19 October 2007 in respect of the respondent Mr Fardon pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the Act) be rescinded and that he be detained in custody for an indefinite term for care, control or treatment: *Attorney-General for the State of Queensland v Fardon* [2011] QCA 155 (the 2011 decision). This is a review of the 2011 decision. The applicant seeks an order under s 30 of the Act that the 2011 decision that the respondent is a serious danger to the community in the absence of an order under the Act be affirmed and an order that he continue to be subject to that detention order.
- [2] Mr Fardon is currently 64 years old. He is not unintelligent. It is common ground that he is not a pedophile and does not have a sexual paraphilia, but that his sexual offending occurred in the context of his psychopathic personality disorder and was aggravated by alcohol and substance abuse. The history of Mr Fardon’s sexual offending and proceedings taken under the Act is summarised in the reasons of the Chief Justice in the 2011 decision at [2]-[11]. After the completion of his imprisonment for 14 years for a brutal rape, sodomy and assault occasioning bodily harm, Mr Fardon was detained under the Act from 28 June 2003 until 27 September 2006 when he was released on a supervision order. In July 2007 he was returned to custody for alleged contraventions of that supervision order for about three months until 19 October 2007, when he was again released on the supervision order. He was returned to custody on 3 April 2008 and has effectively been detained under the Act since that time.
- [3] After Mr Fardon was released on the supervision order in October 2007, he resumed a sexual relationship with a intellectually disabled woman whom he had known as a teenager. She made a complaint against Mr Fardon on the basis that he had engaged

in anal intercourse with her to which she had not agreed, although she was a willing participant in sexual intercourse with him otherwise. Mr Fardon was tried for the offence of rape and convicted. His appeal against that conviction was allowed, the conviction set aside and a verdict of acquittal entered: *R v Fardon* [2010] QCA 317. After that acquittal, Mr Fardon was then dealt with for his contraventions of the supervision order associated with his relationship with the complainant in respect of the rape charge, including attending with her at licensed premises without permission of the supervising corrective services officer and attending her residence unsupervised when she was an intellectually disabled person. That resulted in the 2011 decision.

Reports prepared for the hearing on 15 October 2012

- [4] Reports were prepared by psychiatrists Dr Grant and Dr Beech for the purpose of the hearing of the application on 15 October 2012.
- [5] Dr Grant interviewed Mr Fardon for about two and a half hours on 27 April 2012. Dr Grant records that much of the interview was taken up by Mr Fardon's expressions of anger and frustration at the Act and the failures of Queensland Corrective Services (QCS) to provide him appropriate assistance in custody or when he had been previously released under a supervision order. Dr Grant had prepared two previous reports on Mr Fardon for the purpose of the Act, one dated 3 April 2006 and the other dated 17 January 2011. Dr Grant's report dated 28 April 2012 was by way of update on Mr Fardon and relied on the formal risk assessment instruments that were done for the previous reports. Dr Grant diagnoses Mr Fardon with Antisocial Personality Disorder (Psychopathic) with a past history of severe alcohol and drug abuse in remission for many years in prison and the history of some intermittent anxiety symptoms in the past and to some extent in the present (but not sufficient to receive any current treatment). Dr Grant regards Mr Fardon's sexual offending history as a facet of his psychopathic personality disorder rather than representing a specific sexual paraphilia. Dr Grant considers that participation in a sex offender treatment program is not specifically indicated in the absence of paraphilic behaviour, but might assist Mr Fardon in understanding his previous sexual offending as part of his overall personality disorder and help him avoid such offending in the future.
- [6] Dr Grant concludes his report with these observations:
 "Given that very little has changed in regard to Mr Fardon's condition or his attitudes since the last review in 2011, it remains the case, in my opinion, that Mr Fardon's management on a supervision order in the community would be very challenging. I believe that he would require a great deal of assistance and support in making the transition from complete institutionalisation to a more independent life in the community and there would be a high risk of breaches of a supervision order because of his entrenched negative attitudes. In the past he has demonstrated scant regard for the requirements on a supervision order and his negative attitudes continue to be very strong and would undermine confidence that a supervision order would be successful in assisting his rehabilitation.

If Mr Fardon was to be released on a supervision order, I believe there would be a moderate to high risk of re-offending, with non-

sexual re-offending being more likely than sexual re-offending. However, the risk of the latter would not be insignificant, particularly in the context of a relationship with a woman where he might not sufficiently respect her rights or his responsibilities.

One of the major barriers for Mr Fardon in terms of any treatment or successful transfer to the community is his apparent lack of motivation. It will be difficult to institute any supportive treatments or facilitate change without his very active cooperation and motivation to achieve progress. At present that motivation appears to be lacking and that leads to considerable pessimism about Mr Fardon's safe management in the community. Some extended individual therapy within the prison environment might be one way of further assessing his motivation and encouraging a change in attitudes that might make change more likely and successful transition into the community more possible. Any such counseling would need to be provided by someone with psychotherapeutic experience and an understanding of people with psychopathic personality disorder."

- [7] Dr Beech interviewed Mr Fardon for about five hours on 4 May 2012. Dr Beech assessed Mr Fardon with a number of risk assessment instruments that indicated he was in the range of psychopathy and in the group regarded as being of moderate-high risk of reoffending. Dr Beech expresses the opinion that Mr Fardon has an Antisocial Personality Disorder associated with significant and persisting psychopathic traits. Dr Beech notes that Mr Fardon had significant polysubstance abuse and probably dependence in the past that are now in remission.

- [8] Dr Beech states:

"Over the years there has been some settling in his behaviour and the more recent reports do not point to the earlier dyscontrol he displayed. He does not now seem to resort to violence easily. He voices some insight into his behaviour and he can articulate some empathy, but it is difficult to believe that this is emotionally and affectively genuine. Importantly he still maintains an antagonistic attitude to supervision.

He has many of the significant risk factors for further sexual violence. There is a repeated history of sexual violence notable for the level of physical coercion and the use of violence to progress to rape. He has high psychopathic traits. He is restless and prone to impulsivity still.

To some extent his advancing age is a mitigating factor but in my opinion his behaviours on release indicate, despite his assertions, that he is still a virile man who will pursue sexual relations on release.

In my opinion, the risk of further sexual violence is in the moderately high range still. That is, more than the average sexual offender but not in the range of those at highest risk.

I agree with others that the risk of other illegal or antisocial behaviours is higher.”

- [9] In June 2012 QCS engaged forensic psychologist Mr Nick Smith to provide individual psychological treatment to Mr Fardon and to identify his ongoing treatment needs. Mr Smith attended at the prison between 27 June and 27 September 2012 for treatment sessions with Mr Fardon on eight occasions. Mr Smith then prepared a progress report for the purpose of the hearing on 15 October 2012.
- [10] In this first report, Mr Smith notes that Mr Fardon’s self-report of significant anxiety symptoms fulfils the requirements for a diagnosis of posttraumatic stress disorder (PTSD). Mr Smith also notes Mr Fardon’s significant negative attitude to QCS. Mr Smith’s initial treatment of Mr Fardon focused on building rapport and then with an increasing focus on rehabilitation goals, risk management and Mr Fardon’s posttraumatic stress symptoms. Mr Smith considers that Mr Fardon engaged “very well” in the treatment sessions and that Mr Fardon expressed willingness to continue sessions with Mr Smith whether in custody or in the community.

Hearing on 15 October 2012

- [11] Mr Fardon elected not to attend the October hearing. He also did not swear any affidavit for the purpose of the October hearing. He had not prepared a relapse prevention plan. At that hearing each of Mr Smith, Dr Grant and Dr Beech gave further evidence and was cross-examined by senior counsel for Mr Fardon. Both Dr Grant and Dr Beech considered it was positive that Mr Fardon had commenced individual counselling with Mr Smith, but that it was too early to express an opinion on whether that counselling would improve Mr Fardon’s motivation and attitude towards supervision. Dr Grant explained that Mr Fardon’s breaches of the previous supervision order indicated the strong sense of entitlement on Mr Fardon’s part that it was in order for him to get around the supervision order and not tell the supervisors what he was doing, such as having the sexual relationship with the intellectually disabled woman. Dr Grant was of the opinion that it was Mr Fardon’s sense of entitlement that was of concern.
- [12] The review application was therefore adjourned at the October hearing to enable further counselling of Mr Fardon by Mr Smith to take place, the preparation of updated reports from Mr Smith and the psychiatrists, and for Mr Fardon to have the opportunity to address the key questions of his motivation and his capacity to comply with any proposed supervision order. It is common ground that the risk of of violent sexual reoffending by Mr Fardon under a supervision order will be affected by whether Mr Fardon can genuinely comply with the requirements of a supervision order.

Further reports

- [13] Since preparing his first report, Mr Smith attended on Mr Fardon on 11 occasions which forms the basis of Mr Smith’s second psychological progress report prepared on 7 January 2013. The primary focus of the weekly treatment sessions was for Mr Fardon to progress towards possible release on a supervision order. Mr Smith administered two psychometric assessments specifically targeting PTSD symptoms. Mr Fardon’s score on the Detailed Assessment of Posttraumatic Stress (DAPS) is

strongly suggestive of a diagnosis of PTSD, however, Mr Smith notes that Mr Fardon's results on the other assessment of Trauma System Inventory (TSI) was such as to invalidate the measure, because he scored very highly on the atypical response scale. Mr Smith does not consider that an invalid rating on TSI invalidates an overall finding in support of a PTSD diagnosis as per his DAPS results.

[14] Mr Smith reports that Mr Fardon's engagement in treatment sessions has improved and that he is willing to continue sessions for the foreseeable future.

[15] Mr Smith's 7 January 2013 report was provided to Dr Grant and Dr Beech.

[16] Dr Grant in his report dated 12 January 2013 has not changed his previously expressed opinions regarding the risk for reoffending by Mr Fardon, if he were to be released into the community. Dr Grant observes that if, in fact, Mr Fardon has a significant PTSD, that would not decrease the risk, but rather have the effect of increasing the risk, as it would be likely to cause more "emotional dysregulation" and the likelihood of violent behaviour in response to perceived threats and also increase the likelihood of self-medication with drugs or alcohol to relieve discomfort. Dr Grant concludes:

"I remain of the opinion that the risk in regard to re-offending in a sexual way and in a general violent way is high and that the completion of a sexual offender treatment program is indicated to assist with reducing the risk and with planning a satisfactory relapse prevention plan if he was to be released into the community. My opinion remains that Mr Fardon could not be predictably safely managed in the community under a supervision order unless he first completes a sexual offender treatment program. Mr Fardon would have a great deal of difficulty adapting to community life and I believe he is aware of that, and that he is consequently quite ambivalent about being released into the community."

[17] Dr Beech's conclusion in his report dated 1 February 2013 is slightly more favourable to Mr Fardon than Dr Grant's opinion. Dr Beech states:

"As I stated in my report of August last year, I believe that Mr Fardon has an Antisocial personality disorder with psychopathic traits who has in the past held attitudes that condoned violence. Over the years there has been some setting of his behaviour, but he has held an entrenched antipathy towards QCS staff and supervision which has become apparent during his releases under a DPSOA supervision order.

He has remained a virile man with ongoing problems with rules and conditions that lessen the risk reducing factors of age and maturity. In my opinion this means that his risk of re-offending in a sexually violent way is moderately high. This risk would ordinarily have been reduced by a sexual offender program, supervision, and community re-integration. However, Mr Fardon has up until now eschewed treatment, has not abided by the conditions of a supervision order, and has been stressed on release.

In his favour though, he has not returned to drugs and alcohol when in the community (which were likely potent factors in his earlier

sexual offences), and he has now engaged in some form of supportive psychological counselling. In my opinion, the latter is now a significant risk-reducing factor that makes it more likely that he will remain engaged with treatment if released, and from there he will be more likely to use this support to develop strategies to assist him in dealing with the stresses of community living.

It also makes it more likely that he will listen to advice and not persist with the self-defeating antagonism towards supervision, QCS, and the limits that are placed on by a supervision order. It is likely that he will still struggle with supervision, but it is now more likely that he will use the support available to him to manage this with better insight and fewer material breaches. This in turn means that it is more likely that he will abide by the conditions which act to reduce the risk of his re-offending.”

Hearing on 7 February 2013

- [18] Mr Fardon swore an affidavit for the purpose of the adjourned hearing. He expressed the view that the sessions he had with Mr Smith had been of benefit to him and that he wished to continue the sessions whether in prison or in the community. He expressly stated that he was “prepared to abide by all conditions” in any supervision order and expressed “greater motivation and preparedness to work with Corrective Services as a direct result of the counselling” that he had with Mr Smith.
- [19] As a result of his counselling sessions with Mr Smith, Mr Fardon prepared a handwritten document entitled Relapse Prevention Plan (exhibit 1). The plan identifies risk factors of alcohol, drugs and environment which are acknowledged by Mr Fardon as risk factors that he has to address. There are general strategies for addressing those risks listed in the plan: avoid consumption of alcohol; attend AA meetings; avoid drug taking other than prescribed medication; avoid licensed premises or venues or parties: stay away from known hotspots; and stay away from known consumers of drugs and alcohol. There is an extensive list of emotional triggers in the plan with a less extensive list of strategies to deal with emotional triggers. Some of the strategies are aspirational and realistically unattainable, eg address childhood sexual abuse. There is a list of proposed support networks identified by Mr Fardon including ongoing counselling with Mr Smith and a proposal to rely on a chaplain from the Prison Ministry who has confirmed to a QCS employee from the High Risk Offenders Management Unit that he is willing to provide support for Mr Fardon under a supervision order. Mr Fardon has gone into great detail in the plan about the difficulties he encountered when he was previously released under a supervision order.
- [20] Although one of the reasons for the adjournment of the review application to 7 February 2013 was to enable Mr Fardon to undertake a transitions program, Mr Fardon declined to do so when that was offered by QCS on the basis that he had done the transitions program previously and found it of no assistance. In his view the program was theoretical and he did not have experience of the types of activities, such as acquiring a go card and using an automatic teller machine, explained by the program. By early January 2013 Mr Fardon did seek some

assistance from the transitions coordinator with respect to gaining a form of identification, opening a bank account and dealing with Centrelink.

- [21] On 7 February 2013 Mr Smith confirmed that Mr Fardon has continued to engage in a meaningful way during their counselling sessions and considers that Mr Fardon's overall negative attitude to QCS does not negate Mr Fardon's expressed willingness to cooperate with QCS in respect of the supervision order. He considers that Mr Fardon's improved engagement with his case manager and the psychologist who deals with him from the High Risk Offender Management Unit is a good sign for the expressed intention of Mr Fardon to build constructive working relationships with those to whom he would report under the supervision order.
- [22] Although Mr Smith confirms his opinion that Mr Fardon suffers from PTSD, Dr Grant and Dr Beech would not make such a diagnosis. As Dr Grant explains in his oral evidence, Mr Fardon has a number of features which would occur in PTSD that arise from his traumatic background, his involvement in violence both as a victim and as an offender, and from his having a prominent antisocial personality disorder with psychopathic features. Although Dr Grant had expressed in his report dated 12 January 2013 that if Mr Fardon had a significant PTSD, that would increase the risk of his sexual reoffending, Dr Grant has qualified that reservation by his conclusion on 7 February 2013 that Mr Fardon's intermittent anxiety symptoms would not amount to PTSD, because of all the other factors that Dr Grant has identified that explain Mr Fardon's anxiety. Dr Beech also would not make a diagnosis of PTSD, but is of the opinion that the trauma that Mr Fardon suffered from his childhood through his adolescence and in prison has crystallised into his personality structure leading to an antisocial personality disorder with marked psychopathic features which can be mistaken as a complex PTSD.
- [23] Both Dr Grant and Dr Beech accept that the symptoms identified by Mr Fardon to Mr Smith can be consistent with PTSD. The opinions of both Dr Grant and Dr Beech persuade me, however, that it is too simplistic to conclude that Mr Fardon suffers from PTSD. I accept the approach of Dr Grant and Dr Beech that it is the anxiety that Mr Fardon exhibits and how he copes with that which is relevant in assessing his risk of reoffending, rather than any label given to those symptoms. Dr Grant modified the opinion that he expressed in his report of 12 January 2013 about PTSD increasing the risk of reoffending by Mr Fardon, as Dr Grant acknowledges that Mr Fardon's current symptoms of PTSD are not new and have already formed part of the overall risk assessment that Dr Grant has made.
- [24] Mr Fardon has consistently refused to undertake a group sex offender treatment program, but is prepared to do one that is for him alone. Dr Grant's suggestion in his report of 28 April 2012 that was repeated in his report of 12 January 2013 that Mr Fardon should do a sex offender treatment program before being released under a supervision order was qualified by Dr Grant's oral evidence that a sex offender treatment program for Mr Fardon would be useful, but not essential.
- [25] Dr Grant also notes in his oral evidence that the systems and requirements developed by QCS for administering supervision orders has become more sophisticated and effective since 2006 and that Mr Fardon might find the regime under the supervision order a different experience from that which he experienced between 2006 and 2008.

- [26] Dr Beech considers that when Mr Fardon's relapse prevention plan is taken in conjunction with his affidavit, there are signs that Mr Fardon is showing understanding of what he needs to do under the supervision order to avoid reoffending and commitment to make the changes in his attitude to achieve compliance with the supervision order. Although Dr Beech would have liked to have seen signs of contrition, remorse and empathy, the lack of an expression of those feelings by Mr Fardon is consistent with his personality disorder. Dr Beech notes the improvement of Mr Fardon's behaviour in prison and his engagement in counselling with Mr Smith are positive signs that Mr Fardon would cooperate under a supervision order.

Onus

- [27] The 2011 decision arose out of a hearing in respect of Mr Fardon's contravention of the supervision order made on 19 October 2007. Under s 22(2) of the Act Mr Fardon bore the onus of satisfying the court, on the balance of probabilities, that the adequate protection of the community could, despite the contravention of the supervision order, be ensured by the existing supervision order, as amended under s 22(7) of the Act. Although the Chief Justice observed at [30] of the 2011 decision that Mr Fardon was not obliged to give evidence, the relevance of evidence from Mr Fardon was also noted:

"However, evidence from the respondent could helpfully have borne on the question of his preparedness and capacity to adhere fully to the supervisory regime, especially where the likelihood of contravention, resulting from his attitude, was of considerable expressed concern for the psychiatrists."

- [28] In this review application under s 27 of the Act, it is the applicant who bears the onus of satisfying the court that the adequate protection of the community cannot be reasonably and practicably managed by a supervision order.

Should a supervision order be made?

- [29] Mr Fardon concedes that the evidence before the court allows the court to be satisfied to the requisite standard that there is an unacceptable risk that he will commit a serious sexual offence, if he is released from custody without being subject to a supervision order. The court is still required, however, to have regard to the matters prescribed in s 13(4) of the Act in deciding whether Mr Fardon is a serious danger to the community, as referred to in s 30(1) of the Act. The evidence of Dr Grant and Dr Beech is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that Mr Fardon's moderately high to high risk of sexual reoffending is an unacceptable risk in terms of s 13(2) of the Act. It is therefore appropriate to affirm the 2011 decision that Mr Fardon is a serious danger to the community in the absence of a division 3 order.
- [30] The question arises whether in these circumstances the continuing detention order made by the Court of Appeal should be continued or whether a supervision order should be made. Under s 30(4)(a) of the Act, the court must, in deciding whether to make either a continuing detention order or a supervision order, take into account that the paramount consideration is the need to ensure "adequate protection of the community". Under s 30(4)(b), the court is required to consider whether adequate protection of the community can be reasonably and practicably managed by a

supervision order and whether requirements under s 16 of the Act can be reasonably and practicably managed by corrective services officers.

- [31] The applicant acknowledges that Mr Fardon has participated in beneficial treatment with Mr Smith, prepared a relapse prevention plan and taken some limited steps in preparation for release, but submits that there has not been sufficient benefit from these factors to mitigate the danger to the community from Mr Fardon, if he were released under supervision. The applicant places great weight on the opinions expressed by Dr Grant in his written reports and the strong antipathy that Mr Fardon continues to express to QCS.
- [32] Mr Horton of counsel for the applicant submits that optimism about Mr Fardon's expressed willingness to comply with the conditions of a supervision order is not sufficient to allow the conclusion that the supervision order will be effective in regulating Mr Fardon. The applicant submits that the supervision order will only provide adequate protection of the community from sexual reoffending by Mr Fardon, if Mr Fardon is himself capable of internal regulation of his behaviour, in conjunction with the external regulation of the supervision order and the evidence does not support a favourable conclusion for Mr Fardon on his ability to control his own behaviour and deal appropriately with the anxiety and stress that will inevitably be experienced by him under a supervision order.
- [33] The applicant urges reliance on Dr Grant's opinion in preference to Dr Beech's opinion on the issue of whether Mr Fardon will be likely to comply with a supervision order.
- [34] Against the arguments advanced on behalf of the applicant are the factors of Mr Fardon's increasing age, the constructive therapeutic relationship with Mr Smith, improved relationships in recent times with QCS employees, some acknowledgement of risk factors and the commencement of preparation of strategies for dealing with risk factors, emotional triggers and anxiety symptoms.
- [35] Because this review application is concerned with Mr Fardon's prospective behaviour under a supervision order, Mr Fardon's expression of intention to comply with the supervision order and to cooperate with QCS is relevant, though not determinative. In his case, it has to be evaluated by looking at his past conduct and what has been done to change his attitudes and his circumstances that caused the previous supervision regime to fail. The difference in the way that Mr Fardon himself engaged in the review application between the October 2012 hearing and the February 2013 hearing gives some support for his positive motivation to comply with a supervision order and to continue to work on his capacity to do so.
- [36] Adequate protection of the community from the risk of violent sexual offending does not impose a standard that is capable of precise measurement or prediction. The Act does not contemplate that arrangements under a supervision order to prevent the risk of reoffending must be "watertight": *Attorney-General v Francis* [2007] 1 Qd R 396 at [39].
- [37] Dr Beech gave evidence in broad terms of the type of conditions that would be essential in any supervision order that applied to Mr Fardon. Dr Grant also identified that the crucial areas for the supervision order would be to regulate substance use and Mr Fardon's relationships with others, to monitor him closely,

particularly if he enters a sexual relationship, and to give him support in dealing with those situations that will be stressful for him.

- [38] There was no suggestion on behalf of the applicant that requirements in a supervision order appropriate for Mr Fardon could not be reasonably and practicably managed by QCS.
- [39] Dr Beech expresses the opinion that a period of five years would be sufficient for a supervision order for Mr Fardon, as the risk of violent reoffending drops dramatically for a man in his sixties. Dr Beech also expresses the view that, if Mr Fardon were to be successful in complying with the supervision for a period of five years, that would show he had adapted to release in the community.
- [40] Ultimately the aspects of Dr Grant's opinion on which the applicant placed weight were qualified by Dr Grant's oral evidence and the differences between the opinions of Dr Grant and Dr Beech were not that significant. For the reasons identified in Dr Beech's evidence that support the increasing likelihood of Mr Fardon's compliance with the requirements of a supervision order because of his motivation and improving capacity to do so and my conclusion about Mr Fardon's positive motivation to comply with a supervision order, the applicant has failed to discharge the onus of satisfying the court that the adequate protection of the community from the risk of sexual reoffending by Mr Fardon cannot be reasonably and practicably managed by a supervision order on appropriately stringent terms.

Order

- [41] At the conclusion of the hearing on 7 February 2013, the applicant produced a draft supervision order that was then the subject of submissions. The conditions that were the subject of the submissions as modified by the conclusions that I indicated during the hearing about some of the conditions have been incorporated in the draft order which I have initialled and placed with the file. The orders which I make therefore are:

THE COURT, being satisfied to the requisite standard that the respondent, Robert John Fardon, 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), ORDERS THAT:

1. The decision of the Court of Appeal made on 1 July 2011, that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act, be affirmed;
2. The continuing detention order made on 1 July 2011 be rescinded upon the respondent's release from custody in accordance with order 3 below;
3. The respondent be released from custody by 4pm on 14 February 2013 and from that time be subject to the requirements set out in the draft order initialled by Mullins J and placed with the file until 13 February 2018.