SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Turnbull* [2014] QSC 86
PARTIES:	**ATTORNEY GENERAL FOR THE STATE OF QUEENSLAND** (Applicant) **v** **GARY UNE TURNBULL** (Respondent)
FILE NO/S:	SC No 3675 of 2014
DIVISION:	Trial
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	29 April 2014
DELIVERED AT:	Brisbane
HEARING DATE:	29 April 2014
JUDGE:	Atkinson J
ORDERS:	**1. The application for a Division 3 order be set for hearing on 10 June 2014.** **2. Pursuant to section 8(2)(a) of the DPSOA the respondent undergo examination by two psychiatrists being Professor Barry Nurcombe and Dr Donald Grant who are to prepare independent reports which are to be prepared in accordance with section 11 of the DPSOA.** **3.** **a) The applicant file and serve any further affidavit material and a precise list of what parts of the affidavits and exhibits already filed on which he intends to rely at the final hearing by 20 May 2014.** **b) The applicant's affidavit material must contain evidence as to the content, utility and availability of courses including sex offender treatment programs which could be undertaken by the respondent while subject to a supervision order.** **4. The parties must in all other respects comply with Practice Direction 6 of 2012 unless excused by a Judge.**

5. Liberty to apply is granted.

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – GENERALLY – where the respondent committed a series of predatory sexual offences against adult women – where the respondent has not yet been given the opportunity to complete the sex offenders program – whether there are reasonable grounds for believing that the respondent is a serious danger to the community in the absence of a division 3 order – whether the court should make an order for the examination of the respondent by two independent psychiatrists

PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – JURISDICTION AND GENERALLY – GENERALLY – where the applicant failed to comply with Practice Direction 6 of 2012

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 8(2)(a), s 13

R v Turnbull [2013] QCA 154

R v Turnbull [2013] QCA 374

COUNSEL: M Maloney for the applicant

A Nelson for the respondent

SOLICITORS: Crown Law for the applicant

Alexander Law for the respondent

HER HONOUR: The applicant, the Attorney-General for the State of Queensland, has filed an originating application seeking orders that:

1. pursuant to section 8(2)(a) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA), the respondent undergo examination by two psychiatrists named by the Court, who are to prepare independent reports in accordance with section 11 of the DPSOA;
2. pursuant to section 13(5)(a) of the DPSOA, the respondent be detained in custody for an indefinite term for care, control or treatment; and
3. in the alternative, that, pursuant to section 13(5)(b) of the DPSOA, the respondent be released from custody, subject to such conditions as the Court considers appropriate and that are stated in the order.

This matter was listed today, not for final determination, but for determination of paragraph 1 of the originating application. That is, whether or not the Court should make an order under section 8(2)(a) of the DPSOA for the examination of the respondent by two independent psychiatrists.

The Court may only make such an order where it is satisfied that there are reasonable grounds for believing that the prisoner is a serious danger to the community in the absence of a Division 3 order. In such circumstances, the Court must set a date for the hearing of the application for such an order. In my view, it would be of assistance to the Court to have two psychiatrists prepare independent reports. But I may only do that if I'm satisfied there are reasonable grounds for believing that the respondent would be a serious danger to the community in the absence of a Division 3 order.

Division 3 orders are found in section 13, and section 13(4) sets out what a Court must have regard to in considering whether a prisoner is a serious danger to the community when making such an order. Those factors, of course, are relevant to the making of a preliminary order, as is asked for in this case, under section 8. Not all of them can be had regard to by the Court because some of them are such things as having regard to the reports prepared by the psychiatrists under section 11.

I have been assisted in this case, in deciding whether or not there are reasonable grounds for believing that he would be a serious danger to the community in the absence of such an order, by a number of factors which have been put before me. One of them is the report of the psychiatrist Dr Aboud, who has given oral evidence as well as providing a written report and been cross-examined by Mr Nelson, who appears for the respondent. The report of Dr Aboud deals with the risk that the respondent would commit another serious sexual offence, particularly if released into the community without a supervision order. I am satisfied from that report that there are sufficient grounds for me to be satisfied there are reasonable grounds for believing that the respondent would be a serious danger to the community in the absence of a supervision order.

Dr Aboud gave his opinion that it would be possible for the respondent to complete the appropriate courses in the community whilst under a supervision order, and further material will be provided by the applicant, pursuant to the directions I have given, as to what programs are available and their utility.

I have also taken account of the criminal history of the respondent. It is not necessary to go into them in great detail here, except to say that they reveal a series of predatory sexual offending against adult women, which increased in their violence and intensity as time went by. Some were committed whilst on bail and after the respondent had absconded from the jurisdiction and which were suggestive that that escalation in violence could only be halted by his conviction and detention.

I have had regard to the sentencing remarks, and in particular as well to the judgments by the Court of Appeal which allowed his application for an extension of time for leave to appeal against sentence and the successful sentence appeal, which are reported in [2013] QCA 154 and [2013] QCA 374.

I am satisfied, on the material before me, that there are reasonable grounds for believing that the prisoner is a serious danger to the community in the absence of an order, particularly, in my view, on the material before me, an order made under section 13(5)(b) of the DPSOA. That picture may, of course, change at the final hearing. That is one of the reasons for obtaining the additional psychiatric reports and affidavit material on what courses are available for the respondent to do in the community.

I should perhaps add that the reason why that has a particular importance in this case is because, ordinarily, sex offender treatment programs are not offered to persons in the respondent's position until he is nearing the end of his sentence. For reasons that are not his fault, he was unaware of his capacity to successfully appeal the sentence imposed until recently, when he then made an application for an extension of time in which to apply for leave to appeal.. As I have said, that was allowed. A sentence appeal was successful and the sentence was reduced, meaning that he is now due for release on 14 June this year rather than seven years later than that, which was the sentence, which would have meant that he was due to be released on 14 June 2021. Accordingly, it cannot be said that it was any lack of application on his part that has led to his not having completed the sex offenders treatment program.

I should also make mention of one matter that has concerned me during the hearing, and that is that the Court issued Practice Direction 6 of 2012 to deal with applications made under the DPSOA. Paragraph 4 of that Practice Direction deals with disclosure. It provides for disclosure by the applicant to the respondent and to any experts appointed by the Court of all documents which are in the possession or under the control of the applicant or of Queensland Corrective Services and which relate to the application. The Practice Direction specifically says:

> *This is not intended to reduce the extent of disclosure required under the Act, but rather to replace the practice of putting all material in affidavit form on the Court file. Material should only be in affidavit form if the judge is expected to have regard to it.*

Paragraph 5 of the Practice Direction then provides for the filing of the affidavit material on which the applicant intends to rely. Unfortunately, it appears to me that, in this case, the practice which was meant to be replaced by the issuing of that Practice Direction of all material being put in affidavit form on the court file has not

been changed. Indeed one affidavit contains annexures in three volumes, one and two, 738 pages, giving the whole of the Corrective Services Commission file which I am reasonably certain the applicant would not require a Judge to have regard to every part of.

Furthermore, all of the files held by the DPP have been annexed to an affidavit. That runs to some 473 pages and again it appears unlikely that the applicant intends to rely on each and every of those annexures, but rather they have been put in affidavit form to comply with the requirement of disclosure contrary to the letter and spirit of the Practice Direction. To the extent that the practice which the Practice Direction was intended to change has not caused a change to that practice, it should now change and there should be compliance with Practice Direction 6 of 2012.

The orders which I'll make are as follows:

The Court being satisfied that there are reasonable grounds for believing the prisoner is a serious danger to the community and the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) orders:

(1) The application for a Division 3 order be set for hearing on 10 June 2014.

(2) Pursuant to section 8(2)(a) of the DPSOA the respondent undergo examination by two psychiatrists being Professor Barry Nurcombe and Dr Donald Grant who are to prepare independent reports which are to be prepared in accordance with section 11 of the DPSOA.

(3) (a) The applicant file and serve any further affidavit material and a precise list of what parts of the affidavits and exhibits already filed on which he intends to rely at the final hearing by 20 May 2014.

(b) The applicant's affidavit material must contain evidence as to the content, utility and availability of courses including sex offender treatment programs which could be undertaken by the respondent while subject to a supervision order.

(4) The parties must in all other respects comply with Practice Direction 6 of 2012 unless excused by a Judge.

(5) Liberty to apply is granted.