

SUPREME COURT OF QUEENSLAND

CITATION: *A-G (Qld) v Jackway* [2015] QSC 26

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (applicant)**
v
DOUGLAS BRIAN JACKWAY (respondent)

FILE NO: BS7422 of 2011

DIVISION: Trial Division

PROCEEDING: Application for periodic review

DELIVERED ON: 9 February 2015 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 9 February 2015

JUDGE: Mullins J

ORDER: **The Court affirms the decision of Acting Justice O'Brien made on 28 February 2012 that the respondent, Douglas Brian Jackway, 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 orders that:**

1. The respondent, Douglas Brian Jackway, continue to be subject to the continuing detention order.

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 respondent detained under a continuing detention order under *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – where the applicant applied for the order to be reaffirmed under section 30 of the Act – where psychiatrists opined that the respondent was a high risk of reoffending sexually if released under a supervision order – where the respondent was involved in assaults and breaches in prison since the previous periodic review – whether the respondent should continue to be detained under the Act

*Dangerous Prisoners (Sexual Offenders) Act 2003, s 13, s
30*

COUNSEL: J M Horton QC for the applicant
C L Morgan for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

HER HONOUR: This is a periodic review of a continuing detention order that was made by Justice O'Brien on the 28th of February 2012 and affirmed by Justice Daubney on 20 December 2013. The continuing detention order was made under the Dangerous Prisoners (Sexual Offenders) Act 2003 (the Act). The applicant, who is
5 the Attorney-General, applies for that order to be affirmed again under section 30 of the Act.

Mr Jackway does not contest the finding based on the evidence of the reporting psychiatrists that he is a serious danger to the community in the absence of a division
10 3 order and accepts that that part of the order that was originally made should be affirmed. Mr Jackway submits that the protection of the community from the risk he represents can be adequately managed by the imposition of a supervision order. Mr Jackway wants to be given the same "go" that other prisoners who have completed their sentences for sexual offences have been given and be given an opportunity to
15 show that he can function in the community under a supervision order without committing sexual offences.

It is not a question of whether or not a person should be given a "go". Under section 30, subsection (4), of the Act, in deciding whether or not to make a continuing
20 detention order or a supervision order, I am bound to take into account that the paramount consideration is the need to ensure adequate protection of the community, and I must consider whether adequate protection of the community can be reasonably and practicably managed by a supervision order and requirements under section 16 of the Act can be reasonably and practicably managed by corrective services officers.
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The Attorney opposes the release of Mr Jackway on a supervision order and relies on the opinion of each of the psychiatrists who prepared a report for the purpose of today's hearing. It should be noted that Mr Jackway cooperated with these
30 psychiatrists, Drs Grant and Beech, in being interviewed for the purpose of the reports and being frank in his discussions with him. In addition to that, Mr Jackway swore an affidavit for the purpose of the proceedings and addressed a letter to the Court explaining his intentions, if he were to be released under a supervision order. In addition, Mr Jackway allowed himself to be cross-examined by counsel for the Attorney and answered the questions that I directed to him whilst he was in the
35 witness box. It is to Mr Jackway's credit that he has cooperated in this process, and that itself is a positive sign for the progress that he has made over the years to some extent, but, for the reasons that I am about to outline, I do not consider that the progress he has made is to the stage where I can be satisfied that a supervision order would allow the adequate protection of the community from the risk of sexual
40 reoffending on Mr Jackway's part.

One of the psychiatrists, Dr Beech, acknowledged the genuineness of Mr Jackway's expression of intentions of how he would comply with a supervision order. The problem is that the psychiatric evidence shows that Mr Jackway's behaviour in
45 prison in the last 12 months does not give a sound basis for being confident that he has the skills and the strategies to carry through with the intentions he expresses. It should be noted that it is some three years since Mr Jackway has completed serving

all sentences in full that have been imposed on him. But for a period of three or four months, he has been in prison his entire adult life. He is currently 38 years old.

5 The most significant offence in his criminal history, for the purpose of this proceeding, is the group of offences that were committed by him in April 1995. He pleaded guilty, relevantly, to one count of taking a child under the age of 16 for immoral purposes with a circumstance of aggravation and three counts of indecent dealing with a child under 12 and two counts of attempted carnal knowledge by anal intercourse of a child under 12, for which he was sentenced in December 1995 to an effective sentence of eight years imprisonment.

15 He approached three young boys riding bicycles under the guise of asking for directions. After punching one boy, he manhandled another into his vehicle, drove for a short distance, collided his car with a bridge, took the boy into the mangroves, stripped the boy, assaulted him and committed the offences for which he subsequently pleaded guilty. Because his taking the boy had been observed by a witness who called the police, the police found Mr Jackway at the time that he was about to commit the offence of anal intercourse.

20 On his release from prison in 2003, Mr Jackway only managed to stay out of custody for a few months before he was returned to prison for non-sexual offending. Another child complainant came forward about sexual offences that she alleged were committed against her by Mr Jackway. He was convicted after trial in September 2004 of one count of rape against the girl, who was aged between nine and 10 years old when the offence was committed in early 1991 when Mr Jackway was 14 years old. He was sentenced in January 2005 for that offence and other offences not of a sexual nature. His sentence for the rape was three years imprisonment, which took into account his age when he committed the offence.

30 When the matter came before Acting Justice O'Brien, Mr Jackway's attitude and the courses he had completed were different to what he has done in preparation for the hearing today. I am therefore not going to set out in detail what Justice O'Brien found at the time that he made his decision under the Act in February 2012.

35 The matter came on for periodic review before Justice Daubney in December 2013. By then, Mr Jackway had completed HISOP (High Intensity Sexual Offender Treatment Program), which was a relevant matter for assessing his risk, according to the psychiatrists. He had not done the Transitions Program or the Pathways program. Justice Daubney had to deal with a difference of opinion between the psychiatrists at that time with respect to their assessment of Mr Jackway, but Justice Daubney noted:

45 *I cannot avoid giving heed to the concern expressed by both psychiatrists that a relapse by the respondent into drug and alcohol use will catapult him into a high risk of sexual offence category. Despite the obvious and welcome improvements in his situation since the time he was made the subject of a continuing detention order, I am not satisfied that he is yet at the stage where*

5 *he is sufficiently able to manage the risk of exposure to drugs and alcohol
and otherwise manage his violent behaviour. That necessarily leads to my
conclusion that he is not yet at the stage where I can be satisfied that, if
released under a supervision order, adequate protection of the community
could reasonably and practicably be managed by a supervision order. If
released on a supervision order, he is not in custody. I am not satisfied that he
yet has the personal skills to ensure ongoing abstinence from drugs and
alcohol, which, as I've already noted on several occasions, present on the
common evidence as the trigger for him presenting a high risk of sexual
10 offence.*

Justice Daubney made his decision at a time when there were positive indications
that Mr Jackway was settling, but there was still room for Mr Jackway to get further
assistance in developing the skills to deal with being exposed to alcohol in the
15 community and drugs.

2014 has not been a happy year for Mr Jackway. Another prisoner endeavoured to
deflect attention from himself in a murder trial by pointing to Mr Jackway as the
offender. That prisoner was convicted of the offence, but Mr Jackway had to give
20 evidence in the trial. This was a matter of stress for Mr Jackway and affected the
dealings he had with other prisoners. It appears that he was the subject of
provocations and taunts in the prison. And Mr Jackway, at various stages, has
reacted or responded in an aggressive way.

25 Although his counsel described this as unfair, the fact remains that for the purpose of
the hearing today, it is not irrelevant to take into account the manner in which Mr
Jackway has behaved in prison in the last 12 months. I am shortly going to refer to
the psychiatric evidence. But I will give an example of the behaviour. In the period
between 2 September and 24 November 2014, Corrective Services records 10
30 incidents and breaches against Mr Jackway which include Mr Jackway threatening to
assault correctional officers performing their duties, threatening language, and
damaging his cell.

35 Dr Grant's diagnosis of Mr Jackway has remained unchanged. He considers that Mr
Jackway suffers from a severe antisocial personality disorder and qualifies as
suffering from psychopathic personality. In his interviews with Dr Grant, Mr
Jackway has denied any interest in children and has also denied sadistic fantasies or
sexual drives. Dr Grant considers that it is impossible to make a diagnosis of either
paedophilia or sadism based on the evidence available and concludes that it seems
40 more likely that his sexual offences were motivated by his severe personality
disorder, his impulsivity, his reactions to his own sexual abuse that was committed
against him when a child, and facilitated by severe substance abuse and intoxication
in relation to the incident on the young boy victim in 1995.

45 It is also relevant, according to Dr Grant, that Mr Jackway is highly institutionalised
and acculturated to the prison environment. And in any case, his transition to life

outside prison will not be easy for him or for the people who are supporting or supervising him.

5 Mr Jackway completed the Transitions course in early 2014. He commenced the Pathways course and attended three sessions but was unable to continue because of his behaviour in prison which resulted in his being placed in a detention unit. Now, according to Mr Jackway, he behaved deliberately in a way that would have him placed in a detention unit, because he felt he would be safer in prison away from the taunts of other prisoners if he were out of a mainstream unit.

10 Mr Jackway informed Dr Grant that during the time in prison since he returned in late 2003, he has not abused any drugs. The drug screens that Mr Jackway has undergone are consistent with that report.

15 Dr Grant refers to the application of the formal risk assessments that he has undertaken in earlier reports. The scores on those risk assessment instruments are unchanged. Mr Jackway is in a high risk group on the Static-99. On the psychopathy checklist, he scored 32 which places him in the psychopathic range. On the HCR-20 he was seen as a high risk of violence including sexual and non-sexual
20 violence. On the Risk for Sexual Violence Protocol he was rated as a high risk for future sexual offending.

The risk factors for Mr Jackway identified by Dr Grant include his severe personality disorder which is manifest by impulsivity and immaturity, poor problem solving,
25 poor decision making and a lack of respect for social mores. He also tends to feel a lack of empathy for victims and has a tendency to blame others for violent behaviour. Over time, some of the aspects of his antisocial personality disorder may be gradually becoming less evident. But he remains significantly impulsive with poor control of his temper, untrusting of others and liable to act in an antisocial way on
30 impulse.

Dr Grant notes that intoxication has been a significant disinhibiting factor in his sexual offence against the young boy and in other criminal behaviour. In terms of risk, Dr Grant considers the combination of severe antisocial personality disorder
35 psychopathy and drug or alcohol abuse would be a particularly potent combination likely to lead to re-offending, both violent re-offending or sexual re-offending. If he were to return to significant substance abuse, that would be likely to escalate and significantly increase the baseline risks relating to his personality disorder.

40 Dr Grant notes that the episodes of loss of temper and outbursts of violence in the controlled prison environment indicates that those personality traits represent an ongoing, significant risk factor.

45 Dr Grant was very firm in the opinion that he expressed in his written report and in his oral evidence that it is appropriate for Mr Jackway to complete the Pathways drug and alcohol course prior to his release from custody. He would also recommend that if he is released in the future, he should undergo a maintenance sex offender program

in the community and that Mr Jackway also will require ongoing psychological counselling and would need to be linked in with a drug and alcohol treatment service. Dr Grant considers that it would be easier to frame a supervision order for Mr Jackway when he has completed the Pathways course.

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Dr Grant was cognisant of Mr Jackway's firm resolve to be abstinent, but explained that for someone like Mr Jackway who has been incarcerated for so long, he requires more than just his own resolve to assist him in remaining abstinent from alcohol and drugs. Although Mr Jackway points to the stressors that arose during 2014 in the prison environment that were beyond his control, it is likely that he will have not dissimilar stressors or other stressors to similar degree if released on a supervision order.

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Mr Jackway has to understand what the risks are that contribute to his impulsivity and aggression and the turning to substances like alcohol and drugs to deal with the stressors. He has to develop strategies as to how he will cope without turning to alcohol or drugs if subject to stress in the community. That is why a program such as Pathways that is done intensively over 21 weeks in prison will have benefits for giving Mr Jackway the additional skills that he will require apart from expressed intention in order to deal with the stressors in the community, without returning to alcohol or drugs.

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Dr Grant has expressed the opinion that once Mr Jackway completed the Pathways course, a supervision order would have the potential to reduce his risk of sexual offending from high down to moderate, provided he was able to remain drug free and compliant with the supervision requirements. Dr Grant remained of that opinion, despite the propositions put to him by Mr Jackway's counsel during cross-examination.

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Dr Beech's report for the purpose of this hearing has been particularly affected by Mr Jackway's record in the prison environment during 2014. Dr Beech has therefore departed from his earlier opinion that Mr Jackway might be able to comply with a supervision order, considering that opinion premature. Dr Beech considers that Mr Jackway's return to a higher level of security in the prison environment is a poor prognostic indicator for his release into the community. Even though Dr Beech accepted that the circumstances in the prison environment that resulted in the aggression on Mr Jackway's behalf were due to circumstances that did not have their origin with Mr Jackway, the fact remains that it showed Mr Jackway's manner of response to stressors. Mr Jackway in his evidence explained it away by the nature of the prison environment and what he had to do for his own safety. That may explain a couple of the incidents, but it does not explain all of the incidents and breaches during 2014.

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Mr Jackway's counsel pointed to possible irritability from the ban on smoking that took effect in the prison environment in May 2014. Again, that's another stress that Mr Jackway had to deal with, just as he is going to have to deal with stressors that he may not anticipate in the community. The fact that he has behaved with aggression and impulsivity in the prison environment, because of stressors for whatever reason, I consider is a relevant factual matter to take into account in assessing the risks of

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reoffending outside the prison environment, if Mr Jackway were released on a supervision order.

5 Dr Beech's diagnosis of Mr Jackway is similar to Dr Grant. Dr Beech expressed his opinion in these terms:

10 *It is my opinion that Justice Daubney's concerns last year have been borne out in the fullness of time. Mr Jackway is probably more settled than he was some years earlier, but his continued affective and behavioural disturbances are problematic within a secure prison setting, and it is difficult to imagine how he might be managed in the community, given the breaches he has incurred in the secure section of prison. In his current placement he again appears more settled. At interview, like in other times of quiet reflection, he has some insight, and he can voice his regret at his actions. Outside those supports he is volatile and, indeed, offensive.*

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20 *It is difficult to see how a case manager could supervise him in a community setting, and Mr Smith's recommendations are, I think, simply an indicator that he recognises Mr Jackway's risk of violence. I accept that Mr Jackway might feel more settled in contingency housing away from the provocation of other prisoners. However, he has yet, I believe, to demonstrate that he has enough self-control. His long-term problems with anger are not yet addressed. I accept that he has been abstinent in prison, but I have a concern that he would not be able to adhere to that if released. As others have noted before, Mr Jackway, in an angry and intoxicated state would be at high acute risk of further sexual violence. At present, I think the risk of general violence is also high.*

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30 Dr Beech concluded that:

In my opinion he would benefit from more individual and group therapy aimed at anger management, self-control, affective stability and problem-solving.

35 and further concluded that:

A sustained period of being breach-free in prison in a less secure setting would demonstrate that he would be able to conform to the stringent restrictions of a supervision order.

40 Both Doctors Grant and Beech acknowledged that the last sexual offence committed by Mr Jackway was almost 20 years ago. They were concerned, however, that his risk of sexual reoffending was due to a combination of his personality disorder, impulsive behaviour and the potential for disinhibition, if he turns to alcohol or drugs in order to deal with stress. Although the psychiatrists conceded in the cross-
45 examination that Mr Jackway's circumstances may be very different to many others who are under this regime, as the offence that was committed by him when he was

angry and intoxicated after arguing with his family in April 1995 show, the consequences of Mr Jackway succumbing in the way that is considered the risk associated with anger in combination with alcohol or drugs and impulsive behaviour could be severe, and that explains the psychiatrists' conclusions about his high risk of sexual reoffending.

There is a concern expressed on Mr Jackway's part that the goalposts are moving. He has not completed the Pathways' course that was indicated when he was last before the Court, so in that respect the goalposts have not moved. These applications have to be decided on the material that is placed before the Court at the time. His behaviour in prison in the last 12 months is a relevant and different factor than his behaviour in the period leading up to the hearing before Justice Daubney.

The evidence of Dr Beech and Dr Grant is acceptable and cogent and satisfies me to the high degree of probability that is required under the Act that Mr Jackway's high risk of sexual reoffending is an unacceptable risk in terms of section 13, subsection (2) of the Act. I am also satisfied by the psychiatric evidence that adequate protection of the community cannot be reasonably and practicably managed by a supervision order, and that is why I make the order in terms of the draft initialled by me and placed with the file.