

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General (Qld) v Fuller* [2015] QSC 280

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
and
RYAN JAMES FULLER
(respondent)

FILE NO/S: BS 3496 of 2009

DIVISION: Trial

PROCEEDING: Hearing

DELIVERED ON: 28 September 2015

DELIVERED AT: Brisbane

HEARING DATE: 28 September 2015

JUDGE: Bond J

ORDER: **Delivered *ex tempore* on 28 September 2015:**

THE COURT being satisfied to the requisite standard that the respondent, Ryan James Fuller, has contravened requirements of the supervision order made by Martin J on 15 June 2009 and amended by Dick AJ on 6 July 2011, by A Lyons J on 30 May 2013 and by A Wilson J on 26 May 2014, ORDERS THAT:

- 1. The Respondent, Ryan James Fuller, be released from custody on 30 September 2015 and continues to be subject to the supervision order made by Martin J on 15 June 2009 and amended by Dick AJ on 6 July 2011, by A Lyons J on 30 May 2013 and by A Wilson J on 26 May 2014.**
- 2. The supervision order made by Martin J on 15 June 2009 and amended by Dick AJ on 6 July 2011, by A Lyons J on 30 May 2013 and by A Wilson J on 26 May 2014 be amended as follows:**
 - a. amend order (2) by omitting the words “15 June 2017” currently in order (2) and inserting the following underlined words to read:**

- i. **The respondent be subject to the following conditions until 30 September 2020, or further order of the Court.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where respondent subject to a supervision order 15 June 2009 – where respondent contravened supervision order on multiple occasions – whether adequate protection of the community can be ensured despite the contravention – where Attorney-General sought that the existing order be amended – whether Court empowered to amend existing supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 22

COUNSEL: M Maloney for the applicant
J W Fenton for the respondent

SOLICITORS: Crown Law for the applicant
Fisher Dore Lawyers for the respondent

HIS HONOUR: Ryan James Fuller comes before me consequent upon an order made by Martin J on 10 March 2015 pursuant to s 21(2) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld). His Honour ordered that Mr Fuller be detained in
5 custody until the final decision of the Court under s 22 of that Act as to the order which should be made consequent upon an alleged contravention by him of a supervision order that had earlier been made.

10 A supervision order was first made in respect of Mr Fuller under the Act on 15 June 2009, again by Martin J. It contained 36 requirements and remains in force until 15 June 2017. Since the order was made, it has been amended three times: first by Dick AJ on 6 July 2011, second by Ann Lyons J on 30 May 2013, and most recently by Alan Wilson J on 26 May 2014.

15 The offending conduct which ultimately informed the risks which led to the original supervision order being made was offending conduct in respect of three distinct episodes of sexual conduct involving male and female child complainants.

20 There have been three contravention proceedings since the supervision order was first made.

In July 2010 the respondent was returned to the Supreme Court as a result of breaching requirement (xxiv) of his order. The circumstances of that contravention
25 led to the respondent being convicted and sentenced in the Ipswich Magistrates Court

on 21 January 2011 upon his plea of guilty for the offences of common assault and contravention of a supervision order. The complainant was a male child, approximately 12 years of age, who Mr Fuller approached at a skate park.

5 The second contravention proceedings involved repeated contact with the mother of
an 11 year old female child and the child between 1 October 2012 and 26 September
2013. Mr Fuller had failed to notify Corrective Services of his repeated contact with
the mother of the child, and that conduct gave rise to a contravention of conditions of
10 his supervision order which required him so to do. There was a further contravention
involving his refusal to sign directions given to him. Alan Wilson J on 26 May 2014
was satisfied that the respondent had contravened the requirements of his supervision
order, and released him from custody subject to a further amended supervision order.

15 The third contravention is the contraventions which give rise to Mr Fuller's presence
before me.

On 8 March 2015, at approximately 11:00 am QPS officers attended the vicinity of
the Rocklea Markets and observed the respondent speaking with an older male and
female and a male and female child in the vicinity of a parked vehicle. He was
20 observed to walk with the adults and children to a Subway store and sat at a table
inside the store. He was observed sitting on the seat with the adults and children
outside the Subway store.

The police conducted interviews with Mr Fuller and with the family separately. Mr
25 Fuller gave an explanation for his conduct, but in the course of so doing stated he
knew that, by having contact with the children and the parents of the children, he was
in breach of his supervision order. The interview with the children revealed that
there had been more occasions, approximately three, where Mr Fuller had met with
the children prior to the instance observed by police.

30 On 30 April 2015 the respondent was convicted and sentenced upon his guilty plea in
the Holland Park Magistrates Court in relation to two offences of contravention of a
relevant order. He was sentenced to a period of four months' imprisonment on each
offence, with an immediate parole release date to be fixed.

35 There were two psychiatric risk assessment reports before me, one of Dr Andrew
Aboud dated 2 September 2015 and one of Dr Scott Harden dated 3 September 2015.
There was also an amended psychological report, or an addendum psychological
report, of the respondent's treating psychologist, Diane Barber, dated 10 April 2015.

40 Dr Aboud ultimately concluded, in relation to the risk level posed by Mr Fuller, that
his overall risk would currently be above moderate in respect of sexual violence, and
low in respect of general non-sexual violence. Dr Aboud thought that the
respondent's risk of re-offending would be reduced to below moderate in the context
45 of a supervision order. He thought that if the respondent was released into the
community, it was important that he remain engaged with his psychologist and that
his movement diary be closely monitored. Dr Aboud was concerned about the
respondent's prior tendency towards non-disclosure in respect of certain activities
and associations that would have the potential to develop into high-risk situations as
50 regards reoffending risk.

Dr Harden thought that the respondent's future risk of sexual re-offence was moderate to high in the community in the absence of modifying factors. However, he thought that if the respondent were again released into the community on a supervision order, it would reduce his risk of sexual recidivism to low to moderate.

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The respondent's treating psychologist, Dr Barber, thought that Mr Fuller was aware that he was breaching the requirements of his order by interacting with the subject family, that she was not able to assess whether Mr Fuller's motivations for the contravention were innocent, in terms of seeking the company of the subject family to alleviate his stress and develop a social connectedness, or malevolent in the sense of seeking to groom the children for a future sexual offence. Ultimately, she concluded that Mr Fuller remained at moderate to high risk sexual offending, but that that risk estimate might be revised pending an understanding of the reasoning for his series of breaches.

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Counsel for the respondent conceded the following:

- (a) The respondent admitted that he breached the supervision order in terms of the particulars alleged in the application by the Attorney-General
- (b) That he adopted the submissions advanced by the Attorney-General, namely:
 - (1) I should find that the respondent contravened the requirements of his supervision order;
 - (2) The question then became whether I should rescind the supervision order and impose a continuing detention order or return the respondent to the existing supervision order or an amended supervision order;
 - (3) The psychological and psychiatric opinion was consistent in stating that the respondent needed to continue with the therapeutic treatment plan as had been determined. The reports indicated that his risk remains "above moderate" or "moderate to high" upon release back into the community in the absence of an order, but was reduced to "below moderate" or "low to moderate" by the existence of a supervision order with close monitoring of his activities and access to children; and
 - (4) I should be satisfied, as required by the Act, that the respondent had contravened the supervision order, and it was open on the evidence to return the respondent to the existing supervision order.
- (c) The respondent, was a serious danger to the community in the absence of a division 3 order within the meaning of the Act.
- (d) The respondent consented to the extent that it was relevant to the exercise of my discretion that a supervision order should be made on the same terms as previously.
- (e) The respondent supported that an order should be made in terms of paragraph 1 of the order proposed by the Attorney-General, namely, that the respondent be released from custody on 30 September 2015 and continue to be subject to the supervision order made by Martin J on 15 June 2009, and amended in the way I had earlier indicated.

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The only dispute before me was whether I should make an amendment to the order as amended that the Attorney-General proposed.

5 The Attorney-General sought that I amend order 2 by omitting the words “15 June 2017” and substituting in lieu thereof “30 September 2025” which would have the effect of increasing the time during which the respondent would be subject to a supervision order by some eight years. Counsel for the respondent opposed the extension.

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I heard oral evidence from Dr Aboud and Dr Harden on that question.

15 Dr Aboud thought that there should be an extension of the period to which I have made reference. He thought that the respondent’s risk of re-offending was likely to endure and that there should be an extension of between five to 10 years from today. In cross-examination, his attention was drawn to the fact that the current order expires in June 2017, and he was asked whether it would be easier to make a prediction then, namely, in June 2017, than it would be now. He acknowledged that it might well be, but that speaking as to how things were at the moment, he was
20 concerned at the history that the contraventions had revealed which is why he had proposed the time period that he did. He did concede that two more years of information would be informative. He accepted that if an extension was five years from June 2017 then that would satisfy the requisite level of protection for the community.

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Dr Harden was asked questions on the same topic. He opined that it would be appropriate to make an extension of at least four to five years from today. He indicated that he was concerned about the pattern of the respondent’s contraventions, particularly insofar as it revealed conduct involving unauthorised access to children
30 and he thought that the period during which the respondent should be subject to a supervision order needed to be longer than the current less than two years remaining under the order. He thought that there was not enough time left under the current order to have a period of stable involvement in the community which would enable him to feel confident about questions of risk reduction. He was cross-examined on
35 this point. He was asked whether if a further 21 months was permitted to pass, would he not accept that he would be in a better position to predict the question of whether the respondent would be likely to re-offend. The doctor acknowledged that more data would be useful, but reiterated his view that there was not enough time left to be confident on that question.

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In consequence of the period mentioned in the opinions expressed in the psychiatrists’ oral evidence concerning the appropriate extent of any extension, counsel for the Attorney-General proposed that, rather than seeking the extension until 30 September 2025, that it would be until 30 September 2020. In other words,
45 an extension of three years from the date it was proposed that the respondent be released from custody.

Counsel for the respondent acknowledged that I have power under s 22(7) to make an order extending the period during which the respondent would be subject to the
50 conditions of the supervision order, but maintained his submission I should not do so today.

5 It seems to me that a consideration of the matters to which I am obliged to have regard under s 22 makes it appropriate to make the first of the orders that have been sought by the Attorney-General. It is not appropriate in the present circumstances that I order the supervision order be rescinded and that the respondent be detained in custody for an indefinite period. It is appropriate that he should continue under the supervision order.

10 On the question of whether I should make the further order sought by the Attorney-General, the effect of which would be to extend the time during which the respondent would be subject to the order, I think it is appropriate that an extension be made in the period that the Attorney-General seeks.

15 I accept the evidence of Dr Harden in this respect and although the evidence of Dr Aboud did acknowledge that making an extension from 2017 would satisfy the requisite protection for the community, I did not understand him to be resiling in cross-examination from the position that he had expressed in chief. It follows that each of the psychiatrists gave evidence which I would accept that it would be appropriate to make the extension that has been sought by the Attorney-General.

20 I will make an order as per the draft provided to me amended by inserting the year 2020 instead of the year 2025 mentioned in order 2. Otherwise, I make an order as per the draft signed by me and placed with the papers.

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