SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Vizzard* [2017] QSC 174
PARTIES:	**ATTORNEY-GENERAL FOR STATE OF QUEENSLAND** (applicant) **v** **SIMON BLAIR VIZZARD** (respondent)
FILE NO/S:	SC No 8432 of 2015
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	Delivered ex tempore on 31 July 2017
DELIVERED AT:	Brisbane
HEARING DATE:	31 July 2017
JUDGE:	Holmes CJ
ORDER:	**1. The respondent, Simon Blair Vizzard, be released from custody and continue to be subject to the supervision order made by Mullins J on 1 February 2016.** **2. Amend the supervision order as follows:** **(a) insert 'or guardian' after the word 'parent' in requirement 27; and** **(b) delete 'upon request' from requirement 19.**
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 contravened requirements of a supervision order – whether existing supervision order can ensure adequate protection of the community – whether amendments to the existing supervision order should be made.
COUNSEL:	J B Rolls for the applicant J J Allen for the respondent

SOLICITORS: Crown Law for the applicant
Legal Aid Queensland for the respondent

[1] **HOLMES CJ:** The respondent, who is 46 years old, served a four sentence of imprisonment for sexual offences including sodomy committed against three young boys. He had also served part of a ten year sentence imposed in Mexico for charges of sexual offences committed against male children under the age of 12 years. On his release from imprisonment in this state he was made subject to a supervision order under the Dangerous Prisoners (Sexual Offenders) Act 2003.

[2] It contained conditions requiring him to, among other things, comply with every reasonable direction of a corrective services officer; not have contact with any boy under 16; advise a corrective services officer of any repeated contact with a boy under 16 or a parent of a boy under 16; disclose to a corrective services officer upon request the name of each person with whom he associates and respond truthfully to requests for information about that association – I'm paraphrasing; obtain the prior written approval of a corrective services officer before possessing any equipment that enables him to take photographs or record moving images; not collect or retain any material that contains images of children and dispose of such material if directed to by a corrective services officer. He was also not permitted to possess any USB storage devices.

[3] Under various directions issued by a corrective services officer, the respondent was allowed to attend church meetings and attend at a fast food restaurant with members of the congregation and after church events, but was required to set out his proposed attendances on a schedule from which he was not to deviate without approval. The order itself requires the respondent to submit to and discuss with a corrective services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed.

[4] The respondent submitted a movement schedule for the week commencing 16 January 2017 in which he did not indicate that he intended to have contact with the mother of a seven year old boy or the child himself or that he intended to attend the fast food restaurant on 22 January 2017. He was, however, seen there in the company of parents and children. A woman who is referred to in the material as LBT later told police that she had encountered the respondent at her church and at the fast food restaurant. He had informed her that he'd committed a sexual offence against a boy and was not allowed to have contact with children.

[5] On 22 January 2017 she told the respondent she was going to the fast food restaurant with her seven year old son. He also went there and had lunch with LBT and her son, with other parents and their children nearby. Subsequently, LBT said, the respondent gave her a USB drive. It appears that it had a sort of nature documentary on it but also a documentary about nine year old children. It's not suggested that that was of any pornographic nature, but notwithstanding it was in contravention of the requirement that he not collect or retain any material containing any images of children.

[6] I'm satisfied on the balance of probabilities that the respondent has breached the respective requirements of the supervision order 7, 26, 27 and 40; that he comply with reasonable directions of a corrective services officer; that he not establish contact with a male person under 16 years except with prior written approval; that he advise of any

repeated contact with a parent of a male person under the age of 16; and, as I've already mentioned, that he not collect or retain any material containing images of children.

[7] Two psychiatrists, Drs Grant and Harden, have assessed the respondent. Neither has found any psychiatric disorder or pronounced personality disorder although they do note narcissistic and obsessive personality traits. Dr Grant considers that the respondent exhibits paedophilia. Dr Harden departs from that as a matter of definition: he considers that the respondent does not meet the diagnostic criteria for that condition, but rather for hebephilia because he is attracted to boys who are post-puberty.

[8] Dr Grant considers there to be a moderate to high risk of future paedophilic sexual offending which would involve grooming rather than opportunistic assault. He says that the current contraventions may be an example of early grooming but, if so, the supervision order has been effective in allowing detection of the behaviour and promises to remain effective in reducing risk in the future. Dr Harden considers that the risk posed of sexual reoffending by the respondent is moderate to high but that the effect of a supervision order is to reduce it to low.

[9] The applicant concedes that the supervision order, by monitoring the respondent's associations and preventing contact with underage males, appears to reduce his risk of sexual reoffending to a low level, so that adequate protection of the community can be ensured by his release on supervision.

[10] Having regard to the psychiatric opinion and the proportions of the breaches here, that concession, seems to me, appropriate. The breaches themselves were concerning, but not suggestive of any imminent offence. Dr Harden describes the nature of the contact involved as relatively low risk. Dr Grant says that in his opinion the order served to detect possible early grooming and will continue to be effective in reducing the risk for future sexual reoffending.

[11] I'm satisfied on the balance of probabilities that adequate protection of the community can be ensured by the existing supervision order with certain amendments.

[12] The area of contention between the parties has been as to what amendments should be made. There is one proposed amendment which is not contentious. I will deal with it first. It is simply to add the words, "or guardian" after the word "parent" in requirement 27 so that it would now read:

> *Advise a corrective services officer of any repeated contact with a parent or guardian of a male person under the age of 16.*

[13] I'm satisfied that that amendment is appropriately made. The second, in order of difficulty, proposed amendment is an amendment to requirement 19, which presently requires the respondent to disclose to a corrective services officer, upon request, the name of each person with whom he associates and respond truthfully to request for information about it. The proposed amendment would delete the words, "upon request" so that the onus then falls to the respondent to advise of his associations.

[14] The respondent's approach to his obligations under the supervision order was the subject of a good deal of evidence here. There was particular focus on the fact that he

had been, for example, asking repeatedly for smart phone and computer access, requests which counsel for the respondent pointed out were not unreasonable. It seems to me that they aren't inherently unreasonable but, as Dr Grant was indicating, it is not so much the nature of the requests but the way in which it's repeated with new supervisors, the opportunity being taken to press the point again.

[15] I've looked at IOMS notes which record interactions with the respondent. It seems to me that Dr Grant's characterisation of them as manipulative and testing the boundaries has some real foundation. I accept it. My impression of the respondent is that, as Dr Grant says, his inclination would be to scrutinise the detail of the order and focus on the letter of the order rather than its intent. That may be a function of an obsessive personality, but in any event I do not consider that it answers sufficiently to the need for community protection to leave it to the respondent to disclose who his associates are. It seems to me that it is appropriate that the obligation be firmly placed upon him rather than simply making it a matter that he has to give by way of response. So I would propose to make the amendment to the order which is sought by the applicant.

[16] The final condition which it is proposed to add to the order would require the respondent to obtain the prior approval of a corrective services officer before attending the premises of any shopping centre; of which, I gather, the definition was to be any centre containing more than 10 shops. The arguments for this were that although the respondent does not exhibit predatory tendencies - as Dr Grant says, it's not anticipated he would seize an unknown child for abuse - the concern is that he has a tendency to grooming which requires prolonged access. Shopping centres, Dr Grant points out (as does Dr Harden) are places where young people and their families gather and it might, in that way, permit the respondent to strike up an acquaintance and start contact of that kind.

[17] On the other hand, the psychiatrists also properly acknowledged the counterproductive aspects of conditions which are unduly onerous and the need to be realistic in setting conditions with which respondent can comply. There is the prospect of setting back rehabilitation by imposing unnecessary or too restrictive conditions which lead to frustration.

[18] I think, also, another factor is consistency in the order. Presently, the order does not require the respondent to obtain prior approval in relation to any other location where children might be found, such as fast food restaurants.

[19] On the other hand, there are these aspects to the order: the existing conditions and directions require, in their effect, that the respondent would have to notify any intention to go to a shopping centre, that he not deviate from the schedule without prior approval. Because he is electronically monitored, it will become apparent if he has been to a shopping centre and, also, if he has been to one with any undue frequency or for any unanticipated, unexplained length of time.

[20] Those conditions and directions appear to me to be a means of recognising whether there is any looming issue about attendance at shopping centres. It is a balancing exercise. On balance, I do not consider that insertion of that requirement is necessary to enable the order to ensure adequate community protection.

[21] That being the case, what I propose to do in relation to the draft order is to make it with this amendment: that the first paragraph will read:

> *The respondent, Simon Blair Vizzard, be released from custody and continue to be subject to the supervision order made by Mullins J on 1 February 2016.*

[22] And then that paragraph 2 be contained in the order in its existing form. So I will make that amendment and then I will amend the document which is a schedule to the order by striking the part below:

> *Additional requirements as of 31 July 2017*

and paragraph 42. With those amendments, I make the order as per the draft provided. The remaining matter I want to deal with is this. I will make a direction that Dr Grant's and Dr Harden's evidence be transcribed and a copy provided to the Crown solicitor with a view to providing it to the relevant case managers for assistance on the point of internet access, simply because it may serve to illuminate some countervailing considerations which the two psychiatrists identify. I do not propose to, in any way, indicate what the outcome should be, simply to provide them with that information.