SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Fardon* [2018] QSC 193
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **ROBERT JOHN FARDON** (respondent)
FILE NO/S:	SC No 5346 of 2003
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	27 August 2018
DELIVERED AT:	Brisbane
HEARING DATE:	20 July 2018
JUDGE:	Jackson J
ORDER:	**The application is dismissed.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – POST-CUSTODIAL ORDERS – OTHER TYPES OF POST-CUSTODIAL ORDERS – OTHER MATTERS – *Dangerous Prisoners (Sexual Offenders) Act* 2003 – where respondent is subject to supervision order – where application for the court to set a date for hearing an application for further supervision order – where psychiatric evidence is that respondent's risk of violent sexual offending is in the low range and there is not a significant risk of sexual reoffending – where applicant submits that magnitude of any reoffending could be horrendous – where applicant submits that without supervision order respondent will not have the sanctuary of the precinct to return to – where applicant submits that without supervision order respondent would not have access to continuing psychological treatment – where applicant submits that without supervision order respondent does not have accommodation – where respondent has not contravened current supervision order – whether there are

reasonable grounds for believing the respondent is a serious danger to the community in the absence of a further supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), ss 8, 19B

Attorney-General (Qld) v Fardon [2003] QCA 416, cited
Attorney-General (Qld) v Fardon [2003] QSC 200, cited
Attorney-General (Qld) v Fardon [2003] QSC 331, cited
Attorney-General (Qld) v Fardon [2003] QSC 379, cited
Attorney-General (Qld) v Fardon [2005] QSC 137, cited
Attorney-General (Qld) v Fardon [2006] QCA 512, cited
Attorney-General (Qld) v Fardon [2006] QSC 336, cited
Attorney-General (Qld) v Fardon [2007] QSC 299, cited
Attorney-General (Qld) v Fardon [2011] QCA 111, cited
Attorney-General (Qld) v Fardon (No 2) [2011] QSC 128, cited
Attorney-General (Qld) v Fardon [2011] QCA 155, cited
Attorney-General (Qld) v Fardon [2013] QCA 16, cited
Attorney-General (Qld) v Fardon [2013] QCA 299, cited
Attorney-General (Qld) v Fardon [2013] QCA 64, cited
Attorney-General (Qld) v Fardon [2013] QSC 12, cited
Attorney-General (Qld) v Fardon [2013] QSC 264, cited
Attorney-General (Qld) v Fardon [2014] 2 Qd R 532, cited
Attorney-General (Qld) v Fardon [2015] QSC 20, cited
Attorney-General (Qld) v Nemo, unreported, Martin J, SC No 2341 of 2008, 30 April 2018, considered
George v Rockett (1990) 170 CLR 104, applied
R v Fardon [2010] QCA 317, cited

COUNSEL: P Dunning QC S-G and J Rolls for the Applicant
D O'Gorman SC for the Respondent

SOLICITORS: Crown Law for the Applicant
Patrick Murphy Solicitor for the Respondent

Jackson J:

[1] This is an unusual application for the court to set a date for the hearing of an application for a further supervision order under Division 4A of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("**the Act**"). Division 4A applies to a "released prisoner", meaning a prisoner subject to a supervision order made under s 13(5)(b) of Division 3 of Part 2 of the Act. Under Division 4A, the court may make a further supervision order for a released prisoner on an application made during the period commencing 6 months before the existing supervision order expires. By s 19D(1),

Division 1 of Part 2 of the Act, including s 8, applies as if a reference in s 8 to the prisoner were a reference to the released prisoner and as if a reference in s 8 to an application for a Division 3 order were a reference to an application under Division 4A of Part 2 for a further supervision order.

[2] Accordingly, this application is made as if s 8(1) provides that:

> "**If** the court is **satisfied there are reasonable grounds for believing** the [released] prisoner is a serious danger to the community in the absence of a [further supervision] order, the court must set a date for the hearing of the application for a [further supervision] order." (emphasis added)

[3] I will refer to the relevant question as the "altered s 8 question".

[4] There are three factors that make the present application unusual, even in the context of the extraordinary regime provided for under the Act. The first is that the respondent is Robert John Fardon. The second is that the evidence tendered in support of the application shows that there is a low risk of him committing a serious sexual offence in future, even in the absence of a further supervision order. That evidence consists primarily of the expert psychiatric opinion obtained for this application and the fact that the respondent has not contravened the existing supervision order since release on that order on or about 6 December 2013. The third is that the substantive argument pressed by the Attorney-General for the conclusion that the court should be satisfied that are reasonable grounds for believing that the respondent is a serious danger to the community in the absence of a further supervision order is that the circumstances of the existing supervision order provide the respondent with "support" that, if taken away, will increase the risk that he will commit a serious sexual offence, because he has no current accommodation proposal, will no longer be eligible for the counselling he has been receiving from a psychologist and will not have "the sanctuary of the precinct to return" to should he encounter stress.

The respondent and the Act

[5] The respondent's name is almost synonymous with the history of the Act.

[6] On 3 June 2003, the Bill for the Act was introduced to Parliament and, on 4 June 2003, its passage through the Legislative Assembly was expedited, so that it became an Act on 6 June 2003. That was said to be because of potential cases to which the Bill, if enacted, could apply in the months ahead.[1]

[7] At the time, the Attorney-General said it was not clear how many prisoners there were within the prison system to which the legislation might apply, but that "we are probably talking about approximately a dozen or so very, very serious offenders, most of whom

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[1] Queensland, Legislative Assembly, *Parliamentary Debates* (Hansard), 4 June 2003, 2579-2580.

have been in prison for a long time."[2] History has gainsaid that view. The applications before this court suggest that there are more than one hundred prisoners and released prisoners now subject to the Act.

[8] At that time, the respondent had been imprisoned since 30 June 1989 serving a 14 year sentence for an offence of rape of an adult woman. His full time release date was accordingly 29 June 2003. He had other prior convictions for serious sexual offences. One was an offence of attempted carnal knowledge against a girl younger than 10 years (that did not involve violence) when he was 19 years of age and another was an offence of rape at gunpoint against a girl of 12 years when he was 30 years old. He had other convictions for offences that were not serious sexual offences, as defined in the Act.

[9] On 17 June 2003, the Attorney-General filed an originating application for orders that the respondent be detained in custody for an indefinite term.[3] It is possible that this was the first application under the Act. It is the first in time in the published judgments of the court.

[10] On 27 June 2003, the court made an order under s 8 of the Act setting the date for the final hearing of the application.[4] The court also ordered the interim detention of the respondent.[5] Further orders were made extending the interim detention orders.[6]

[11] On 9 July 2003, the court dismissed the respondent's challenge to the constitutional validity of the Act.[7]

[12] On 23 September 2003 the Court of Appeal dismissed the respondent's appeal from that order.[8]

[13] On 6 November 2003, the court ordered that the respondent be detained in custody for an indefinite term for control, care and treatment, defined under the Act as a "continuing detention order".[9]

[14] On 1 October 2004, the High Court of Australia dismissed the respondent's appeal from the Court of Appeal's order dismissing his constitutional challenge to the Act.

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2 Queensland, Legislative Assembly, *Parliamentary Debates* (Hansard), 4 June 2003, 2581.

3 *Attorney-General (Qld) v Fardon* [2003] QSC 331, [25].

4 *Attorney-General (Qld) v Fardon* [2003] QSC 331, [27].

5 *Attorney-General (Qld) v Fardon* [2003] QSC 331, [27].

6 *Attorney-General (Qld) v Fardon* [2003] QSC 331.

7 *Attorney-General (Qld) v Fardon* [2003] QSC 200.

8 *Attorney-General (Qld) v Fardon* [2003] QCA 416.

9 *Attorney-General (Qld) v Fardon* [2003] QSC 379.

[15] On 11 May 2005, upon review of the 6 November 2003 order, the court ordered that the respondent continue to be the subject of the continuing detention order.[10]

[16] On 8 November 2006, the court ordered that the continuing detention order be rescinded and ordered that the respondent be released from custody subject to the conditions stated in a supervision order.[11]

[17] On 4 December 2006, the Court of Appeal dismissed an appeal from the order of 8 November 2006.[12] The respondent was released on the supervision order shortly afterwards.[13]

[18] On 12 July 2007, the respondent was arrested for breach of a condition of the supervision order that he abstain from violations of the law. The breach alleged was that on 11 July 2007 he enabled or aided a neighbour who also was subject to a supervision order to disobey a curfew condition of his order, by allowing the neighbour to use his car. On 13 July 2007, the court ordered that the respondent be discharged from custody.[14]

[19] On 24 July 2007, the respondent was arrested for another breach of the conditions of his supervision order that he reside at all times in a place that has received prior approval from a Corrective Services Officer and that he report to and receive visits from the supervising Corrective Services Officer at such frequency as determined necessary. The alleged breach was that had left his approved place of residence and travelled to Mackay and then to Townsville. On 24 July 2007, the court suspended the supervision order.[15]

[20] On 19 October 2007, on the hearing of the contravention application, the court ordered that the respondent be released again on the supervision order as amended.

[21] On 3 April 2008, the respondent was arrested on a warrant issued pursuant to s 20 of the Act, based on a complaint of rape against the respondent.[16]

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[10] *Attorney-General (Qld) v Fardon* [2005] QSC 137.

[11] *Attorney-General (Qld) v Fardon* [2006] QSC 336.

[12] *Attorney-General (Qld) v Fardon* [2006] QCA 512.

[13] *Attorney-General (Qld) v Fardon* [2007] QSC 299, [2].

[14] *Attorney-General (Qld) v Fardon* [2007] QSC 299, [9]-[11].

[15] *Attorney-General (Qld) v Fardon* [2007] QSC 299, [12]-[14].

[16] *Attorney-General (Qld) v Fardon (No 2)* [2011] QSC 128, [21]-[22].

[22] On 14 May 2010, the respondent was convicted and sentenced to ten years imprisonment for the alleged rape.[17]

[23] On 12 November 2010, the Court of Appeal set aside the respondent's conviction of rape.[18] The respondent remained in custody by reason of the unresolved application for breach of the conditions of his supervision order on 3 April 2008.

[24] On 11 April 2011, on the final hearing of the application, the court ordered that the respondent be released from custody subject to a supervision order.[19]

[25] On 3 June 2011, the Court of Appeal stayed the supervision order.[20]

[26] On 1 July 2011, the Court of Appeal rescinded the supervision order and ordered that the respondent be detained in custody for an indefinite term for care, control or treatment ("second continuing detention order").[21]

[27] On 13 February 2013, on review of the second continuing detention order, the court rescinded the second continuing detention order and ordered that the respondent be released from custody upon a supervision order.[22]

[28] On 14 February 2013, the Court of Appeal stayed the supervision order.[23]

[29] On 28 March 2013, the Court of Appeal set aside the supervision order and ordered that the matter of the review of the continuing detention order be remitted for re-hearing.[24]

[30] On 27 September 2013, on the re-hearing of the review of the continuing detention order, the court made an order that the continuing detention order be rescinded and that the respondent be released from custody subject to a supervision order ("second supervision order").[25]

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17 *R v Fardon* [2010] QCA 317, [1].

18 *R v Fardon* [2010] QCA 317.

19 *Attorney-General (Qld) v Fardon (No 2)* [2011] QSC 128.

20 *Attorney-General (Qld) v Fardon* [2011] QCA 111.

21 *Attorney-General (Qld) v Fardon* [2011] QCA 155.

22 *Attorney-General (Qld) v Fardon* [2013] QSC 12.

23 *Attorney-General (Qld) v Fardon* [2013] QCA 16.

24 *Attorney-General (Qld) v Fardon* [2013] QCA 64.

25 *Attorney-General (Qld) v Fardon* [2013] QSC 264.

[31] On 4 October 2013, the Court of Appeal stayed the second supervision order. On 10 October 2013, the Court of Appeal further stayed the second supervision order.[26]

[32] On 6 December 2013, in the context of hearing the appeal by the Attorney-General from the supervision order, the Court of Appeal declared that ss 3 and 6 of the *Criminal Law Amendment (Public Interest Declarations) Amendment Act* 2013 (Qld) were invalid.[27] On the same day, the appeal from the second supervision order was dismissed.

[33] In this way, the respondent was released on the second supervision order shortly after 6 December 2013 from a period in custody that had commenced on 3 April 2008.

[34] On 3 September 2014, the court ordered that the respondent be detained in custody until the decision of the court on an application made by the Attorney-General under s 22 of the Act that the respondent was likely to contravene a requirement of the second supervision order.[28]

[35] On 16 September 2014, the court made orders dismissing that application and ordered that that the respondent be released from custody again subject to the second supervision order.[29]

[36] Since that date, the respondent has been released from custody again upon the second supervision order and has not contravened or breached that order. In fact, the period of non-contravention dates back longer than that. In the first place, he has not breached the second supervision order since he was released on that order on 6 December 2013, a period of almost 4 years and nine months. But it should not be forgotten that the respondent's previous breach of the first supervision order was on 3 April 2008, now more than 10 years ago. Following that breach, he spent more than 5 years in custody, until 6 December 2013, despite not having been guilty of an offence in that period.[30]

[37] The extraordinary nature of the respondent's history of orders made under the Act is revealed by reading the relevant reasons for judgment and orders to which I have referred. The reasons for judgment of the court, including the Court of Appeal, for those legal proceedings comprise approximately 380 pages.[31]

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[26] *Attorney-General (Qld) v Fardon* [2013] QCA 299.

[27] *Attorney-General (Qld) v Fardon* [2014] 2 Qd R 532; [2013] QCA 365.

[28] *Attorney-General (Qld) v Fardon* [2015] QSC 20, [1].

[29] *Attorney-General (Qld) v Fardon* [2015] QSC 20, [2].

[30] Leaving aside the offence of breaching the supervision order itself, for which he was not prosecuted.

[31] Not including the Court of Appeal's decision in 2010 setting aside the respondent's conviction for rape on the complaint made on 3 April 2008, or the reasons of the High Court on the challenge to the constitutional validity of the Act in 2004.

The psychiatrist's opinion

[38] Dr Michael Beech is a consultant psychiatrist with long experience in providing independent reports of the kind required under ss 8(2)(a), 11 and 13(4)(a) of the Act and the reports commonly obtained, although not required by the terms of the Act, for the purposes of an application under s 8.

[39] On 16 April 2018, Dr Beech interviewed the respondent for the purposes of preparing a report to be used on this application. His instructions were to consider the respondent's risk of sexual recidivism with and without a supervision order in operation, including at the expiration of the second supervision order on 3 October 2018. He was specifically asked whether, if he considered that a further supervision order was appropriate, the level of risk with a further supervision order in place and the duration for which the further supervision order should be in operation.

[40] Dr Beech reviewed prior psychiatric and psychological assessments of the respondent.[32] They included one made by Dr Beech in 2012 when he assessed the respondent's risk as moderate to high. The reports revealed consistent themes, summarised by Dr Beech, as follows:

> "Mr Fardon has been diagnosed with an anti-social personality disorder, and he is rated high on psychopathic trait assessments. He rates at least in the moderate range for static risk factors for violent sexual offending. There have been a number of specific dynamic risk factors, notably his personality, his tendency to use physical coercion, his rejection of support and treatment, and substance use. There has been an agreement that, notwithstanding the violence involved in the offending, he does not suffer from a sexual paraphilia such as sexual sadism or paedophilia."

[41] As Dr Beech observed, it is likely that the recent near five year period is the longest unbroken stint that the respondent has experienced outside prison since he was 30 years of age and it is difficult to assess the risk of sexually violent reoffending in a man of the respondent's age (69 years) who has been on a supervision order for five years.

[42] Although the static (historical) risk factors place the respondent in the group of offenders with above average risk of re-offending, as Dr Beech opines and I accept, that does not take into account the nature of his offending or consider the changes that have taken place since 1980, and does not adequately take into account his advancing years.

[43] The dynamic risk domains that tend to predict re-offending are grouped around anti-social attitudes and behaviours, mental disorder and substance use, and sexual deviance. In Dr Beech's opinion, which I accept, although a number of those factors were in play in earlier years in the respondent's case, his anti-social personality disorder and psychopathy have significantly lessened over the years and he has not (in the last 5

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[32] Report dated 23 May 2018, p 13.

years) breached the rules and restrictions placed on him, nor has he contravened the stringent supervision regime.

[44] This application, like so many others brought under the Act, was supported by an affidavit that exhibited the whole of the over 1700 page offender management file maintained by Corrective Services for the respondent from October 2013 to the present. Reading that inordinate amount of material reinforced the weight to be attached to Dr Beech's statements that the regime was "very stringent". A simple example is that for a significant time at the beginning of the period the respondent was subjected to what is described as a "24 hour curfew". The restriction meant that the respondent was not permitted to go by himself outside the house at which he was required to reside, not even to wash his clothes downstairs or to go to purchase food to eat, even though he was expected to procure and prepare his own food and to wash his own clothes.

[45] Similarly, reading the file reinforced the weight to be attached to Dr Beech's statement that the respondent had not breached the rules and restrictions placed on him under the second supervision order.

[46] As Dr Beech says, the respondent's anti-authoritarian attitude is on display, but he has to a very large degree cooperated with case officers and there is no evidence of an ongoing proclivity to criminal offending. There is no evidence that a sexual paraphilia now exists. There is no evidence of ongoing sexual preoccupation.

[47] The respondent has been stressed at times, irritable and angry, frustrated and abusive, or isolated and withdrawn. But he has shown no evidence of specific hostility towards females and no proclivity towards further sexual violence. There is no ongoing active vulnerability to substance abuse (that the respondent has associated with his major episodes of sexual offending), in circumstances where they would have been available.

[48] These factors, and the findings on interview set out in his report, inform Dr Beech's opinions that:

> "In my opinion, the most relevant dynamic factors for reoffending have now substantially lessened. Instead, I think there is evidence of maturity in general, and affective settling, and perhaps some development of remorse, and an improved tendency to take advice. Mr Fardon has been consistent in expressing his desire to remain out of prison, and I think overall his behaviour over the past five years point to his progress in that direction.
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> Finally, I think in the absence of an ongoing sexual paraphilia, in the absence of any evidence of an attraction towards children, and in the reduction of ongoing severe psychopathic traits, his age is a significant factor in reducing his risk of reoffending sexually. I have attached (as appendix D) a graph by Hanson, taken from one of their review articles. It demonstrates the significant reduction over time of the risk of reoffending by rapists, and the risk becomes very low after the age of 65 years. Other studies would also indicate that in the absence of paraphilia or sexual

> deviance, the risk of reoffending markedly diminishes with age past 60 years.
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> For those reasons, despite the STATIC 99R score, I think that the risk of violent sexual reoffending by Mr Fardon has reduced past moderate and into the low range. There is a risk that he will find his release from supervision to be very destabilising, and stressful. However, these days, I think there is evidence that when he is stressed he does not revert to sexual violence or sexual means to cope. There is a risk that in the community he will become anxious and react abusively to perceived or actual provocation, or that his personality style in general will bring him to conflict with others. This might cause problems for him, but again I do not think it will lead to a significant risk of sexual offending."

[49] I note that Dr Beech has specifically considered the risk presented by the respondent being released from a supervision order, but opines that it will not lead to a significant risk of sexual reoffending.

The psychologist's opinion

[50] Mr Smith is a forensic psychologist with specialist experience in the treatment of sex offenders who has treated the respondent since 27 June 2012. He has sworn many earlier affidavits in proceedings between the Attorney-General and the respondent under the Act. Over the relevant period since 6 June 2013, Mr Smith has prepared a further 10 progress reports relating to the respondent, reflecting the number of sessions attended by the respondent, as follows:

Date of report	**Total number of sessions**
28 August 2014	97
10 September 2014	98
23 February 2015	117
26 May 2015	129
14 December 2015	148
23 May 2016	158
30 September 2016	164
4 February 2017	170
5 August 2017	178
18 February 2018	184

[51] As that history shows, treatment sessions were held relatively frequently between 27 June 2012 and 28 August 2014, approximately fortnightly thereafter, and reducing to approximately monthly from February 2017.

[52] As at 18 February 2018, Mr Smith opined that the respondent continued to remain stable and appeared to be functioning well. He was making steady progress in adjusting further to the norms of community life, as he moved towards greater levels of independence. Examples of that movement were his use of a Go Card to catch a train to a session, obtaining a new hearing aid and new prescription spectacles and monitoring his lung health (the respondent suffers from emphysema). He described the respondent as reporting gradual ongoing success in adapting to modern conveniences and technology in the time since release from custody, contributing to his senses of self-efficacy and self-reliance.

[53] As to the respondent's mental state, his clinical presentation remained generally consistent, with a stable emotional presentation and no significant change from the previous report. He had broadened his focus somewhat in the recent months with increased emphasis on maintaining a stable routine and lifestyle. He had not demonstrated any risk-salient or offence-paralleling behaviours in the recent period. He remained positively engaged in clinical appointments and maintained ongoing mood stability, although reporting some anxiety about completing the second supervision order.

[54] The treatment focus had maintained an emphasis on problem-solving and discussions around various potential outcomes of returning to live in the community as well as exploring the management of the relationships the respondent had formed since his release. As his mental state remained stable he had also continued to cope effectively with anxiety and frustration. Mr Smith concluded:

> "As a result of Mr Fardon's ongoing progress and positive engagement I would consider that his treatment needs continue to be addressed at present. I would also consider that the frequency of our appointments can remain at monthly as he progresses towards the end of his Supervision Order later this year."

[55] I note that Mr Smith was not instructed to provide any specific opinion as to the respondent's risk of sexual reoffending at the end of the second supervision order if no further supervision order were made. His primary risk statement remains that contained in his report dated 28 August 2014, after which there were 87 further sessions attended by the respondent over three and a half years to 18 February 2018.

The "reasonable grounds" question in context

[56] The applicant submits that the answer to the altered s 8 question is informed by a two propositions.

[57] First, referring to the question under s 8, the applicant relies upon *Attorney-General (Qld) v Nemo*,[33] an unpublished decision, where it was said:

> "Section 8 does not require any conclusion that the prisoner is a serious danger to the community. What an applicant must demonstrate in order to obtain an order under section 8 is material sufficient to satisfy the Court that there are reasonable grounds for believing the prisoner is a serious danger to the community. It is not the time for a Court to embark upon a consideration of the material with a view to forming even a tentative view as to the final conclusion. Similar phraseology can be found in other statutes where the exercise of a power is conditioned on the existence of reasonable grounds for belief. Such was the case in the High Court decision in *George v Rockett* (1990) 170 CLR 104. More recently, that case was considered by the High Court in *Prior v Mole* (2017) 91 ALJR 441 where in paragraph 4 Justices Kiefel and Bell said with respect to the formation of such a belief:
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> > 'Proof in the latter requires that those facts and circumstances be sufficient to induce in the mind of a reasonable person a positive inclination towards acceptance of the subject matter of the belief. This is not to say that it requires proof on the civil standard of the existence of that matter. Facts and circumstances that suffice to establish the reasonable grounds for a belief may include some degree of conjecture.'
>
> That reasoning, which I respectfully adopt, applies to section 8. As such, it removes section 8 from any consideration that there needs to be established to the high degree set out in section 13 the matters necessary to ground the belief."

[58] Second, the applicant relies upon *George v Rockett,*[34] where this was said:

> "The objective circumstances sufficient to show a reason to believe something need to point more clearly to the subject matter of the belief, but that is not to say that the objective circumstances must establish on the balance of probabilities that the subject matter in fact occurred or exists: the assent of belief is given on more slender evidence than proof. Belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition and the grounds which can reasonably induce that inclination of the mind may, depending on the circumstances, leave something to surmise or conjecture."[35]

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[33] Unreported, Martin J, SC No 2341 of 2008, 30 April 2018.

[34] (1990) 170 CLR 104.

[35] (1990) 170 CLR 104, 116.

[59] I confess to some hesitation in attempting the mental gymnastics involved in attempting an "inclination of the mind", but the thrust of the passage is clear enough. Nevertheless, in my view, it is axiomatic that the meaning of the altered s 8 question must be considered in its statutory context.

[60] That context is directed at the target of the ultimate critical finding under s 13(1), as altered, that a respondent is a "serious danger to the community in the absence of a [further supervision] order", in the way serious danger to the community is defined in s 13(2), and thereby engages the requirement of satisfaction of an "unacceptable risk that the released prisoner will commit a serious sexual offence" to "a high degree of probability" based on "acceptable, cogent evidence", as required under s 13(3).

[61] In deciding whether the released prisoner is a serious danger to the community in that sense, the court must have regard to the relevant factors specified in s 13(4)(aa) to (j).

[62] Even though the altered s 8 question requires satisfaction only that there are reasonable grounds for believing that the respondent is a serious danger to the community in that sense, what must be proved to satisfy that question is informed by what will be required before the court is able to make the ultimate critical finding under s 13(1) as altered.

[63] Further, in a case like the present, where there have been many prior proceedings under the Act, there may be fewer unexplored possible lines of inquiry relevant to the ultimate critical finding than in other cases.

[64] In the present case, it should not be forgotten that each of the prior continuing detention orders and supervision orders was prefaced by a finding that the respondent was a serious danger to the community in the absence of a Division 3 order. Nevertheless, the relative weight to be given to that fact is perhaps illustrated by the change in circumstances between the conditions that obtained when those orders were made and the present circumstances.

[65] For example, as late in the piece as 12 January 2013, one reporting psychiatrist opined, as he had done on previous applications, that the respondent could not be predictably safely managed in the community under a supervision order unless he first completed a sexual offenders' treatment program.[36] But not only was that opinion altered subsequently, without the respondent completing such a program,[37] but also the respondent was released on such an order and was managed successfully.

The Attorney-General's contentions

[66] First, the applicant submits that the offences that the respondent "could commit, if he reoffends, would be horrendous, if they involved a repetition of his earlier offending",

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[36] *Attorney-General (Qld) v Fardon* [2013] QSC 264, [22].

[37] *Attorney-General (Qld) v Fardon* [2013] QSC 264, [24].

and "the nature of this risk … is crucial in undertaking the assessment required to be undertaken by the Act". In my view, this a matter that Dr Beech has taken into account in reaching his view as to the respondent's risk. In any event, I note that the findings of the court when the second supervision order was made are not consistent with this view of the respondent's risk of sexual reoffending.[38]

[67] Second, the applicant submits that although the respondent has not reoffended (on the second supervision order) despite stressors and even depression, that "needs to be placed in context in that the respondent has always had the sanctuary of the precinct to return [to]".

[68] This submission is wholly unsupported by evidence. I do not accept and do not find that the precinct, located near a particular jail facility, where sex offenders, including the respondent, are mostly required to live, as an approved residence in accordance with the conditions of the released prisoner's supervision order, is to be regarded as a sanctuary. The precinct is not a place of protection of the offenders who are required to live there.

[69] Third, the applicant submits that the respondent, whilst on a supervision order, has had the support of his continuing treatment with Mr Smith. That is true. But the applicant seeks to invert the positive, by submitting that in the absence of a further supervision order, there is no evidence that the respondent would continue to have that support. This point should be treated with some reservation, in my view. The applicant has not asked the respondent whether he would voluntarily continue to attend on Mr Smith, or offered to pay for his treatment if he would do so. Rather, the applicant knows that the respondent could not afford to pay for Mr Smith's sessions privately – he has no means except pension entitlements – and then seeks to rely on the unlikelihood that the respondent will continue to consult Mr Smith as a factor to further delay the expiry of any supervision order. I do not consider that is a reason why the respondent's risk of serious sexual offending is increased.

[70] Fourth, the applicant submits that the respondent has no current accommodation proposal. That too is true, but it elides the point that during the second supervision order the respondent is only able to reside at a place approved by the authorised corrective services officer. There have been numerous proposals over the last year or so for the respondent to reside at a place outside the precinct. Not one has been approved. Some of the grounds of rejection relate to the breadth of the conditions of the second supervision order. It must be said that a residence that is not near a place where the respondent might have unsupervised contact with a person under 16 years of age because they live nearby, or there is a park or school where they may be, and so on, is not easily found. On some occasions the proposed residence has been found unacceptable because old people live nearby, or there are licensed premises in the area.

[71] The respondent has said that he has given up seeking approval from an authorised corrective services officer for a residence outside the precinct. Whether or not he could have persisted further does not mean that he might have expected to obtain one to date.

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[38] *Attorney-General (Qld) v Fardon* [2013] QSC 264, [32] and [50].

Apart from that, the respondent does not have, apparently, family or friends with whom he might reside. Even so, I do not consider that uncertainty to be a reason that the court should find the respondent's risk of serious sexual offending is increased.

[72] Whilst none of the second, third or fourth matters relied upon by the applicant is expressly considered by Dr Beech, the applicant did not seek to obtain his opinion on any of those matters. In the result, in my view, they should not be treated as matters that operate outside the scope of Dr Beech's opinions, as set out above.

Conclusion

[73] In the end, the applicant submits that Dr Beech's report, taken as a whole, and having regard to the altered circumstances that would operate at the end of the second supervision order, does not show that there are not reasonable grounds for believing that the respondent presents an unacceptable risk to the community.

[74] In my view, there are two answers to that proposition. First, I consider that Dr Beech's views do support the contrary conclusion, noting that "unacceptable" must always involve a value judgment by the court, that the court can never be satisfied that there is no risk where a respondent has committed a serious sexual offence in the past, and the need to protect members of the community from the risk of another serious sexual offence, as matters that inform whether the applicant has shown reasonable grounds for believing that the respondent is a serious danger to the community.

[75] Second, the way the applicant puts this submission inverts the altered s 8 question. The true question is whether the applicant has shown that there are reasonable grounds for believing the respondent is a serious danger to the community in the absence of a further supervision order.

[76] In oral submissions, the applicant made the further submission that at a final hearing of an application under s 13 as altered, it would be relevant for there to be a closer analysis of how much the cooperation and assistance of the respondent has been what it ought to be. In my view, that question would only be relevant if it went to the ultimate critical question on such an application, namely whether the respondent is a serious danger to the community.

[77] Although it was said in one of the cases involving the applicant that a supervision order has "the character of a compact between the prisoner and the community: the prisoner is accorded a measure of personal freedom, but only provided he is willing to, and does, submit to a regime of tight control",[39] there is no undertaking or agreement by a prisoner that forms any part of a relevant "compact" provided for by the Act, unlike a bail undertaking or a probation order. A supervision order does impose a tight regime of control, but there is nothing consensual about it under the Act.

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[39] *Attorney-General (Qld) v Fardon* [2011] QCA 155, [29]

[78] In any event, there is no evidence identified on the hearing of this application that the respondent has failed to cooperate in some relevant way that goes to whether the applicant has shown there are reasonable grounds for thinking that the respondent is a serious danger to the community in the absence of a further supervision order.

[79] For the reasons I have given, in my view, the applicant has not done so. The application must be dismissed.