

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Allen* [2020] QSC 127

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(applicant)  
v  
**ROBERT KELLY ALLEN**  
(respondent)

FILE NO: BS No 11156 of 2016

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: Orders made on 18 May 2020, reasons delivered on 22 May 2020

DELIVERED AT: Brisbane

HEARING DATE: 18 May 2020

JUDGE: Davis J

ORDER: **The court, being satisfied to the requisite standard that the respondent, Robert Kelly Allen, has contravened requirement 21 of the supervision order made on 4 March 2019, orders that:**

**1. Pursuant to ss 22(2) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, the respondent be released from custody and continue to be subject to the supervision order made on 4 March 2019.**

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 the supervision order made on 4 March 2019 under the *Dangerous Prisoners (Sexual Offenders) Act 2003* by consuming alcohol and illicit drugs – where the contraventions are admitted – where the evidence of the psychiatrists is that the risk the respondent poses to the community can be adequately managed under the existing supervision order – whether the respondent should be released subject to the requirements of the existing supervision order

*Dangerous Prisoners (Sexual Offenders) Act 2003*, s 5, s 13,

s 15, s 20, s 22, s 30

*Attorney-General for the State of Queensland v Allen* [2017] QSC 58, cited

*Attorney-General for the State of Queensland v Allen* [2019] QSC 56, cited

*Attorney-General for the State of Queensland v Fardon* [2019] QSC 2, followed

*Attorney-General for the State of Queensland v Francis* [2012] QSC 275, followed

*Attorney-General for the State of Queensland v Francis* [2013] QSC 321, cited

*Attorney-General (Qld) v Sands* [2016] QSC 225, cited

*Attorney-General for the State of Queensland v Travers* [2018] QSC 73, cited

*Kynuna v Attorney-General (Qld)* [2016] QCA 172, followed

*Turnbull v Attorney-General (Qld)* [2015] QCA 54, followed

COUNSEL: J Rolls for the applicant  
S Robb for the respondent

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

- [1] The respondent is a prisoner the subject of a supervision order made under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the DPSOA) by Jackson J on 4 March 2019.<sup>1</sup>
- [2] The applicant alleged that the respondent breached the terms of the supervision order and sought orders under s 22 of the DPSOA as a consequence. The respondent admitted the breaches but sought to be released back into the community under the supervision order.<sup>2</sup>
- [3] On 18 May 2020, I made the following orders and reserved my reasons for so doing:
- “The court, being satisfied to the requisite standard that the respondent, Robert Kelly Allen, has contravened requirement 21 of the supervision order made on 4 March 2019, orders that:
1. Pursuant to ss 22(2) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, the respondent be released from custody and continue to be subject to the supervision order made on 4 March 2019”
- [4] These are my reasons for making the orders which I did.

<sup>1</sup> *Attorney-General for the State of Queensland v Allen* [2019] QSC 56.

<sup>2</sup> Pursuant to section 22(7) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*; respondent’s written submissions at [8].

## History

- [5] The respondent was born in February 1986. He is presently 34 years of age. He has a history of sexually offending against children.
- [6] While he was serving his last sentence for sexual offending, an application was brought against him by the applicant pursuant to s 5 of the DPSOA. That application came before Mullins J (as her Honour then was) on 10 April 2017.<sup>3</sup> Her Honour:
- (a) found that the respondent was a serious danger to the community in the absence of an order under Division 3 of Part 2 of the DPSOA;<sup>4</sup> and
  - (b) made a continuing detention order.<sup>5</sup>
- [7] Pursuant to the continuing detention order, the respondent remained in custody until 4 March 2019 when the order was reviewed by Jackson J.<sup>6</sup> His Honour:
- (a) confirmed the decision made by Mullins J on 10 April 2017 that the respondent was a serious danger to the community in the absence of an order under Division 3 of Part 2 of the DPSOA;<sup>7</sup>
  - (b) rescinded the continuing detention order;<sup>8</sup> and
  - (c) released the respondent from custody subject to the requirements of a supervision order for a period of five years.<sup>9</sup>
- [8] In releasing the respondent his Honour observed that the respondent had completed sexual offender treatment programs since the continuing detention order was made<sup>10</sup> and found that the adequate protection of the community could be ensured by his release upon a supervision order.<sup>11</sup>
- [9] The consumption of alcohol and illicit drugs was regarded by the psychiatrists who examined the respondent as a risk factor relevant to sexual reoffending. As a result, conditions 21 and 22 of the supervision order required the respondent to:
- “21. abstain from the consumption of alcohol and illicit drugs for the duration of the order;
  22. submit to any form of drug and alcohol testing including both random urine analysis and breath testing as directed by a Corrective Services Officer.”

---

<sup>3</sup> *Attorney-General for the State of Queensland v Allen* [2017] QSC 58.

<sup>4</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003*, s 13(1).

<sup>5</sup> Section 13(2)(a).

<sup>6</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003*, Part 3.

<sup>7</sup> Section 30(1).

<sup>8</sup> Section 30(5).

<sup>9</sup> *Attorney-General for the State of Queensland v Allen* [2019] QSC 56.

<sup>10</sup> At [15] and [26].

<sup>11</sup> At [29] and [30].

- [10] Within a very short period after release, the respondent consumed methylamphetamine, and therefore contravened the supervision order. He was returned to custody on 10 April 2019 but released back into the community on 27 August 2019 on the supervision order.<sup>12</sup>
- [11] On 5 December 2019, pursuant to a direction under cl 22 of the supervision order, the respondent provided a urine sample which tested positive to methylamphetamine and buprenorphine. When questioned, the respondent admitted to intravenously injecting methylamphetamine on 4 December 2019. The respondent was taken back into custody.<sup>13</sup> He has formally admitted, in the current proceedings, that he has contravened the supervision order.<sup>14</sup>

### **Statutory context**

- [12] Where a contravention or likely contravention is alleged, a warrant for the arrest of a prisoner in the community on supervision may be issued pursuant to s 20 of the DPSOA. This section provides, relevantly, as follows:

**“20 Warrant for released prisoner suspected of contravening a supervision order or interim supervision order**

- (1) This section applies if a police officer or corrective services officer reasonably suspects a released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the released prisoner’s supervision order or interim supervision order.
- (2) The officer may, by a complaint to a magistrate, apply for a warrant for the arrest of the released prisoner directed to all police officers and corrective services officers to arrest the released prisoner and bring the released prisoner before the Supreme Court to be dealt with according to law. ...”

- [13] The presence of the prisoner before the court pursuant to the warrant triggers the jurisdiction to make orders under s 22, although it is the practice of the applicant to file an application which alleges particulars of the contravention or likely contravention. Burns J approved of such a procedure in *Attorney-General (Qld) v Sands*.<sup>15</sup> Section 22, relevantly, provides as follows:

**“22 Court may make further order**

- (1) The following subsections apply if the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the supervision order or interim supervision order (each the *existing order*).

---

<sup>12</sup> By order of Bowskill J, pursuant to s 22(7).

<sup>13</sup> Pursuant to s 20.

<sup>14</sup> Respondent’s written submissions at [8].

<sup>15</sup> [2016] QSC 225 at [4].

- (2) Unless the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by the existing order as amended under subsection (7), the court must—
- (a) if the existing order is a supervision order, rescind it and make a continuing detention order; or
  - (b) if the existing order is an interim supervision order, rescind it and make an order that the released prisoner be detained in custody for the period stated in the order.
- ...
- (7) If the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by a supervision order or interim supervision order, the court—
- (a) must amend the existing order to include all of the requirements under section 16(1) if the order does not already include all of those requirements; and
  - (b) may otherwise amend the existing order in a way the court considers appropriate—
    - (i) to ensure adequate protection of the community; or
    - (ii) for the prisoner’s rehabilitation or care or treatment.
- (8) The existing order may not be amended under subsection (7)(b) so as to remove any requirements mentioned in section 16(1).”

[14] Here, as already observed, the contravention is admitted. The onus is therefore upon the respondent to prove that, despite the contravention of the supervision order “the adequate protection of the community can ... be ensured by a supervision order”,<sup>16</sup> whether in its current form, or amended.<sup>17</sup> The term “the adequate protection of the community”, which appears in s 22(7), also appears earlier in the DPSOA.<sup>18</sup>

---

<sup>16</sup> Section 22(7).

<sup>17</sup> Section 22(7)(b).

<sup>18</sup> Section 13.

[15] It is well established that the term “the adequate protection of the community” bears the same meaning as it bears in s 13 of the DPSOA.<sup>19</sup> It refers to protection against the prisoner committing a “serious sexual offence”.<sup>20</sup> That term is defined as:

“*serious sexual offence* means an offence of a sexual nature, whether committed in Queensland or outside Queensland—

- (a) involving violence; or
- (b) against a child; or
- (c) against a person, including a fictitious person represented to the prisoner as a real person, whom the prisoner believed to be a child under the age of 16 years.”

### **Psychiatric evidence**

[16] Consultant psychiatrists Dr Josephine Sundin and Dr Andrew Aboud interviewed the respondent for the purposes of the present application. Both doctors prepared reports which were in evidence before me.<sup>21</sup> Neither was required for cross-examination.

[17] Doctor Sundin diagnosed the respondent as suffering from the following:

- “1. Anti-social Personality Disorder, meets criteria for Psychopathy;
- 2. Substance Use Disorder - amphetamines, recent breach, previous abuse alcohol and cannabis currently in sustained remission;
- 3. Conduct Disorder in childhood and adolescence; and
- 4. Post-traumatic Stress Disorder, probable.”<sup>22</sup>

[18] Doctor Aboud’s diagnosis was:

“Antisocial Personality Disorder, with clear evidence of Psychopathic traits and Polysubstance Dependence (in enforced remission in custody) and Agoraphobia with panic disorder.”<sup>23</sup>

[19] As to risk, Dr Sundin opined:

“I continue to be of the opinion that Mr Allen is at moderate to high risk for sexual offending and high to very high risk for violent offending. His risk for both sexual and violent offending is elevated

---

<sup>19</sup> *Kynuna v Attorney-General (Qld)* [2016] QCA 172 at [60] and *Turnbull v Attorney-General (Qld)* [2015] QCA 54 at [36].

<sup>20</sup> *Attorney-General for the State of Queensland v Fardon* [2019] QSC 2 at [19], following *Attorney-General for the State of Queensland v Travers* [2018] QSC 73 at [30].

<sup>21</sup> Dr Sundin’s report is dated 13 April 2020 and is Exhibit AM-3 to the Affidavit of A McLean sworn 15 May 2020 (CFI 68); Dr Aboud’s report is dated 30 April 2020 and is Exhibit AM-5 to the Affidavit of A McLean sworn 15 May 2020 (CFI 68).

<sup>22</sup> Report of Dr Sundin dated 13 April 2020, page 13.

<sup>23</sup> Report of Dr Aboud dated 30 April 2020, page 12.

in the presence of illicit substances such as stimulants or in the face of abuse of alcohol.”<sup>24</sup>

[20] Doctor Sundin considered that the respondent required ongoing treatment by a psychiatrist and recommended his involvement in a community based alcohol and drug treatment service. Because of his personality profile, Dr Sundin stressed the need for close supervision.

[21] Ultimately, though, Dr Sundin’s recommendation was:

“I therefore respectfully recommend to the Court that Mr Allen could be released back into the community under the auspices of a supervision order once a case management plan has been developed that sets in train the above described strategies so that treatment can be initiated immediately upon Mr Allen’s release back into the community. I do not consider there is any need to alter or modify any of the clauses of his existing supervision order.”<sup>25</sup>

[22] As to risk, Dr Aboud opined:

“It is my view that Mr Allen’s overall risk (if released without any supervision, monitoring or support) would currently be very high in respect of general offending, high in respect of non sexual violence, and moderate to high in respect of sexual violence.”<sup>26</sup>

But:

“In my opinion his risk of sexual reoffending would again be reduced to below moderate in the context of a supervision order.”<sup>27</sup>

[23] Doctor Aboud, like Dr Sundin, emphasised the need for abstinence from alcohol and ongoing treatment. In conclusion, Dr Aboud observed:

“If released to the community, he should be supported in remaining abstinent from illicit drugs and alcohol, and this should include random testing. I also recommend that attention be paid to ensuring that he has broad social stability upon release, with a focus on stable accommodation, useful employment, enhancing personal supports, prosocial interests, and ensuring that he does not associate with antisocial peers or have unsupervised contact with vulnerable young women who are under the age of 16.”<sup>28</sup>

### **The position of the respective parties**

[24] Ms Robb, of counsel for the respondent, submits that the evidence of the psychiatrists supports the respondent’s release back into the community upon supervision. She relied in her submissions upon the judgment of Byrne SJA in

---

<sup>24</sup> Report of Dr Sundin dated 13 April 2020, page 13.

<sup>25</sup> Report of Dr Sundin dated 13 April 2020, page 15.

<sup>26</sup> Report of Dr Aboud dated 30 April 2020, page 14.

<sup>27</sup> Report of Dr Aboud dated 30 April 2020, page 15.

<sup>28</sup> Report of Dr Aboud dated 30 April 2020, page 15.

*Attorney-General for the State of Queensland v Francis*,<sup>29</sup> where his Honour observed:

“[64] But where contravention of a supervision order is proved, the Act does not require continuing detention unless the prisoner can show that the supervision order would in future be complied with. Rather, continuing detention is the consequence unless ‘adequate protection of the community’ can be ensured by ‘a’ supervision order.

[65] The inquiry focuses on whether a supervision order would be efficacious in preventing the commission of a violent sexual offence.

[66] If, therefore, the likely future drug use would not jeopardise the ‘adequate protection of the community...’, continuing detention is not mandated.

[67] The slim chance of abstention from drugs during supervision is an important consideration in deciding whether Mr Francis has discharged the s 22(7) burden. But it does not matter for its own sake. It is important because that prospect bears on the risk of sexual violence. It is that potential which is critical: not illicit drug use as such.”<sup>30</sup>

[25] Ms Robb submitted that, notwithstanding the contraventions, the respondent has not, while in the community on supervision, committed a “serious sexual offence”, proof, she submitted, of the effectiveness of the supervision order.

[26] Mr Rolls of counsel, who appeared for the applicant, conceded that the respondent had showed cause under s 22(7) of the DPSOA and submitted that the respondent ought to be released back into the community on the supervision order. He did not seek any amendment to the order under s 22(7)(b).

[27] The attitude of the applicant conveyed to the court through Mr Rolls was a sensible and appropriate one given the evidence of Doctors Sundin and Aboud and the general history of the respondent.

### **Consideration and determination**

[28] As observed earlier, the breach of the supervision order is admitted. I formally accepted the admission and found that the supervision order had been contravened, thus enlivening the jurisdiction under s 22 of the DPSOA.

---

<sup>29</sup> [2012] QSC 275.

<sup>30</sup> See also *Attorney-General for the State of Queensland v Francis* [2013] QSC 321 at [51].

- [29] Given the opinions of the psychiatrists that illicit substance abuse is a risk factor relevant to the prospect of the respondent reoffending, the breach is a serious one. However, the question is whether the adequate protection of the community can be ensured by releasing the respondent back into the community on the supervision order.
- [30] I accepted the evidence of the psychiatrists as to their assessment of risk of the respondent committing a serious sexual offence and the effect that the supervision order has had, and is likely to have, upon that risk. I accepted the submissions of Ms Robb, which are supported by the proper concession of Mr Rolls.
- [31] I am satisfied that the adequate protection of the community can be ensured by the release of the respondent upon the supervision order in its present form without amendment.
- [32] For those reasons, I made the orders that I did.