

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v A* [2020] QSC 279

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

FILE NO: BS No 6114 of 2020

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: Orders made on 4 September 2020, reasons delivered on 11 September 2020

DELIVERED AT: Brisbane

HEARING DATE: 4 September 2020

JUDGE: Davis J

ORDER: **Pursuant to s 21(4) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, the respondent be released from custody subject to the requirements stated in the interim supervision order until 4pm on 18 September 2020.**

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 interim supervision order made pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the DPSOA) – where this was the first contravention of the interim supervision order – where the respondent is 20 years’ old – where the contravention was the consumption of alcohol – where the breach did not involve any act of violence or any sexual act – where the contravention has not led the applicant to contend that a continuing detention order should be made on the Division 3 application – whether there were “exceptional circumstances” pursuant to s 21(4) of the DPSOA justifying release of the respondent pending final hearing of the Division 3 application – whether the discretion under s 21(4) of the DPSOA should be exercised to release the respondent

*Dangerous Prisoners (Sexual Offenders) Act 2003*, s 20, s 21

*Attorney-General for the State of Queensland v Dugdale*  
[2009] QSC 358, followed

*Attorney-General for the State of Queensland v Friend* [2011]  
QCA 357, cited

*Attorney-General for the State of Queensland v A* [2020]  
QSC 178, cited

*Attorney-General for the State of Queensland v Holroyd*  
[2020] 187, cited

*Attorney-General for the State of Queensland v Kynuna*  
[2019] QSC 76, followed

*Harvey v Attorney-General for the State of Queensland*  
[2011] QCA 256, cited

COUNSEL: J Rolls for the applicant  
T Ryan for the respondent

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

- [1] The respondent, A, is subject to an interim supervision order made by me on 16 June 2020 under the provisions of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the DPSOA).<sup>1</sup> The applicant alleges breaches of the interim supervision order.
- [2] The respondent was arrested consequent upon the alleged contravention of the interim supervision order and was held in custody. He applied for an order under s 21(2)(b) of the DPSOA for his release pending final determination of the contravention application.
- [3] On 4 September 2020, I made the following orders:
- “Pursuant to s 21(4) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (‘the Act’), the respondent be released from custody subject to the requirements stated in the interim supervision order (CFI 13) until 4pm on 18 September 2020.”<sup>2</sup>
- [4] These are my reasons for making those orders.

### **Background**

- [5] The respondent is a young Indigenous man born in March 2000. He is now only 20 years of age.
- [6] In my earlier judgment of *Attorney-General for the State of Queensland v A*,<sup>3</sup> I explained the respondent’s criminal history.<sup>4</sup> There is no need to set that out again in any detail. Suffice to say that in November 2016, the applicant was convicted of offences which he committed in November 2015 when he was 15 years of age.

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<sup>1</sup> *Attorney-General for the State of Queensland v A* [2020] QSC 178.

<sup>2</sup> The matter is next listed before the court on 18 September 2020.

<sup>3</sup> [2020] QSC 178.

<sup>4</sup> At [3]-[9].

Those offences were deprivation of liberty,<sup>5</sup> sexual assault,<sup>6</sup> and rape.<sup>7</sup> He was sentenced to four years detention. He was later convicted of other offences which extended his release date.

[7] Apart from being on parole for a period of only a few days in late 2018, and when released pursuant to the interim supervision order, the respondent has been in custody continuously since November 2015.

[8] On 8 June 2020, the applicant filed an application for orders under the DPSOA (the Division 3 application). On that application, the applicant relied upon a risk assessment of Dr Josephine Sundin, Clinical Psychiatrist.

[9] On 16 June 2020, I made various orders, including:

“The court, being satisfied that there are reasonable grounds for believing that the respondent, A, is a serious danger to the community in the absence of an order made under Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the Act), orders that:

1. The application for a Division 3 order be set for final hearing on 28 August 2020.
2. Pursuant to s 8(2)(a) of the Act, the respondent undergo examinations by two psychiatrists, being Dr Scott Harden and Dr Evelyn Timmins, who are to prepare reports in accordance with s 11 of the Act.
3. Pursuant to s 8(2)(b)(i) of the Act, the respondent be released from custody subject to the requirements stated in the order attached as Schedule A to these reasons until 4.00 pm on 28 August 2020.”

[10] Upon the respondent’s release on the interim supervision order, he lived at The Precinct in Townsville.

[11] On 18 August 2020, at The Precinct, he consumed alcohol in breach of the interim supervision order.

[12] On 19 August 2020, the respondent was arrested under a warrant issued pursuant to s 20 of the DPSOA and he appeared before me by video link from Townsville pursuant to the warrant on 21 August 2020. I made the following orders:

- “1. The hearing of the application pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (‘the Act’) be adjourned to 10am on 28 August 2020.
2. Pursuant to s 21(2)(a) of the Act, the respondent be detained in custody until the final decision of the Court under s 22 of the Act.

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<sup>5</sup> *Criminal Code*, s 355.

<sup>6</sup> *Code*, s 352(1).

<sup>7</sup> *Code*, s 349(1).

3. Both the hearing of the application for a Division 3 order under the Act and the application pursuant to s 22 be mentioned at 3.30pm on 25 August 2020.”

[13] The respondent later made an application for release under s 22(4) of the DPSOA. It was upon that application that I made the orders on 4 September 2020.

### **The respondent’s application**

- [14] The respondent relied upon an affidavit of Alisha Radford, a solicitor at Legal Aid Queensland, who acts on his behalf. She swore that affidavit based on her conversation with the respondent and she swore that she believed that what he told her was true.
- [15] Through Ms Radford, the respondent accepts that he consumed alcohol on 18 August 2020. He told Ms Radford that he was unsettled and stressed because he was looking forward to being released at the expiry of his sentence only to be confronted with the application under the DPSOA. Then, when he obtained the interim supervision order, he found that he could not return to his family as he believed he would. This all led to stress and he consumed alcohol which had been brought onto The Precinct by another resident. Through Ms Radford, he now assures the court that he is aware of the strict nature of the supervision order and wishes to comply with it so he can reach a point where he can “reside with his family, play football and gain employment”.<sup>8</sup>
- [16] Clinical Psychiatrist, Dr Eve Timmins, was asked by the applicant to give an opinion to be used in the respondent’s application for release pending finalisation of the breach proceedings. Her opinion was:
- (a) the respondent’s personality structure is likely to make his management difficult;
  - (b) the use of substances will increase risk of sexual offending; and
  - (c) a supervision order is likely to be effective at managing risk in the community.

### **Statutory context**

[17] Section 21 of the DPSOA provides as follows:

#### **“21 Interim order concerning custody generally**

- (1) This section applies if a released prisoner is brought before the court under a warrant issued under section 20.
- (2) The court must—
  - (a) order that the released prisoner be detained in custody until the final decision of the court under section 22; or
  - (b) release the prisoner under subsection (4).

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<sup>8</sup> Ms Radford’s affidavit, paragraph 2(r).

- (3) The released prisoner may, when the issue of his or her custody is raised under subsection (2), or at any time after the court makes an order under that subsection detaining the prisoner, apply to the court to be released pending the final decision.
- (4) The court may order the release of the released prisoner only if the prisoner satisfies the court, on the balance of probabilities, that his or her detention in custody pending the final decision is not justified because exceptional circumstances exist.
- (5) If the court adjourns an application under subsection (3), the court must order that the released prisoner remain in custody pending the decision on the application.
- (6) If the court orders the released prisoner's release, the court must order that the prisoner be released subject to the existing supervision order or existing interim supervision order (each the existing order) as amended under subsection (7).
- (7) For subsection (6), 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 amend the existing order to include any other requirements the court considers appropriate to ensure adequate protection of the community.”

[18] The application here is made under s 21(4).

[19] Unlike other sections, s 21 does not contain reference to “adequate protection of the community”.<sup>9</sup> However, that is a central theme under the DPSOA. In fact, it is one of the stated objects of the Act.<sup>10</sup> As Bowskill J observed in *Attorney-General for the State of Queensland v Kynuna*,<sup>11</sup> and Applegarth J noted in *Attorney-General for the State of Queensland v Dugdale*,<sup>12</sup> a consideration in determining “exceptional circumstances” for the purposes of s 21(4) of the DPSOA must be the adequate protection of the community.<sup>13</sup> Also relevant, naturally, are the circumstances and seriousness of the breach. The purpose of s 21(4) is to allow a respondent into the community pending determination of the breach proceedings so, where it can be seen that the breach proceedings are unlikely to result in the imposition of a continuing detention order, that fact is in favour of an order for release being made.<sup>14</sup>

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<sup>9</sup> Except s 21(7).

<sup>10</sup> Section 3.

<sup>11</sup> [2019] QSC 76.

<sup>12</sup> [2009] QSC 358.

<sup>13</sup> See also generally *Harvey v Attorney-General for the State of Queensland* [2011] QCA 256 and *Attorney-General for the State of Queensland v Friend* [2011] QCA 357. That is reinforced by the reference to “adequate protection of the community” in s 21(7).

<sup>14</sup> *Attorney-General for the State of Queensland v Holroyd* [2020] 187.

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

- [20] The respondent seeks the order for his release. While he admits breaching the interim supervision order, he says that there are explanations, if not excuses, as he explained to Ms Radford.
- [21] The applicant submits that the supervision order operated so that the breach was detected. Mr Rolls of counsel, who appears for the applicant, candidly submitted in his written submissions “it could not be said that in the intervening period between now and the determination of the application under s 22 of the Act, the community is likely to be deprived of adequate protection against the risk the respondent otherwise presents, if released on a supervision order”. He then conceded “... It is open to the court to accede to the respondent’s application under s 21(4) of the Act”.

### **Determination**

- [22] Exceptional circumstances exist here.
- [23] The relevant circumstances are:
- (a) The applicant is very young.
  - (b) He has been in custody almost continuously since he was 15 years of age.
  - (c) It is hardly surprising that he found the commencement of the DPSOA proceedings against him, the making of the interim supervision order, transition to The Precinct, isolation from his family and the other restrictions under the supervision order unsettling.
  - (d) The breach did not involve any act of violence or any sexual act and certainly not the commission of a serious sexual offence.
  - (e) The contravention was not in any way planned or plotted. He succumbed to temptation to drink alcohol that was brought onto The Precinct by another resident.
  - (f) The alcohol was consumed at The Precinct.
  - (g) There is no suggestion that any member of the public was inconvenienced, let alone endangered.
  - (h) He will be released back to The Precinct which is a regulated and supervised environment.
  - (i) The contravention has not led the applicant to contend that a continuing detention order should be made on the Division 3 application.
  - (j) The applicant concedes that the evidence enlivens the discretion under s 21(4) of the DPSOA to release the respondent.
- [24] For those reasons, I made the order that I did.