SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Brown* [2021] QSC 142
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) v **Troy Jimmy Charles Brown** (respondent)
FILE NO/S:	BS 422 of 2009
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	14 June 2021
DELIVERED AT:	Brisbane
HEARING DATE:	14 June 2021
JUDGE:	Brown J
ORDER:	**The Court affirms the decision of Martin J made on 16 June 2009 that the respondent, is a serious danger to the community in the absence of an order pursuant to Division 3, Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 and orders that:** **1. Pursuant to s 30(5) of the Act, the continuing detention order made on 1 April 2020 be rescinded; and** **2. The respondent be released from custody and from that time be subject to the requirements contained in the draft Supervision Order for a period of ten years.**
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 is detained under a continuing detention order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – where applicant applied for a review of the order under s 27 of the Act and orders that the respondent continue to be subject to a continuing detention order pursuant to s 30(3)(a) of the Act after the

respondent contravened the supervision order — whether respondent serious danger to community in absence of Division 3 order – whether adequate protection of community can be reasonably and practically managed by supervision order – whether s 16 requirements can be reasonably and practically managed by corrective services officers

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 16, s 27, s 30

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

Attorney-General for the State of Queensland v Fardon [2011] QCA 155, cited

Attorney-General (Qld) v Brown [2019] QSC 73, cited

Attorney-General (Qld) v Brown [2020] QSC 57, cited

Attorney-General (Qld) v DBJ [2017] QSC 302, cited

Attorney-General (Qld) v Fardon [2011] QCA 111, cited

Attorney-General (Qld) v Francis [2007] 1 Qd R 396, cited

Attorney-General (Qld) v Lawrence [2009] QCA 136, cited

Attorney-General (Qld) v S [2015] QSC 157, cited

Attorney General v KAH [2019] QSC 36, cited

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

COUNSEL: J Rolls for the applicant

C Reid for the respondent

SOLICITORS: Crown Law for the applicant

Legal Aid Queensland for the respondent

[1] This is an application pursuant to s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (**the Act**)[1] for review of the continuing detention of Troy Jimmy Charles Brown, the respondent.[2] The Attorney-General for the State of Queensland (**the applicant**) seeks to have a decision of Martin J made on 16 June 2009 affirmed, being that Troy Jimmy Charles Brown (**the respondent**) presents a serious danger to the community in the

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1 References to the "DPSOA" also refer to the Act.

2 This judgment refers to Mr Brown and the respondent interchangeably.

absence of an Order under Division 3 of the Act and that the continuing detention of Mr Brown be reviewed. The respondent was subject to a continuing detention order in 2009 which was subsequently affirmed by this Court in 2011 and 2012.

[2] In 2014, Justice A Lyons ordered the respondent be released from custody subject to a supervision order. Mr Brown subsequently breached the supervision order and was returned to custody in October 2014. He was released from custody on the basis that he continue to be supervised pursuant to a supervision order, having discharged the onus upon him, notwithstanding the contravention. He again breached the supervision order and was returned to custody in July 2015. He was again released subject to the supervision order in 2015. He breached the supervision order and was again returned to custody in 2017. He was released in November 2017, subject to the supervision order. He was returned to custody in July 2019 with multiple contraventions for positive results showing cannabis and, on three occasions, refusing to provide samples. He was released, subject to a supervision order, on 4 March 2019. He returned to custody in July 2019. On 1 April 2020, Burns J found that he had breached his supervision order on three occasions by taking cannabis. His Honour rescinded the supervision order and ordered that Mr Brown be detained on a continuing detention order.

[3] Justice Burns, in his reasons, stated:

> "Despite the concessions made by Dr Aboud in cross-examination as to the apparent efficacy of the supervision order, I am by no means persuaded that it has been "working", to use that shorthand term. The escalation in the respondent's risk profile whilst under the strictures of the order strongly suggest that, despite the best efforts of his case managers, the respondent is one impulse away from acting on his sexual preoccupations, and in a serious way. This is due to a number of reasons, not the least of which is his unremitting cannabis use. As to that, not only does cannabis serve to disinhibit the respondent, he appears to have developed no (or very little) genuine insight into the indisputable link between the abuse of that drug and the accompanying elevation in the risk that he will commit a serious sexual offence. For some time leading up to the contraventions that are the subject of this application, the respondent actively attempted to circumvent the order and cannot, in my view, be relied on to comply with critical directions that are given to him. He has unmet treatment needs and should follow the

> recommendations made by both psychiatrists in their evidence, including the need to properly engage with a psychologist to obtain motivational counselling, participating in the MISIP and considering the benefits of taking antilibidinal and/or antidepressant medication, if he is to have any hope in the relatively short-term of addressing his offending behaviour and thereby reducing the risk he would constitute if released on supervision.
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> I make it clear that, in coming to this view, the effect of which is that the respondent has not discharged the onus, I have proceeded on the basis that the alleged assault on TF has not been proved and, further, that the text message exchange and associated telephone calls (or attempted telephone calls) may be more revealing of TF's attempts to contact the respondent rather than the other way around. Instead, like Dr Sundin and Dr Aboud, I placed considerable reliance on the observations and opinions expressed by his treating psychologist, Ms Richards, as well as the contents of the IOMS as supporting the opinions ultimately expressed by the psychiatrists to the effect that, if the respondent was released on supervision today, there would be an unacceptable risk that he will commit a serious sexual offence. In short, I am not satisfied that the adequate protection of the community can, despite the contraventions, be ensured by the existing supervision order or an order amended pursuant to s 22(7) of the Act."[3]

[4] It is the continuing detention order which is the subject of review today.

[5] The majority of contraventions of the supervision order by the respondent have involved him taking cannabis or refusing to provide urine samples.

[6] The respondent accepts that he is a serious danger to the community in the absence of an order made under Division 3 of the Act. He, however, contends that the medical evidence supports his release back into the community. The applicant concedes that the evidence supports the release of the respondent, subject to the supervision order. There is no contest the supervision order should be for a period of ten years.

Criminal History

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[3] *Attorney-General (Qld) v Brown* [2020] QSC 57 at [34]-[35].

[7] The respondent is a 40 year old indigenous man. He had an unstable childhood and began offending at a young age, including sexual offences.

[8] Mr Brown's criminal history dates back to 1994. Jackson J set it out in a helpful table at paragraph 2 of his Honour's judgement,[4] including the contraventions of the supervision order up until 2019. The relevant index offences, involving rape, which resulted in the making of the original order under the Act, occurred in 2002. At the time, the respondent was under the influence of alcohol, cannabis and amphetamines. He had sexually offended twice before in 1995, which involved rape, and separately an indecent assault. Those offences have been accurately described by Justice Burns in his Honour's judgement,[5] and I will not repeat them.

Legal Framework

[9] The application for review is governed by s 30 of the Act. It provides *inter alia* that the Court may affirm the decision that a prisoner is a serious danger to the community in the absence of a Division 3 order, only if it is satisfied by acceptable cogent evidence and to a high degree of probability that the evidence is of sufficient weight to affirm the decision.

[10] The Court must determine whether or not, based on the evidence provided at the review hearing, the respondent is now a serious danger to the community.[6]

[11] Relevantly the definition of "serious danger to the community" requires that there must be an unacceptable risk that the prisoner will commit a serious sexual offence,[7] in the absence of a Division 3 order. The relevant risk is not the risk of any offence but the risk of the commission of a "serious sexual offence".

[12] The term "unacceptable risk" is incapable of precise definition but requires the striking of a balance of competing considerations. The relevant risk is not any risk. The risk means the

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4 *Attorney-General (Qld) v Brown* [2019] QSC 73, save that there is a typographical error where it refers to a conviction for stealing and indecent assault in 1999, which was in fact 1 November 1995: CFI 166.

5 *Attorney-General (Qld) v Brown* [2020] QSC 57 at [4]-[5].

6 *Attorney-General for the State of Queensland v Allen* [2019] QSC 56 at [14].

7 "Serious sexual offence" is defined in the Schedule of the Act: the offence must be of a sexual nature with the added requirement that it either involve violence or an offence against children.

possibility, chance or likelihood of commission of such an offence. An unacceptable risk is a risk which does not ensure adequate protection of the community. In *Attorney-General (Qld) v DBJ*,[8] Bowskill J stated that:

> "[13] In considering whether a risk is unacceptable it is necessary to take into account, and balance, the nature of the risk and the degree of likelihood of it eventuating, with the seriousness of the consequences if the risk eventuates. In this regard, in a case in which the focus was upon the degree of likelihood, Keane JA said in *Attorney-General (Qld) v Beattie* [2007] QCA 96 at [19]:
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> > 'For the appellant, it was argued that the expert description of the risk of the appellant's re-offending as 'moderate' meant that the risk fell short of 'unacceptable'. But this argument overlooks the point that whether or not a moderate risk is unacceptable must be gauged by taking into account the nature of the risk and the consequences of the risk materialising. In this regard, the appellant's likely targets are children, and especially street children: vulnerable members of the community who are likely to be peculiarly susceptible to his seduction techniques. The focus of consideration must, therefore, be upon the likely effect of a supervision order in terms of reducing the opportunities for the appellant to engage in acts of seduction of children to an acceptably low level.'
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> [14] As observed in *Nigro v Secretary, Dept of Justice* (2013) 41 VR 3597 at [6]:
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> > 'Whether a risk is unacceptable depends upon the degree of likelihood of offending and the seriousness of the consequences if the risk eventuates. There must be a sufficient likelihood of the occurrence of the risk which, when considered in combination with the magnitude of the

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[8] [2017] QSC 302.

> harm that may result and any other relevant circumstance, makes the risk unacceptable.'

[15] For present purposes, what is required is an assessment of the risk of the released prisoner committing a serious sexual offence in the absence of a further supervision order. Relevantly, the object of the DPSOA is to ensure adequate protection of the community (s 3(a)). That does not mean the purpose of the legislation is to guarantee the safety and protection of the community. If that were the case, every risk would be unacceptable. This is the corollary of the point made by the Court of Appeal in *Attorney-General (Qld) v Francis* [2007] 1 Qd R 396 at [39] that the Act "does not contemplate that arrangements to prevent [a particular risk] must be 'watertight'; otherwise orders under s 13(5)(b) would never be made" (as opposed to a continuing detention order). In this regard, as McMurdo J noted in *Attorney-General (Qld) v Sutherland* [2006] QSC 268 at [30]:

> 'Adequate protection is a relative concept. It involves the same notion which is within the expression 'unacceptable risk' within s 13(2). In each way the statute recognises that some risk can be acceptable consistently with the adequate protection of the community.'"

[13] The assessment of whether a risk is acceptable may include consideration of what is known and what is unknown about the risk.[9]

[14] In determining whether the decision ought to be affirmed under s 30 of the Act, the factors mentioned in s 13(4) of the Act must be considered. These are:

> "(aa) any report produced under *section 8A*;

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[9] *Turnbull v Attorney-General (Qld)* [2015] QCA 54 at [37] where there was uncertainty about some material facts about a prisoner which affected the question of whether a detention order was required to ensure the adequate protection of the community which could not be known without him completing the HISOP program; See also *Attorney-General (Qld) v S* [2015] QSC 157 at [40] McMurdo J.

(a) the reports prepared by the psychiatrists under *section 11* and the extent to which the prisoner cooperated in the examinations by the psychiatrists;

(b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;

(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;

(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;

(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;

(g) the prisoner's antecedents and criminal history;

(h) the risk that the prisoner will commit another serious sexual offence if released into the community;

(i) the need to protect members of the community from that risk;

(j) any other relevant matter."

[15] Further, there must be evidence that the respondent will comply with the order.[10]

[16] If the Court, on a review hearing, affirms the decision that the prisoner is a serious danger to the community in the absence of a Division 3 order, then the discretion granted by s 30(3) of the Act is enlivened.

[17] Once the Court's discretion is enlivened, the Court may then order either that the prisoner continue to be subject to the continuing detention order, or be released from custody subject to a supervision order. The onus lies on the applicant to satisfy the Court that a continuing detention order should be made. The starting point is the consideration of whether a supervision order can ensure adequate protection of the community.

[18] The paramount consideration under s 30(4) of the Act is the need to ensure the adequate protection of the community in deciding what the appropriate order is to make. That requires the Court to consider whether adequate protection of the community can be

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10 *Attorney-General for the State of Queensland v Fardon* [2011] QCA 155 at [29].

reasonably and practicably managed by a supervision order and whether the requirements under s 16 of the Act can be reasonably and practicably managed by corrective service officers.

[19] The adequate protection of the community does not require the Court to be satisfied that there is some absolute guarantee of protection. In order to be satisfied that the community can adequately be protected by the supervision order, the Court must be satisfied that a "…supervision order would be efficacious in constraining the respondent's behaviour by preventing the opportunity for the commission of sexual offences."[11] In *Attorney-General (Qld) v Francis* the Court observed that:[12]

> "…The Act does not contemplate that arrangements to prevent such a risk must be "watertight"; otherwise orders under s. 13(5)(b) would never be made. The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principle, be preferred to a continuing detention order on the basis that the intrusions of the Act upon the liberty of the subject are exceptional, and the liberty of the subject should be constrained to no greater extent than is warranted by the statute which authorised such constraint." (footnotes omitted)

[20] There must be evidence that the respondent will, or is at least capable, of complying with the order.[13]

[21] In *Attorney-General (Qld) v S*,[14] the Court stated that, in determining whether the community could be adequately protected only by a continuing detention order, the Court is required to consider "…the nature and extent of risk, as well as the potential

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11 See *Attorney-General (Qld) v Fardon* [2011] QCA 111 at [29] per Chesterman JA.

12 [2007] 1 Qd R 396 at 405.

13 *Attorney-General (Qld) v Fardon* [2011] QCA 111 at [29].

14 [2015] QSC 157.

consequences of that risk eventuating, in order to assess whether the risk is acceptable, in the sense of providing adequate protection to the community."[15]

Psychiatric evidence

[22] A psychiatric assessment was made by both Dr Aboud and Dr Sundin for the purposes of this hearing. Both doctors had seen Mr Brown and assessed him on previous occasions.

Dr Aboud

[23] Dr Aboud had previously prepared reports in 2017 and 2020.

[24] He considered that the respondent had the following psychiatric conditions:

- alcohol dependency;
- cannabis dependence;
- other substance abuse (solvents, opiates, possible stimulants);
- mixed personality disorder with predominantly antisocial paranoid and borderline traits;
- psychopathic features; and
- below average intellectual function being a threshold for borderline mental retardation.

[25] Dr Aboud did not find the respondent met the diagnostic criteria for a diagnosis of paraphilia.

[26] He considered that Mr Brown did not present with any mental illnesses, although he noted the possibility that his use of illicit substances may have impacted his mood so that he became elevated, which may also contribute to increased sexual preoccupation.

[27] Dr Aboud used a number of risk assessment tools to assess the respondent's risk of reoffending relevantly to his being a risk under the Act.

[28] The Respondent was above the cut off for a diagnosis of psychopathy to be made.

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15 [2015] QSC 157 at [40].

[29] In assessing the respondent by reference to the sexual violence protocol, Dr Aboud considered that if the respondent was to re-offend, it would take the form of opportunistic sexual violence, possibly in the course of committing a property related offence. Alcohol and illicit substances such as cannabis may be involved which would lead to disinhibition and reduced behavioural control, accompanied by mood elevation associated with sexual preoccupation. However, Dr Aboud noted the possibility that offending might occur without any substances being involved where labile emotional states might be channelled into offending. Such offending is likely to be impulsive. Dr Aboud considered Mr Brown would be at a higher risk if bored, angry, despondent, stressed or highly sexually preoccupied.

[30] Dr Aboud found that the respondent's sexual offending risk was high, on the basis of the static instruments used. He found that the dynamic risk factors have remained "somewhat intractable to change due to his psychopathic personality structure, limited intellect and negative attitude." He found therapies have provided limited assistance in moderating the risks.

[31] Dr Aboud noted that the respondent has demonstrated reasonable behaviour in prison and successfully completed the Medium Intensity Substance Intervention Program.

[32] In his interview with the respondent, Dr Aboud found the respondent's mental state to be stable and he was more motivated to be released into the community, although there was some evidence of minimisation of offending. The respondent indicated a willingness to see a medical practitioner and although he has declined any anti-libidinal or anti-depressive medication, he indicated he has an open mind and would consider taking medication if he encountered difficulties.

[33] In Dr Aboud's opinion is that the respondent has matured during his period in custody and developed more insight into himself and his vulnerabilities.

[34] Dr Aboud considers that Mr Brown carries a significant loading of vulnerability factors associated with future offending. He considers that his unmodified risk of reoffending remains high, but considered that the risk would be reduced to below moderate and manageable in the context of the supervision order. Dr Aboud found Mr Brown's mental state to be quite stable. He considered that the respondent appears to have matured over the year in custody and developed more insight into his need to comply with conditions of

the supervision order. Dr Aboud considered that he had presented as being more motivated to succeed if released into the community. Dr Aboud noted that he will require a robust external structure of risk management if released into the community, which replicates the structure which previously was in place. He considers that the respondent should continue to see a psychologist and continue with motivational work and therapy in relation to his attitudes to women and sexual preoccupation. He considered he would also benefit from a sexual offender maintenance program. He considered that any supervision order would need to be 10 years given the respondent's relatively young age and the chronic nature of his risk vulnerabilities.

Dr Sundin

[35] Dr Sundin had previously assessed the respondent and provided reports in 2009, two reports in 2010, 2012, 2014, 2015, 2017 and 2019.

[36] Dr Sundin found the respondent met the diagnostic criteria for a number of psychiatric conditions:

- mixed personality disorder with antisocial narcissistic and borderline personality traits;
- cannabis use disorder in sustained remission while incarcerated;
- alcohol use disorder in sustained remission; and
- psychopathy.

[37] Dr Sundin found that the respondent's overall risk for unmodified sexual violence is moderate to high. She noted that was lower than what she had previously assessed Mr Brown's risk to be. Dr Sundin found that although the respondent's static factors remain unchanged, there is a shift in a positive direction with respect to the dynamic risk factors. She noted that he has not committed any further sexual offence since 1995. That has included the period since his release under a supervision order in 2014, albeit that he has been in the community intermittently due to his contraventions. She considered he had a positive report from the Medium Intensity Substance Intervention Program, and that since undertaking that program, he appeared to have turned the corner. She noted he accepts the link between cannabis and his increased risk of offending, is taking some responsibility for his actions and asserts he will not use cannabis if released in the community.

[38] In particular, Dr Sundin considered the respondent is no longer resentful of the requirements of a supervision order and expressed an intention to be compliant with the order. His sexual preoccupation needed to remain a focus for ongoing monitoring upon his release.

[39] She considered that while aware of Mr Brown's poor track record and multiple breaches, the sexual recidivism risk posed by the respondent is not imminent and has been contained by the existing supervision order. She recommends that the respondent be released under the supervision order with the requirement that he complete the MISOP Program in the community and participate in a culture and appropriate drug abuse program. Dr Sundin was advised the MISOP Program was not suitable for Mr Brown. In an email dated 1 June 2021 she advised that the next best option was the Sexual Offenders Maintenance Program run in concert with individual therapy. That accords with the opinion of Dr Aboud.

[40] She considers the supervision order should be for a period of ten years given the seriousness of the respondent's past offending, his age, risk profile and the need for ongoing support for him as he matures further and achieves a more prosocial outlook.

Other Evidence

[41] The Respondent completed a Medium Intensity Substance Intervention Program in December 2020. A report dated 14 December 2020 By the Gallang Place Aboriginal and Torres Strait Islander Corporation on Mr Brown's performance stated he had an excellent attitude throughout the prepared. It noted the respondent had engaged throughout the program. A letter from Jonathan Morris of Gallang Place stated that Mr Brown had indicated a willingness to engage in counselling upon release, to address past issues which have impacted upon his quality of life. It also noted that he had reconnected with the values and beliefs of his culture and what this means for him and his family. A number of community support services were identified for him to engage with upon his release.

[42] The report of Gallang Place showed a significant improvement from Mr Brown's engagement the previous year with psychological treatment. A report by Ms Richards, a psychologist who had treated the respondent in 2019, noted that the respondent at that time had been lacking motivation to change his behaviour. Ms Richards noted such a factor and his ongoing unstable mental state had raised significant barriers to his

treatment and his motivation. He was described as being in a "pre-contemplative stage of change" where the focus of treatment was to increase his motivation.

[43] The reports of his behaviour in prison since the making of the continuing detention order reflects that his behaviour had improved significantly compared to his anti-authoritarian, disruptive and challenging behaviour when he was imprisoned for the 2002 offences.

[44] Ms Monson of Corrective Services has confirmed that treatment from a psychologist will be provided to Mr Brown upon his release, and there is a vacancy in Townsville's contingency accommodation. She has also identified other community support services that will be available to Mr Brown if he wishes to take advantage of them. Mr Denaro has confirmed that the Sexual Offenders Maintenance Program will be available to Mr Brown at the Townsville community corrections office when it is taking place, but the details of which have not yet been finalised.

Consideration

Is the respondent a serious danger to the community in the absence of a Division 3 Order?

[45] The first question is whether the Court should affirm the finding made on 16 June 2019 that the respondent is a serious danger to the community in the absence of a Division 3 order under the Act. As set out above, the respondent concedes that the evidence supports a finding that he is a serious danger to the community in the absence of a Division 3 order and that the order of Martin J made on 16 June 2009 should be affirmed.

[46] Given the evidence before me, particularly the psychiatrists' assessment of the respondent's unmodified risk, which I accept, that concession is properly made. I am satisfied to a high degree of probability that there is acceptable cogent evidence that has been presented to me, that is of sufficient weight, to conclude that the respondent continues to be a serious danger to the community in the absence of a Division 3 order under the Act. I have reached that conclusion having regard to the matters identified under s 13(4) of the Act, including in relation to the respondent's criminal history, psychiatric conditions, participation with psychologists and programs, the relevant risks identified particularly by the psychiatrists and arising from his previous offending and the need to protect members of the public from that risk.

[47] It is evident that the respondent has previously had psychological treatment which he engaged in but was lacking motivation to develop strategies to change, but where there are now signs there is a greater willingness to take positive steps to change and some insight into his offending and the relevant triggers to the risk of reoffending.

[48] I am therefore satisfied that the applicant has discharged the onus upon her and that the Court should affirm the decision of Martin J that the respondent is a serious danger to the community in the absence of a Division 3 order.

Should the respondent be released on a supervision order?

[49] The applicant carries the onus to persuade the Court in that regard.[16] As provided under s 30(4) of the Act, the paramount consideration is the need to ensure adequate protection of the community. The Court must consider whether the adequate protection of the community can reasonably and practicably be managed by a supervision order and whether the requirements of s 16 of the Act can be reasonably and practicably managed by Queensland Corrective Services (**QCS**). There is no evidence suggesting that QCS cannot reasonably and practicably manage the requirements under s 16 of the Act in this instance.

[50] In determining that he could not be satisfied that the adequate protection of the community could be assured if the respondent was released under a supervision order in that regard last year, Justice Burns found that the respondent's risk was escalating and that despite the best efforts of his case managers, he was one impulse away from acting on his sexual preoccupations. His Honour noted a number of factors were contributing to that, not least of which was "his unremitting cannabis use" and his lack of insight between his abuse of substances and the accompanying elevation of risk that he would commit a serious sexual offence. His Honour noted that "he has unmet treatment needs and should follow the recommendations made by both psychiatrists in their evidence including the need to properly engage with a psychologist to obtain motivational counselling, participate in the MISIP and considering the benefits of anti-libidinal and/or anti -

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16 *Attorney-General (Qld) v Lawrence* [2009] QCA 136; *Attorney-General (Qld) v Francis* [2007] 1 Qd R 396.

depressive medications" to have any hope of addressing his offending behaviour and reduce the risk.[17]

[51] Mr Brown's detention in custody appears to have served the purposes of the Act. He has had a positive response to his participation in the MISIP program and there is evidence he is gaining insight into his cannabis use and risk of offending. He is now showing a preparedness to continue treatment upon his release to assist his motivation and is at least prepared to consider consulting a medical practitioner about medications which may assist him further.

[52] That is not to say that there will not continue to be significant barriers to his progress given his psychiatric conditions, particularly psychopathy and personality disorder. However, the psychiatrists have observed an increasing maturity and that he has expressed a willingness to not only comply with the supervision order, but there is evidence he no longer resents it.

[53] Given the psychiatrists' opinions that his risk would be reduced to below moderate to moderate under a supervision order and the supervision has previously served to curtail the risks of his reoffending, the Attorney General has quite properly in the circumstances stated "it is not able to be concluded the preference for a supervision order ought to be displaced" and accepts that the adequate protection of the community, based on the evidence presented, would be ensured by the respondent's release under a supervision order.

[54] I am persuaded on the balance of probabilities that adequate protection of the community can reasonably and practicably be managed by the supervision order, and the requirements of s 16 of the Act can be reasonably and practically be managed by Corrective Services. I am satisfied that the adequate protection of the community can be ensured by the respondent's release under a supervision order.

[55] A proposed supervision order was circulated to Dr Sundin and Dr Aboud. The proposed draft provided to the Court does not include clause 37 of the draft supervision order

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17 *Attorney-General v Brown* [2020] QSC 57 at [34].

circulated to Dr Sundin and Dr Aboud. Neither Dr Aboud nor Dr Sundin considered that provision was necessary to contain the respondent's risk.[18]

Length of Order

[56] There is no contest between the parties that the supervision order should be for ten years. That is supported by the opinions of both psychiatrists, which I accept as the period needed for him to mature and receive support before he will be an acceptable risk in the community without supervision, given his chronic risk vulnerabilities and having regard to his criminal history.[19]

Conclusion

[57] Given the above analysis, the orders that should be made by this Court are that:

The Court affirms the decision of Martin J made on 16 June 2009 that the respondent, Troy Jimmy Charles Brown is a serious danger to the community in the absence of an order pursuant to Division 3, Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 and orders that:

1. Pursuant to s 30(5) of the Act, the continuing detention order made on 1 April 2020 should be rescinded; and
2. The respondent should be released from custody and from that time be subject to the requirements contained in the draft Supervision Order for a period of ten years.

[58] I will therefore make the Order in accordance with the draft provided.

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18 Exhibit 1 and 2.

19 Which is the relevant test for determining the period of a supervision order: *Attorney General v KAH* [2019] QSC 36 at [69].