SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v S* [2018] QSC 89
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (Applicant) **v** **S** (Respondent)
FILE NO/S:	BS No 2012 of 2015
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	1 May 2018
DELIVERED AT:	Brisbane
HEARING DATE:	30 April 2018
JUDGE:	Lyons SJA
ORDER:	**The order of the court is that:** **1. Pursuant to s 30(1) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), the decision made on 9 June 2015, that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act, is affirmed.** **2. Pursuant to s 30(3)(a) of the Act, the respondent continue to be subject to the continuing detention order made on 9 June 2015.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT SEXUAL OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent was detained under a continuing detention order under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the applicant applied under section 30 of the Act for the order to be reaffirmed – where the respondent continues to deny his sexual offending – where the respondent refused to participant in psychiatric assessments – where psychiatrists still consider that the respondent needs to complete certain programs – whether the respondent poses a serious danger to the community pursuant to the Act –

whether the applicant has discharged the onus to establish that the respondent should continue to be subject to a continuing detention order – whether the community could be adequately protected by a supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) s 3, s 13, s 16, s 27, s 30

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

Attorney-General (Qld) v S [2017] QSC 32

Kynuna v Attorney General for the State of Queensland [2016] QCA 172

COUNSEL: Mr J. Rolls for the Applicant
Mr J. Cook for the Respondent

SOLICITORS: Crown Law for the Applicant
Russo Lawyers for the Respondent

This application

[1] This is an application pursuant to s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ('the Act') for a review of the respondent's continuing detention order. On 30 April 2018 I was satisfied that the respondent was a serious danger to the community in the absence of a Division 3 Order and affirmed the decision of 9 June 2015 that the respondent be detained indefinitely for control, care and treatment pursuant to s 13(5)(a) of the Act. These are the reasons for that decision.

[2] On 9 June 2015, PD McMurdo J was satisfied that the respondent was a serious danger to the community in the absence of a Division 3 order under the Act and ordered that the respondent be detained indefinitely for control, care and treatment pursuant to s 13(5)(a) of the Act.

[3] If a continuing detention order has been made under Division 3 of the Act, then the Attorney-General must make an application for a review to be carried out pursuant to s 27 of the Act. The application for review is then governed by s 30 of the Act which provides as follows:

> (1) This section applies if, on the hearing of a review under section 27 or 28 and having regard to the required matters, the court affirms a decision that the prisoner is a serious danger to the community in the absence of a division 3 order.
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> (2) On the hearing of the review, the court may affirm the decision only if it is satisfied—
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> > (a) by acceptable, cogent evidence; and
> > (b) to a high degree of probability;
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> that the evidence is of sufficient weight to affirm the decision.
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> (3) If the court affirms the decision, the court may order that the prisoner—

(a) continue to be subject to the continuing detention order; or
(b) be released from custody subject to a supervision order.

(4) In deciding whether to make an order under subsection (3)(a) or (b)—

(a) the paramount consideration is to be the need to ensure adequate protection of the community; and
(b) the court must consider whether—

(i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and
(ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers.

(5) If the court does not make the order under subsection (3)(a), the court must rescind the continuing detention order.

(6) In this section—
required matters means all of the following—
(a) the matters mentioned in section 13 (4);
(b) any report produced under section 28A .

[4] The first review of that continuing detention order occurred in 2017 and on 13 March 2017 Brown J was satisfied that the respondent was a serious danger to the community in the absence of a Division 3 order and ordered that the respondent continue to be subject to a continuing detention order.

[5] Pursuant to an application filed on 7 December 2017, the applicant has sought a review of the continuing detention order. Counsel for the Attorney-General submits that the respondent still presents a serious danger to the community in the absence of a Division 3 order under the Act and the decision of 9 June 2015 should be affirmed and a continuing order ought be made pursuant to s 30(3)(a) of the Act.

[6] Arrangements were made for the respondent to be examined by two psychiatrists, Dr Michael Beech and Dr Josephine Sundin. Dr Sundin was scheduled to see the respondent on 1 February 2018 for the purpose of conducting a psychiatric assessment. The respondent however refused to participate and Dr Sundin prepared her report in the absence of cooperation from the respondent but upon reviewing all the available material.

[7] Dr Beech attended the Wolston Correctional Centre on 16 February 2018 for the purpose of conducting a psychiatric assessment and once again the respondent refused to participate. Accordingly, Dr Beech has prepared a report in the absence of cooperation from the respondent based upon a review of all the available material.

[8] As Dr Sundin had recommended that the respondent been seen by Dr Lars Madsen, a forensic and clinical psychologist who had a long history of working with prisoners, Dr Madsen was engaged to see the respondent. However, the respondent refused to engage with Dr Madsen when he attended at the Wolston Correctional Centre on 23 March 2018.

Background

[9] The respondent is currently 44 years of age and his criminal history commenced in 1992 when he was sentenced to probation and community service for an assault occasioning bodily harm, and an unlawful assault. He was then sentenced again in 1992 for entering a place with intent, stealing, false pretences, possession of a motor vehicle and was convicted and fined in order to pay restitution. In 1993 he was then convicted in relation to breaking and entering a dwelling house with intent at night and assault occasioning bodily harm. He was in prison for three years in relation to the break and enter with intent, with a concurrent sentence of 12 months imposed in relation to the assault occasioning bodily harm. He was given a parole eligibility date after 12 months.

[10] Significantly, in 2001, the respondent was sentenced to several terms of imprisonment which amounted to a period of 16 years, which expired on 10 June 2015. He was sentenced to 10 years imprisonment for maintaining a sexual relationship with a child with a circumstance of aggravation over a six month period in 1998 and 1999. He was declared to be a serious violent offender. He was also sentenced to concurrent terms of five and three years on a number of offences of assault occasioning bodily harm and the indecent treatment of a child under 12. He was also sentenced to a cumulative term of six years for grievous bodily harm. A summary of those offences is as follows:

Date	**Description of Offence**	**Sentence**
Brisbane District Court 25/05/2001	• Maintaining a sexual relationship with a child with circumstances of aggravation (between 31/10/1998 & 08/04/1999) • Assault occasioning bodily harm whilst armed (between 01/03/1994 & 04/03/1994) • Assault occasioning bodily harm whilst armed (3 charges between 01/10/1998 & 15/02/1999)	Imprisonment 10 years Declared a serious violent offender. Imprisonment 5 years concurrent with above.
	• Assault occasioning bodily harm (2 charges between 01/11/1994 & 10/12/1994) • Assault occasioning bodily harm (2 charges between 31/12/1998 & 01/03/1999) • Indecent treatment of a child under 16 years (under 12 years, expose, lineal, video tape) (3 charges between 31/10/1998 & 08/04/1999) • Indecent treatment of a child under 16 years (under 12 years, expose, lineal, descendant/guardian/carer) (3 charges between 31/10/1998 & 08/04/1999) • Indecently dealt with child under 16	Imprisonment 3 years concurrent with above.

	years (under 12 years, lineal, descendant/guardian/carer) (2 charges between 31/10/1998 & 08/04/1999)	
	• Grievous bodily harm (between 01/04/1999 & 08/04/1999)	Imprisonment 6 years cumulative to above. Declared a serious violent offender. Time spent in pre-sentence custody (714 days) to be deemed as time already served. Conviction recorded for all charges.

[11] The circumstances of the offences and the respondent's antecedents were then set out by PD McMurdo J in his decision as follows:

> "[3] These offences were committed against the respondent's then partner and her young son. The offences were summarised by McPherson JA, in dismissing the respondent's appeal against conviction and application for leave to appeal against sentence, as follows:
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> > "The victim of the physical assaults was at the time his de facto wife. Most of them took place after she had, at his insistence, performed indecent acts which the applicant filmed for the purpose of setting up a pornographic business. Some of those acts consisted of performing acts of multiple sex with other adults. The assaults, some of which involved the use or threat of use of a dangerous instrument such as a garden fork, were carried out by the applicant because he was dissatisfied with the standard of the complainant's performance during those indecent acts.
> >
> > One of the persons with whom she was forced to commit some of the sexual acts was her own nine year old son, who was also the victim of the sexual offences committed against the child to which I have referred. To crown this career of appalling behaviour, the applicant finally subjected the woman complainant to a prolonged and savage beating inflicting grievous bodily harm on her, including brain damage, fractures to facial bones and a severe injury to her left ear requiring plastic surgery.
> >
> > In the course of his submissions in this Court the applicant, it may be noted, admitted that he had committed that assault causing grievous bodily harm.
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> > …
> >
> > He showed no remorse whatever for what he has done. The learned sentencing Judge described his behaviour as depraved and despicable. Those are strong words, but they

> are in my opinion fully justified. In the 20 years in which I have been on this Court, I have not seen a case in which the conduct of the accused was worse than this."
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> [4] The respondent has always maintained that he did not commit sexual offences against the child. He sought to explain his violent assaults upon his partner as attempts to protect the son from sexual misconduct by her.
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> [5] … Prior to the matters already mentioned, he had a criminal history for offences of violence, dishonesty and breaking and entering a dwelling house, for which he received various terms, including one of three years imprisonment for which he was required to serve 12 months. The offence of breaking and entering a dwelling house with intent was committed in October 1992. The sentencing judge then remarked:
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> > "I regard this as a very serious offence. Here we have a decent woman asleep in her own home where she should be safe. You come in the early hours of the morning and subject her to a terrifying ordeal. You say you went there for money, but from what she tells the police even if that were so your mind changed towards sexual matters. You told her to remove her knickers. She managed to escape you and she was punched as she eluded you."
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> [6] There are several recorded breaches during the respondent's time in prison. Most involved disobeying the lawful direction of a corrective services officer. At least one involved an assault on another prisoner. Another, in 2013, involved an assault on a visitor."[1]

[12] In making a continuing detention order, PD McMurdo J indicated that he was satisfied the respondent was a serious danger to the community in the absence of a Division 3 order. He also indicated he was satisfied that there was an unacceptable risk that the respondent would commit a serious sexual offence if released from custody without such an order. He indicated that the respondent's offending behaviour, his anti-social personality disorder, the possibility that there is an element of sadism or paedophilia in the respondent's offending as well as the respondent's denial of sexual offending, together with the fact that the respondent had not engaged in necessary treatment programs meant that those factors together combined to indicate that the respondent was an unacceptable risk.

[13] In determining whether the community could be adequately protected only by a continuing detention order, His Honour indicated that that question involved consideration of the nature and extent of risk, as well as the potential consequences of that risk eventuating, in order to assess whether the risk was acceptable in the sense of providing adequate protection to the community. His Honour indicated that the psychiatrist's concern was that the respondent would not comply with a supervision order and that a serious offence might be committed before his non-compliance was detected. His Honour considered that that was a substantial risk. He indicated it was a risk which exists, especially from the likelihood that the respondent would not engage

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1 See *Attorney-General (Qld) v S* [2015] QSC 157 at [3] – [6] (supra).

with those supervising him and from the difficulties in supervising the respondent without him having undergone necessary treatment programs.

[14] In conducting the first review in 2017, Brown J was also satisfied on the evidence before her that the position remained the same as was described by the court in the reasons of PD McMurdo J. Her Honour was satisfied that the court should affirm the decision that the respondent is a serious danger to the community in the absence of a Division 3 order. Her Honour considered that as well as the factors considered by PD McMurdo J in June 2015, the risk was further heightened by the fact the respondent had not engaged in the necessary treatment programs previously recommended, except for the Getting Started Program. Her Honour noted that whilst the respondent participated in that program, "his denial of sexual offending has meant the respondent has not responded positively as it has provided no insight into the nature of his behaviour or motivations and the relevant triggers for his sexual offending such it could be treated. Presently his attitude indicates that a High Intensity Sexual Offending Program which both psychiatrists considered he would need to engage in is not open given his denial." [2]

[15] Her Honour concluded that both Dr Beech and Dr Grant were of the view that there was an unacceptable risk that the respondent would breach any supervision order and that given his psychopathic tendencies, Dr Beech indicated a supervisor could not place trust in what the respondent said he was going to do and that, in order to avoid the risk of the respondent breaching the supervision order, he could not in fact be let out of his accommodation.

[16] Dr Grant considered that given the respondent's denial that he had offended in any sexual way it was unlikely that he would accept the terms of an order which sought to restrain him and his actions on the basis that he was such an offender.

[17] Her Honour noted that Dr Grant indicated that a supervision order contains some 30 requirements and essentially puts a straitjacket on the respondent in various ways and that would be expected to have some effect on reducing the risk posed by the respondent's release. However, ultimately, Dr Grant's view was that in the absence of an understanding of the risk pathways of the respondent and given the potential for breaching the supervision order, the risk of reoffending would still be significant. Dr Grant considered that the risk would be a moderate to high risk of some violent sexual offending behaviour.

[18] Brown J noted that Dr Grant was of the view that the respondent needs to undertake the High Intensity Sexual Offender Program ('HISOP') prior to release and also the violence program. His view was that completion of programs addressing violence, substance abuse and sexual offending would all assist in increasing confidence that the risk could be contained. Her Honour considered that those matters presently could not be addressed by any supervision order. Her Honour also indicated that whilst the psychiatric evidence acknowledged that electronic monitoring under a supervision order could assist in containing the risk, it could not provide information such as who the respondent was seeing, and the kind of relationship he was developing. She considered that given the respondent's anti-social behaviour and psychopathic traits, no trust could be placed in the respondent to reliably inform any supervisor of these matters. Her

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2 *Attorney-General (Qld) v S* [2017] QSC 32 at [85].

Honour noted that Dr Beech and Dr Grant considered this increased the risk of offending significantly.

[19] Her Honour concluded:

> "It is evident therefore that there is a significant risk that the respondent would not comply with any supervision order and that he may commit a serious offence before his non-compliance is detected. Moreover presently no supervision order can be formulated to properly address the risks posed by the respondent to ensure adequate protection of the community, given the failure of the respondent to engage in programs that would enable that to occur. In the circumstances, I consider that the imposition of a supervision order cannot reasonably and practically manage the adequate protection of the community, because it presently cannot contain the risk posed by the respondent to provide such adequate protection."[3]

[20] Section 30 of the Act provides that the court can affirm the decision that the prisoner is a serious danger to the community if it is satisfied by acceptable cogent evidence and to a high degree of probability. If the court on the review hearing affirms a 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. Pursuant to that section, the court is able to order that the respondent be subject to a continuing detention or be released from custody subject to a supervision order. In determining whether to make such an order, the paramount consideration is to "ensure adequate protection of the community".[4]

Dr Sundin's report dated 11 February 2018

[21] As I have previously noted Dr Sundin was unable to conduct a psychiatric assessment of the respondent on 1 February 2018 as the respondent refused to participate. Her report however did review all of the available material. Dr Sundin noted that her previous report was dated March 2014 but that subsequent to that date the respondent had agreed to be interviewed by Drs Grant and Beech, both of whom were male psychiatrists. Dr Sundin reviewed those reports.

[22] Dr Sundin considers that the respondent suffers from anti-social personality disorder and that he also meets the criteria for psychopathy. She also notes that he has violence which has been linked to his sexual offending and accordingly the paraphilia of sexual sadism cannot be excluded. Dr Sundin remains of the view that he needs to complete a HISOP prior to any consideration of his release into the community. In that regard, she recommended Dr Madsen be retained to provide such counselling.

[23] Dr Sundin noted that Dr Beech interviewed the respondent in 2015 and again in 2016, as did Dr Grant. Dr Sundin relied heavily on the second report of Dr Beech in which he noted that he did not consider there was much that had changed since his earlier assessment and that the respondent shows strong psychopathic traits which continue. He considered that those traits interfered with his program engagement. Dr Beech considered that nothing has actually occurred that has remedied or altered the

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3 *Attorney-General (Qld) v S* [2017] QSC 32 at [89].

4 *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 30(4).

respondent's situation except perhaps he has "become more steadfast, in a roundabout way, in his refusal."[5] Dr Beech considered that the respondent's risk of re-offending in a violent sexual manner remains high and that his risk of violence generally remains high and that intimate partners would be at particular risk.

[24] Dr Grant, Dr Sundin noted, had reached similar conclusions to Dr Beech. Dr Grant also noted that the respondent had an extensive history of polysubstance abuse and referred to the question mark over the issue of a sexual paraphilia stating that "the respondent's offending history indicates that he links violent behaviour with sexual behaviour"[6] and he suggests that sadism is likely. Dr Grant considered that if he did have sexual drives that were sadistic then that combined with his high scores on the psychopathy checklist would indicate a high risk combination. She noted that Dr Grant recommended that the respondent complete the HISOP whilst in custody prior to release. He noted that the risk of breaching a supervision order would be such that breaches might involve use of alcohol or drugs and in the context of any involvement with females that could rapidly escalate into a situation of interpersonal violence and potential sexual assault. He considered that it would be difficult for a supervision order to operate in the sense of preventing a rapid deterioration and re-offence.

[25] Dr Sundin noted that the Integrated Offender Management System (IOMS) system which covered a period from January to November 2017 indicated that the respondent had stated to QCS staff that he was happy to remain at Wolston for the next 30 years.

Dr Beech's report dated 19 March 2018

[26] Dr Beech's report is dated 19 March 2018. Dr Beech also noted that the respondent had declined an interview with him. Dr Beech's report referred to the fact that the respondent is a 44 year old single Indigenous man who has been held on a continuing detention order since 2015, following his conviction in 2001. His conviction was in relation to a number of charges of assault occasioning bodily harm against his female partner over a five year period that was in fact interrupted by his return to custody and subsequent release.

[27] Dr Beech noted that the violence has occurred in the context of the respondent's coercion of his partner into performing sexual acts for his pornography business and that the 2001 convictions also included several charges of indecent treatment of a child, in that he had coerced the boy and the boy's mother into performing sexual acts and had exposed the boy to pornography and sexual activity. Dr Beech stated that he had noted in his 2016 report, the offending had ostensibly been simply for production of pornography but in his view the nature of the offending suggested sadism, voyeurism and paedophilia. Dr Beech also noted that the respondent has continued to deny any culpability, perhaps except to the extent that he accepts he assaulted the woman on one occasion when he became enraged at her negligent treatment of her son. Dr Beech considers that the entrenched denial has militated against any greater understanding of the offending, any clarification of associated sexual deviance and any form of intervention.

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5 Exhibit 2.1 at p 11.

6 Court File Document 22 at p 9.

[28] Dr Beech also referred to the significant criminal history which included violence and an incident of sexual offending, as well as a history of substance misuse.

[29] Dr Beech considered that in the absence of any material to the contrary, he could not see that much had changed since his 2016 report. He considered that the STATIC factors remain the same and that on the STATIC-99R he would place the respondent in the group of offenders who are significantly high risk that is, higher than the average sexual offender. He considers that the case file material, apart from indication of compliant prison behaviour, continue to show evidence of psychopathy and he considers that overall the respondent has high psychopathic traits. He also considers that this occurs in the context of an anti-social personality disorder and he agrees with Dr Grant's earlier reports that there are significant narcissistic traits as well.

[30] Dr Beech stated that he could not see that there had been any significant change in the dynamic risk factors in that there is an ongoing denial or minimisation of violence, and he remains unemployed in the prison system. He also noted that there was no evidence of any significant external support and the respondent is dismissive of attempts at intervention or treatment. There is no evidence of any plans on his release.

[31] Dr Beech also stated that in prison the respondent is on a safety order because of his assaults against another prisoner. In that regard he considers that the respondent's risk of violent offending in the community remains high. As there has been nothing to indicate any changes in the risk of sexual reoffending Dr Beech considered that that risk also remained high.

[32] Dr Beech considered the risk might be lowered to some extent in the community by a supervision order that restricted the respondent's movements, contacts and access to his potential victims. He also considered, however, that in the absence of any formal treatment or exploration of his offending, his personality style, his ongoing risk factors, and understanding of his offending pathway, it would be difficult to know to what extent any such risk would be lowered by a supervision order. Dr Beech stated that in the absence of any acceptance for treatment in custody, it is difficult to imagine that the respondent would take on a treatment in the community and therefore it is difficult to see how the risk might be lowered by any programs available in the community.

[33] Dr Beech stated that in 2016 he did not think there was much else that could be done by QCS to break the impasse and whilst there has been intensive motivational support offered, the respondent has yet to take up that offer.

Other material

[34] At the hearing Ms Jolene Monson, the acting manager of the High Risk Offender Management Unit (HROMU) gave evidence of the programs and courses the respondent had completed and been offered. Her affidavit sworn 19 April 2018[7] sets out an impressive number of vocational courses that the respondent had successfully completed as well as some transition programs including a managing addiction program and a relationship program both in 2011. Ms Monson also stated that in 2016 the respondent had completed the Getting Started Preparatory Program (GSPP), which was a pre-requisite to the HISOP. Ms Monson confirmed that after the completion of the

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7 Court File Document 41.

GSPP an exit report would be prepared which contained recommendations about a prisoner's suitability for further intensive programs.

[35] Ms Monson gave evidence that after the successful completion of the GSPP an offender would then be assessed as to whether they were suitable for the HISOP which was an intensive 350 hour program over 12 months which involved two or three sessions per week. I note that the Exit Report is exhibited to the affidavit of Annette O'Brien[8] and it states that "Prisoner S maintained a stance of innocence in relation to his current offences, which presents a significant barrier to his participation in further treatment programs."[9] In relation to the significance of such a denial, the affidavit of Ashley Phelan, sworn 20 January 2017,[10] states that the HISOP is a group based, high intensity sexual offending program for offenders at high risk of sexually reoffending. The aim of the program is to help stop re-offending by assisting participants to identify the thoughts, feelings and behaviours associated with their offending and to assist them in developing skills and strategies to prevent recurrence of the behaviours. The affidavit stated:

> "Partial or significant denial of offending is not always a precluding factor for participation in HISOP, provided the offender is willing to make some concessions such as acknowledging their involvement in some form of sexual behaviour. However in respect of this respondent, despite having completed GSPP he still maintains a complete denial of all aspects of the sexual offending and is resistant towards discussing the offences therefore he is not currently a suitable candidate to participate in and benefit from the HISOP. The aim of HISOP is not for the respondent to complete the HISOP but to gain skills and knowledge which reduces his risk of sexual recidivism." [11]

[36] Ms Monson confirmed that in some circumstances an offender can be admitted onto the program even if there is substantial denial of offending but that the recommendation in relation to the respondent was that he was considered unsuitable for the HISOP given his stance of complete denial of the sexual offending. Ms Monson confirmed that in relation to the respondent the impasse was that "he wants to be placed on the program but essentially he is ineligible because of his denials".[12]

[37] Ms Monson gave evidence that because of that impasse, another intensive program offered by QCS, the Cognitive Self Change High Intensity Violence Program (CSCP) which was run through the Maryborough Correctional Centre, was offered to the respondent but that he declined the offer. In this regard she indicated that the respondent could at any time indicate to his case manager his willingness to be involved in such a program and arrangements would be made for his future involvement in such a program.

[38] Ms Monson also stated that the respondent was offered the assistance of a psychologist to enable him to discuss his involvement in those programs but he declined that assistance. She also gave evidence that should the respondent indicate a willingness to

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8 Exhibit 6.2 and Court File Document 26.
9 Exhibit 6.2 and Court File Document 26 at p 3.
10 Exhibit 6.1 and Court File Document 12.
11 Exhibit 6.1 and Court File Document 12 at [13].
12 Transcript 1-8: 35 – 36.

undertake the HISOP in the future he would need to complete the GSPP preparatory program again and depending on the stance he took during that program his suitability would be assessed once again. In this regard he could have the assistance of a psychologist during the program.

[39] The affidavit of Mr Phelan also stated that if the respondent addressed his violence needs through the CSCP program this "would serve as an appropriate treatment option which may be an avenue for future participation in the HISOP".[13] The affidavit also stated that should the respondent change his stance in relation to a "categorical denial of offences, and present as willing, ready and able, an offer for placement in HISOP may be made in future".[14]

Should the respondent be subject to a Division 3 Order?

[40] Having considered the extensive evidence before me and taking into account the required matters in s 30 of the Act, I am satisfied to a high degree of probability that there is acceptable, cogent evidence that the respondent is a serious danger to the community in the absence of a Division 3 Order. I therefore affirm the decision made on 9 June 2015 and affirmed on 13 March 2017.

[41] The issue which remains to be determined is whether pursuant to s 30(3) the respondent should (a) continue to be subject to the continuing detention order; or (b) be released from custody subject to a supervision order. In making such a determination s 30(4) provides that the paramount consideration is the need to ensure adequate protection of the community and the Court must consider whether the adequate protection of the community can be reasonably and practicably managed by a supervision order and whether the requirements of s 16 can be reasonably and practicably managed by corrective services officers.

[42] Having considered the reports which have been prepared for this hearing, as well as the other material relied upon by the applicant, I am satisfied that the evidence indicates that the respondent's risk of serious sexual re-offending is still in the moderate to high range and that the likely offence would involve an adult female or child and that such an offence would result in psychological or physical damage. In the present case the applicant submits that the respondent is an untreated sex offender who has limited or no insight into his condition and the steps he needs to take to address his risk and therefore a continuing detention order is required.

[43] The applicant must establish that the adequate protection of the community cannot be ensured by a supervision order. In *Kynuna v Attorney General for the State of Queensland*[15] President McMurdo held:

> "In *Attorney-General v Francis* this Court made plain that if the supervision of a prisoner is apt to ensure adequate protection of the community under the Act, having regard to the risk to the community posed by the prisoner, then an order for supervised release should be preferred to a continuing detention order. This is because the intrusions of the Act upon the liberty of the subject are exceptional and the liberty

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13 Exhibit 6.1 and Court File Document 12 at [14].
14 Exhibit 6.1 and Court File Document 12 at [15].
15 [2016] QCA 172.

> of the subject should be constrained to no greater extent than warranted by the Act. It is not contemplated under the Act that supervision orders must be watertight; otherwise they would never be made."[16] (citations omitted)

[44] In the present case however, I cannot 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. In making such an order the Court is required to reach a positive conclusion that the supervision order proposed would provide adequate protection. As Counsel for the applicant stated in his closing submission, because of the respondent's non engagement in the HISOP, the risk cannot be quantified. Counsel continued:

> "The risk can't be managed by way of an appropriately structured supervision order, absent the offending pathway being identified and one does not know whether Mr S is a sexual sadist. One does not know whether he's a paedophile. One does not know what his drivers are to enable an appropriately structured supervision order to be formulate, which would – which your Honour could be satisfied would provide adequate protection to the community. That's the touchstone – whether the community would be adequately protected if – without knowing what motivates Mr S. One would be releasing him into the community a ticking time bomb that could go off at any stage when corrective services would simply not know how to direct him. For example, a GPS tracker might identify where he goes, but that does not necessarily identify who he associates with and the circumstances and those factors might be quite relevant to corrective services and how they manage him. So without knowing what Mr – what makes Mr S tick, it's very difficult to structure an order which would provide the necessary protection."[17]

[45] I accept that the evidence remains unaltered since 2015 and clearly establishes that the applicant has satisfied me that the adequate protection of the community cannot be ensured by a supervision order and the respondent should continue to be subject to a continuing detention order.

[46] The order of the court is that:

1. Pursuant to s 30(1) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), the decision made on 9 June 2015, that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act, is affirmed.

2. Pursuant to s30(3)(a) of the Act, the respondent continue to be subject to the continuing detention order made on 9 June 2015.

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16 [2016] QCA 172 at [64].
17 Transcript 1-17: 18-32.