

CITATION: *The King v Murdoch* [2024] NTSC 60

PARTIES: THE KING

v

MURDOCH, Gerald

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 21312275

HEARING DATE: 12 January 2024

JUDGMENT GIVEN: 12 January 2024

REASONS DELIVERED: 17 July 2024

JUDGMENT OF: Kelly J

Criminal Code 1983 (NT), s 43H, s 43I, s 43ZG(1), s 43ZG(6),
s 43ZH(2)(a), s 43ZH(3), s 43ZH(3)(d), s 43ZLM, s 43ZN, s 43ZN(2)(a)(i),
Part IIA

Mental Health and Related Services Act 1998 (NT)

R v KMD [2015] NTSC 31

REPRESENTATION:

Counsel:

Crown:	S McMaster
Chief Executive Office of the Department of Health:	E Farquhar
Supervised Person:	A Abayasekara

Solicitors:

Crown:	Office of the Director of Public Prosecutions
Chief Executive Officer of the Department of Health:	Solicitor of the Northern Territory
Supervised Person:	Northern Territory Legal Aid

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The King v Murdoch [2024] NTSC 60
No. 21312275

BETWEEN:

THE KING

AND:

GERALD MURDOCH

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 17 July 2024)

Background and Procedural History

- [1] On 23 March 2013, Mr Murdoch was charged with one count of attempting to have sexual intercourse without consent and knowing about or being reckless as to the lack of consent.
- [2] Mr Murdoch's actions were found to be as a result of schizophrenia and on 13 February 2014, the Court accepted a plea of not guilty due to mental impairment pursuant to s 43H of the *Criminal Code 1983* (NT) (the Code). The Court formally declared that Mr Murdoch was liable to supervision pursuant to s 43I of the Code.
- [3] On 12 June 2014, a Custodial Supervision Order (CSO) was imposed and a term of imprisonment of three years was set for the purposes of s 43ZG(1)

of the Code. Following a major review of Mr Murdoch's case in 2016, the Court ordered the continuation of the CSO.

[4] On 21 July 2017, following a periodic review, the CSO was varied to a Non-Custodial Supervision Order (NCSO) and Mr Murdoch was permitted to relocate to Alice Springs.

[5] As part of the NCSO, Mr Murdoch has been continuously subject to:

- (a) electronic monitoring,
- (b) a curfew,
- (c) a residential direction,
- (d) geographic restrictions,
- (e) a non-contact order,
- (f) a direction to participate in treatment and programs,
- (g) a direction to take medications as directed,
- (h) a direction to abstain from alcohol and drug use, and
- (i) a direction to participate in breath testing or other testing for alcohol and drugs.

[6] Mr Murdoch became a participant in the National Disability Insurance Scheme (NDIS) operated by the federal National Disability Insurance Agency (NDIA) while residing in Alice Springs between 2017 and 2021. He has a disability support worker who assists him with daily community access. He has previously had NDIS supported accommodation.

[7] In June 2021 Mr Murdoch obtained permission of the Court to return to Darwin and did so, residing in private accommodation before moving into Banksia House in May 2022. Since Mr Murdoch's return to Darwin, he has

been under the care of the Forensic Mental Health Team in the Top End Mental Health Service.

[8] The treating team reported good progress in terms of Mr Murdoch's mental health and risk profile. As a result, his treating psychiatrist at the time, Dr Mrigendra Das, recommended in his report dated 26 October 2023 that the Court consider unconditionally discharging Mr Murdoch from his NCSO. A further periodic review commenced in November 2023.

[9] At a mention on 9 November 2023, I expressed concern about unconditionally discharging Mr Murdoch from his NCSO in the context of his lack of insight, his tendency to provide untruthful accounts and his distorted cognition in relation to his relationships with women. Mr Murdoch's admissions to Dr Das that he only complies with his medication due to the Court order that is in place¹ was also concerning. At that time, the process of obtaining a second report was underway.

[10] On 15 December 2024 the Court received a report of Dr Ranjit Kini. Both Dr Kini and Dr Das were available to give evidence before the Court on 12 January 2024.

[11] Section 43ZH(3) provides that on completion of the review of a NCSO the Court may:

(a) confirm the order;

(b) vary the conditions of the order;

¹ Report of Dr Mrigendra Das, 26 October 2023, paragraph 6.4

- (c) vary the supervision order to a custodial supervision order and impose the conditions on the order the court considers appropriate; or
- (d) revoke the order and release the supervised person unconditionally.

[12] On 12 January 2024, pursuant to s 43ZH(3)(d), I ordered the revocation of the NCSO made 21 July 2017 and released the supervised person unconditionally. I now set out the reasons for that decision.

Relevant Legal Principles

[13] Part IIA of the Code establishes a regime for the supervision of two categories of person: persons found not guilty by way of mental impairment and persons found unfit to plead. Mr Murdoch falls into the first category.

[14] Where a supervised person is subject to an NCSO and undergoing a periodic review, the Code does not specify a test to be applied by the Court in determining the order to be made on the completion of the review.² This is in contrast to periodic reviews of a CSO or major reviews.³

[15] The matters the Court must have regard to when making an order are set out at s 43ZN and include:

- (a) whether the accused person is likely to endanger himself or another person because of his mental impairment, condition or disability;
- (b) the need to protect people from danger;

² The Code s 43ZH(3)

³ The Code s 43ZH(2)(a); s 43ZG(6)

- (c) the nature of the mental impairment, condition or disability;
- (d) the relationship between the mental impairment, condition or disability and the offending conduct;
- (e) whether there are adequate resources available for the treatment and support of the supervised person in the community;
- (f) whether the accused person is complying or is likely to comply with the conditions of the supervision order; and
- (g) any other matters the court considers relevant.

[16] In deciding whether to make a supervision order, the Court must apply the principle that restrictions on a supervised person's freedom and personal autonomy are to be kept to the minimum that is consistent with maintaining and protecting the safety of the community.⁴ The statutory regime creates a strong legislative presumption in favour of the liberty of the subject.⁵

[17] Pursuant to s 43ZN(2)(a)(i) of the Code, when considering whether to substantially reduce the supervision of a supervised person, a court must consider two reports written by appropriate experts. For the purpose of this periodic review, the Court received two reports from consultant forensic psychiatrists, Dr Mrigendra Das and Dr Ranjit Kini.

⁴ The Code s 43ZLM

⁵ *R v KMD* [2015] NTSC 31 at [37]

Report of Dr Mrigendra Das

[18] In his report dated 26 October 2023, Dr Das reaffirmed his previous conclusions that Mr Murdoch suffers from schizophrenia.⁶ In addition, Dr Das identified that Mr Murdoch holds significant cognitive distortions regarding women that are likely to be influenced by his personality traits and cultural factors.⁷ These belief systems are rigid and have been held over time and do not appear to be linked to his mental illness.⁸ In his clinical review notes, Dr Das stated:

...a significant part of [GM]'s presentation and attitudes is determined by his personality and views about women in general. These are not part of his mental illness and are unlikely to change in the future. These personality and attitudinal attributes in itself does not merit him continuing on a NCSO.⁹

[19] Dr Das noted that Mr Murdoch continues to demonstrate impaired insight into his mental illness.¹⁰ Dr Das further stated:

It is also important to note than an impaired insight into schizophrenia does not always relate to a poor outcome. There are ample examples of patients with schizophrenia who have an impaired insight and are not accepting of the diagnosis, but remain engaged in treatment and accept medication and rehabilitation.¹¹

6 Report of Dr Mrigendra Das, 26 October 2023, paragraph 12.1

7 Report of Dr Mrigendra Das, 26 October 2023, paragraph 11.7

8 Report of Dr Mrigendra Das, 26 October 2023, paragraph 11.7

9 Report of Dr Mrigendra Das, 26 October 2023, paragraph 6.9

10 Report of Dr Mrigendra Das, 26 October 2023, paragraph 12.3 (note incorrectly marked as 10.2)

11 Report of Dr Mrigendra Das, 26 October 2023, paragraph 12.3 (note incorrectly marked as 10.2)

[19] Dr Das reported that Mr Murdoch has shown improvement in his risk profile and his mental illness is now stable and he responds well to medication.¹² Dr Das considers that Mr Murdoch's personality traits affect his risk profile including deceitfulness, impulsivity, disregard for the safety of others, consistent irresponsibility and lack of remorse. However, as long as Mr Murdoch remains engaged in active treatment of his mental illness, Dr Das considers his risks to be low.¹³ A relapse of his schizophrenia is likely to increase his risk towards others.

[20] Dr Das concluded that at the current time, the safety of Mr Murdoch or the public would not seriously be at risk if Mr Murdoch was released and recommended that he be unconditionally discharged from his NCSO.¹⁴

Report of Dr Ranjit Kini

[21] Dr Kini was Mr Murdoch's treating psychiatrist from 2014 to 2019. In his report dated 13 December 2023, Dr Kini administered an updated Risk for Sexual Violence Protocol (RSVP) test to assess changes from previous RSVP tests, last administered in 2015.

[22] In his report, Dr Kini considered the most relevant domains for risk remain mental illness, cognitive distortions and antisocial personality traits, and

¹² Report of Dr Mrigendra Das, 26 October 2023, paragraph 11.9

¹³ Report of Dr Mrigendra Das, 26 October 2023, paragraph 12.5 (note incorrectly marked as 10.4)

¹⁴ Report of Dr Mrigendra Das, 26 October 2023, paragraph 12.1-12.6 (note incorrectly marked from 12.3)

that acute psychotic illness has been established as a significant risk factor in increasing Mr Murdoch's propensity for sexual violence.¹⁵

[23] Dr Kini also considered that the residual symptoms of mental illness that remain while Mr Murdoch is medicated do not significantly increase his risk of sexual violence.¹⁶

[24] Dr Kini described Mr Murdoch's non-psychotic faulty thinking patterns and attitudes relating to his ex-wife and the role of Muslim women in intimate relationships as 'cognitive distortions'.

I am using this term to describe Mr Murdoch's non-psychotic, faulty thinking patterns and attitudes relating to his ex-wife and the role of Muslim women in intimate relationships. In my opinion, Mr Murdoch's distorted personality traits, misconceptions about his previous intimate partners, and faulty interpretation of cultural and religious experiences overlap with his entrenched cognitive distortions. These cognitive distortions feed into Mr Murdoch's entitled views and expectations about intimate female partners. Mr Murdoch has had these cognitive distortions for more than nine years.¹⁷

[25] Both Dr Kini and Dr Das reported that these views have remained unchanged throughout treatment.¹⁸ Dr Kini outlined Mr Murdoch's antisocial personality traits such as deceitfulness, lack of remorse, failure to comply with social norms and disregard for his intimate partner's rights and wishes including a lack of empathy. Dr Kini expressed the view that although these

15 Report of Dr Ranjit Kini, 13 December 2023, paragraph 7.7-7.8

16 Report of Dr Ranjit Kini, 13 December 2023, paragraph 7.11

17 Report of Dr Ranjit Kini, 13 December 2023, paragraph 7.12

18 Report of Dr Ranjit Kini, 13 December 2023, paragraph 7.15; Report of Dr Mrigendra Das, 26 October 2023, paragraph 11.7

antisocial personality traits contribute to Mr Murdoch's minimization or denial of sexual violence, they are not psychotically driven.¹⁹

[26] Dr Kini stated that if Mr Murdoch's mental illness remains in remission and he continues to accept treatment under a CMO, his risk of sexual violence is reduced:²⁰

Mr Murdoch is on a CMO. This will ensure his compliance with antipsychotic treatment. This is the most important risk mitigation intervention.²¹ ... [Now] that the manageability risk domain has been sufficiently addressed (by the imposition of a CMO, implementation of a NDIS plan, Mr Murdoch's compliance with treatment whilst he is on the CMO and engage with the adult Forensic Mental Health Team even if not on the NCSO) it is in my opinion that a less restrictive management option compared to the NCSO is available and desirable.²²

[27] Dr Kini concluded that Mr Murdoch's risk of harm to others and himself can be appropriately managed without him being subject to a NCSO provided that he is on a CMO. Mr Murdoch indicated that he would continue to accept prescribed medication when on a CMO.²³ Dr Kini recommended that the Court consider unconditionally discharging Mr Murdoch from his NCSO.²⁴

Submissions on behalf of the CEO of the Department of Health

[28] The CEO submitted that while Mr Murdoch remains a risk, primarily to women with whom he is in an intimate relationship, this is due to his personality traits and beliefs, rather than his mental impairment. It was

¹⁹ Report of Dr Ranjit Kini, 13 December 2023, paragraph 7.16

²⁰ Report of Dr Ranjit Kini, 13 December 2023, paragraph 7.17

²¹ Report of Dr Ranjit Kini, 13 December 2023, paragraph 7.17

²² Report of Dr Ranjit Kini, 13 December 2023, paragraph 8.4

²³ Report of Dr Ranjit Kini, 13 December 2023, paragraph 6.20

²⁴ Report of Dr Ranjit Kini, 13 December 2023, paragraph 8.8.

further submitted that Mr Murdoch's personality traits and views about women are unlikely to be affected by a further period of supervision; that it was unclear what would be achieved with a further period of supervision and that Mr Murdoch needs to be managed notwithstanding these beliefs.

[29] Further, the CEO informed the Court that the treating team have obtained a Community Management Order (CMO) under the *Mental Health and Related Services Act 1998* (NT) for the maximum allowed period of six months at the end of which the Tribunal will review the order and can extend for a further six months. CMOs can effectively continue indefinitely so long as they are reviewed by the Tribunal every six months. Both expert reports considered the existence of a CMO to be an important risk mitigation factor in managing Mr Murdoch's risk to himself and others and preventing a relapse of his mental illness.²⁵

[30] The CEO submitted that an unconditional discharge is the appropriate order having regard to the principle that any restrictions on Mr Murdoch's freedom are to be kept to the minimum that is consistent with maintaining and protecting the safety of the community; and achieving the purpose of the legislation in safely reintegrating Mr Murdoch back into the community.

²⁵ Report of Dr Ranjit Kini, 13 December 2023, paragraph 7.17, 8.4-8.6; Report of Dr Mrigendra Das, 26 October 2023, paragraph 11.11, 12.5 (note incorrectly marked as 10.4)

Submissions on behalf of the Office of the Director of Public Prosecutions

[31] The Crown submitted that in circumstances where Mr Murdoch has not re-offended for ten years, has shown improved compliance with his prescription regimen, is subject to and compliant with his CMO, and the application to remove the NCSO is supported by unchallenged expert medical opinion, the ongoing risk that Mr Murdoch poses to the community as a result of his cognitive distortions, are not such that they outweigh his right to be free from the constraints of the NCSO. The Crown was unable to make contact with the victim of the original offence to ascertain her views on the prospect of Mr Murdoch's unconditional discharge.

Submissions on behalf of the Supervised person

[32] Counsel for the supervised person submitted that the regime is directed at managing the risk that arises from the mental impairment, condition or disability that gave rise to the initial order as distinct from a general risk of reoffending; that is, the risk that arises from the supervised person's schizophrenia rather than risks that arise from his belief systems or personality traits.

[33] Defence outlined the following matters that the Court would have regard to in concluding that there is insufficient evidence to establish that the supervised person is likely to present a serious danger to himself or the community. Mr Murdoch's schizophrenia has been in remission since 2019 and managed for a significant period of time; and the residual symptoms of

mental illness that remain whilst he is medicated are, in the opinion of both expert psychiatrists, deemed not to significantly increase his risk of sexual violence.

[34] It was further submitted that despite Mr Murdoch's lack of insight into his mental illness, he has never failed to accept treatment and has expressed an intention to continue to accept his medication if required to do so on a CMO. The relapse of Mr Murdoch's schizophrenia in 2018 was the result of a change in treatment provided and not a lack of engagement from Mr Murdoch. Mr Murdoch has not committed any offences over a lengthy period of time and whilst the supervised person at various stages breached some of the conditions of his order, particularly curfew conditions, the nature of those breaches did not give rise to any significant concern with regard to either risk of offending or relapse of his schizophrenia. There have been no breaches since 2022.

[35] Defence submissions also underscored that Mr Murdoch's cognitive distortions discussed in the expert reports do not include a view that non-consensual sexual intercourse within a marriage is either lawful or acceptable.

[36] Defence submitted that a CMO will appropriately manage Mr Murdoch's treatment in the community and that a CMO includes the necessary enforcement powers and options for involuntary treatment should the supervised person disengage. Counsel for the supervised person contended

therefore that the Court should revoke the order and release the supervised person unconditionally.

Consideration

[37] I accept the expert opinion evidence of Dr Kini and Dr Das that the safety of either Mr Murdoch or the public is not likely to be seriously at risk if Mr Murdoch is released from the NCSO and that any risk can be appropriately managed on the CMO currently in place.

[38] I initially experienced some doubt as to the potential effectiveness of a CMO given that such orders are enforceable only in the Northern Territory, Mr Murdoch has expressed a desire to relocate interstate, and if unconditionally released from any form of supervision order, he would be free to do so without notice to his treating team.

[39] However, I asked Dr Kini about this possibility and was satisfied that, if given sufficient notice of any relocation, contact could be made with the appropriate interstate agency and Mr Murdoch's treatment transferred to them. Further, Mr Murdoch now has funding through the NDIS which gives him some ties to the Territory and decreases the likelihood of a sudden, unannounced relocation interstate without transferring his treatment to an alternative agency.

[40] Turning to the factors set out in s 43ZN of the Code, I accept the evidence of Dr Das and Dr Kini that Mr Murdoch's mental impairment is stable and

his schizophrenia is well managed with medication such that the risk of him endangering himself or another is unlikely.

[41] Part IIA is largely directed towards the management of the risk that arises from the mental impairment that gave rise to the initial order rather than anti-social personality traits and faulty thinking patterns. However, s 43ZN(g) does envisage the need for the Court to have regard to other matters that may influence a person's risk. That would include the "cognitive distortions" identified in the reports.

[42] Mr Murdoch's cognitive distortions formed part of his risk profile alongside mental illness as identified by Dr Kini in his RSVP assessment. Although they are not the result of Mr Murdoch's mental illness, the reports suggest that these distortions are likely to influence Mr Murdoch's attitude towards the initial offending including his lack of remorse and lack of empathy for the victim.

[43] I have reached the conclusion, based on the expert opinion evidence, that while Mr Murdoch's views, mainly his views on women, give rise to some risk to those with whom he may be in an intimate relationship, the risks posed by these views do not outweigh his right to be free of the NCSO, particularly in light of the legislative presumption identified by this Court from the language in Part IIA.

[44] Further, there appears to be limited utility in Mr Murdoch remaining on the NCSO for the purposes of treating and managing any risks posed by these

cognitive distortions when on both expert accounts, they have remained unchanged despite consistent efforts. Mr Murdoch needs to be managed outside of an NCSO notwithstanding these views.

[45] For those reasons, I made an order unconditionally releasing Mr Murdoch from his non-custodial supervision order.
