

CITATION: *Attorney-General (NT) v JF* [2024]
NTSC 38

PARTIES: ATTORNEY-GENERAL OF THE
NORTHERN TERRITORY

v

JF

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 18 of 2020 (22034945)

DELIVERED: 1 May 2024

HEARING DATE: 17 April 2024

JUDGMENT OF: Brownhill J

REPRESENTATION:

Counsel:

Applicant: R Brebner

Respondent: M Hubber

Solicitors:

Applicant: Solicitor for the Northern Territory

Respondent: Hubber Legal

Judgment category classification: C

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

Attorney-General (NT) v JF [2024] NTSC 38
No. 18 of 2020 (22034945)

BETWEEN:

**ATTORNEY-GENERAL OF THE
NORTHERN TERRITORY**
Applicant

AND:

JF
Respondent

CORAM: BROWNHILL J

REASONS FOR JUDGMENT

(Delivered 1 May 2024)

The history of the proceedings

- [1] On 12 February 2021, I made a final supervision order (‘FSO’) in respect of the respondent, effective from 25 February 2021 for a period of five years, on the basis that he presented a serious danger to the community pursuant to the *Serious Sex Offenders Act* (NT) (‘SSO Act’).¹
- [2] The FSO required the respondent, amongst other things: to report to a probation and parole officer (‘PPO’) as directed by a PPO (order 2(b)); to comply with directions from a PPO (order 2(f)); to reside and remain

1 *Attorney-General (NT) v JF* [2021] NTSC 14.

at a location specified by a PPO and not leave without prior permission from a PPO (order 4(a)); not to purchase, possess or consume any dangerous drug and to submit to testing as directed by a PPO for the purpose of detecting the presence of any such drug (order 4(c)); to comply with any direction given by a PPO to participate in specified rehabilitation, care or treatment (order 4(h)); not to own or use any phone or devices with storage or internet capabilities without permission from a PPO (order 4(j)); and not to possess or view any form of pornography (order 4(k)).

- [3] The history of these proceedings from that time to 1 December 2022 is set out in the decision of *Attorney-General (NT) v JF* [2022] NTSC 89 at [3]-[12]. Essentially, the respondent committed 18 contraventions of the FSO from 25 February 2021 to 20 December 2021, was arrested and held in custody until 28 April 2022, was released on an interim supervision order, committed a further 12 contraventions between 28 April and 10 August 2022, and was arrested on 10 August 2022.
- [4] On 1 December 2022, I varied the FSO, to provide that the respondent not own, possess or use any laptop, computer, phone and/or device with storage or internet capabilities without the permission of a PPO.
- [5] In accordance with the decision made on 1 December 2022, on 12 December 2022, with effect from 4 January 2023, the FSO was reinstated and its conditions were repeated in an amended version of

the FSO with renumbered provisions. Consequently, from that date, the FSO required the respondent, amongst other things: to report to a PPO as directed by a PPO (order 4(b)); to comply with directions from a PPO (order 4(f)); to reside and remain at a location specified by a PPO and not leave the premises at any time of the day or night without prior permission from a PPO (order 6(a)); not to purchase, possess or consume alcohol or remain in the presence of any person consuming alcohol (order 6(b)); not to purchase, possess or consume any dangerous drug or remain in the presence of any person consuming a dangerous drug and to submit to testing as directed by a PPO for the purpose of detecting the presence of any such drug (order 6(c)); to comply with any direction given by a PPO to participate in specified rehabilitation, care or treatment (order 6(h)); not to own, possess or use any laptop, computer, phone and/or device with storage or internet capabilities without the permission of a PPO (order 6(j)); and not to possess or view any form of pornography (order 6(k)).

[6] The respondent was released from custody on 4 January 2023.

[7] On 11 April 2023, the respondent was sentenced to imprisonment for one month and three days by the Local Court for an assault of a correctional officer committed whilst in custody. He was released on 15 May 2023.

- [8] On 13 July 2023, the applicant sought the issue of a warrant, under s 49 of the SSO Act, for the respondent to be arrested and brought before the Court to consider alleged contraventions of the FSO by the respondent. Some 33 alleged contraventions were set out in the summons and in an affidavit filed in support.
- [9] On 14 July 2023, a warrant was issued by the Court for the respondent's arrest. He was arrested on 15 July 2023.
- [10] On 17 July 2023, pursuant to s 51 of the SSO Act, the respondent was brought before the Court for consideration of the alleged contraventions, but was not legally represented. On that date, I made an interim continuing detention order ('ICDO') pursuant to s 54(3) of the SSO Act, pending completion of the Court's consideration of the alleged contraventions. Further ICDOs were made as a consequence of various listings of the hearing dates.
- [11] I also made orders for the Commissioner of Community Corrections to prepare a supervision report about the respondent pursuant to ss 56(3) and 88 of the SSO Act and, pursuant to s 57 of the SSO Act, a medical assessment order within s 79 of the SSO Act for the respondent to submit to being examined by Dr Danny Sullivan.
- [12] On 31 July 2023, I added Dr Andrew Aboud to the medical assessment order and made orders for the filing of the medical assessment reports

and the supervision report, along with written submissions of the parties.

[13] On 23 October 2023, the matter was brought on for mention during which the respondent indicated (through counsel) that he admitted the contraventions of the FSO alleged in the affidavit filed in support of the summons. During that mention, I raised with the applicant whether some arrangement could be put in place for the respondent to be subject to the COMMIT program, or some form of sanctions matrix, to ensure swift consequences for any contraventions of the FSO. The parties were given time to file further evidence and written submissions.

[14] During the hearing on 17 April 2024, the Court received into evidence the following:

- (a) an affidavit made on 13 July 2023 by Chelsea Salisbury, a PPO appointed under s 25 of the *Correctional Services Act 2014* (NT) and employed by Northern Territory Correctional Services who was the respondent's PPO from 24 January 2023 ('Salisbury Affidavit') – this was the affidavit filed in support of the summons;
- (b) pursuant to s 57 of the SSO Act, a report dated 15 September 2023 from Dr Danny Sullivan, a Consultant Forensic Psychiatrist ('Sullivan Report');

- (c) pursuant to s 57 of the SSO Act, a report dated 8 September 2023 from Dr Andrew Aboud, a Consultant Forensic Psychiatrist ('Aboud Report'); and
- (d) pursuant to s 56 of the SSO Act, a supervision report prepared pursuant to s 88 of the SSO Act dated 6 October 2023 from the Commissioner for Correctional Services ('Supervision Report'), which included an individual maintenance treatment summary report for the respondent dated 17 July 2023 prepared by Alana Wood, a Senior Clinician and Forensic Psychologist working with Correctional Services;
- (e) an affidavit made on 13 February 2024 by Jennifer Scott, a PPO appointed under s 25 of the *Correctional Services Act 2014* (NT) and the Regional Manager of Palmerston Community Corrections employed by Northern Territory Correctional Services who is responsible for the management of the caseload of adult offenders subject to the SSO Act ('Scott Affidavit'); and
- (f) a supplementary affidavit made on 12 March 2024 by Jennifer Scott ('Supplementary Scott Affidavit').

[15] No victim submissions were received. The Director of the Crime Victims Services Unit sought victim submissions about the offender from registered victims pursuant to s 55 of the SSO Act and no submissions were received.

Orders on consideration of alleged contravention

- [16] If satisfied that the respondent has contravened or is likely to contravene the FSO, the Court is obliged by s 58(1) of the SSO Act to revoke the FSO and make a final continuing detention order. However, by s 58(2), the Court need not do so if satisfied it would not be appropriate to do so.
- [17] If not satisfied that the respondent has contravened or is likely to contravene the FSO, or if satisfied it would not be appropriate to revoke the FSO and make a final continuing detention order, the Court is permitted, by s 59(2) of the SSO Act to amend the FSO as it considers appropriate.
- [18] Section 9 of the SSO Act applies when a court is deciding whether to make, confirm or revoke a continuing detention order (s 9(1)). Section 14 of the SSO Act applies when a court is deciding whether to make, amend or revoke a supervision order (s 14(1)). Consequently, in deciding whether it would not be appropriate to revoke the FSO and make a final continuing detention order as required by s 58(2) of the Act, the Court must regard as the paramount consideration the need to protect victims of serious sex offences committed or likely to be committed by the respondent, the victims' families and members of the community generally (ss 9(1)(a), 14(2)(a)), and as a secondary consideration, the desirability of providing rehabilitation, care and

treatment for the respondent (ss 9(1)(b), 14(2)(b)). Further, in considering the need for protection, the Court must have regard to: the likelihood of the respondent committing another serious sex offence (ss 9(2)(a), 14(3)(a)); whether adequate protection could reasonably be provided (s 9(2)(b)) or only be provided (s 14(3)(c)) by making a supervision order in relation to the person; and whether it will be reasonably practicable for the Commissioner of Correctional Services to ensure that the respondent is appropriately managed and supervised (s 14(3)(b)).

Onus and standard of proof

[19] The Attorney-General has the onus of satisfying the Court that the respondent has contravened or is likely to contravene the FSO (s 60(1)). The respondent has the onus of satisfying the Court that it would not be appropriate to revoke the FSO and make a continuing detention order (s 60(2)). The standard of proof for these matters is the balance of probabilities (s 95(2)).

Alleged contraventions

[20] All of the alleged contraventions were admitted. The following evidence was deposed to in the Salisbury affidavit.

Drug use

- [21] Over the period from 4 January 2023 to 15 July 2023, urinalysis testing of the respondent yielded positive results for cannabis on 10 occasions, being 20 February, 6 March, 13 March, 24 March, 29 March, 3 April, 22 May, 27 May, 13 June and 26 June 2023. On 13 June 2023, urinalysis testing also yielded positive results for benzodiazepines.
- [22] I find that the respondent consumed cannabis on these ten occasions and benzodiazepines on this one occasion, in contravention of order 6(c) of the FSO.

Possession of drugs and drug paraphernalia

- [23] The respondent had been directed not to have drug paraphernalia at his residence, which was located in the grounds of the Darwin Correctional Centre.
- [24] On 8 March 2023, a search of the respondent's residence located a bucket bong.
- [25] On 1 June 2023, after the respondent's PPO received information that the respondent had in his backpack a small ziplock bag containing a green leafy substance suspected to be cannabis and a bong, the respondent produced to his PPO the bag and admitted it contained cannabis. The cannabis was seized by Police. A search of his residence then located a homemade bong, which was confiscated. The respondent

was charged by summons in the Local Court with possession of cannabis.

[26] On 14 June 2023, a search of the respondent's residence located numerous bongs.

[27] I find that the respondent possessed cannabis on this one occasion in contravention of order 6(c) of the FSO.

[28] I also find that the respondent possessed drug paraphernalia on these three occasions, in breach of the direction from his PPO that he not have drug paraphernalia at his residence, which was in contravention of order 4(f) of the FSO.

Drug testing

[29] On 4 March 2023, the respondent failed to provide a sufficient sample for oral drug testing.

[30] On 10 July 2023, the respondent refused to attend for urinalysis drug testing as directed by a PPO.

[31] I find that the respondent failed to submit to drug testing on these two occasions in contravention of order 6(c) of the FSO.

Possession of mobile phones

[32] On 17 May 2023, the respondent was in possession of a mobile phone that was not the mobile phone he was permitted to have. The

respondent told his PPO the mobile phone belonged to his uncle / second father ('father').

[33] On 20 May 2023, the respondent asked for and was granted permission to have a new SIM card, as he had lost his old one. While the respondent was being assisted to activate the new SIM card by compliance officers, the respondent's old phone number was called and a phone was heard to ring from the respondent's vicinity. Compliance officers do not have powers to search or seize for prohibited items, so no search was conducted.

[34] On 1 June 2023, in addition to the mobile phone he was permitted to have, the respondent was in possession of a second mobile phone that he was not permitted to have.

[35] On 11 June 2023, the respondent was in possession of a second mobile phone whilst at the Stringybark Centre. He refused to hand it to staff and left the Centre when told it was against the rules not to hand over the phone.

[36] On 14 June 2023, the respondent was in possession of a second mobile phone. He told his PPO he had this phone to contact his family. The phone was seized.

[37] I find that the respondent's possession of an unauthorised phone on these five occasions was in contravention of order 6(j) of the FSO.

Leaving residence without permission

- [38] On 3 March 2023, the respondent was directed not to attend anywhere other than pre-approved addresses, being those of his father and his grandmother.
- [39] On 24 June 2023, the respondent left his residence and was located by electronic monitoring travelling to Howard Springs by pushbike. When located by compliance officers, he told them he was going to his father's address. The respondent did not have prior permission to go to his father's address on that day.
- [40] On 25 June 2023, the respondent left his residence twice without prior permission to do so. On the second occasion, he was then given permission to go to a service station to purchase cigarettes and directed to return directly home. The respondent did not do so, but attended an unapproved address before returning to his residence a short time later.
- [41] On 6 July 2023, the respondent left his residence without prior permission, walking towards Palmerston. He told his PPO he had no food left. He was directed to return to his residence and wait to be collected. He refused. He was located and collected by PPOs and taken to the Community Corrections office. He was directed not to leave the waiting area without approval until he was collected by his mentors. He left the waiting area and sat outside the office. He was directed on

numerous occasions to return to the waiting room. He refused. He waited in the park nearby to be collected. He said he would run away.

[42] On 11 July 2023, the respondent was permitted to leave his residence at 8am and take a bus to the Community Corrections office, then to go to his father's address for an hour, then to go back to the Community Corrections office, then to go back to his residence. He was directed not to attend other addresses. The respondent left his residence earlier than permitted, did not go to the Community Corrections office, went to his father's house, left three minutes later, returned again and left eight minutes later, and attended two other unapproved addresses.

[43] I find that the respondent's departure from his residence without prior permission on these five occasions was in contravention of order 6(a) of the FSO.

Failure to follow directions

[44] On 17 March 2023, the respondent was directed to travel directly to and from his Certificate II in Construction course, which was to commence on 20 March 2023, by bicycle and bus, departing his residence at 6.15am and returning by 5pm, Monday to Friday. The course hours were 9am to 3pm. On 20 March 2023, the respondent informed his PPO that the course had finished at 1.29pm and asked for permission to go to his father's house. That request was declined and the respondent was directed to go straight home and not to his father's

house. Electronic monitoring of the respondent's movements showed that he was at a bus stop in Palmerston. When PPOs arrived, the respondent said he was going to his father's house.

[45] On 21 March 2023, the respondent sought permission to go to his father's address to get his pushbike. He had left the pushbike there that morning, which attendance was without prior permission. He was directed to be home by 4.30pm. The respondent did not return to his residence until 6pm.

[46] On 22 March 2023, the respondent did not travel directly home from the course, but attended an unapproved address.

[47] On 23 March 2023, the respondent did not attend the course, but instead attended a meeting at the Northern Land Council in Darwin which he was not given permission by his PPO to attend.

[48] On 24 March 2023, the respondent was directed to be collected from his residence by compliance officers and to remain at the location of a one day driver program (to assist in obtaining a driver's licence) until collected by compliance officers. On 25 March 2023, on two occasions, the respondent left the location of the driver program and travelled to two unapproved addresses, being absent from the program for a total of around one hour. The respondent failed the driver's licence test.

- [49] On 27 May 2023, the respondent left his father's address, went to two unapproved addresses and then to his sister's address, which was also an unapproved address.
- [50] On 17 June 2023, the respondent left his father's address and went to an unapproved address.
- [51] On 19 June 2023, the respondent left his father's address and went to an unapproved address.
- [52] On 10 July 2023, the respondent was given permission to go to his father's address the following day. The respondent told his PPO he was going to his grandmother's address. He was told he did not have permission for that as his grandmother had withdrawn her permission for him to go there after he had previously consumed cannabis there. The respondent became belligerent, tore up the permission to attend his father's address, asked compliance officers to take him to his grandmother's house, became irate and absconded from their line of sight when this request was refused, refused to get in their vehicle and walked away, then did get in the vehicle but exited it when it was stopped at a red light, refused to get back in the vehicle, yelling that he was going to his grandmother's house whilst in traffic, and was subsequently taken there by other family members with his grandmother's permission.

[53] I find that these eleven instances comprise contraventions of order 4(f) of the FSO.

Failure to participate in rehabilitation, care or treatment as directed

[54] On 5 June 2023, the respondent was assessed as suitable for a seven to ten day admission into a detoxification program known as ‘Stringybark’. He was verbally directed to participate in the program, comply with the program’s rules and not leave the Stringybark Centre unless escorted by Correctional Services or mentors from his mentorship program. He entered the program on that date. On 11 June 2023, after refusing to hand over his second mobile phone at the Stringybark Centre, the respondent left the Centre at 7.55am. He told a PPO he was taking the bus home. Instead, he travelled to the Casuarina bus exchange, an unapproved address, a shopping centre in Palmerston, the same unapproved address again, and then returned to his residence.

[55] I find that this was a failure to participate in rehabilitation as directed by his PPO, and comprises a contravention of order 6(h) of the FSO.

Should the CSO be revoked and replaced by a continuing detention order?

Salisbury Affidavit

[56] The Salisbury Affidavit deposed that, over a period of months, the respondent had continued to engage in escalating levels of cannabis use, had routinely disengaged with his mentor program supports, had

used benzodiazepines, had recently refused to attend for drug testing which gave rise to concerns about what drugs he was using, and had demonstrated a propensity to leave his inclusion zones without approval and to attend unapproved addresses. The respondent's breaches had been increasing in both frequency and seriousness, including open defiance of directions and the incident where he exited a vehicle in the flow of traffic on a busy road. The respondent's disengagement with his mentoring program, which is intended to provide him with living support and skills development, meant he had benefitted very little from the program.

[57] The Salisbury Affidavit deposed that, as at 13 July 2023, the respondent had attended three sessions of individual offence-specific maintenance treatment with Forensic Psychologist, Alana Wood. Ms Wood reported that the respondent exhibited limited insight into both the importance of remaining abstinent from alcohol and drugs, and the connection between substance use and his prior sexual offending. Ms Wood reported that the respondent's recent patterns of non-compliance, including cannabis use, were of concern because his prior sexual offences were perpetrated in circumstances of intoxication, which gives rise to impaired judgment, impulsivity, aggression and sexual disinhibition. Ms Wood reported that the respondent had not yet developed adequate strategies to desist from substance use, and lacked self-awareness into the elevated risk at which he was then presenting.

His lack of insight meant he was not able to self-manage his risks, and was resistant to the external risk-management strategies imposed on him under the FSO. If the respondent were to further destabilise by, for example, consuming alcohol, his risk of sexual reoffending would be further increased. Ms Wood also reported that the respondent blamed his consumption of cannabis, which he admitted to consuming daily, on feeling frustrated and stressed by the directions of his PPOs and always being watched. The respondent possessed minimal insight into the link between his continued non-compliance and the need for him to be managed under strict conditions. His past sexual violence had been linked to negative emotions including shame, anger and frustration, making him prone to seeking sexual release when distressed or having negative feelings. Ms Wood reported the respondent is prone to poor coping, emotional dysregulation and, when intoxicated, difficulty managing negative emotions. Other factors precipitating past sexual violence include feelings of disempowerment and associating with anti-social family and friends. Ms Wood reported that the respondent was then at an elevated level of risk and, without appropriate sanction, likely to continue on a trajectory towards further behaviours of concern, including reoffending.

[58] The Salisbury Affidavit deposed that:

Given [the respondent's] increased antisocial behaviour and escalating non-compliance with the conditions of his order, it appears that a period in a structured and restrictive environment, such as in custody,

would be of benefit to [the respondent] to assist him to refrain from drug use and further deterioration. It will also protect potential victims of sexual violence, given his historical pattern to commit sexual offences whilst intoxicated with various substances. NTCS are no longer confident we can safely supervise [the respondent] in the community.

Sullivan Report

[59] The Sullivan Report set out a record of Dr Sullivan's discussions with the respondent on 18 August 2023 and a summary of the documents he had been provided with. The report then made the following observations or opinions. Previous cognitive assessment demonstrates the respondent is in the low normal range of intellect but likely has a language disorder. Dr Sullivan considered it appropriate to seek a speech pathology assessment to map out details of relative strengths and weaknesses and provide expert advice on optimising communication from and with the respondent. The respondent continues to meet the diagnosis of antisocial personality disorder, with repeated rule-breaking and impulsive behaviour, superficial emotional engagement and maladaptive responses to supervision constraints. He also has a severe substance use disorder, with persistent use despite harmful consequences, strong cravings and a markedly increased salience of cannabis use, whilst denying he is addicted. Dr Sullivan considered that abuse of benzodiazepines is unlikely, and found it more likely that he was administered oral diazepam whilst in the Stringybark detoxification program (despite no record confirming that). The respondent should continue to be offered treatment with Selective

Serotonin Reuptake Inhibitors medication to reduce the impact of negative emotionality on offending risk factors, impulsivity and precipitants to substance use, which he had ceased using because of perceived adverse side effects, which are more likely attributable to other medications taken by the respondent for health conditions. The respondent has repeatedly breached the conditions of his CSO geared towards controlling risk factors for further sexual or violent offending and maintains a pattern of deceitfulness related to breaches, often only acknowledging them when confronted with incontrovertible evidence.

[60] The Sullivan Report opined that the respondent:

- (a) continues to demonstrate ongoing significant risk factors using the Three Predictor Model, with limited evidence of long-term planning or goal setting, passive and poorly elaborated release plans for accommodation, employment, integration into the community and desisting from substance use, and poor coping skills with limited useful strategies to engage and occupy himself;
- (b) continues to score in the high risk category assessed on the STATIC-99 risk assessment tool, unchanged from his previous assessment; and
- (c) has a significant range of past risk factors in three of the domains, a moderate number of risk factors in one of the domains, limited risk factors in another domain and most dynamic risk factors

remaining elevated despite the supports and interventions of the FSO, under the Risk for Sexual Violence Protocol ('RSVP') model of assessment.

[61] The Sullivan Report observed that scenario planning suggests that were it to occur, future offending might involve an opportunistic attack on an adult female stranger or relative, while intoxicated with alcohol and/or cannabis, and using physical force to control the victim.

[62] The Sullivan Report ultimately opined that the respondent would be at high risk of committing another serious sexual offence if not detained in custody or subject to a supervision order. The Sullivan Report opined as follows:

It is unclear how best to manage [the respondent] in the community. Despite efforts to work collaboratively with [the respondent] and promote positive behaviour, his repeated relapse into cannabis use and recurrent breaches of conditions is in my opinion evidence that, without supervision, he would rapidly return to a lifestyle which places him at significantly escalated risk of further sexual and/or violent reoffending.

There appears little benefit to his detention, as it does not appear that there are further program interventions which will assist him. The issue remains his motivation and capacity to comply with conditions of a supervision order in the community.

...

Although [the respondent] has demonstrated less overt behaviours associated with sexual preoccupation or generating opportunity for sexual interaction, he has continued to breach conditions of a supervision order and has remained using cannabis, despite its association with his elevated offending risk and impaired judgment.

As noted, from a risk management perspective, a continued detention order offers no therapeutic benefit except reducing opportunity for further offending. However, returning to a supervision order will

require explicit determination of risk tolerance, to calibrate the Community Corrections responses to breaches.

If he is to remain on a supervision order, continuing cannabis use and other breaches do not assist [the respondent] to manage risk or develop a prosocial lifestyle. Given that interventions which might be considered positive behavioural support have not been effective, it may be worthwhile moving to interventions more akin to COMMIT parole, in which breaches of conditions are promptly followed by immediate sanctions. This would require consideration by [NTCS] of the practicability and resourcing of such an intervention, which may not be feasible.

About Report

[63] The About Report set out a summary of the documents he had been provided with, the respondent's history as obtained from those documents, and a record of Dr Aboud's discussions with the respondent on 25 August 2023. The report then made the following observations or opinions. The respondent lacks insight into his vulnerabilities and risks and the association between his substance use and that risk. The respondent demonstrated a tendency to deny and minimise, and sometimes claim to not remember. He was somewhat dismissive and provided stock responses that he thought would inspire confidence that he would abide by his supervision requirements in the future. He meets the criteria for a serious polysubstance use disorder to the severity of dependence, including cannabis, synthetic cannabinoids and alcohol. He also meets the diagnostic criteria for antisocial personality disorder, with rather prominent psychopathic traits. Dr Aboud opined that the respondent:

- (a) scored seven out of ten on the Static 99R risk assessment tool, placing him in the group regarded as well above average risk of sexual and violent reoffending;
- (b) scored four out of seven on the Risk Matrix 2000/S risk assessment tool, placing him in the group regarded as high risk of sexual reoffending;
- (c) scored six on the Risk Matrix 2000/V risk assessment tool, placing him in the group regarded as very high risk of violent reoffending;
- (d) scored 28 out of 40 on the Psychopathy Checklist, which is very close to the cut-off point for diagnosing psychopathy;
- (e) had 14 positive scores and four partial or possible scores on the RSVP risk assessment tool for sexual violence.

[64] Dr Aboud considered that the respondent would sexually reoffend in the context of negative affect due to psychosocial stress (including loneliness, boredom or frustration), leading him to use pornography or drink alcohol as avoidant coping, in turn leading to disinhibition and reduced behavioural control. Whilst alcohol intoxication is the most serious risk factor, use of substances such as cannabis could lead to use of alcohol or itself lead the respondent to be in a destabilised higher-risk state. The offending would be opportunistic, most likely involve a

female acquaintance, include physical violence and threats, leading to various forced sexual activity.

[65] Ultimately, Dr Aboud opined that the respondent presents an overall unmodified risk of serious sexual reoffending categorised as high. This would be the case if he was released to the community in the absence of an assertive management plan supported by robust community supervision and support. During his most recent period in the community, the respondent had become so determined to smoke cannabis that he was frequently breaching his supervision order to procure it and was almost constantly under its influence. Dr Aboud opined that it is extremely unlikely that the respondent has any genuine intent or motivation or ability to succeed in ceasing cannabis consumption or abiding by his supervision order at this time. Dr Aboud opined as follows:

It is my view that nothing has materially changed while he has been in prison and that the challenges associated with his management at the time when he was returned to custody will simply recur and very quickly after release. I consider this to be a serious problem, as it is my view that the combination of ongoing frequent cannabis use combined with an inability to contain his movements creates a situation where [the respondent] is constantly in a state of poor judgment and disinhibition and reduced behavioural control, and it is random chance whether he encounters a potential female victim while frequenting an unapproved address. Further, should he encounter opportunity to consume alcohol, he would be at a high chance of lapsing and becoming intoxicated by this substance, and present an even greater risk of sexually reoffending.

It is thus my opinion that at the current time and for the foreseeable future [the respondent] is not safely manageable in the community even in the context of a supervision order. He would render the protective conditions of the supervision order meaningless, due to his repeated

and frequent breaches, which would occur due to: (i) his addiction to cannabis; and (ii) his antisocial personality disorder, and in particular his psychopathic traits, which allow him to readily break boundaries and rules with little regard for consequences. Hence, **it is my opinion that if re-released to a supervision order, his risk of serious sexual reoffending would still be high, and that this risk could only be reasonably contained by detention in custody subject to a continuing detention order.** [emphasis in original]

If the court chooses to detain [the respondent] in prison subject to a continuing detention order, it is my recommendation that he be engaged by a psychologist to undertake intensive therapeutic work of a ‘motivational’ nature and to appeal to his enlightened self-interest to abide by conditions of a supervision order in the future. In this circumstance, I suggest that he undertake such work for a period of at least a year before review of his progress and prospects of safe release. [underlining in original]

Supervision Report

[66] The Supervision Report noted that, since his arrest for the contraventions of the CSO, the respondent had two recorded incidents in custody. On 20 July 2023, he complained of chest pains after being denied his request to move to a different cell and, whilst under observation in the medical unit, made threats to custodial officers to find them and to walk up and down the road with a bag of rocks looking for them. On 29 July 2023, he again complained of chest pains.

[67] The Supervision Report noted that the Strong Steps alcohol and drug counselling service accepted a referral for the respondent in September 2023, and would engage with him monthly by phone whilst he is in custody, in preparation for continued treatment upon his release.

[68] The Supervision Report noted the respondent’s referral to the Darwin Indigenous Men’s Service, where he attended a weekly program

involving mentoring, yarning circles, cultural and healing activities and leadership workshops. It also noted that the Certificate II in Construction course that the respondent was enrolled in was discontinued by the provider before the respondent could complete it. It is unclear when, or if, that course might resume.

[69] The Supervision Report noted that supported, supervised community accommodation is not available in the Territory and the respondent is not eligible for NDIS housing nor accommodation provided by Anglicare, Salvation Army or Mission Australia due to the nature of his offending. The respondent is on a wait list for Territory Housing, which has a waiting time of some six to eight years. The Cottages in which the respondent was accommodated whilst in the community are now being used to house sentenced prisoners, and the other two self-contained demountables in the prison grounds are currently occupied, meaning no accommodation is available to the respondent through Northern Territory Correctional Services (NTCS). Without suitable accommodation, the respondent is considered by NTCS to be unsuitable for release.

[70] The Supervision Report noted that the respondent commenced individual offence specific treatment with a forensic psychologist when he was in the community, between 4 January and 11 April 2023. When he returned to custody, this treatment was taken over by Alana Wood. Ms Wood's report dated 17 July 2023 reported that, as at the date of

the report, the respondent had engaged in five sessions whilst he was in the community, but they ceased after he was arrested on 15 July 2023. She said the respondent's engagement in the treatment sessions was inconsistent and variable, being either reasonably co-operative but unenthusiastic, or frustrated, irritable and aggrieved, with a lack of acceptance of responsibility for his actions and their consequences and a preoccupation with his perceptions of unfairness of the conditions under the FSO. For the most part, his aggrieved attitude towards them was such that a considerable portion of his treatment was spent working through his thoughts and feelings associated with his circumstances and attempting to support him to recognise that his situation will not improve until he is able to display acceptable compliance and behaviour. Despite fleeting displays of some degree of acknowledgement of his non-compliance, the respondent displayed no motivation or willingness to work with Ms Wood around ways in which to improve his attitude and behaviour. The respondent failed to accept any responsibility for his circumstances and often externalised responsibility for his ongoing patterns of rule-breaking behaviour. The respondent showed a lack of insight with regards to the increasingly elevated risk state at which he was presenting, and failed to acknowledge the apparent escalation in his overarching patterns of non-compliance and resistance towards external risk-management strategies. On some occasions, he became disengaged during the

sessions, often appeared frustrated at Ms Wood's questions and occasionally became visibly tense, clenching his jaw and staring intensely at Ms Wood for long periods of time in silence, possibly attempting to intimidate her. These behaviours meant the respondent was unable to meaningfully participate in the planned activities or discussions. Ms Wood recommended that the respondent requires further custodial-based individual maintenance treatment before consideration for community based supervision, focusing on increasing his motivation to engage in treatment in the community and comply with the conditions of his supervision order.

- [71] The Supervision Report stated that NTCS are unable to safely manage the respondent in the community. He will be provided with intensive treatment whilst in custody, if he is willing to engage, targeting motivation to comply with a supervision order, developing insight into his risk, and the association between substance use and the risk of reoffending. The position of NTCS is that a continuing detention order should be made for a period of 12 months to ensure community safety, allow the respondent to undertake the intense treatment, and to pursue accommodation options and a suitable release plan.

Scott Affidavit

- [72] The Scott Affidavit deposed that, since the date of the Supervision Report, the respondent has been involved in five further incidents

whilst in custody, two of which involved threats and aggression. One of those involved a fight with another inmate which the respondent initiated. The respondent has not sought employment or education courses whilst in custody, where he is housed with a high security classification. The respondent has had telephone counselling sessions with the Strong Steps program every three weeks since September 2023 and has developed, with his counsellor, a relapse prevention plan. Steps were being taken to enable the respondent to engage in weekly face-to-face sessions with a counsellor at the prison.

[73] The Scott Affidavit deposed to further treatment sessions with Ms Wood and a further report from Ms Wood noting that his engagement in those sessions had been co-operative on a superficial level, motivated by a desire to be released on the FSO and to regularly leave his accommodation block. While the respondent has been able to identify some of the thoughts and feelings connected to his previous non-compliance, he has struggled to develop sufficient plans for self-managing these risks, providing instead vague and non-specific risk-mitigation strategies such as ‘obey the rules’. The treatment sessions with Ms Wood will continue in the future, whether or not the respondent is in custody.

[74] With respect to accommodation, the Scott Affidavit deposed that NTCS has engaged with multiple members of the respondent’s family to canvas accommodation options. The only person willing to offer him

accommodation is his father. In communications with NTCS staff, the respondent's father minimised the respondent's offending and has been critical of the FSO and its conditions. The respondent's father lives in a house with his partner, that partner's adult daughter and three children aged 8, 4 and 2 (both male and female). In June 2024, the respondent's cousin-brother will also live at the property when he is released from custody. NTCS assessed this property as unsuitable to accommodate the respondent given that there will be six other people living there, with seven from June 2024, including adult and child females.

- [75] The Scott Affidavit deposed to the COMMIT system, which aims to achieve behavioural change by sending a consistent message to offenders about personal responsibility and accountability through a consistently applied and timely mechanism for dealing with non-compliance. On the basis of the eligibility criteria, the respondent would be suitable for a COMMIT style order. However, there are difficulties adopting the COMMIT system in relation to a person on a CSO. First, s 56 of the SSO Act requires the preparation of a supervision report before the Court can deal with a supervisee brought before the Court for alleged contraventions of their order. Second, the Court proceeds on the basis of an affidavit as to the alleged contraventions, which would also need to be prepared. Preparation of the supervision report and affidavit would extend the time between the

commission of an alleged contravention and the Court hearing the matter. Third, the COMMIT sanctions matrix does not cover all of the conditions in the respondent's FSO, so an individual sanctions matrix would be required, which addresses the criminogenic risks and needs of the respondent. An individual sanctions matrix has been prepared for the respondent. Fourth, after numerous discussions with the respondent about the sanctions matrix and how he would comply with it, Ms Scott has no confidence that the respondent has thought about or is able to articulate any realistic strategies to enact change from his behaviour when previously released. Fifth, the respondent has expressed such dislike about being housed in the high security sector of the prison that Ms Scott is concerned he will abscond if released. Sixth, Ms Scott is concerned that if he did contravene his FSO and was required to come to Court or be arrested for the contravention, he would be aggressive and violent towards the staff and Police tasked with bringing him to Court. Seventh, if the respondent enrolls in vocational education and training, failures to attend whilst he is detained under the sanctions matrix for any contravention would cause disruption and jeopardise his completion of that education and training. Similar concerns are held about short periods in custody causing difficulties in accommodation and Centrelink payments. Finally, the Scott Affidavit deposed that a review of the COMMIT program in 2020 found that it is not more successful than non-COMMIT parole in assisting offenders to complete

their parole without being returned to custody. The Scott Affidavit endorsed the opinions of Dr Aboud and Ms Wood about the benefits to the respondent and to community safety with a period of further detention.

Supplementary Scott Affidavit

[76] The Supplementary Scott Affidavit deposed to a further incident in which the respondent threatened correctional officers. Until the respondent progresses to a medium security classification, he will not be permitted to participate in employment or education programs whilst in custody. While the respondent met once face-to-face with the Strong Steps counsellor, his main counselling has been and will be by three weekly telephone sessions, which have been ongoing. The respondent had had two further sessions with Ms Wood, in which no significant change had been demonstrated by the respondent. Those sessions with Ms Wood included discussing with the respondent the individual sanctions matrix.

[77] The Supplementary Scott Affidavit proposed an alternative to a COMMIT style order also based on the ‘good parenting model’ on which the COMMIT program is based. Under the alternative, positive behaviour is rewarded and negative behaviour is predictably and swiftly addressed. The consequence of non-compliance is not an immediate return to custody, but a ‘three strikes’ approach with

increasing consequences for each strike, the most serious consequence being brought to Court for determination as to whether the respondent be returned to detention for a period to be determined by the Court. The main sanction for a contravention is to be confined to his residence and limited to scheduled appointments only, ie the respondent would be confined to his residence for set periods of time (mostly two days for the first contravention of a condition of the FSO, seven days for the second contravention of that condition, ten days for the third contravention of that condition, and then being brought to Court for the fourth contravention of that condition), save for scheduled medical, treatment, corrections, education and employment appointments. The alternative is seen as avoiding the disruptions from periods of incarceration, and reducing the demands on the Court, and the risks of harm to arresting or detaining officers. Even on the alternative, Ms Scott maintained her concerns that the respondent is unlikely to comply with the conditions of the FSO, meaning ultimately he would be returning to the Court for periods of detention.

Respondent's submissions

[78] I accept counsel for the respondent's submissions that:

- (a) Whilst in custody, the respondent is subject to a repeating cycle of not having access to employment or education programs as a high security prisoner, having negative engagements with correctional

staff due to his anti-social personality disorder, which engagements see him retain his high security classification.

- (b) Whilst in the community, the respondent did not commit any sexual offending.
- (c) Whilst in the community, the respondent complied with the requirements for electronic monitoring, meaning that his movements were able to be tracked even when they were not in accordance with the agreed schedule.
- (d) The respondent's contraventions of the FSO are directly linked to his consumption of cannabis. Cannabis use or failure to attend for drug testing is easily detected.
- (e) The respondent has participated in drug counselling sessions since he has been in custody and could attend drug counselling or rehabilitation in a day program in the community.
- (f) The respondent has participated in psychiatric treatment sessions, which will continue both within and outside of custody.

Applicant's submissions

[79] The applicant submitted that the Court should find all of the alleged contraventions proved and make a continuing detention order ('CDO') and set a review period of 12 months pursuant to ss 31(2) and 65(2) of the SSO Act. This submission was based on the extensive number of

contraventions committed by the respondent since the FSO was made, the opinion of Dr Aboud that a further period of 12 months in custody would enable him to continue offence specific psychiatric treatment, abstinence from drug use and alcohol and drug counselling, and the lack of any suitable accommodation that does not pose risks to members of the community, including the female occupants of the respondent's father's house where the respondent would reside.

- [80] Counsel for the respondent submitted that the respondent has been in custody now for some nine months, with little change observed in his coping skills, insight, understanding of his criminogenic factors, or ability to develop release plans and realistic long term goals. Consistent with Dr Sullivan's opinion, there is no basis for an expectation that a further 12 months in custody would see any meaningful change. The respondent should be given the opportunity to try the alternative sanctions matrix developed for him and explained to him, which he understands.

Respondent's risk and the CSO

- [81] Having regard to the above body of evidence, and in the circumstances, I am satisfied that the respondent has contravened the FSO in the ways found above.
- [82] However, I am satisfied that it would not be appropriate to revoke the FSO and make a final CDO.

[83] Despite in excess of 30 contraventions across the course of some six months, and the 28 contraventions the subject of the last decision in this matter, the respondent has not committed a serious sex offence or an offence of a sexual nature. Nor has the respondent contravened the conditions of the FSO relating to possession of pornography. Despite the observations and opinions expressed in the Salisbury and Scott Affidavits set out above, the risk that the respondent would do so (and the need to protect victims, their families and members of the community) is essentially unchanged from what it was when I made the FSO in February 2021.

[84] As regards the risk to staff from violence on the part of the respondent, that risk exists whether the respondent is in custody or in the community. Consequently, it has little bearing on whether it would be appropriate to revoke the FSO.

[85] I agree with the respondent's submission that, ultimately, the respondent's risk is better addressed by his rehabilitation in the community subject to a FSO than by continued detention.

[86] The most significant difference between the present circumstances and those present when the respondent was previously released on the FSO is that, if released from custody, the respondent would reside in his father's house, with two adult females and female children. Given that the risks are of sexual offending of an opportunistic nature, it must be

acknowledged that this living situation would elevate the risk of sexual offending against those females. At the hearing, counsel for the applicant informed the Court that the respondent's father was then in hospital with health issues, leaving only female adults living in the respondent's father's house. It was unknown when the respondent's father might be well enough to return home.

[87] On the other hand, the respondent's father's address is an approved address and one at which the respondent attended on numerous occasions whilst he was in the community. Further, the respondent's prior sexual offending occurred when he was intoxicated from alcohol, and there is no suggestion that he has consumed alcohol whilst in the community.

[88] Both Dr Sullivan and Dr Aboud were of the opinion that the respondent's cannabis use raised the risk of sexual reoffending. Various measures, including the respondent's participation in drug and alcohol counselling, the respondent's offence specific treatment and the proposed sanctions matrix, are directed to preventing the respondent from consuming cannabis. As counsel for the respondent has submitted, consumption of cannabis is easily detected.

[89] While detaining the respondent in custody would virtually eliminate the risk of sexual reoffending, I consider that simply detaining the respondent in custody for a further period of 12 months would not

permit him to rehabilitate. He would have little opportunity to learn and develop the skills he requires to successfully transition to living in the community and managing his risk. The therapeutic supports or programs he has undertaken and will undertake in custody would not be able to be put into practice, and would remain theoretical and unlikely to be retained. I agree with Dr Sullivan's opinion that, 12 months from now, the respondent's risk of further sexual offending would be unlikely to be any different to what it is at present.

[90] The proposed sanctions matrix offers a means by which the respondent may come to understand the connection between his behaviour and its consequences (in the form of constraints upon his freedom of movement). It would also ensure that, if the respondent were to revert to frequent consumption of cannabis, breaches of his curfew or failures to follow the directions of his PPO, he will be quickly brought back to Court to be dealt with.

[91] It is anticipated that, under the proposed sanctions matrix, a lengthy period of ongoing contraventions of the FSO would not be tolerated. If the respondent were to contravene a condition of the FSO four times, the expectation is that a warrant for his arrest would be swiftly sought (ss 48, 50) and granted (s 49), and he would be quickly arrested and brought before the Court.

[92] Swift responses to contraventions with the consequences contemplated by the proposed sanctions matrix and, after a fourth contravention of a particular condition, the swift arrest of the respondent is, in my view, likely to assist the respondent to understand that his behaviour will have consequences. That may well have the effects which Dr Sullivan identified.

[93] For those reasons, I intend to reinstate the FSO, which will continue in effect for a period of five years from 12 February 2021.

Variation of CSO

[94] The applicant sought:

- (a) a variation to order 6(i) of the FSO, which is the condition prohibiting contact with children under 18 years, to make clear the condition applied outside of his place of residence; and
- (b) a new order 6(q) in the FSO, requiring the respondent to comply with the sanctions matrix set out at Annexures JS-3 and JS-4 to the Supplementary Scott Affidavit.

[95] I accept these variations should be made.

Disposition

[96] Pursuant to s 58(2) of the SSO Act, the FSO is not revoked. It will be reinstated.

[97] Pursuant to s 59(2)(a), I will revoke the ICDO, to take effect from
8 May 2024.

[98] Pursuant to s 59(2)(b), the FSO is amended by:

(a) amending order 6(i) to read as follows:

Outside of his place of residence, the Respondent must have no contact with children under the age of 18 years (except in the course of a normal business transaction) except in the presence of an adult who has been approved for the purposes of this order by a probation and parole officer.

(b) adding new order 6(q) as follows:

The Respondent must comply with the sanctions matrix set out at Annexures JS-3 and JS-4 of the affidavit of Jennifer Scott affirmed on 12 March 2024.
