Manrique (Re)

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Subject: Criminal

COURT OF APPEAL FOR ONTARIO

CITATION: Manrique (Re), 2024 ONCA 649
DATE: 20240903
DOCKET: COA-23-CR-1092

Simmons, van Rensburg and Thorburn JJ.A.

IN THE MATTER OF: Luis Fernando Manrique

AN APPEAL UNDER PART XX.1 OF THE *CODE*

Anita Szigeti, for the appellant

Lilly Gates, for the respondent Attorney General of Ontario

Heard: August 13, 2024

On appeal against the disposition of the Ontario Review Board, dated September 20, 2023, with reasons dated October 12, 2023.

REASONS FOR DECISION

[1] The appellant appeals a disposition of the Ontario Review Board ordering that he be conditionally discharged. He submits that the Board's finding that he continues to pose a significant threat to the safety of the public is unreasonable and that he is entitled to an absolute discharge. The hospital, St. Joseph's Healthcare Hamilton, did not participate in the appeal and took no position on the outcome.

[2] The appellant was found not criminally responsible in 2010 in relation to an offence of attempted murder as a result of a serious attack on his then-wife. He is diagnosed with schizoaffective disorder and is currently treatment incapable for psychiatric decisions. Apart from the index offence, he has no criminal history. Nor does the record reveal any history of substance abuse.

[3] Evidence led at the Board hearing established that, at the time of the hearing, the appellant had been living in the community and stable for four years. Further, he had been fully medication compliant since 2017. Since January 2023, he had been on a long-acting antipsychotic medication (Invega Trinza) that is injected every three months. Although the appellant's insight into his illness and need for medication was described as fragile, his treating psychiatrist testified that, even if the appellant were to completely discontinue this medication, it would last in his system for about a year. Further, while there was evidence that the appellant decompensated during periods of medication non-compliance in 2016 and 2017 to the point that he had to be secluded so he could be stabilized,[1] he was not aggressive during these periods.

[4] The appellant's treating psychiatrist testified that the appellant was not ready for an absolute discharge. His treatment team wanted to monitor his recent transition to more

independent housing since, historically, change has been a stressor. Further, she noted that while the appellant had recently accepted a referral to the Assertive Community Treatment Team (ACTT), the form of non-forensic post-discharge follow-up the treatment team considered necessary to ensure no undue risk to public safety, the waiting list for ACTT was 18 months. The psychiatrist also testified that she and the team intended to advocate for a shorter wait time and that, in the event of an absolute discharge, she would immediately pick up the phone and explain that they could not wait for 18 months. She also testified that, at most, she would be able to provide monthly follow-ups to the appellant for about six months.

[5] The appellant testified at the hearing and asserted that he would not quit his medication without the supervision of a civil (outpatient) psychiatrist and the advice of his priest.

[6] At paras. 71 and 72 of its reasons, the Board said:

> [The appellant] suffers from a major mental illness, schizoaffective disorder. The commission of the index offence was extremely violent and serious. [The appellant] has impoverished insight regarding the need for medication to attenuate the symptoms which would pose a risk to public safety if he stopped taking his medication.
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> The Board is not confident in [the appellant's] assertion that he would continue to take his medication pending oversight from a civil psychiatrist. The Board believes that currently [the appellant] is only compliant because he is a rule follower and recognizes the critical oversight of the Board. The Board agrees that without this oversight, there is a high likelihood [the appellant] would stop taking his medication and in such a state there would be a predictable decline in his medical status leading to a decompensation and a heightened risk to public safety.

[7] Concerning post-discharge support, the Board said, at paras. 77-79:

> The Board accepts that the team wants [the appellant] to succeed with his ultimate transition to full community reintegration, without forensic or Board oversight. The Board acknowledges that [the appellant] is close to this goal, but there are still risk factors that need to be addressed.
>
> The Board is concerned that [the appellant's treating psychiatrist] is not able to guarantee follow up with a forensic outpatient team in the event of an absolute discharge. The doctor said [the appellant] needs to be seen weekly and if he was on an absolute discharge (without a

> referral to ACTT in place) the most that [the appellant] could be seen by [her] would be once a month for perhaps six months. The hospital does not have a formal follow-up out-patient program for patients who have been granted absolute discharges, pending transition to a non-forensic team as resources are limited.
>
> The Board accepts that the ideal scenario is for the transition to be adequately in place, thus reducing significantly the risk associated with an absolute discharge.

[8] Based on our review of the record, there was evidence before the Board to support its finding that without Board oversight there was a high likelihood the appellant would stop taking his medication.

[9] However, while we recognize that the Board set out the proper test for establishing a significant threat to public safety, the Board's reasons were insufficient to explain how it reached the conclusion that the appellant meets that standard. As noted by the Board, this court has emphasized that the significant threat standard is an onerous one. In our view, the Board's assertion that there would be "a predictable decline in [the appellant's] mental status leading to decompensation and a heightened risk to public safety" does not explain how the appellant meets the significant threat standard. Further, the Board's statements about the treating psychiatrist not being able to guarantee post-discharge forensic support and its reference to the "ideal scenario" of non-forensic support being "adequately in place" suggest the Board may have been focused on minimizing any risk created through granting the appellant an absolute discharge rather than properly assessing whether he met the significant threat threshold.

[10] In the circumstances, we set aside the Board's disposition and order a re-hearing before a differently constituted panel to be scheduled as expeditiously as possible.

"Janet Simmons J.A."
"K. van Rensburg J.A."
"Thorburn J.A."

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[1] The appellant was started on medications with the consent of his substitute decision maker after being found treatment incapable.