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T Christie (Re)

IN THE MATTER OF Part XX.1 (Mental Disorder) of
the Criminal Code R.S.C. 1985 c. C-46,
as amended 1991, c. 43
AND IN THE MATTER OF the Disposition Hearing of
Charles Christie

[2000] B.C.R.B.D. No. 220

British Columbia Review Board
E.A. Tollefson, Chairperson, R. Holland and
M. Anderson, Members

Heard: September 28, 2000.

Reasons: October 16, 2000.

(38 paras.)

Appearances:

Charles Christie, accused/patient.

D. Gaffar, counsel for the accused/patient.

M. Shieh, for the hospital/clinic.

L. Hillaby, for the Attorney General.

¶ 1 CHAIRPERSON:-- On September 28, 2000, a panel of the British Columbia Review Board ("the Review Board") composed of E. Tollefson, Q.C. (Alternate Chairperson), Dr. R. Holland (Psychiatrist) and Ms. M. Anderson (Social Worker) conducted a hearing pursuant to section 672.81(1) of the Criminal Code, respect of Charles CHRISTIE ("the accused"). The hearing was held in the presence of the accused, D. Gaffar (Counsel for the accused), L. Hillaby (Counsel for the Attorney General of British Columbia), and K. Shieh (representative of the Director, Adult Forensic Psychiatric Services ("the Director")). After hearing the evidence and the submissions by the parties, it became apparent that the presence of the attending psychiatrist, Dr. W. Wanis, was required to explain statements he had made in Exhibits 37 and 38 (letters of May 29 and September 8, 2000 to Dr. E. Murphy, Senior Psychiatrist, Forensic Psychiatric Institute ("FPI")) regarding the risk to the public in the event that the accused were to decompensate in an unsupervised setting. Accordingly, the Review Board adjourned the hearing to a time when Dr. Wanis could be available. A telephone conference, with all those who had been present at the September 28 portion of the hearing, plus Dr. Wanis, took place October 6, at which time the hearing was completed with the addition of Dr. Wanis's oral evidence and supplementary

submissions by the parties. The Review Board reserved its decision.

Background

¶ 2 Reference should be made to the reasons given by the Review Board for its various dispositions since Mr. Christie came under the Board's jurisdiction. In this regard, the reasons given by the Board for its first disposition in the case (exhibit 15, June 30, 1995) and to the reasons given at the last full hearing (exhibit 34, July 9, 1999) are particularly useful.

¶ 3 On May 18, 1995, the Provincial Court of British Columbia found the accused not criminally responsible on account of mental disorder for the index offences charged, namely two counts of arson, contrary to sections 433(a) and 434 respectively of the Criminal Code, alleged to have been committed in Victoria, in March of that year. This was not his first encounter with the criminal justice system; indeed, he had accumulated either twelve or fifteen convictions (depending how the criminal record is interpreted) in the period from March, 1978 to May, 1992. With two exceptions (convictions for failing to attend court and for possession of stolen goods) all the convictions were for property offences (theft, breaking and entering, and possession of stolen goods).

¶ 4 Mr. Christie was born February 15, 1958. He apparently began to display symptoms of psychiatric illness in his late teenage years. Unfortunately, he did not appear to possess sufficient insight either to understand the nature of his illness or to accept the need for medication, and, as a result his life became something of a revolving door with a recurring cycle of release from hospital, non-compliance with medication, decompensation, aggressive or violent behaviour and re-committal to the hospital. Prior to committing the index offences he had at least eighteen admissions to the Eric Martin Pavilion of the Royal Jubilee Hospital in Victoria, plus an unknown number in Ontario where the family lived before moving to British Columbia. The evidence indicates that at the time of committing the index offences he had been off his Lithium for approximately nine months and had been taking his Nozinan intermittently during that same time period. In the month preceding these offences, he is reported to have become progressively more agitated, frustrated and despondent regarding his accommodation, to the point where he became suicidal. According to the account he gave to the staff at FPI, after several futile efforts to get help, he decided to commit suicide by setting fire to his room, but when the fire began to hurt him, he changed his mind and instead he hailed a cab to take him to the Emergency Department of the hospital to get treatment for his burns (exhibit 7).

¶ 5 After having been found not criminally responsible on account of mental disorder, Mr. Christie received a custodial disposition, placing him in FPI. Although there were continuing difficulties getting his Lithium levels right, the positive symptoms of his mental illness responded well to the medications provided. However, the negative symptoms - e.g., lack of motivation and lack of interest in participating in suggested programs - persisted, and he spent many of the daytime hours either smoking or sleeping. While compliant with medication, he tended to subvert dietary restrictions designed to deal with his obesity (and later, diabetes). He was not particularly cooperative with hospital routines and directions, sometimes becoming so defiant and aggressive that privileges were taken away or he was placed in

seclusion.

¶ 6 His lack of motivation and his unwillingness to participate in programs made him a difficult person to place in a supervised group home such as Willingdon House or Manchester House, but in April, 1998, he was granted a conditional discharge to live in his mother's home. Supervision was to be provided by her, in collaboration with the Forensic outpatient clinic. For the first ten months of this arrangement, Mr. Christie appears to have done quite well. Ms. P. Gill, Community Nurse in the outpatient clinic wrote on March 19, 1999 that although he continued to lack motivation and interest in attending programs, his mental state remained stable, his appetite healthy, and he was working on losing weight. He had been compliant with all conditions of his disposition. He also had been compliant with his medication, and, indeed, appeared to have developed some insight into his need for medication. She reported that he had said to her, "For the first time in my life I think I realise that I really need this lithium. If I stop taking it, I could relapse and so something very serious" (exhibit 27). Dr. M. Dilli, in a letter of the same date, commented that Mr. Christie had made "somewhat slow and fluctuating" progress, but on the whole he had been compliant and had not exhibited any major symptoms/signs of his original bipolar disorder (exhibit 28). However, Dr. Dilli (and Ms. Gill) made it clear that the placement in his mother's home should not be allowed to continue. Mrs. Christie's age and physical condition made it difficult for her to supervise her son. It also seemed clear that they got on each other's nerves - as Ms. Gill put it, "Mr. and Mrs. Christie feel they can 'tolerate each other' until other suitable accommodation can be arranged" (exhibit 27).

¶ 7 On April 19, 1999, the Review Board considered the situation and agreed that Mr. Christie should be placed somewhere other than in his mother's home, but as there was no other suitable semi-independent living facility then available, the existing order should continue for another three months, during which time a more viable living arrangement could be devised (exhibit 29).

¶ 8 Unfortunately, in June, 1999, the tension between Mr. Christie and his mother worsened. The evidence is (exhibits 31 and 32) that Mrs. Christie was complaining that he maltreated her and yelled at her "from morning till night". She also alleged that the Forensic outpatient clinic was doing nothing for him, and she demanded that they refer him at once to a mood disorder clinic. The Outpatient Clinic was having difficulty finding a suitable semi-independent placement for Mr. Christie, partly because of the nature of the index offence (arson), and partly because of his own ambivalence about accepting such a placement. On June 15, Mrs. Christie phoned Ms. Gill to say that Mr. Christie was refusing to attend an appointment at Willingdon House. Ms. Gill then spoke with Mr. Christie, and he agreed to attend. Five minutes later, a very distraught and upset Mrs. Christie phoned again to say he had just "dumped a glass of water" over her head and that he had hit her the day before on their way home from the Clinic. Mrs. Christie went on to say that "he does this sort of thing all the time". At this point the outpatient clinic decided that Mr. Christie should return to FPI; however, when Ms. Gill phoned Mr. Christie to make this request, he initially agreed, but Mrs. Christie became very angry and said she would not let her son return to FPI, saying that they had done nothing for him during the past four years. The outpatient clinic then began formal proceedings to have him returned on the basis of breach of conditions of his disposition order. He was returned to FPI by the RCMP on June 16 following a court order.

¶ 9 On July 9, 1999, the Review Board conducted a disposition hearing and concluded that the appropriate disposition was an order that he be detained in custody in FPI. The Board based its decision on findings that Mr. Christie was "a big fellow" and "can be intimidating"; that his mental condition was "fragile and vulnerable"; and that when he was not stable he could "act out in ways that are risky to members of the public as indicated by the index offence." It also noted that the treatment team needed time to stabilize him and to find a placement that would provide the right supports for him. The Board expressed the hope that "sooner rather than later" he would be accorded an opportunity to go on visit leaves to a place like Willingdon House. The Board added that, given the dynamics of the relationship between him and his mother, it did not believe that he should return to live with her (exhibit 34).

¶ 10 At Mr. Christie's request, the formal annual hearing that was scheduled to take place by July 8, 2000, was delayed, and on June 21 a bridging order, lasting until October 1, was made in the same terms as the previous order.

¶ 11 In preparation for the June hearing of the Review Board, Dr. Wanis wrote (exhibit 37) that Mr. Christie had progressed through FPI's system and was currently residing in the Dogwood Unit. His mental state appeared to be settled, but he continued to have several medical problems including gout, obesity, diabetes, increased water intake and sleep apnea, for which, in collaboration with Dr. MacDonald and other GPs, they had implemented a treatment regimen. It had also been decided to switch him from Lithium Carbonate to another mood stabilizer (Valproic Acid) that would decrease the risk of negative impact on his kidneys. To help deal with the sleep apnea problem, Mr. Christie had bought a cpap machine. On the question of risk assessment, Dr. Wanis wrote the following:

As it relates to Mr. Christie's risk, despite the medication change, his risk is at the medium level. In general he has been more cooperative with routine, he has not been impulsive, and he is accessing the community with no recent evident acting out. There is a current plan of placing him at Willingdon House and this is currently being explored. However, although his risk is currently medium, this risk could change if he does not respond to Valproic Acid as he did to Lithium.

¶ 12 For the September 28, 2000 hearing (i.e., this hearing), Dr. Wanis wrote (exhibit 38) that Mr. Christie was currently stable on Valproic Acid. He had an array of privileges, including day leaves into the community, and his mother had indicated that she was willing to have him on overnight weekend passes. He was currently awaiting placement in Willingdon House. On the issue of risk, Dr. Wanis wrote:

As it relates to Mr. Christie's current risk, it lies somewhere between low to medium. However, if Mr. Christie is placed in an environment without some supervision and if he becomes non-compliant with his medications, this risk could change to high.

¶ 13 Dr. Wanis recommended that the Review Board order that Mr. Christie be detained in custody in FPI under conditions permitting community access and visiting leaves once a placement becomes

available at Willingdon House.

Evidence given at the September 28 hearing

¶ 14 As Dr. Wanis was not present at this hearing, Mr. Shieh, the Case Management Coordinator, replied on behalf of the Director. In response to questions he said that although Mr. Christie had been verbally aggressive, threatening, belligerent and argumentative, there was no record of personal violence by Mr. Christie while he had been in FPI. The only evidence of physical violence against anyone came from his mother, who alleged that he had hit her. Nor had he set any fires (the index offence was arson). Likewise, with the exception of the period in June, 1999, when he was returned to FPI, and was resisting, yelling and referring to God, his mental condition had been stable since sometime prior to his release on conditional discharge in 1998. He was generally compliant with his medications, and, in fact, was on a self-administration program. When asked what Dr. Wanis meant when he referred to Mr. Christie becoming a "high risk" if he were non-compliant with his medications and were in an unsupervised environment, Mr. Shieh said that he thought Dr. Wanis meant there would be a high risk that Mr. Christie would commit a "legal offence". To the question of whether Mr. Christie was in fact on the waiting list at Willingdon House, Mr. Shieh replied that he would be considered for a place in that facility if he showed initiative and participation in programs for two months. After that, the time he would have to wait for a bed to become available was unpredictable. He said that FPI did not have any programs that were specifically designed to address a patient's lack of motivation. When asked if private accommodation might be an alternative if Mr. Christie were to pay for it out of his own pocket, Mr. Shieh said that he would first have to go through Willingdon House.

¶ 15 Mr. Christie responded first to questions posed by members of the Review Board. He said that he was not unwilling to take all programs: for example, he was willing to take Occupational Therapy, but it was almost impossible to get on the program because it has a "giant waiting list". He denied that he had any major problems with his mother, saying that they were just "joking around" when he poured water on her head, and the alleged hit was just a tap (apparently in reply to a hit by her). He saw her every week, but he had not stayed overnight at her place because it was a lot of work to unhook and transport his "sleep machine". When asked about the index offence, he said that he had not slept for five nights before he set the fire and it was with the intention of committing suicide. In relation to his ability to live in the community, he admitted that he did not have any friends in Vancouver, and had not communicated in a long time with people he knew in Victoria. He said that he was not a drinker, and although he had used marijuana years ago, he no longer had any interest in doing so. If given an absolute discharge he said that would get an apartment, outside Vancouver, in some place near the SkyTrain, where he would care and cook for himself. He said that he would have to think about whether he would be willing to pay some of his own money to get a suitable semi-independent unit under a conditional discharge. On the question of medication, he said he was pleased with the change from Lithium to Valproic Acid, for Lithium caused him to put on weight and made him want to drink too much water. He said that he now weighed 330 pounds and he wanted to get down to 240 pounds.

¶ 16 Ms. Gaffar asked Mr. Christie about his attitude to his medication. He said that the medication helped him to maintain stability, and if he were given an absolute discharge he would still continue to

take his medications. When asked whether he had any interest in obtaining employment, he replied that he would not mind a part-time job where he could sit down.

¶ 17 Mr. Hillaby asked no questions of Mr. Christie.

Submissions (September 28)

¶ 18 Mr. Shieh reiterated the position put forward by Dr. Wanis, namely that the appropriate disposition was an order that Mr. Christie be detained in custody in FPI, with provisions permitting the Director to allow him to have access to the community, including visiting leaves to Willingdon House for up to 28 days.

¶ 19 Mr. Hillaby said that he was not concerned whether Mr. Christie was hospitalized. He reminded the Review Board that it first had to decide whether there was enough evidence to meet the test in the Winko case (decided by the Supreme Court of Canada, June 17, 1999), for otherwise it would have to grant an absolute discharge. He suggested that if the Board concluded that some of the evidence on the issue of risk was "unsafe", it could adjourn the hearing and seek better evidence. Referring to the letter of the attending psychiatrist, Dr. Y. Hollander, to the Presiding Judge, May 16, 1995 (exhibit 9), at p. 2, he said that at the time of committing the index offence, Mr. Christie had declined to such a psychotic state that he thought he was setting only a simple little bed fire that could easily be put out.

¶ 20 Ms. Gaffar submitted that there was no evidence of a "significant threat to the safety of the public", and therefore under the Winko decision, an absolute discharge had to be granted by the Review Board. In the week prior to the commission of the index offence, the accused had been unable to get help despite repeated efforts on his part. He reported feeling so depressed that he went four times to the hospital's Emergency department, seeking to be admitted, but each time he was refused (see exhibit 12). Since that time his insight has developed further. There is no evidence of non-compliance with medication in recent years.

¶ 21 Ms. Gaffar maintained that Mr. Christie was not a violent man. He can be loud, rude and immature in his behaviour, but in all the time he has been in FPI he has never physically assaulted anyone. In assessing the significance of him hitting his mother, one must take into account her behaviour in the past. The Winko decision says that in order to meet the significant threshold test, the risk must go beyond what is merely trivial or annoying - neither a high risk of trivial harm nor a small risk of grave harm will suffice. In assessing the risk posed by Mr. Christie, not too much emphasis should be placed on the index offence, for it was not a part of a pattern of violence, but was a singular event which does not show a predisposition to this kind of conduct. Nor is a relapse an indication of a significant threat.

¶ 22 The Review Board considered the submissions and concluded that it was necessary to get further evidence from Dr. Wanis as to what he meant by "high risk of re-offending". It therefore adjourned the hearing until a day at which all parties and Dr. Wanis could all be present by a telephone conference hook-up.

Evidence given at the October 6 hearing

¶ 23 When the hearing resumed by telephone conference on October 6, Dr. Wanis said that what he was referring to in his two letters was a high risk of "violence" by Mr. Christie if he failed to take his medication and was unsupervised. He pointed to the index offences as an illustration of what might happen in such circumstances. The fact that there had been nothing like that since could be explained on the basis that Mr. Christie had spent most of that time in hospital, where he was taking his medication and was under supervision. The risk was not just that he might commit further acts of arson, but that he might commit other acts of violence, and in that regard Dr. Wanis pointed out that while in the community, he had hit his mother. Dr. Wanis agreed that the index offences had occurred in the context of a suicide attempt, and he said that he did not consider suicidality to be a major issue. Violence towards others was, and it could be precipitated by stress or other factors. Mr. Christie's insight into his condition was not very good, and it was questionable whether [if given an absolute discharge] he would follow up with attendance at clinics where his mental and medical condition could be monitored.

Submissions (October 6)

¶ 24 The Hospital's position remained the same as at the September 28 hearing.

¶ 25 Mr. Hillaby said that the Review Board should concern itself not with the possibility of minor infractions but whether there was more than a minuscule risk of grave harm. The question was whether Mr. Christie, if given an absolute discharge, would keep himself well, and, if not, how he might act out. He recommended that the Review Board grant a discharge subject to conditions.

¶ 26 Ms. Gaffar said that while there was a risk of Mr. Christie doing something like slapping or pouring water on someone, there was no evidence there was a significant threat of him committing an act of serious harm - there was no evidence of him acting out in this way either in the hospital or in the community in the last five years. Mr. Christie understood that he must stay on his medication in order to stay well, and he had been responsible for administering his own medication for some time. Therefore, she concluded, the appropriate disposition was an absolute discharge.

Considerations and Conclusions

¶ 27 As indicated by both Ms. Gaffar and Mr. Hillaby, the primary question is whether the accused represents "a significant threat to the safety of the public", for unless the Review Board concludes that he does, it must grant him an absolute discharge under section 672.54(a) of the Criminal Code. This section has been carefully analyzed by the Supreme Court of Canada in the Winko case. In that case, Madam Justice McLachlin (now Chief Justice McLachlin), writing for the majority, at paragraph 57 of the judgment, said:

Section 672.54 provides that an NCR accused shall be discharged absolutely if he or she is not a "significant threat to the safety of the public". To engage these provisions of the Criminal Code, the threat posed must be more than speculative in nature; it must be supported by evidence: *D.H. v. British Columbia (Attorney General)*, [1994] B.C.J. No. 2011 (C.A.), at para 21. The threat must also be "significant", both in the sense that there must be a real risk of physical or psychological harm occurring to individuals in the community and in the sense that this potential harm must be serious. A minuscule risk of a grave harm will not suffice. Similarly, a high risk of trivial harm will not meet the threshold. Finally, the conduct or activity creating the harm must be criminal in nature: *Chambers v. British Columbia (Attorney General)* (1997), 116 C.C.C. (3d) 406, at p. 413. In short, Part XX.1 can only maintain its authority over an NCR accused where the court or Review Board concludes that the individual poses a significant risk of committing a serious criminal offence. If that finding of significant risk cannot be made, there is no power in Part XX.1 to maintain restraints on the NCR accused's liberty.

¶ 28 In one of the sub-paragraphs of paragraph 62 of the judgment, McLachlin J. dealt with how, in the determination of whether the accused poses a significant threat to the safety of the public, a court or Review Board should treat past criminal conduct by the NCR accused:

A past offence committed while the NCR accused suffered from a mental illness is not, by itself, evidence that the NCR accused continues to pose a significant risk to the safety of the public. However, the fact that the NCR accused committed a criminal act in the past may be considered together with other circumstances where it is relevant to identifying a pattern of behaviour, and hence to the issue of whether the NCR accused presents a significant threat to public safety. The court or Review Board must at all times consider the circumstances of the individual NCR accused before it.

¶ 29 With these directions in mind, does the accused, Charles Christie, pose a "significant threat to the safety of the public"?

¶ 30 As examples of personal violence by Mr. Christie, the Director's representatives were only able to point to the index offences, which took place in March, 1995, and the evidence of him having hit his mother and poured water over her head just prior to being ordered to return to FPI in June, 1999.

¶ 31 While the act of fire lighting, which formed the actus reus of the index offences, certainly constituted a significant threat to public safety at that time, the majority of the Supreme Court of Canada has said in *Winko* that the index offence "is not, by itself, evidence that the NCR accused continues to pose a significant risk to the safety of the public unless it is relevant to identifying a pattern of violent behaviour towards others that is likely to be repeated in the future. As Madam Justice McLachlin put it in paragraph 60 of her judgment, the past offence "may in some circumstances constitute a link in a chain of events that demonstrates a propensity to commit harm, albeit unintentional". The Review Board

was unable to find such a pattern in Mr. Christie's case.

¶ 32 The index offences provide little evidence that they were a part of such a pattern, or that the accused intended to harm anybody but himself. Indeed, the circumstances surrounding the event point to it being an act of great depression and despair, resulting from failure to comply with prescribed mood stabilizing and anti-psychotic medication over a period of several months, which led him to believe that suicide was the only way out (see exhibits 4, 7 and 9). There is no evidence of Mr. Christie having either a history of fire setting, or a history of other forms of serious violence directed against others - although he has a relatively extensive record of previous convictions, none of them were for offences of violence against the person, and, in the four years he has spent in FPI since being found NCRMD, he has never demonstrated physical violence against anyone.

¶ 33 This means that apart from the index offences, the only evidence of personal violence by Mr. Christie is that he hit his mother and poured water on her head in June, 1999, for which conduct he was returned to FPI. Depending upon their nature, these acts could be considered to be evidence that he poses a significant threat to the safety of the public, but in this case there is nothing to indicate that either of these acts was of a serious nature. There is no evidence that they caused Mrs. Christie any physical injury or psychological trauma. No charges were laid, and when the Forensic Clinic responded by requesting that Mr. Christie return to FPI, Mrs. Christie became very angry and said that she would not let him return there. It appears that she was upset and regretted even raising the subject. On such evidence it is not possible for the Review Board to conclude that these acts were anything more than trivial annoyances that cannot satisfy the "significant threat to public safety" threshold set out in section 672.54(a) of the Criminal Code.

¶ 34 Dr. Wanis says that if Mr. Christie were released from the supervisory structures imposed by the Director, there is a chance that he would stop taking his medication, as was the case prior to the occurrence of the index offences, and in such a situation he could once again become a significant threat to the safety of the public.

¶ 35 There are, of course, no guarantees that an accused will never commit another serious crime while in a decompensated mental state. However, both the Supreme Court of Canada in Winko and the British Columbia Court of Appeal in the D.H. case have stated that the threat to public safety must be based on evidence rather than on speculation. As indicated above, apart from the index offences, there is no evidence of Mr. Christie posing a significant threat of physical violence to other people. It should also be noted that since the time of the index offences, Mr. Christie's mental condition has improved considerably. He has maintained stability - with the possible exception of a minor break in June, 1999 - since sometime before being granted a conditional discharge in April, 1998. He has developed insight into his need to take medication as prescribed, and in fact has been on a self-medication program for some time. He was successful in living in the community under a conditional discharge for over a year, reporting to the Forensic outpatient clinic only once every two weeks, during which period he was compliant with his medication and all the conditions of his disposition order.

¶ 36 The Review Board therefore unanimously concludes that there is insufficient evidence to establish that the Mr. Christie poses a significant threat to the safety of the public, and therefore, an absolute discharge is the only disposition order that the Board can make at this time.

¶ 37 While this conclusion deals appropriately with the concern for public safety, it does not, in the Board's view deal adequately with the other considerations that the Review Board must take into account in selecting an appropriate disposition under section 672.54 of the Criminal Code, namely, "the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused". The Review Board believes that Mr. Christie's mental, and physical, condition is such that he needs the help of mental health and medical professionals on an ongoing basis. He also needs assistance in finding suitable accommodation where he can live comfortably and safely. At first, he probably also will need assistance in setting up his apartment, shopping for necessities and learning how to prepare nutritious meals for himself that also take into account his problems with obesity and diabetes. These are all matters which would normally be dealt on a cooperative basis between FPI, the Forensic outpatient clinic, and hopefully in collaboration with the Mental Health system and other social agencies. As the Hospital was not recommending an absolute discharge at this time, it may not have laid this groundwork for Mr. Christie's release.

¶ 38 In order to give the Director time to make necessary arrangements to facilitate a smooth transition from custody to community living, the Review Board has decided to exercise its power, under section 672.63, to specify that this order shall come into effect not later than twenty-eight (28) days after the making of the order. In other words, if the arrangements can be made in less than 28 days, the Director shall discharge him accordingly. In the interim, Mr. Christie will continue to be under the conditions of the June 21, 2000 order of this Board.

E.A. TOLLEFSON, Q.C., CHAIRPERSON

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