

Citation: Martin v. Director, Adult Forensic Psychiatric Services
2000 BCCA 341

Date: 20000529

Docket: CA025994/
CA026183

Registry: Vancouver

COURT OF APPEAL FOR BRITISH COLUMBIA

ORAL REASONS FOR JUDGMENT

Before:

The Honourable Madam Justice Southin
The Honourable Mr. Justice Finch
The Honourable Mr. Justice Donald

May 29, 2000

Vancouver, B.C.

CA025994

IN THE MATTER OF JOEY MARTIN

APPELLANT

AND:

THE DIRECTOR, ADULT FORENSIC PSYCHIATRIC SERVICES

RESPONDENT

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

No. CA026183

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ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

D. Nielsen appearing for the Appellant

M.P. Acheson appearing for the Respondent
The Director, Adult Forensic
Psychiatric Services

L. Hillaby appearing for the Respondent
Attorney General of British Columbia

J.I. Nunez appearing for the Intervenor
British Columbia Review Board

[1] **DONALD, J.A.:** The question on this appeal is whether the British Columbia Review Board lost jurisdiction over the appellant when it failed to conduct a valid review within 12 months of its decision dated 5 May 1998 granting the appellant a conditional discharge.

[2] The review, conducted within time on 28 April 1999, was invalid because the hearing panel was not properly constituted. The relevant legislation stipulates that a panel quorum is three members. In this instance, the term of one member's appointment had run out and the decision taken by the panel was therefore a nullity. The member was not re-appointed until shortly after the 12 month period elapsed.

[3] On 2 June 1999 the panel reconvened as a properly constituted body and made the same determination as before; but by then, according to the appellant's assertion, the Board had lost jurisdiction in not abiding by the strict time limits in s.672.81(1) of the **Criminal Code**:

672.81 (1) A Review Board shall hold a hearing not later than twelve months after making a disposition and every twelve months thereafter for as long as the disposition remains in force, to review any disposition that it has made in respect of an accused, other than an absolute discharge under paragraph 672.54(a).

[4] In its decision on 2 June 1999 the panel rejected the jurisdictional challenge holding that on a purposive interpretation of the **Code** non-compliance with the mandatory time limit did not result in a loss of jurisdiction. In reaching that conclusion the panel relied on an earlier B.C. Review Board decision in the case of **Doucet** (B.C. Review Board, December 15, 1997).

[5] **Doucet** involved a different time limit, the requirement prescribed by s.672.47(1) to hold an initial Board hearing within 45 days of the verdict of not criminally responsible by reason of mental disorder in the criminal trial, but the jurisdictional argument was virtually the same. The matter made its way to this court and was decided on 23 March 2000: **Doucet v. Adult Forensic Services and Attorney General of British Columbia**, 2000 BCCA 195.

[6] The majority opinion of this court given by Madam Justice Rowles, Mr. Justice Braidwood concurring, was that a failure to abide by the 45 day time limit without a demonstration of substantial prejudice did not result in a loss of jurisdiction over the accused. All three judges agreed that the trial judge had effectively created a 90 day extension as permitted by the **Code**, and since the Review Board hearing took place within that time, there was no basis for a jurisdictional argument.

[7] This was the primary ground for Mr. Justice Lambert's decision. His dissent was on the jurisdictional implications of missing the 45 day time limit. In the latter regard he said that on a proper interpretation of the time limiting provisions, understood in light of the purposes and scheme of the insanity sections of the **Code**, the Review Board would have lost jurisdiction had there been no 90 day extension. In the result, he said the accused would have fallen back on the jurisdiction of the trial judge and the process of disposition would have to start all over again.

[8] The majority judgment rested its judgment primarily on the footing that the missed limitation did not cause a loss of jurisdiction; but as a secondary ground for dismissal of the appeal, they expressed agreement with Mr. Justice Lambert's view that there was a 90 day extension.

[9] The appellant submits that since all the judges in **Doucet** found that the hearing was within the extended time limit, the majority opinion on the point in question here was unnecessary to the decision, and as *obiter dicta*, need not be followed.

[10] The judgments in **Doucet** were fully reasoned. They address the very question before us. Apart from considerations of *stare decisis*, I find the majority decision in **Doucet** highly persuasive and I propose that we follow it

in this case. I would adopt what was said by the majority in *Doucet*, without repeating it, and apply that reasoning to the circumstances of this case which I have said are in all important respects the same. The appellant has demonstrated no prejudice as a result of the missed time limit.

[11] I would dismiss the appeal.

[12] **SOUTHIN, J.A.:** I agree. I would add only this. It is the obligation of the Board to hold the hearing within the time limited. Upon a failure of the Board to do so, the person who has been detained or is subject to that jurisdiction has an immediate right to come to the court and obtain an order in the nature of *mandamus* compelling the Board to do its duty. But though that be so, it does not follow that the failure immediately gives rise to a loss of jurisdiction. In my view, nothing in the section warrants such a conclusion. For those reasons and those given by my colleague, I would dismiss this appeal.

[13] **FINCH, J.A.:** I agree that the appeal should be dismissed for the reasons given by Mr. Justice Donald.

[14] **SOUTHIN, J.A.:** The appeal is dismissed.

"The Honourable Madam Justice Southin"

"The Honourable Mr. Justice Donald"