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R. v. Chalmers

Between
Her Majesty the Queen, (appellant), and
Thomas Chalmers, (respondent)

[2001] O.J. No. 117
Docket No. C33369

Ontario Court of Appeal
Toronto, Ontario
Catzman, Carthy and Weiler JJ.A.

Heard: January 16, 2001.
Judgment: January 22, 2001.
(13 paras.)

Persons of unsound mind — Release from committal — Review — Evidence.

Appeal by the Crown from a disposition of the Ontario Review Board. The Board granted the respondent Chalmers an absolute discharge from detention. Chalmers suffered head injuries in an accident. His brain damage caused him to assault, threaten and harass his girlfriend. He was found not criminally responsible because of his mental disorder and was detained at a rehabilitative institution. At that time he was considered a risk to the public if deprived of supervision. The Board decided that he could be released because he no longer was a threat to the public. The Crown submitted that the Board failed to search out and consider all the evidence. It was concerned that the staff psychiatrist who saw Chalmers monthly did not attend the hearing. The psychiatrist submitted a report but it was inconclusive. However, this psychiatrist did not treat Chalmers. The psychiatrist who treated him submitted a report that supported his release. The Crown also submitted that the Board trivialized Chalmers's potential threat to his current girlfriend. The Board's decision was also unreasonable.

HELD: Appeal dismissed. The decision was reasonable. The Board was not required to obligate the psychiatrist to testify. There was sufficient evidence on the critical question of danger to society. The Board did not trivialize Chalmers's conduct. It was entitled to conclude that Chalmers's criminal conduct would not occur in the future.

Appeal from:

On appeal from the disposition of the Ontario Review Board dated October 25, 1999.

Counsel:

Erika Chozik, for the Crown, appellant.
Janice E. Blackburn, for the respondent, Dr. Howard Barbaree.
Cosmo Galluzzo, for the respondent.
Maureen Forestall, for the Ontario Review Board.

The following judgment was delivered by

¶ 1 **THE COURT** (endorsement):— The Crown appeals from a disposition by the Ontario Review Board of October 25, 1999, granting the respondent an absolute discharge from detention at a rehabilitation institution known as Maynard Place. The respondent suffered head injuries in a 1990 accident, leaving him with brain damage the symptoms of which led to a series of assaults upon, threats to, and harassment of his then lady friend. This led to a series of convictions and then, in 1995, a finding of not criminally responsible on account of mental disorder. He was initially detained in hospital and in 1998 was discharged to a less restrictive institution, Maynard Place. At that time he was considered a risk to the public if deprived of supervision and the institution provided a structured and supportive environment with expertise in relation to his condition. He had been diagnosed with organic brain syndrome and delusional disorder. Eventually, he was permitted to come and go as he pleased from the community to the institution.

¶ 2 The next less restrictive move for the respondent would be an absolute discharge and it was incumbent on the Board that convened in October 1999 to consider that determination.

¶ 3 A majority of four out of five members of the Board concluded after hearing the evidence:

> It is true that the accused is personally better served if he is under a supervised structured environment as provided by Maynard Place, but failing that, the threat that the lack of same engenders does not create a significant threat to the safety of the general public and particularly to his present and former girlfriends. Past history of his relationships with them, seen at their greatest risk levels only demonstrate the likelihood of annoyance but no severe threat of serious physical or psychological harm. The test in "Winko" is not met, so that the majority of the Board finds that, on the evidence heard before us, including the attention given to Exhibits 1 to 5, inclusive, and particularly having regard to the "Winko" case excerpts summarizing that case at paragraph 62, subparagraph 1 to 3, inclusive, the majority of the Board, (Dr. Miller, having given a dissenting opinion for a conditional discharge,) finds that the accused is at worst, merely an annoyance, but not a significant threat to the safety of the public.

> Accordingly, taking into consideration the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, the majority of the Board is of the view (one member dissenting) that the least onerous and least restrictive disposition is that the accused be given an absolute discharge.

¶ 4 The first ground of appeal by the Crown is that the Board failed in its duty to search out and consider all relevant evidence as directed in Winko v. British Columbia (1999), 135 C.C.C. (3d) 129 (S. C.C.) at 160-161. The particular concern was the non-attendance of Dr. Dickey.

¶ 5 Dr. R. Dickey is a staff psychiatrist at the hospital who saw the respondent monthly but did not administer treatment. He did not attend the hearing and his report was submitted by Dr. Klassen, senior staff psychiatrist at the hospital, who could not explain the report. Board members asked questions about the report and when answers were not forthcoming there was discussion of a subpoena. The concern was over the safety of the public and the report was inconclusive, concluding with the observation that Dr. Dickey's usefulness in dealing with the respondent was at an end.

¶ 6 The subpoena suggestion was dropped and the Crown now says that the Board failed in its duty to pursue and obtain Dr. Dickey's full evidence.

¶ 7 In the circumstances we do not accept this argument. Dr. Gates, the respondent's treating psychologist, submitted a report which concludes:

> Mr. Chalmers is capable of expressing very intense feelings about his situation and experiences with the courts and the mental health system over the past 3 or 4 years, but I do not have the impression that, despite the social inappropriateness of his behaviour at times, that he presents any real risk to the public in that regard. However, if he were not in the relationship he currently has with his girlfriend, I have no doubt that he would actively seek one and his social behaviour could become a concern if he were not subject to a degree of monitoring and support.

¶ 8 Mr. Milner, the resident manager of Maynard Place testified that he was in personal contact with the respondent throughout his stay, that he came and went in recent times as he pleased, and that in his opinion, he did not at this time present a threat to society.

¶ 9 Given this evidence before the Board on the critical question of the danger to society of an absolute discharge, we cannot conclude that the Board had a duty to seek out the reluctant Dr. Dickey who felt his usefulness was spent.

¶ 10 The second argument raised by the Crown was that the Board misapplied the test in Winko (supra) for determining that the respondent was "a significant threat to the safety of the public". The complaint is that the Board trivialized the threat as being one of annoyance to a prospective lady friend

rather than seeing it as a threat to commit criminal acts. We see this issue as going more to the Board's perception of the evidence than an error in understanding the test.

¶ 11 On the evidence the respondent had taken up with a new lady friend at Maynard Place. They had their difficulties in that relationship but none that led to serious complaints. Dr. Gates' observations, quoted above, speak to the potential of future problems in such a relationship if he should transfer his interest to another woman. Overall, everyone reports general improvement in his manifestations of his condition. In our view, the level of degree of risk based on the evidence before it, was for the Board to decide. The Board was entitled to turn away from a finding that his criminal conduct of the past would recur in the future. We would not interfere on that ground.

¶ 12 Finally, the Crown argued that the disposition was unreasonable. This ground melds into the first two and as we see it, the Board had a full exposure to the available evidence and reached a conclusion that was available to it.

¶ 13 We therefore dismiss the appeal.

CATZMAN J.A.
CARTHY J.A.
WEILER J.A.

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