Case Name:

R. v. Vancurenko

Between
Her Majesty the Queen, (Respondent), and
George Vancurenko, (Appellant)

[2006] O.J. No. 2569
Docket: C44377

Ontario Court of Appeal
Toronto, Ontario
J.C. MacPherson, J.M. Simmons and E.A. Cronk JJ.A.

Heard: June 23, 2006.
Oral judgment: June 23, 2006.
Released: June 27, 2006.
(7 paras.)

Criminal law — Appeals — Appeal by prisoner Vancurenko from Ontario Review BoardAEs decision that he be detained dismissed — Board did not err in admitting police summary of prisonerAEs prior criminal activity — There was strong evidence to support the BoardAEs risk assessment, which was entitled to considerable deference.

Appeal by Vancurenko from the Ontario Review BoardAEs decision that he be detained in the minimum security unit of the Whitby Mental Health Centre (WMHC). Vancurenko argued that the Board erred in admitting a police summary of his prior criminal activity, thereby impairing the fairness of the hearing and denying him fundamental justice. He also argued that the BoardAEs decision was unreasonable and that he should have received an absolute or conditional discharge from the WMHC.

HELD: Appeal dismissed. The Board was entitled to receive and consider the challenged police summary and it made no error in admitting the summary at the review hearing. There was strong evidence to support the BoardAEs risk assessment, which was entitled to considerable deference. The disposition reflected the least onerous and least restrictive disposition available, consistent with the need to protect the public.

Statutes, Regulations and Rules Cited:

Inquiries Act, R.S.C. 1985, c. I-11

Appeal From:

On appeal from the disposition order of the Ontario Review Board dated August 22, 2005.

Counsel:

Jean Buie for the appellant

Melissa Ragsdale for the respondent, the Ministry of the Attorney General

Ronald Carr for the respondent, the Administrator of the Whitby Mental Health Centre

---

ENDORSEMENT

The following judgment was delivered by

¶ 1 **THE COURT** (oral endorsement):— The appellant appeals from the August 22, 2005, disposition of the Ontario Review Board that he be detained in the minimum secure unit of the Whitby Mental Health Centre ("WMHC"). He advances two grounds of appeal. First, he argues that the Board erred in admitting a police summary of prior criminal activity and police investigations relating to the appellant, among other matters, thereby impairing hearing fairness and denying the appellant fundamental justice. Second, he submits that the Board's decision was unreasonable and that he should have received an absolute or conditional discharge from the WMHC. Notwithstanding the able argument of Ms. Buie, we reject these grounds of appeal.

(1) Admissibility of Police Summary

¶ 2 The appellant properly concedes that the Board enjoys a wide latitude to receive hearsay evidence, that its process is primarily inquisitorial rather than adversarial in nature, and that it is vested with certain of the powers envisaged by the *Inquiries Act*, R.S.C. 1985, c. I-11. In our view, given the breadth of this authority, the Board was entitled to receive and consider the challenged police summary and it made no error in admitting the summary at this review hearing. Indeed, we observe that much of the evidence received by the Board in its hearings is in the nature of hearsay evidence.

¶ 3 The summary was clearly relevant to the matters in issue at the hearing. At least some, if not all, of the information contained in the summary had been admitted by the Board at earlier annual review hearings concerning this NCR (not criminally responsible) accused. As reflected in its reasons for admitting the summary, the Board is accustomed to evaluating hearsay evidence and is aware of the dangers inherent in evidence of this type. In addition, the appellant waived any right to cross-examine the author of the summary regarding the reliability of the contents of the summary or the sources of the information contained in the summary.

¶ 4 Moreover, and importantly, we do not accept the appellant's contention that the Board's reasons demonstrate that the Board relied on the summary in making its disposition in this case. In our view, the Board's reasons, properly read, do not support this claim. It is apparent that much of the historical and other information referenced by the Board was detailed in the hospital reports before the Board. More significantly, the Board's reasons indicate that it was highly influenced by and accepted the evidence of the appellant's treating psychiatrist, Dr. Chapman, and the evidence emanating from the appellant's treatment team.

(2) Reasonableness of Disposition

¶ 5 Nor do we accept that the Board's disposition was unreasonable. There was strong evidence to support the Board's risk assessment concerning the appellant. This assessment, which falls squarely within the expertise of the Board, attracts considerable deference from this court. See *R. v. Owen*, [2003] 1 S.C.R. 779 and *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625. We see no basis to interfere with it.

¶ 6 We are also of the view that the Board's disposition, including the conditions imposed, was crafted by the Board with a view to the liberty interests of the appellant. We are satisfied, on the facts of this case, that the disposition reflects the least onerous and least restrictive disposition available in the circumstances, consistent with the need to protect the public from the appellant. The Board's disposition was reasonable and supported by the evidence at the review hearing.

¶ 7 Accordingly, for the reasons given, the appeal is dismissed.

J.C. MacPHERSON J.A.
J.M. SIMMONS J.A.
E.A. CRONK J.A.

QL UPDATE: 20060628
cp/e/qw/qlmxf/qlrsg