

** Unedited **

Indexed as:

I R. v. Vaughan

Between

Her Majesty the Queen (respondent), and
Gerald Michael Vaughan (appellant)

[1997] O.J. No. 4252

Docket Nos. C25187 C24654 and C24655

**Ontario Court of Appeal
Toronto, Ontario
Brooke, Finlayson and Rosenberg JJ.A.**

Heard: October 21, 1997.

Judgment: October 23, 1997.

(2 pp.)

Criminal law — Punishments (sentence) — Imprisonment and parole — Parole hearing, waiver.

Appeal by the accused from a decision of the Parole Board directing the appellant's continued detention and from orders adjourning and dismissing his application for habeas corpus. The appellant argued that the Board should not have proceeded with the hearing since he waived the hearing.

HELD: Appeals dismissed. The appellant could not unilaterally waive the hearing since the annual hearing was mandatory. Since the Board's order stood, the appeals respecting the habeas corpus application were moot.

Statutes, Regulations and Rules Cited:

Criminal Code, s. 672.81(1).

Counsel:

B. Cugelman, for the appellant and Gerald Michael Vaughan, the appellant, in person.
Dana Venner, for the respondent.

The following judgment was delivered by

¶ 1 **THE COURT** (endorsement):— As to appeal C25187. This is an appeal from the order of the Review Board, dated May 31, 1996. By that order, the Board directed the appellant's continued detention.

¶ 2 It was the appellant's submission that the Board ought not to have proceeded with the hearing as he had waived the hearing. In our opinion, this was not open to the appellant. He could not unilaterally waive the hearing. The provision of the Criminal Code, s. 672.81(1) makes the annual hearing mandatory and it cannot be waived. It may be that had a proper request been made to the Board that its proceedings be adjourned to commence within the statutory period, such an order could have been made. That is not what happened.

¶ 3 In the circumstances then, we cannot interfere and the appeal fails and must be dismissed.

¶ 4 As to appeals C24654 and C24655. These are two appeals with respect to orders made by Goodearle J., Eberhard J. and Marchand J. The first two are orders adjourning the hearing of the appellant's application for habeas corpus. The third is an order made by Marchand J. dismissing the application.

¶ 5 The appellant concedes here that if the order of the Board dated May 31, 1996 stands, then these appeals are moot.

¶ 6 In the circumstances then, for that reason, these appeals are dismissed. BROOKE J.A.
FINLAYSON J.A. ROSENBERG J.A.

QL Update: 971103
cp/d/mii/DRS