

INTRODUCTION AND BACKGROUND

[1] On October 11, 2018, the British Columbia Review Board convened an annual hearing to review the disposition of Divyan Joshua Christopher (the accused), who is 25 years old.

[2] We are entitled to accept some, none or all of the evidence before us. While we have considered all of the evidence on record in this case, we only recite that which is necessary to our decision.

[3] Mr. Christopher was charged with three offences which occurred in Victoria on June 13th, 2017, including assault (s. 266 cc), theft under \$5000 (s. 334(b) cc), and assault with weapon (s. 267(a) cc). Witnesses observed the accused trying to steal or snatch a briefcase from an individual on a Victoria street. In the course of that process, he punched, spit upon and threw rocks at the victim before being arrested. He was, at the time, the subject of a CBSA detention warrant. Mr. Christopher has prior convictions for assault and assault with weapon (November 2016), mischief (August 2017), assault (spitting) and assault with weapon (August 2017), as well as for a number of breaches.

[4] The accused was born in India and has also lived in Dubai and Australia. He demonstrated behavioural outbursts and started using marijuana regularly before relocating to Canada in 2014, and to Victoria in 2016. Due to his behaviour, his living circumstances were inconsistent and unstable, including homelessness. Mr. Christopher's parents have been supportive of him, albeit from a distance. They provided him with \$1000 to \$1200 monthly for rent and to maintain himself. He has frequently expressed resentment that his parent's financial support was inadequate. His mother alleges that he assaulted her during a visit to Victoria in early 2017. Since 2016 he has been the subject of more than 33 police reports. He was previously admitted to hospital in 2016 following an altercation.

[5] On assessment by FPS in 2017, Mr. Christopher presented as acutely psychotic and paranoid for his own safety. Schizophrenia and multiple substance use disorders were considered applicable diagnoses: since confirmed at Exhibit 12. On August 29th, 2017, Mr. Christopher was given a verdict of NCRMD and committed to FPH.

[6] At FPH Mr. Christopher was considered lacking in insight and in coping skills but he was behaviourally stable, compliant and abstinent. Despite his lack of insight, he verbally accepted his diagnosis and he denied ongoing symptoms. He clearly did not agree that he was mentally ill. At his initial hearing, the Review Board found that the necessary and appropriate disposition was one of detention.

EVIDENCE AT HEARING

[7] Dr. Stingu-Baxter is Mr. Christopher's inpatient psychiatrist. Mr. Christopher was housed on the A4 unit of FPH until January 2018, and then transferred to the Elm south ward. He reported, or disclosed episodes of visual and auditory hallucinations telling him to hurt somebody or himself, (mainly at night or on awakening), paranoid and grandiose delusions as well as negative symptoms. His symptoms diminished with a change in his antipsychotic medication. His residual symptoms do not affect his behaviour. He continues to voice that he does not need medications and reports side effects.

[8] Mr. Christopher has not demonstrated any violent or aggressive behaviour. He has been entirely abstinent and does not seek drugs. He appears to acknowledge the potential negative behavioural and mental state effects of drug use. His insight or acceptance of his underlying mental illness is less robust.

[9] Mr. Christopher participated in offered programs and his engagement has generally been reported as positive, insightful and effective. His participation in the substance abuse program is described as follows: "Mr. Christopher was fully engaged and demonstrated a genuine interest in the material covered." He also says that continued recovery work "feels healthy and more positive." His goals are seen as realistic and he demonstrates "a deep understanding of the effect of substance use," on his relationships. He demonstrated "great" insight into and guilt about his behaviour on drugs.

[10] Mr. Christopher's cognitive functioning is reportedly within normal limits, with some mild memory and language impairments, which he recognizes and wants to address. He attends CBT. His ADLs could benefit from further development. Mr. Christopher's goal beyond discharge from hospital is to return to India. His immigration status is under legal review.

[11] In stark contrast with her written assessment, Dr. Stingu-Baxter's oral evidence was far more negative, ambivalent and outright contradictory in such dimensions as the extent and variety of the accused's drug use, the degree of his engagement in programs, the extent of his negative symptoms or the level of remission of his symptoms and his vulnerability to relapse. She does not think Mr. Christopher is able to live or function independently. Her answers to questions from hearing participants were vague and equivocal. She answered "I don't know" to several questions. She felt that Mr. Christopher's "entitled" attitude could trigger a negative reaction in the community. Her evidence was often non-specific, over inclusive and speculative. Simply put, we prefer the information in her written assessment.

[12] Mr. Christopher speaks to his family twice weekly and his parents remain supportive of him. He has difficulty describing his symptoms but denies any commands. Nonetheless, he says he needs the medication and will remain compliant as they bring clarity and help his nightmares and voices. He denies side effects but acknowledges some erectile dysfunction. He was homeless and sleeping rough for a year prior to his admission and admits he harboured delusional beliefs about the victim of his "random" index offence. He was also angry at his parents at the time "I had gotten angry at my parents, so I took it out on a random person ... I couldn't take it out on them ... I wanted to take it out on someone". He says he immediately recognized he had made a mistake. Mr. Christopher wants to return to India as soon as possible under his own auspices and with his parent's support, rather than being deported.

ANALYSIS AND DISPOSITION

[13] The Board's decision making is governed by s. 672.54 And s. 672.5401 of the *Criminal Code* which provide:

672.54 When a court or Review Board makes a disposition under subsection 672.45(2), section 672.47, subsection 672.64(3) or section 672.83 or 672.84, it shall, taking into account the safety of the public, which is the paramount consideration, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is necessary and appropriate in the circumstances:

(a) where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the

safety of the public, by order, direct that the accused be discharged absolutely;

(b) by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or

(c) by order, direct that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considers appropriate.

...

672.5401 For the purposes of section 672.54, a significant threat to the safety of the public means a risk of serious physical or psychological harm to members of the public — including any victim of or witness to the offence, or any person under the age of 18 years — resulting from conduct that is criminal in nature but not necessarily violent.

[14] As confirmed in ***Calles v. British Columbia (Adult Forensic Psychiatric Services)***, 2016 BCCA 318, codification of the definition of significant threat in s. 672.5401, has not changed its interpretation:

A significant threat to public safety is defined in s. 672.5401 of the *Criminal Code* to mean “a risk of serious physical or psychological harm to members of the public – including any victim of or witness to the offence, or any person under the age of 18 years – resulting from conduct that is criminal in nature but not necessarily violent”. The threat posed must be more than speculative and be supported by the evidence. It must 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 grave harm will not suffice”, nor will a high risk of trivial harm: **Winko**, at para. 57. (*para. 15*)

[15] In ***R. v. Carrick***, 2015 ONCA 866, the Court specifically adopted the above formulation from **Winko** and added:

In short, the “significant threat” standard is an onerous one. An NCR accused is not to be detained on the basis of mere speculation. The Board must be satisfied as to both the existence and gravity of the risk of physical or psychological harm posed by the appellant in order to deny him an absolute discharge (*Par. 17*)

[16] The risk assessment provided by Dr. Stingu-Baxter, at Exhibit 14, highlights that the accused's schizophrenic illness was associated with, or contributed to the index offence, as would be the case with any NCR accused. It does not appear to consider the accused's alleged assaultive behaviour in respect of his mother, reported by a third party.

That said, and despite evidence of declining functioning, Mr. Christopher's criminal record is not remarkable for serious violence, nor is his index offence (which he says occurred while he was using marijuana), at the seriously violent end of the spectrum of such events. Mr. Christopher has been nonaggressive, nonviolent, cooperative and abstinent since his admission to FPH. His symptoms, despite some apparent ongoing negative symptoms, have responded and diminished with treatment. Contrary to Dr. Stingu-Baxter's *viva voce* opinion, he is the subject of very positive reports regarding his engagement and insight at programs. He is showing symptoms and Mr. Christopher's insight is new and fragile. He remains less than fully accepting of his illness. We have determined that our jurisdiction over him remains justified.

[17] Having concluded that the accused remains a significant threat, we are required to reconsider and apply the criteria in s. 672.54 to the evidence to arrive at the necessary and appropriate disposition in this case:

The “necessary and appropriate” standard came into force on July 11, 2014. Before then, the *Criminal Code* required that the disposition be the “least onerous and least restrictive to the accused”. This court has endorsed the Board’s view that the two standards are synonymous – in other words, the “necessary and appropriate” disposition is also the “least onerous and least restrictive” disposition: **Ranieri** (*Re*), 2015 ONCA 444, 336 O.A.C. 88, at paras. 20-21. The change in language was meant to clarify the standard and make it easier to understand, not to modify it. Thus, the jurisprudence developed under the least onerous and least restrictive standard continues to apply to dispositions under the necessary and appropriate standard: **McAnuff** (*Re*), 2016 ONCA 280. (*Par* 22)

[18] We find Dr. Stingu-Baxter's assessment in support of detaining Mr. Christopher is speculative and lacking in critical analysis in terms of alternative scenarios. She apparently does not consider the statutory presumption in favour of discharge or a less restrictive, less onerous disposition, which governs the Review Board's decision making process. On our part we consider once more the relative severity, or lack thereof of the index offence, the accused's progress as reported, and his somewhat unique or unusual access to financial support from his parents. Therefore, and although we have determined to maintain jurisdiction, we see no unacceptable or inappropriate risk in discharging Mr. Christopher under conditions which require him to be monitored weekly; under which he is prohibited from the use of substance and subject to testing, and importantly, under which he can readily be return to the confines of FPH if that is deemed necessary. We therefore find

that the necessary and appropriate disposition in this case is one of discharge subject to conditions. That disposition will be delayed in its effect until November 15th, 2018 to provide time for Mr. Christopher to arrange financial support and to secure accommodation with the assistance of the Director.

Reasons written by B. Walter in concurrence with Dr. R. Stevenson and Dr. M. Burnett.

[[[[[[[[[[