BRITISH COLUMBIA REVIEW BOARD

IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE
R.S.C. 1985 c. C-46, as amended S.C. 2005 c. 22

REASONS FOR DISPOSITION
IN THE MATTER OF

JASWANT SINGH GILL

HELD AT: **Forensic Psychiatric Hospital**
Port Coquitlam, BC
October 12, 2017

BEFORE:	**CHAIRPERSON:**	**B. Walter**
	MEMBERS:	**Dr. P. Constance, psychiatrist**
		P. Cayley

APPEARANCES: **ACCUSED/PATIENT: Jaswant Singh Gill**
ACCUSED/PATIENT ADVOCATE: T. Reyes
DIRECTOR AFPS: B. Lohmann, Dr. G. Wiehahn
DIRECTOR'S COUNSEL: D. Lovett, QC
ATTORNEY GENERAL: G. Kabanuk
CSC (PACIFIC): M. Taylor, Dr. R. Lamba

****Ban on Publication pursuant to s. 486.5(1) of the Criminal Code.**

****Pursuant to s.672.5(4) of the Criminal Code, the Correctional Service of Canada is a party to these proceedings.**

INTRODUCTION AND BACKGROUND

[1] THE CHAIRPERSON: On October 12, 2017, the British Columbia Review Board convened a hearing at the Forensic Psychiatric Hospital (FPH) to make a placement decision under s. 672.68(2) of the *Criminal Code* in respect of Jaswant Singh Gill.

[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.

ACCUSED'S BACKGROUND

[3] Mr. Gill was raised in a strict home on Vancouver Island. In 1991, he relocated to Vancouver where he became involved in a criminal lifestyle. That same year, he was accused of abduction, sexual assault, and compelling prostitution. He was also involved in the drug trade. During a "staged drug deal" in the early 1990's, he shot and killed a victim named TA. That offence, or more properly, his conviction and his sentence of life imprisonment for that offence is one aspect of the issue before us in this hearing.

[4] In 1992 before his arrest on the abduction, sexual assault and compelling prostitution charges and while on probation following a conviction for theft, Mr. Gill eloped to the USA for several years. He was allegedly assisted by family members to return to Canada in 1999. We note that the dates of Mr. Gill's absence from Canada do not accord with the matter of TA which in the indictment is dated as December 1994.

[5] On March 6, 2000 Mr. Gill married the victim of the index offence in India. They cohabited in India for a month. The accused returned to Canada, on the understanding that his new spouse would, subject to immigration requirements, follow him to Canada.

[6] On January 6, 2001, Mr. Gill was arrested for his outstanding prostitution and sexual assault charges and sentenced to five and a half years in prison on each count, to be served concurrently.

[7] In February 2001 Mr. Gill's spouse arrived in Canada at the age of 29. The accused was in jail on her arrival and they did not cohabit until his release in 2003. Their

cohabitation was interrupted by periodic separations, including when the accused was, on a number of occasions, returned to custody due to parole breaches.

[8] The accused and the victim moved in together in February of 2006. On February 14, 2006, the accused killed his wife, GG (the index offence). The circumstances of the homicide are somewhat grisly. Mr. Gill apparently strangled his wife and stabbed her. He then refrigerated her body in their apartment for three weeks. He eventually enlisted a friend to help him dispose of the body, and they buried her in a shallow grave. GG was not reported missing until September 12, 2006.

[9] By 2008, the accused had become involved with two other women. He was the subject of a number of allegations in respect of these individuals, including charges of threatening, assault with weapon, assault causing bodily harm, forcible confinement, assault, cruelty to animals and criminal harassment. In this context, the two women reported that the accused had disclosed to them that he killed his wife. On June 10, 2010, the accused was convicted on two counts of the above offences, the victims of which were females and their families.

[10] Between January, 2011 and September, 2012, the accused was convicted of breaches of probation.

[11] In February of 2013, in the context of an undercover operation, the accused admitted to the murder of his wife. He also made admissions regarding the (1994) murder of the victim TA. Mr. Gill gave a confession to police on February 16, 2013. The accused's behaviour during the undercover operation gave rise to questions about his mental state, in particular, and psychiatric and/or drug issues.

[12] On December 16, 2013, the accused was first admitted to FPH for assessment of his fitness to stand trial. Dr. Hediger mentioned a diagnosis of schizophrenia, with a history of psychosis and delusions complicated by marijuana use and which were inconsistently treated due to non-compliance. Mr. Gill was certified and with treatment, acknowledged the benefits of medication. He was ultimately considered fit to stand trial.

[13] The Board also has Exhibit 5, a 2015 assessment provided to the Vancouver Police Department by a psychologist, Dr. Mackoff. It concludes that the accused demonstrates impaired empathy; that he is grandiose, manipulative, and has narcissistic personality features; that he is excited by dominance in sexual situations and minimizes his responsibility for sexual assaults; that he is criminally versatile and is considered a high

risk to reoffend violently. This assessment also highlights that Mr. Gill is a special risk to women and children and that his risk for violence escalates or heightens when he is excited. The report also diagnoses a possible schizotypal personality disorder.

[14] In September of 2015, Dr. Jeanette Smith was asked to provide an assessment for Mr. Gill's defence counsel, which may be found at Exhibit 6. Her assessment augmented the psychiatric profile by adding that Mr. Gill had been certified in August of 2008, while acutely delusional, disorganized, paranoid and admitting to daily marijuana use; that he was treatment non-compliant on discharge, and that he had reportedly demonstrated a consistent or systematic pattern of domestic abuse of females, children, as well as an animal. He had also voiced bizarre and grandiose ideations in the context of the police undercover operation, including descriptions of his wife's death, as well as the 1994 murder.

[15] Dr. Smith found the accused disorganized and delusional. She diagnosed schizophrenia with grandiose and paranoid delusions as well as disorganized thinking exacerbated by the use of marijuana.

[16] In April of 2017, shortly before trial, Dr. Tomita provided an NCRMD assessment to the court, which is found at Exhibit 9. Dr. Tomita found no evidence that Mr. Gill had experienced psychosis before January of 2006. He said that Mr. Gill had been generally untreated until 2013 and was probably continuously psychotic thereafter. He assigned a differential diagnosis of schizophrenia or schizoaffective disorder, but interestingly, found insufficient evidence upon which to base a clear opinion about the index offence. He considered Mr. Gill ineligible for an NCRMD verdict.

[17] By April of 2017 Mr. Gill was in FPH and was again assessed by Dr. Wiehahn who concluded that the accused suffered from an established diagnosis of schizophrenia with auditory and visual hallucinations, and a complex delusional system; a history of alcohol and cannabis use, as well as a more distant history of cocaine use in 2005. Again, Dr. Wiehahn was unable to provide a definitive opinion regarding Mr. Gill's mental state at the time of the index offence, the murder of his wife in February 2006.

[18] On May 1, 2017, the Supreme Court of British Columbia found Mr. Gill guilty of the December 23, 1994 first degree murder of the victim TA, i.e. the non-index offence, and sentenced him to life imprisonment. In respect of Count 1 of the Indictment, the court

found Mr. Gill not criminally responsible on account of mental disorder, (NCRMD) for the murder of his wife, and made a disposition that the accused be detained at FPH.

[19] These two verdicts and their competing custodial dispositions render Mr. Gill a dual status offender, pursuant to s. 672.67 of the *Criminal Code*. I observe, in reviewing the court's findings, that in detaining the accused at FPH, the court appears to have expressly intended that, once treated, the accused be released to prison to serve the life sentence imposed under Count 2, with no eligibility for parole for 25 years.

[20] While arranging the accused's initial Review Board hearing, under s. 672.47, the Director of FPH, as well as the Crown, requested that the Review Board hold a placement hearing with respect to Mr. Gill under s. 672.68(2). The accused agreed. The Review Board determined to add the Correctional Service of Canada (CSC), as a party to the proceeding. CSC was notified a day before the scheduled hearing. Obviously, under such circumstances, CSC did not have the opportunity to assess the accused or to formulate a recommendation. Under the circumstances, the Review Board could have simply adjourned its initial hearing but when it convened on July 26, 2017, it imposed a custodial disposition of three months on the understanding that a placement hearing would be scheduled.

[21] On the basis of evidence of a diagnosis of schizophrenia; Mr. Gill's serious history of serious violence, including sexual assaults and murder; his extensive history of antisocial and criminal behaviour; his antisocial personality disorder with violent attitudes, and his continuing, at least low level of psychosis, the Review Board, at its first hearing, determined that the accused was a significant threat and detained him at FPH.

EVIDENCE AT PLACEMENT HEARING

[22] To assist the Board in making a placement decision, we received an assessment and heard oral evidence from Dr. Lamba, a psychiatrist employed by CSC. Dr. Lamba agrees that the accused suffers from a psychotic illness but is uncertain whether the proper diagnosis is schizophrenia, schizoaffective, or some other form of psychotic disorder. The lack of clarity is based on the available history of Mr. Gill's illness as well as uncertainty as to its future course. Nevertheless, Dr. Lamba opines that Mr. Gill's illness is characterized by a prolific and evolving delusional system, the symptoms of which, unexpectedly, do not appear to affect Mr. Gill's daily functioning, or for that matter, his behaviour.

[23] As to the issue of placement, in play at this hearing, Dr. Lamba is of the opinion that the treatment of Mr. Gill's psychotic disorder consists primarily of the administration of medication which can be achieved equally effectively at either the Forensic Psychiatric Hospital or in a correctional setting. That is, the primary psychiatric illness can be equally accommodated in either system, especially as it does not appear to affect or impact Mr. Gill's daily functioning. Dr. Lamba is unclear about the role of psychosis in Mr. Gill's future risk of violence or harm to others.

[24] However, Dr. Lamba also diagnoses Mr. Gill with prominent antisocial and narcissistic personality traits, which he believes are far more relevant to Mr. Gill's potential risk of violence and offending behaviour.

[25] On the basis of the application of a number of instruments, Dr. Lamba finds Mr. Gill at least a moderate risk of violence. He believes that the accused's personality and/or criminogenic features would be better addressed in a corrections setting. Dr. Lamba is also of the view that, given the extent and nature of the programming available in a corrections environment, and depending on his progress and behaviour, Mr. Gill could eventually be helped to understand the origins of his offending behaviour. He might indeed also achieve greater mobility within the secure confines or perimeter of a correctional institution than he could be afforded at FPH.

[26] Ms. Duncanson is an Assistant Warden, Interventions, at Pacific Institution. She described the process of intake and assessment to which Mr. Gill would be subjected in determining into which prison or "parent institution" he would be placed. Given Mr. Gill's offence and his sentence, he would, in any event, be placed for at least the first two years of his sentence in the maximum security Kent Institution. In that setting, Mr. Gill would have access to a mental health team and be offered both psychological programs and counselling, as well as vocational, educational and fitness program modules. Depending on his behaviour, Mr. Gill could, after two years at Kent, be cascaded to a less secure institutional environment.

[27] Finally, on behalf of CSC, the Review Board received evidence from Ms. Taylor, the Executive Director of the Regional Treatment Centre (RTC). She testified that Mr. Gill would, in the Corrections system, have access to psychiatric treatment and services, including admission to the RTC, a psychiatric hospital, should his treatment needs become

more acute. She also testified that Kent Institution is slated to implement a new and significantly enhanced mental health unit as of November 2017.

[28] On behalf of the Director of FPH, Dr. Wiehahn, provided further evidence that under treatment Mr. Gill has experienced at least subjective improvement in his symptoms. However, given his risk assessment submitted for the July 26 hearing, and although medication can continue to be administered in FPH, Dr. Wiehahn is of the opinion that in order to mitigate the potential impact of his personality and extensive criminogenic history, Mr. Gill requires a highly structured environment which cannot be offered at FPH. In Dr. Wiehahn's opinion, as he does not present with an acute, persistent and severe mental illness which is treated using medication and other modalities, Mr. Gill requires placement in a correctional facility. Dr. Wiehahn believes that the treatment of Mr. Gill's personality traits, his criminogenic attitudes and his history of antisocial behaviours are not primary strengths of FPH. Therefore, much of what Mr. Gill needs is not available at FPH, especially as, given his sentence, reintegration or opportunities for privileges are not yet under consideration. Dr. Wiehahn opines that Mr. Gill's psychotic illness and/or any historic substance abuse issues are secondary contributing factors to any future risk of violence by this accused. Dr. Wiehahn suggests that even if Mr. Gill's current medication regime were discontinued, he might not deteriorate significantly.

[29] Mr. Gill testified clearly that he not only consents, but wishes to be transferred to Kent Institution where he believes he will be able to “move on” and have greater access to programs while still receiving his medication. Many of Mr. Gill's responses to questions about his mental illness and its symptoms were either not entirely responsive, persuasive or helpful in determining whether or not he currently experiences symptoms of psychosis. He currently espouses no expectations of even eventual reintegration. He closed his evidence by indicating that he wishes to move on from this hospital.

[30] All parties, including Mr. Gill, agreed that he should be transferred to a correctional setting where access and opportunities to participate in necessary programs, under the level of structure and security he requires to safeguard public safety, are available.

[31] In his closing submissions through counsel, Mr. Gill also provided his consent, as contemplated in s. 672.81(1.1), to forego a further hearing to review his disposition before

this tribunal within the presumptive 12-month period, in favour of an extended disposition of 24 months from the date of his initial hearing.

ANALYSIS AND PLACEMENT DECISION

[32] Section 672.67 provides:

> **672.67 (1)** Where a court imposes a sentence of imprisonment on an offender who is, or thereby becomes, a dual status offender, that sentence takes precedence over any prior custodial disposition, pending any placement decision by the Review Board.
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> **(2)** Where a court imposes a custodial disposition on an accused who is, or thereby becomes, a dual status offender, the disposition takes precedence over any prior sentence of imprisonment pending any placement decision by the Review Board.

[33] In this case, subsection 672.67(2) applies. Mr. Gill is a dual status offender, who is subject to a custodial disposition at FPH. He is also subject to a sentence of life imprisonment.

[34] The current proceeding is convened to make a placement decision in accordance with s.672.68(2) and (3):

> **Placement decision by Review Board**
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> **(2)** On application by the Minister or of its own motion, where the Review Board is of the opinion that the place of custody of a dual status offender pursuant to a sentence or custodial disposition made by the court is inappropriate to meet the mental health needs of the offender or to safeguard the well-being of other persons, the Review Board shall, after giving the offender and the Minister reasonable notice, decide whether to place the offender in custody in a hospital or in a prison.
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> **Idem**
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> **(3)** In making a placement decision, the Review Board shall take into consideration
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> > **(a)** the need to protect the public from dangerous persons;
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> > **(b)** the treatment needs of the offender and the availability of suitable treatment resources to address those needs;
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> > **(c)** whether the offender would consent to or is a suitable candidate for treatment;

(d) any submissions made to the Review Board by the offender or any other party to the proceedings and any assessment report submitted in writing to the Review Board; and

(e) any other factors that the Review Board considers relevant.

[35] On the evidence, the necessary treatment of Mr. Gill's primary mental disorder, by the administration of medication, is available and can be provided equally whether he is detained at FPH or incarcerated by CSC.

[36] However, the evidence is unequivocal that the array of necessary treatment approaches to address Mr. Gill's personality traits and his criminal history are more the mandate, or purview of, and more readily available in a secure CSC environment.

[37] Importantly as well, the latter setting may be in a position to eventually offer Mr. Gill more in the way of program opportunities and mobility without in anyway compromising the need to protect the public from this highly dangerous individual.

[38] Finally, the record will reflect that Mr. Gill not only consents, but indeed seeks placement and treatment, under the terms of his sentence in a CSC institution. Such a placement was also an expressed expectation of the trial court.

[39] Therefore, having considered the evidence within the framework and criteria set out in s.672.68(3), we find that Mr. Gill's needs and the public safety are best met by his placement into an appropriate institution under the authority of, and to be determined by, CSC in accordance with his sentence, and we so order.

[40] Finally, in consideration of the consents provided on the record by the accused and the BC Attorney General at the hearing, Mr. Gill's disposition of detention, dated July 26, 2017, remains in full force and effect and is further reviewable within 24 months of its imposition, or on or before July 26, 2019: s. 672.63; 672.81(1.1).

Reasons written by B. Walter, in concurrence with Dr. P. Constance and P. Cayley

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