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

JAMES JULIAN PAGE

HELD AT: **Forensic Psychiatric Hospital**
Port Coquitlam, BC
November 1, 2017

BEFORE: **ALTERNATE CHAIRPERSON:** **I. Friesen *(dissenting)***
MEMBERS: **Dr. J. Smith, psychiatrist**
B. Walter *(for the majority)*

APPEARANCES: **ACCUSED/PATIENT: James Julian Page**
ACCUSED/PATIENT ADVOCATE: T. Reyes
DIRECTOR AFPS: Dr. G. Wiehahn / C. Toews
ATTORNEY GENERAL: G. Kabanuk

MR. WALTER:

INTRODUCTION AND BACKGROUND

[1] On November 1, 2017 the British Columbia Review Board convened an annual hearing to review the disposition of James Julian Page, the accused, who is 53 years of age.

[2] On February 12, 2003, Mr. Page was charged with possession of a dangerous weapon. He was arrested in an intoxicated state, brandishing a large kitchen knife.

[3] On February 22, 2003, Mr. Page was charged with aggravated assault by stabbing. Mr. Page is an addict and a historic user of multiple substances including cocaine, methamphetamine, Valium, methadone and heroin.

[4] At the time of the offences, Mr. Page had a lengthy criminal record, including thefts, robbery, flight, forgery, break and enter and assault of a peace officer. He committed these offences to satisfy his addictions which, despite attendance at several programs, were not successfully treated.

[5] He had previously been admitted to FPH in 1999 and diagnosed with a substance induced psychotic disorder. He was acutely psychotic on admission to FPH after the index offences and diagnosed with chronic schizophrenia, exacerbated by substance abuse and antisocial personality disorder.

[6] On July 28, 2003 Mr. Page received a verdict of NCRMD and was detained. At FPH, Mr. Page's symptoms remitted to some extent and he stabilized. Nevertheless, despite appearing motivated and gaining in insight, he continued to use marijuana and crack cocaine with accompanying auditory symptoms in and during unauthorized absences from the hospital. He also displayed occasional assaultive behaviours.

[7] Despite assertive efforts to reintegrate him, Mr. Page's discharges have been punctuated by at least eight returns to hospital. These have inevitably been associated with substance abuse (including marijuana, cocaine, heroin, and ecstasy), often while absent on an unauthorized basis. This pattern became chronic and relentless by 2010 to 2011, with negative impacts on the accused's mental state and anxiety. He was considered a chronic addict. He engaged in shoplifting to support his habit. He became impossible to supervise in the community despite "heroic" attempts to do so.

[8] Mr. Page has been detained at FPH since November 2014 but nevertheless has continued to use amphetamines, benzodiazepines, and cannabis. When not using substances, Mr. Page is clinically stable, compliant, insightful and manageable.

[9] Since 2015, Mr. Page has sought inter-provincial transfer to his home province of New Brunswick where he has supportive family. Regrettably, that jurisdiction has declined to accept Mr. Page, at least on an in-patient basis.

EVIDENCE AT HEARING

[10] Dr. Wiehahn's diagnosis of Mr. Page remains a severe, multi-substance abuse disorder; a psychotic disorder; and antisocial personality disorder. Mr. Page's symptoms exacerbate when he uses substances, which is considered the most potent factor in his potential risk to others. Mr. Page tested positive for cannabis on three occasions in February 2017 with negative effects on his mental state. In May he admitted not consuming his prescribed oral medications by "cheeking" them. In October he admitted some non-compliance with corresponding reduced levels of clozapine in his bloodstream but no mental instability. He continues to report anxiety and occasional auditory symptoms.

[11] Mr. Page is on a second 28-day visit leave to the CTC program and is engaged in substance abuse programming from that venue. In some contrast to past assessments, Dr. Wiehahn's evidence is that Mr. Page appears cognitively intact and capable of living independently. The treatment plan is to transition Mr. Page to reside at CTC subject to conditions under the supervision of an outpatient treatment team.

[12] If unsupported in the community, and considering his but passive compliance, Dr. Wiehahn considers that Mr. Page could pose a moderate violence risk within a three-month time frame. That said, Mr. Page has demonstrated no violence since 2005, although he was returned to FPH in August of 2010 for uttering threatening comments. He does not express violent attitudes currently. Dr. Wiehahn did not provide an assessment of Mr. Page's risk under a scenario that would see him discharged absolutely to reside with his brother in New Brunswick, away from an antisocial drug using environment or milieu.

[13] Mr. Page continues in his desire to return to New Brunswick to reside with his brother and to attend community mental health and substance services: See Exhibit 94.

[14] Mr. Page says that he no longer derives enjoyment from the effects of "heavy" substance use. He acknowledges ongoing auditory symptoms at times of a derogatory or

even persecutory nature. He says he would remain treatment compliant but would seek approval for a reduction in his dosage of clozapine.

ANALYSIS AND DISPOSITION

[15] 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.

[16] Codification of the definition of significant threat has not changed its interpretation. The threshold test remains that articulated in ***Winko v. British Columbia (Forensic Psychiatric Institute)***, [1999] 2 S.C.R. 625:

> [T]he threat posed must be more than speculative in nature; it must be supported by evidence: *D.H. v. British Columbia (Attorney General)*, [1994] B.C.J. No. 2011 (QL) (C.A.), at para 21. The threat must also 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 miniscule risk of grave harm will not suffice. Similarly, a high risk of trivial harm will not meet the threshold. Finally, the conduct or activity creating the harm must be criminal in nature… *(Par. 57)*

[17] In ***Calles v. British Columbia (Adult Forensic Psychiatric Services)***, 2016 BCCA 318, the BC Court of Appeal confirmed that:

> 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)*

[18] 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)*

[19] A finding of significant threat must be based on evidence rather than speculation. There must be a real risk of physical or psychological harm to individuals in the community that is serious, in the sense of going beyond the merely trivial or annoying. The conduct of concern must be criminal in nature. There must be a foreseeable and substantial risk that the accused would, or is likely to commit a serious criminal offence if discharged absolutely. In making these determinations, we must have regard both to the interests of individual liberty as well as to the paramount consideration of public protection.

[20] Despite the serious and violent index offence while Mr. Page was in the throes of his addiction and psychosis, and despite his personality disorder, he has, even while intoxicated during unauthorized absences, not been violent in ten to twelve years. He demonstrates no violent attitudes or ideations.

[21] While Mr. Page will predictably not remain perfectly abstinent, the risk of breaching prohibitions in this case is not necessarily tantamount to a risk to public safety. We are not entitled to place an onus on Mr. Page to disprove dangerousness: **re *Marzec***, 2015 ONCA, 658, paragraph 30.

[22] In the opinion of the majority of this Panel, the accused does not pose a significant threat to the extent that he should remain under our jurisdiction. We must therefore absolutely

discharge him. Our disposition will be delayed in its effective date until November 30, 2017 to allow for financial, travel and other arrangements to be developed for Mr. Page's transfer to New Brunswick.

MS. FRIESEN (dissenting):

[23] I would have continued to find that the jurisdiction of the Review Board is justified. The accused has a history of violence including the assault of a police officer and robbery. The index offences are serious, violent and involve the use of weapons and the second occurred while he was on bail for the first. Most of his offences occurred either to support his drug habit or in the context of drug use. His violence often occurs when he relapses into substance abuse leading to increased paranoia and psychosis. When psychotic, he can misinterpret the actions of others and resort to violence. He continues to experience auditory hallucinations even while under treatment. While Mr. Page has been non-violent for many years, it is only because of the ongoing support and supervision of the forensic treatment team who have assisted him to maintain a healthy lifestyle and mental health stability.

[24] Mr. Page has only recently begun visit leaves to CTC in August 2017. At the time of the hearing, he had 2 visit leaves to CTC. Reports have been cautiously optimistic but Mr. Page has demonstrated significant irritability on several occasions. CTC staff have been able to successfully manage Mr. Page’s temper flares by resorting to the coercive power of the Review Board order. On his first visit leave in September 2017, he was overtly confrontational and swore at a staff member because of his frustration over rules regarding the handling of gasoline for a gas-powered bike. He was returned to FPH where his behaviour settled over the weekend before his return to CTC.

[25] Dr. Wiehahn testified that Mr. Page is, at best, passively compliant with his medication. His blood levels for clozapine dropped on two occasions in 2017. Mr. Page admitted to have cheeked his medication and it was crushed in order to ensure compliance. He continues to require extensive supervision in order to provide him with the motivation and support to take his medications.

[26] Mr. Page’s most important factor related to his success in the community and his risk formulation is his use of substances. His three positive urine screens for marijuana occurred even while in the strict confines of the hospital. Dr. Wiehahn opined that over the next three months, without support in the community, Mr. Page’s risk for violence is moderate

but that his risk for substance abuse is high. Using START (short term assessment of risk and treatability), Dr. Wiehahn highlighted the accused's critical risk items as follows:

> "Not invested in prosocial lifestyle, or treatment for psychiatric diagnosis, or substance abuse. Substance use in an antisocial crowd is the strongest link with violence, especially when psychotic symptoms emerge" *(page 5, para. 3).*

[27] If given an absolute discharge, Mr. Page is likely to fall into an anti-social lifestyle, fail to be compliant with anti-psychotic medication and return to substance abuse. His relapse to substance abuse is likely to be followed by mental health deterioration and a return to violence. The type of violence he resorts to when ill is serious and dangerous. These are not speculative risks, but an assessment based on his past behaviour when returned to the community. Review Board oversight is necessary to ensure the safety of the public.

[28] Having found that the threshold of significant threat has been met, I would have gone on to conclude the necessary and appropriate disposition is a conditional discharge, allowing for Mr. Page to live at CTC with the support of staff to assist him to maintain his mental health stability and to minimize the likelihood of his return to substance abuse.