



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

JOSE PEREZ

**HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
20 November 2006**

**BEFORE: CHAIRPERSON: B. Long
MEMBERS: Dr. G. Laws, psychiatrist
 Dr. M. Lee**

**APPEARANCES: ACCUSED/PATIENT: Jose Perez
ACCUSED/PATIENT COUNSEL: D. Nielsen
HOSPITAL/CLINIC: A. Westmacott (by telephone)
ATTORNEY GENERAL: L. Hillaby**

Introduction

[1] On November 20, 2006, the B.C. Review Board conducted an annual disposition review in the matter of Jose Perez. At the conclusion of the hearing the Board informed the parties of its unanimous decision to make an absolute discharge, delayed until January 22, 2007. Reasons were reserved.

Index offence

[2] Mr. Perez is a citizen of Mexico. In the autumn of 1991 he began a trip to Alaska that took him through Vancouver, B.C.. Mr. Perez was experiencing symptoms of an undiagnosed schizoaffective disorder. While in Vancouver, the accused grew depressed and attempted suicide. He developed persecutory delusions that the Mexican government wanted to harm him. Coincidentally the accused had attended the Vancouver Writers Festival on Granville Island on October 25, 1991. He believed a Festival volunteer, the victim of the index offence, was an agent of the Mexican government who intended to harm him. He returned to the Writers Festival the next day, and deliberately stabbed and killed the victim. Mr. Perez was charged with first-degree murder, and was found NCRMD on this charge on June 15, 1993.

Background

[3] Mr. Perez is now 47 years old. His personal history and progress under Board jurisdiction have been fully reviewed in the course of the 17 previous disposition reviews that have been held in these proceedings, and will not be repeated again. For convenience, we adopt the review provided in the last reasons for disposition by Alternate Chair Sweeney.

[4] Mr. Perez was a visitor to Canada at the time of the index offence. Over the years since then he has established a substantial number of connections to this country and would like to remain in Canada. He married a Canadian citizen in 1995. However the Department of Canadian Immigration and Citizenship (CIC) commenced removal proceedings against the accused following the NCR verdict, and eventually obtained an order of deportation. CIC took the position that the accused could be legally removed from Canada, even while under Board jurisdiction, as long as he was not detained in

hospital. On September 27, 2005 the accused's final challenge to his deportation order was exhausted when the Federal Court, Trial Division, in *Perez v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1601, upheld the authority of CIC to remove the accused from Canada as long as he was not detained in hospital, and despite remaining under Board jurisdiction.

[5] The accused's legal battle to remain in Canada has been the major focus of his life in recent years. It has been a source of considerable anxiety and stress, and the major factor threatening the accused's mental stability. Not surprisingly, the threat of deportation has sharply impeded the accused's reintegration into the community in British Columbia.

[6] Mr. Perez was subject to custodial orders following the index offence. He was conditionally discharged in June of 2004. He was returned to FPH in October of 2005 as a result of concerns about his mental state brought about by the stress of his immigration struggles. When last before the Board on December 8, 2005, the accused was given a custodial disposition. The purpose of this hearing is to review that disposition.

Evidence

[7] The Board was provided with two new reports from the accused's treatment team, composed of his psychiatrist, Dr. Meldrum, and case manager, Ms. Rodgers. The Board heard additional oral evidence from Dr. Meldrum, Ms. Rodgers, Trent Cook, an enforcement officer with Canada Border Services Agency, Helen Park, a lawyer with the federal Department of Justice, and Mr. Perez.

[8] The accused's mental illness has remained stable over the last year. Dr. Meldrum reports no sign of depression or psychosis. Mr. Perez remains fully compliant with his medication and treatment. His anxiety over his threatened deportation has significantly diminished. He has spent significant time in the community on visit leaves with his wife, Cassandra DeBanou, who also has a mental illness. Dr. Meldrum reports that in March of 2006, Ms. DeBanou's mental state deteriorated, and the accused's visit leaves were curtailed. However, within about six weeks her illness improved, and the accused was able to resume visit leaves. By August of 2006 Mr. Perez had progressed to a series of 28-day visit leaves. The accused is now ready for the next stage in his reintegration, which would ordinarily be a conditional discharge. However the treatment

team has been unable to formulate any discharge plans because of CIC's announced intention to deport the accused as soon as he is discharged.

[9] Dr. Meldrum said that Mr. Perez accepts that he cannot legally remain in Canada. He would like to get on with his life, and is prepared to return to Mexico. He has eight siblings who reside in the Mexico City area. They are supportive of the accused, have met with the treatment team several times since the NCR verdict, and stayed in touch over the years. Dr. Meldrum reports that the accused's family can provide temporary housing. Some of the family reside in a duplex. One of the units of the building is now free, as it was previously occupied by the accused's mother, who is deceased. The family informed Dr. Meldrum that the accused and Ms. DeBanou could live there until they secured their own accommodation.

[10] Dr. Meldrum, in conjunction with the accused's family, has made contact with Dr. Mario Gomez, a psychiatrist at the National Institute of Psychiatry located in Mexico City. Dr. Meldrum said the Institute is a well-known facility that is active in research and treatment. Access to treatment is not universal, but the cost is adjusted according to ability to pay. Dr. Meldrum said that the cost of the accused's medication is much cheaper in Mexico, and would be about \$80 a month. If Mr. Perez returns to Mexico, Dr. Meldrum will forward his clinical records to Dr. Gomez. Forensic services is also willing to provide the accused and his wife with six months of medication in order to ensure that have no obstacles in maintaining continuous access to medication.

[11] In Dr. Meldrum's opinion, the accused's principal risk factor is the possibility of relapse to psychotic illness. She noted the absence of other risk factors such as anti-social personality, or histories of substance abuse or previous violence. However the accused is vulnerable to stress, which can precipitate mental deterioration. Although the accused has not experienced any major relapse for more than five years, that has been in the context of considerable forensic supervision and treatment.

[12] The most encouraging development since the last disposition review is the accused's increased capacity to handle stress without mental deterioration. Mr. Perez has come to accept that he will be deported to Mexico upon discharge from FPH. He was able to accommodate his wife's most recent relapse to illness. Dr. Meldrum noted that in the past, Mr. Perez was relatively passive in responding to deteriorations in his wife's mental state, but during the most recent episode, he was much more proactive in his in dealing

with her illness. For example he made a number of telephone calls to seek assistance as well as made other necessary arrangements. Mr. Perez subsequently had several blunt discussions with his wife in which he told her that she needed to adequately treat her mental illness if the couple was to continue to remain together.

[13] Despite this progress, Dr. Meldrum was unable to recommend an absolute discharge. In her opinion the combination of the seriousness of the index offence and the history and severity of the accused's illness warrants a cautious and gradual transition to independent living in the community. The accused is now ready for discharge, provided there is adequate supervision, support, and monitoring. The next step should be a conditional discharge under forensic care. However that option has been frustrated by CIC's intention to deport the accused on discharge.

[14] Dr. Meldrum said that if the accused returned to Mexico, he would face a considerable number of challenges. He would have to find and maintain adequate medical treatment, accommodation, and employment. His wife's immigration to Mexico would need to be resolved. She had an additional concern that added an extra dimension to the accused's risk. Although Mr. Perez no longer experiences paranoia, he continues to have some doubts about the quality of justice in Mexico. Significantly Dr. Meldrum noted that he had some rational basis for his fears about persecution, as he had been harassed by the police before leaving the country, and his sister had been shot, apparently as a result of political activism. Mr. Perez strongly believes that if he is deported to Mexico while on conditional discharge, his legal status as an NCR accused on conditional discharge for first-degree murder would leave him at risk for further jeopardy or sanction from Mexican authorities. In Dr. Meldrum's opinion, these fears would be an additional and possibly significant stressor. The consequent risk to public safety would not be trivial given the history of the accused's paranoid belief system.

[15] Furthermore Dr. Meldrum added that although the accused has good insight into his illness, this disappears rapidly on relapse. When ill the accused has shown a propensity to conceal his symptoms. She said that his family had never seen the accused when he was ill, and might have real difficulty detecting the signs of relapse. Therefore despite the support and assistance of his family, Dr. Meldrum concluded that there were simply too many unknowns to support any discharge that would have the accused immediately sent to Mexico.

[16] The Board heard evidence from two witnesses associated with CIC. Trent Cook is an enforcement officer with Canada Border Services Agency. He described the process of deportation to Mexico. He stressed that the objective of his agency was to effect a smooth and orderly return. He said that Mr. Perez would have an opportunity to return to Mexico out of custody. He confirmed that the accused had never failed to appear when required by CIC, and as long as he continued to do so, there would be no need to take him into custody. He said that CIC would arrange air travel to Mexico for the accused and then accompany him on the flight. He said that his department would make efforts to coordinate travel arrangements with Ms. DeBanou so that she could have the opportunity to accompany the accused on the same flight.

[17] Helen Park is a lawyer with the Department of Justice. She has conducted the accused's immigration proceedings and was counsel in *Perez, supra*. She said that this matter was a test case that established that CIC had the power to deport an NCR accused on conditional discharge. She said the CIC was prepared to cooperate with forensic services in deporting Mr. Perez. She said that following discharge, all that remained to be done was obtain the accused's travel documents and schedule an airline flight. She said that Mr. Perez had a birth certificate, which should make obtaining travel documents straightforward. She said that the Canadian government had a good working relationship with Mexican authorities and did not anticipate any difficulties or lack of cooperation.

[18] Lastly the Board heard evidence from Mr. Perez. He said that he loved Canada and wanted to stay here, but he accepted the decision in his immigration proceedings. He wanted to get on with his life and that meant returning to Mexico. He confirmed Dr. Meldrum's description of his family's support. He said that he planned to find work, noting that he has experience working in construction, but adding that he would like to explore employment in the tourism industry. He observed that he had acquired a good working knowledge of English, which would be of particular advantage since Mexico had experienced a boom in English-speaking tourists. Mr. Perez was realistic in recognizing that his NCR verdict might create a barrier to employment, and said that he had other options such as working with his family. He said that some of his siblings have their own businesses: one operates a tailoring business; another has a café. He is also interested in opening his own business. Mr. Perez said that his wife was excited about going to Mexico. She had been there before, met with his family on several occasions, and liked them. He said that it was important that his wife continue to receive treatment for her mental illness.

He added that he needed to consider his own mental health needs and this required that his wife adequately treat her own illness.

[19] Mr. Perez expressed apprehension about returning to Mexico on conditional discharge. He acknowledged that the justice system had improved significantly after he left the country and he no longer had particular fears of persecution. However he believed that if he returned under the legal status of conditional discharge, he could be at real risk of some form of sanction from local authorities. If he was going to be discharged from FPH, he wanted the benefit of an absolute discharge to avoid the threat of any problems.

Positions of the Parties

[20] The Director, represented by Ms. Westmacott, submitted that Mr. Perez did not need to remain at FPH. She observed that although the accused does not require detention in hospital for treatment, there were legitimate concerns with both conditional and absolute discharge. She submitted that in the ordinary course, the next step in the accused's reintegration into the community would be a conditional discharge. However this was not an option in view of the evidence that the accused would be immediately deported. This would cause the accused to be beyond the control or supervision of the Director. Furthermore if the accused was conditionally discharged, he would face a number of challenges as reviewed in Dr. Meldrum's evidence. In considering the alternative of an absolute discharge, Ms. Westmacott observed that the accused had yet to make a successful transition to living in the community. She reviewed the many unknowns that concerned Dr. Meldrum. She therefore was unable to recommend any form of discharge.

[21] The Crown, represented by Mr. Hillaby, agreed that the evidence did not support a detention order, as the accused was now ready for discharge. He noted that Mr. Perez had accepted that he would be sent back to Mexico and wanted to get on with his life. He observed that an absolute discharge would be a tidier outcome. However, on balance he was unable to support that outcome. He agreed that in the ordinary course the next step should be a conditional discharge with forensic support and supervision. He submitted that the accused had an understandable basis for his concerns about returning home on conditional discharge, and would additionally face many challenges and unknowns as outlined in Dr. Meldrum's evidence. He concluded that the Board should therefore make a

conditional discharge, but that the order should relieve the Director of responsibility to supervise the accused, since that would be impossible once the accused left Canada.

[22] Mr. Perez, represented by Ms. Nielsen, sought a delayed absolute discharge. She observed that the index offence was some 15 years ago and occurred at a time when his illness was completely untreated. She stressed the accused has no other history of violence or aggressive behaviour. She noted the accused had not experienced a relapse to illness for more than five years, and, had been able to accommodate the stress of his immigration proceedings and wife's illness over the last year. She repeated the accused had excellent support from his family in Mexico. She concluded that there would be no utility to a conditional discharge given that the accused would be beyond the direction and control of the Director and there would be the additional stress as on the accused's fears.

Discussion

[23] The Board's decision is governed by s. 672.54 of the *Criminal Code*. We must make the least onerous and least restrictive disposition compatible with the accused's circumstances while taking into account four factors. They are the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society, as well as the other needs of the accused.

[24] The determination under s. 672.54 ordinarily involves a two-stage process. The Board must first assess the accused's risk, and then make the least onerous and least restrictive disposition. If the Board concludes that the accused continues to be a significant threat to public safety, it may either detain the accused at FPH, or make a conditional discharge. If the accused is not a significant threat, the Board must make an absolute discharge. However analysis of the accused's threat is not made in a vacuum and necessarily takes into consideration the likely scenarios on each of the dispositional alternatives.

[25] We start out by reviewing Mr. Perez's current circumstances. His illness is well controlled by medication and treatment. He exhibits no symptoms of illness and his mental state has remained stable over the last year, despite the threat of deportation and relapse of his wife's illness. The accused accepts that he has exhausted all legal remedies to remain in Canada, and while return to Mexico is not his preferred choice, he wants to move forward in his life, and is ready to return to Mexico. He does not wish to stay at FPH

solely to avoid deportation. The basis for his return to FPH from the community in 2005, namely the potential for stress induced mental deterioration, has diminished enormously. The evidence overwhelmingly supports that the accused is now ready to move on to the next stage in his life, whatever that might be.

[26] In the usual course, the next step in the accused's reintegration into the community would be a conditional discharge, which would permit him to continue to receive forensic support and monitoring while making the transition to life without forensic involvement. However this process has been thwarted by the decision of CIC to forthwith deport the accused to Mexico upon conditional discharge. If Mr. Perez was on conditional discharge in Mexico, the Director would have no means to supervise or monitor him, or take steps to ensure that the public remained protected from any danger the accused might present. Furthermore the Board would not have any ability to enforce its order, as the Board has no extraterritorial jurisdiction. Indeed once outside of Canada, the accused would be unable to return to Canada based on his current legal status.

[27] We conclude that a conditional discharge that removes the accused from all possibility of forensic supervision and Board jurisdiction is a logical contradiction. The essence of a conditional discharge is a discharge subject to conditions. The Board was not prepared to make an order knowing that it could not enforce any part of the order. Additionally a conditional discharge means that the Board would have first concluded that the accused was a significant threat to public safety. It would be utterly irresponsible to make an order which would deprive the accused of the very forensic support and supervision that made his risk assumable in the community. Simply put, a conditional discharge without enforceable conditions effectively amounts to an absolute discharge.

[28] Dr. Meldrum reviewed a number of challenges facing the accused upon return to Mexico. In her opinion, the combination of these stressors had the real potential to induce mental deterioration. She thought that there were too many unknowns to support an absolute discharge. We can certainly appreciate the concerns of Dr. Meldrum, and without deciding the matter, we observe that a conditional discharge would add the potentially significant stressor of the accused's fears of Mexican authority because of his legal status. In the context of this case we do not find the accused's fears to be entirely unreasonable and conclude that a conditional discharge would pose a greater risk than absolute discharge. We therefore conclude that a conditional discharge is not a viable alternative in these proceedings.

[29] The evidence is clear that the accused does not require detention in hospital for treatment. Detention in these circumstances could only be justified in order to protect the public, which in this case is the public of Mexico, since there is no prospect of reintegrating the accused into Canadian society. It is difficult to conceive of how detaining the accused at FPH could advance his reintegration into Mexico. There is no further treatment that FPH can provide that would smooth a return to Mexican society. The evidence is that the accused is ready to leave FPH. The net effect of a detention order would leave the accused indefinitely marooned at FPH with no prospect of reintegration into society.

[30] We now return to the threshold issue of significant threat. We begin by noting that we were impressed by Mr. Perez' evidence. His presentation was focused and articulate. He was able to maintain a calm demeanour despite his acknowledgement that he was nervous. He demonstrated good insight into his illness and expressed a reasonable understanding of the circumstances he will face upon return to Mexico. His plans on return to Mexico were realistic and we could readily sympathize with his wish to get on with his life.

[31] The evidence establishes that the accused's mental state has remained stable over the last year. He has not shown any signs of vulnerability to stress despite facing significant challenges as a result of his immigration status and his wife's relapse to illness. His illness has been well controlled by medication for some time and it has been more than five years since he experienced any relapse. The evidence also establishes that the accused is fundamentally prosocial. We find it significant that he has no history of violence. It has been more than 15 years since the index offence, and although it was horrific, it was also a complete anomaly in this man's history. Mr. Perez is fortunate to have significant support from his siblings in Mexico City. They can provide temporary accommodation and have the potential to assist with employment should that prove necessary. The accused should be able to access sound psychiatric treatment. He will have access to six months of medication. Ms. DeBanou would like to move to Mexico and intends to accompany the accused. She has previously met the accused's family and likes them.

Decision

[32] These circumstances are unusual, and we conclude that on balance the evidence supports that the accused is no longer a significant threat. In reaching this decision we have placed particular emphasis upon the reintegration of the accused into society and the other needs the accused. We repeat that there is no prospect of reintegration into society while the accused remains under a detention order that has been made to shield him from impending deportation. The Board was not provided with any evidence that might explain why CIC refuses to permit the accused some limited time in the community on conditional discharge prior to deportation. Nevertheless, CIC's intention is quite clear, and the Board must accept that this will occur.

[33] The other needs of the accused reinforce that he should have the opportunity to return home and be able to get on with his life, which would not be assisted by a further period of detention at FPH. The evidence supports that he is well poised to make a successful reintegration into Mexican society.

[34] The parties were agreed that should the Board make an absolute discharge, the order should be delayed for a period of about two months in allow Mr. Perez reasonable time to make arrangements before his return to Mexico. We agree that this period of time will be required to permit the necessary preparations prior to travel. Our intent is that the accused will be removed on or within days of this order coming into force. The suggested date was January 22, 2007, and the Board accordingly made the order effective of that date.

Reserved reasons prepared by B. Long,
Dr. G. Laws and Dr. M. Lee concurring,
January 3, 2007