

COURT OF APPEAL FOR ONTARIO

CITATION: Kobzar (Re), 2012 ONCA 144

DATE: 20120307

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Goudge, MacPherson and Juriansz JJ.A.

IN THE MATTER OF: Yuriy Kobzar

AN APPEAL UNDER PART XX.1 OF THE *CRIMINAL CODE*

Joanne K. Stuart, for the appellant

Yuriy Kobzar, appearing in person

Joseph Di Luca and Erin Dann, *amicus curiae*

Barbara Walker-Renshaw, for Ontario Shores Centre for Mental Health

Heard and released orally: February 29, 2012

On appeal against the disposition of the Ontario Review Board dated, May 27, 2011.

ENDORSEMENT

[1] The Crown appeals from an Ontario Review Board (ORB) disposition discharging the respondent absolutely (by a 4-1 majority). The Crown contends that the ORB's disposition was unreasonable because the ORB failed to properly

assess the respondent's risk of causing psychological harm to members of the public, misapprehended the evidence, and exceeded its jurisdiction by going behind the trial judge's findings on the index offence.

[2] We do not accept this submission. The standard of review of an ORB disposition is reasonableness which the Supreme Court of Canada described in this fashion in *R. v. Owen*, [2003] 1 S.C.R. 779 at para. 33:

[A] Court of Appeal should ask itself whether the Board's risk assessment and disposition order was unreasonable in the sense of not being supported by reasons that can bear even a somewhat probing examination. If the Board's decision is such that it could reasonably be the subject of disagreement among Board members properly informed of the facts and instructed on the applicable law, the court should in general decline to intervene.

[3] In our view, the majority decision of the ORB comfortably fits within these parameters. The ORB's ultimate decision that the respondent was not a significant threat to the public was an entirely reasonable decision on the record before it.

[4] The appeal is dismissed.

"S. T. Goudge J.A."

"J. C. MacPherson J.A."

"R. G. Juriansz J.A."