

COURT OF APPEAL FOR ONTARIO

CITATION: Landrus (Re), 2014 ONCA 371

DATE: 20140509

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Laskin, Watt and Hourigan JJ.A.

IN THE MATTER OF: BENJAMIN LANDRUS

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

Benjamin Landrus, appearing in person

Joseph Di Luca, *amicus curiae*

Karen Papadopoulos, for the Crown

Barbara Walker-Renshaw, for the Person in charge of the Ontario Shores Centre for Mental Health Sciences

Heard: April 15, 2014

On appeal against the disposition of the Ontario Review Board dated, August 14, 2013.

By the Court:

A. OVERVIEW

[1] The appellant Benjamin Landrus was found not criminally responsible on account of mental disorder for a charge of aggravated assault. He was admitted

to Ontario Shores, where he is currently detained on the hospital's secure forensic unit.

[2] On August 1, 2013, Mr. Landrus had an initial disposition hearing before the Ontario Review Board. He represented himself, though he was assisted by *amicus*. He asked for an absolute discharge. The hospital sought a hybrid disposition by which it would detain Mr. Landrus on the secure forensic unit with discretion to transfer him to the general forensic unit if appropriate. The Crown opposed the hybrid disposition.

[3] The Board released its disposition in mid-August, followed by written reasons in early September. The Board rejected an absolute discharge, as it concluded that Mr. Landrus was a significant threat to the safety of the public. The Board also rejected the hospital's request for a hybrid disposition. Instead, it ordered that Mr. Landrus be retained on the secure forensic unit, but with privileges that include supervised access to the community.

[4] In this court, Mr. Landrus accepted that an absolute discharge is not justified. However, he asked that he be placed on the general forensic unit, which would entitle him to greater privileges, including more access to the outdoors. *Amicus* submits that the Board erred in failing to make the hybrid disposition sought by the hospital for two reasons:

- (1) The Board failed to explain why a hybrid disposition was contrary to public safety; and

(2) In rejecting a hybrid disposition, the Board improperly relied on Mr. Landrus's request for an absolute discharge as evidence of his dangerousness.

B. BACKGROUND

[5] Mr. Landrus is 30 years old. He is a very intelligent young man. He functions in the "very superior range of mental ability, at the 99.9 percentile". He had a largely happy childhood. He was raised by his parents, both of whom worked for the Toronto District School Board as psychologists.

[6] Concerns about Mr. Landrus's mental health first surfaced in 2006. He was diagnosed with psychosis, then with schizophrenia, paranoid type.

[7] The index offence, which is described in detail in the Board's reasons, occurred on November 3, 2012. Mr. Landrus attacked his father and hit him with a cricket bat. Mr. Landrus told us that this is the only time he has acted violently.

[8] Since Mr. Landrus has been at Ontario Shores, he has been treated by Dr. Coleman, who testified at the Board hearing. In her opinion, Mr. Landrus posed too high a risk to be transferred to the general forensic unit; he needed the support available to him on the secure forensic unit. She was concerned that if Mr. Landrus came into contact with his father, Mr. Landrus would harm him. She hoped that Mr. Landrus would benefit from his medication but did not expect him to be in complete remission or even see significant improvement until he was on a higher dose for a longer period of time.

[9] The hospital report notes that Mr. Landrus “variably endorsed auditory hallucinations, stating that he heard his father’s voice or a number of voices that cause him anxiety.” The report also notes that Mr. Landrus “maintained fixed delusions of his father controlling him by sound or radio waves externally and raping and murdering people.” The clinical risk assessment in the hospital report indicates that the appellant continues to “harbor paranoid delusions that his father, the victim of the index offence, is murdering and raping others.” The hospital report concludes that Mr. Landrus is at a high risk for further violence.

C. DISCUSSION

[10] We agree with the Board’s finding that Mr. Landrus continues to pose a significant threat to the safety of the public. Moreover, although Mr. Landrus asked for a transfer to the general forensic unit, we are satisfied that the evidence before the Board fully supports his detention on the secure forensic unit. Thus, the only issue before us is whether the Board’s rejection of the hybrid disposition sought by the hospital was unreasonable. We therefore turn to the *amicus’s* two submissions on this issue.

(1) Did the Board fail to explain why a hybrid disposition was contrary to the safety of the public?

[11] The Board concluded that a hybrid disposition was premature. It said:

The Board agrees with counsel for the Attorney General that it is much too early to grant Mr. Landrus the benefit of a Hybrid Order given the fact [that] he has only

recently started to take medications and his treatment is in very early stages. Mr. Landrus has been a reluctant participant in treatment and the doctor in her evidence said it was possible he might well discontinue taking medications.

[12] In our view, the Board's finding was reasonable and therefore entitled to deference from this court. The Board was entitled to come to its own conclusion about whether a non-hybrid disposition on the secure forensic unit was the least onerous and least restrictive disposition. In reaching its conclusion, the Board was justified in taking into account that Mr. Landrus was in the early stages of treatment. The prematurity of a hybrid disposition was a valid reason for not granting it.

[13] Moreover, in practice, the difference between the Board's disposition and the disposition sought by the hospital is negligible. Mr. Landrus has not yet shown the improvement that would justify even contemplating a transfer to the general forensic unit. And his hearing date (his annual review) is but a few months away. For these reasons, the Board's disposition was reasonable.

(2) Was the Board's reliance on Mr. Landrus's request for an absolute discharge improper?

[14] After rejecting the hybrid disposition sought by the hospital, the Board said the following:

It remains to be seen whether or not Mr. Landrus will participate in psycho-educational programs and cooperate with respect to treatment at Ontario Shores and it is noteworthy that his application for an Absolute

Discharge at this stage of his hospitalization shows a complete lack of judgement or understanding with respect to his situation or his mental illness. Mr. Landrus at the hearing repeatedly asked for evidence with respect to his symptomatology notwithstanding the fact that he has sought out medications for same and that his symptoms are well documented in the various reports and clearly expressed at the hearing by Dr. Coleman.

[15] As *amicus* submitted and the Crown fairly acknowledged, these comments were improper. Mr. Landrus was entitled to ask for an absolute discharge and was entitled to ask for the evidence that supported the hospital's position. The Board was not justified in relying on the position Mr. Landrus took at the hearing to buttress its findings. Although the Board erred in doing so, its error was of no consequence as it had already determined that it would not grant a hybrid disposition – a determination we have found to be reasonable.

[16] Accordingly, the appeal is dismissed.

Released: May 9, 2014 ("J.L.")

"John Laskin J.A."
"David Watt J.A."
"C.W. Hourigan J.A."