

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Heinekamp, 2015 ONCA 124

DATE: 20150224

DOCKET: C58957

Laskin, Feldman and Simmons JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Anthony Heinekamp

Appellant

Lucy Saunders, for the appellant

Christine Tier, for the Attorney General of Ontario

James Gibson, for Ontario Shores Centre for Mental Health Services

Heard: February 4, 2015

On appeal from the disposition of the Ontario Review Board dated May 12, 2014.

**By the Court:**

[1] The appellant appeals from a disposition of the Ontario Review Board ordering that he be detained in a medium secure unit at Ontario Shores Centre for Mental Health Services rather than in the minimum secure unit where he was detained prior to the disposition under appeal.

[2] In making its decision, the Board relied on the appellant's recent alcohol use, which involved two incidents of intoxication; his antisocial activities and attitude; and his recent elopement and resulting elopement risk.

[3] We do not accept the appellant's submissions that the Board erred in relying on these factors or that it failed to impose the least onerous and least restrictive alternative.

[4] The appellant suffers from paranoid schizophrenia, substance abuse disorder, and antisocial personality disorder. He committed the index offences and a prior manslaughter while intoxicated. Although his schizophrenia is currently controlled by medication, he pleaded guilty to the prior manslaughter and there is no evidence it was related to schizophrenia as opposed to anti-social personality disorder combined with drinking.

[5] At the hearing, the appellant's treating psychiatrist gave evidence that the appellant is at a very high risk of acting violently when intoxicated; that he has minimal insight into his alcohol problem; that there was a significant risk he would access alcohol if he had indirectly supervised privileges on the minimum secure unit; and that even if he did not have indirectly supervised privileges on the minimum secure unit, the appellant could obtain alcohol from other patients on the unit.

[6] Taking account of these factors, it was open to the Board to find as it did that alcohol use makes the appellant a much more dangerous individual; that the appellant does not appreciate the risk that alcohol poses for him and for members of the public; and that there is a greater chance that the appellant will access alcohol if he is detained in the minimum secure unit rather than in the medium secure unit.

[7] Moreover, it was open to the Board to take account of the appellant's continued alcohol use and the risk it creates when determining the least onerous, least restrictive disposition. The fact that the appellant had been using alcohol in the time frame leading up to the previous disposition ordering that he be detained in a minimum secure unit did not preclude the Board from relying on his recent alcohol use when arriving at the disposition under appeal. A prior decision to attempt to manage the appellant in the minimum secure unit despite his alcohol use does not preclude the Board from taking account of his continuing alcohol use and the risk that it created in determining the least onerous, least restrictive disposition.

[8] As for the appellant's antisocial activities and attitude, the Board did not rely solely on the appellant's refusal to discontinue his business activities with other patients. The Board noted as well that the appellant's current disposition included a prohibition against alcohol use and that he minimized the seriousness

of the index offences and has indicated that he would engage in the same conduct again

[9] In any event, the appellant's refusal to discontinue his business activities with other patients was a proper factor to consider in relation to managing the appellant's risk. Based on the appellant's history, the prospect that his business activities would bring him into conflict with other patients was real. Moreover, there was evidence that he had threatened another patient who owed him money arising from his business activities.

[10] The appellant's elopement risk made him an unsuitable candidate for the indirect supervision privileges that are customary on the minimum secure unit. If granted indirect supervision privileges on the minimum secure unit, his elopement risk heightened the risk that he would access alcohol.

[11] At the hearing, the appellant's treating psychiatrist testified that he did not believe that the appellant could be managed on a minimum secure unit at that time. The appellant did not testify or call evidence. In all the circumstances, the Board's conclusion that detaining the appellant in the medium secure unit was the least onerous, least restrictive disposition was not unreasonable.

[12] Before the Board, the appellant sought a hybrid order in the alternative. On appeal he maintains, in the alternative, that a hybrid order would have been the least onerous and least restrictive disposition.

[13] We do not accept that submission. The Board noted that it was open to the appellant to demonstrate improved stability and conduct, in which case, Ontario Shores could seek an early review. In our view, particularly in the light of the appellant's treating psychiatrist's evidence that a "straight" disposition would give the appellant a better opportunity to focus on addressing his risk factors, the Board's decision not to make a hybrid disposition was not unreasonable.

[14] Finally, in our view, read as a whole, the Board's decision reflects proper consideration of all the factors in s. 672.54 of the *Criminal Code*.

[15] In the result, we see no basis on which to interfere with the Board's disposition.

Released:

"FEB 24 2015"  
"JL"

"John Laskin J.A."  
"K. Feldman J.A."  
"Janet Simmons J.A."