

COURT OF APPEAL FOR ONTARIO

CITATION: Foote (Re), 2019 ONCA 731

DATE: 20190919

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Watt, Miller and Fairburn JJ.A.

IN THE MATTER OF: Ian R. Foote

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

Anita Szigeti, for Ian Foote

Erica Whitford, for the Crown

Kathryn Hunt, for the Center for Addiction and Mental Health

Heard: September 13, 2019

On appeal against the disposition of the Ontario Review Board dated November 7, 2018.

REASONS FOR DECISION

[1] This is an appeal from an Ontario Review Board detention order with privileges up to the possibility of community accommodation approved by the hospital. The appeal is based on three grounds:

- (a) the reasons were insufficient because the Board failed to properly address the appellant's evidence and resolve the content of that evidence against the totality of the record;

- (b) there was a procedural error in light of the fact that the Board made a determination without having access to important information; and
- (c) the Board failed to adequately address why a conditional discharge was not the least onerous and restrictive disposition available.

[2] We do not agree that the Board erred in any of these respects.

[3] The Board was under no obligation to review the appellant's evidence in fine detail. The reasons reflect that the Board adequately summarized the appellant's evidence and grappled with its core content. Among other things, the appellant testified that he does not have a mental illness and denies delusional thinking. This central aspect of the appellant's evidence was rejected by the Board. That rejection is clear based upon the Board's considered and reasoned acceptance of contrasting evidence in the case, including that of the treating psychiatrists who addressed the appellant's ongoing psychiatric condition and his delusional thought processes: *R. v. J.J.R.D.* (2006), 215 C.C.C. (3d) 252 (Ont. C.A.), leave to appeal ref'd [2007] S.C.C.A. No. 69, at para. 53. The Board clearly accepted that evidence, the corollary of which was that they rejected the appellant's denials.

[4] Nor do we see any procedural error in this case. The Board very helpfully set out what it saw as gaps in the record, suggesting the types of documents that

should be gathered before the next annual hearing. Despite those observations, the Board specifically noted that it was satisfied that the issues to be resolved could be “properly addressed” on the existing record. We see no error in that conclusion and agree that proceeding without an adjournment was wise given that the Board’s disposition resulted in the appellant moving to a less restrictive setting than the one he was detained in at the time of the hearing.

[5] Finally, we disagree that the Board erred in concluding that a detention order was required. Specifically, the appellant says that the Board failed to explain why a conditional discharge was not the least restrictive disposition available. We disagree.

[6] The reasons are clear as to why a detention order was made and that finding fell within a range of reasonable outcomes. The Board concluded that left without hospital oversight, the appellant would “experience a recurrence of his psychotic symptoms, including delusional beliefs” about the victim he had stalked, would not take his medication, and would engage in “seriously harmful criminal conduct, similar to that of the index offences.” The evidentiary record supports those findings, including that the appellant:

- suffers from a major mental illness;
- has continued to engage in delusional thinking while in the hospital;

- has a substance abuse disorder, including having consumed crystal methamphetamine;
- has refused to take antipsychotic medication that is considered by the medical professionals as the principal risk management tool;
- has a lack of insight into his symptoms and poses a significant risk to the public; and
- has an established record of not complying with court orders.

[7] We see no error in the Board's conclusion that the appellant continues to pose a significant threat to the safety of the public. The Board gave appropriate consideration to a conditional discharge, finding upon the evidence it accepted that the appellant is "not currently in a position to be discharged into the community." We would defer to that finding.

[8] We see no basis upon which to intervene in the Board's decision. The appeal is dismissed.

"David Watt J.A."

"B.W. Miller J.A."

"Fairburn J.A."