

COURT OF APPEAL FOR ONTARIO

CITATION: Aggio (Re), 2020 ONCA 214

DATE: 20200316

DOCKET: C67258

Watt, Fairburn and Zarnett JJ.A.

IN THE MATTER OF: David Aggio

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

David Aggio, acting in person

Andrew Hotke, for the respondent, Attorney General of Ontario

No one appearing for the respondent, Person in Charge of St. Joseph's
Healthcare Hamilton

Naomi Lutes, duty counsel

Heard and released orally: March 10, 2020

On appeal against the disposition of the Ontario Review Board dated May 31,
2019.

REASONS FOR DECISION

[1] The appellant appeals from a disposition of the Ontario Review Board directing that he be detained at the Forensic Psychiatric Program at St. Joseph's Healthcare Hamilton with various privileges, up to and including community living in accommodation approved by the Person in Charge.

The Background Facts

[2] The appellant was found not criminally responsible on account of mental disorder (NCRMD) on October 24, 2011 on index offences of uttering threats and resisting arrest. These offences arose out of the appellant's conduct when stopped by police for a routine investigation into an alleged *Highway Traffic Act* offence.

[3] The appellant drove to a police station to speak to the ticketing officer's supervisor. There, he became belligerent. He made several threats, among them, threats to kill police or have them kill him as part of a murder-suicide plot.

[4] At the police station, officers detained the appellant under the *Mental Health Act*. He refused to comply. He tried to attack the officers. He was tasered, yet persisted in his threats. He was then taken to a local hospital and admitted on Form 1 under the *Mental Health Act*. When released from the hospital, about two weeks later, he was arrested.

[5] During his tenure under the authority of the Ontario Review Board, the appellant has always been subject to a detention order. At the hearing with which we are concerned, the Hospital and Crown supported the continuation of the

detention order. The appellant sought an absolute discharge. His counsel made no submissions in favour of a conditional discharge.

The Arguments on Appeal

[6] In this court, duty counsel contends that the Board erred in failing to give meaningful consideration to the availability of the conditional discharge.

[7] Duty counsel submits that the Board determined that a detention order was required solely on the basis that it was easier to return the appellant to hospital under a detention order than would be the case were he to be conditionally discharged. The duty of the Board, duty counsel reminds us, to impose the least onerous and least restrictive disposition, requires more than mere convenience to the Hospital.

Discussion

[8] In our view, this is not a case in which the Board's conclusion, that a detention order was the least onerous and least restrictive disposition, was grounded solely on the Hospital's convenience.

[9] When read as a whole, the reasons reflect the evidence adduced before the Board. They explain why the Board considered that a conditional discharge was not a necessary and appropriate disposition. The Board concluded:

We have considered a conditional discharge but find that it is not the necessary and appropriate Disposition. The treatment team requires the ability to return Mr. Aggio to

the Hospital quickly should be begin to decompensate. Mr. Aggio is treatment capable and given his presentation, this would not be possible under the *Mental Health Act*. We also find that the treatment team should have the ability to approve Mr. Aggio's accommodation. Mr. Aggio has a significant substance use disorder which directly impacts his mental health. When Mr. Aggio is first discharged into the community it will be essential that his accommodation is such that his risk of relapse would not be increased. Given that Mr. Aggio's insight into his substance use and its impact on his mental health fluctuates, this would likely impact his ability to choose appropriate accommodation.

[10] The Board noted the appellant's progress over the reporting year with which it was concerned. It also pointed out that the appellant's ability to live in the community in the year ahead is largely dependent on his participation in the programming offered and recommended by the treatment team, and that he remains abstinent from substance abuse. The Board expressed the hope – one that we share – that the appellant will take advantage of the therapy offered to him.

Disposition

[11] The appeal is dismissed.

“David Watt J.A.”

“Fairburn J.A.”

“B. Zarnett J.A.”