

COURT OF APPEAL FOR ONTARIO

CITATION: Ducharme (Re), 2020 ONCA 712

DATE: 20201109

DOCKET: C68051

Gillese, Lauwers and Benotto JJ.A.

IN THE MATTER OF: Christopher Ducharme

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

Anita Szigeti and Maya Kotob, for the appellant

Mark Luimes, for the respondent Attorney General of Ontario

James P. Thomson and Julia L. Lefebvre, for the respondent Person in Charge
of Waypoint Centre for Mental Health Care

Heard: November 5, 2020, by video conference

On appeal from the disposition of the Ontario Review Board dated January 29,
2020, with reasons dated February 10, 2020.

REASONS FOR DECISION

[1] The appellant is currently being detained at the Waypoint Centre for Mental Health Care. He appeals the disposition of the Ontario Review Board dated January 29, 2020 requiring his continued detention because he continues to pose

a risk to public safety. He appeals on the basis that the Board erred in rejecting an absolute discharge or, in the alternative, a conditional discharge.

[2] The appellant has a history of violent behaviour. He has been found NCR twice. The first index offences were committed in March 2015 when he had been charged with failure to comply with a promise to appear, fraudulently obtaining food, possession of property obtained by crime, dangerous driving, failing to stop at the scene of an accident and uttering death threats. The second index offence was committed in December 2016: assault with a weapon. Both sets of index offences involved violence: one included threatening a taxi driver with a knife.

[3] While in detention there have been many occasions where staff have been threatened, kicked, scratched and subjected to sexually inappropriate conduct. He has assaulted co-patients and held a knife to a staff member's throat intending to take her hostage. The appellant admits the behaviour but submits that his aggression is caused by his frustration with the rules and regulations he is required to abide by.

[4] Dr. Hudson testified that, if the appellant were to be released from the hospital, he would likely return to drug use and the likelihood of aggressive behaviour is almost certain. Dr. Choptiany testified that the appellant has limited insight into the risk posed by lack of treatment and a history of not taking his medication.

[5] The appellant's violent episodes have, at times, required that he be put in restraints. He attended the hearing before the Board in restraints. Dr. Hudson testified that this was necessary for the safety of the appellant and for the others in the room. He explained that the appellant suffers from recurrent psychotic disorder and recurrent explosive anger "where others are harmed seriously." The restraints at the hearing were necessary because of his agitation and threatening behaviour in the days leading up to the hearing and the morning of the hearing. Dr. Hudson testified that there is no way to consistently predict the outbursts because the appellant is regularly calm immediately before an eruption.

[6] Both Dr. Hudson and Dr. Choptiany testified that if released, the likelihood of aggressive behaviour is almost a certainty and the risk of violence is high. On this basis, we conclude that the Board's decision rejecting an absolute discharge was reasonable.

[7] The appellant submits, in the alternative, that he should have been granted a conditional discharge. He submits that the Board erred in concluding that there was "no air of reality" to the disposition of a conditional discharge.

[8] The evidence establishes that the appellant is not willing to follow conditions. He made it clear that he would not follow the terms of a conditional discharge. He suffers delusions involving conspiracies against him. He has no plan for re-

integration into society and continues to pose a risk to the public. He has expressed a continued resolve to escape.

[9] It was open to the Board to accept this evidence and reasonably conclude that a conditional discharge was not appropriate. In the circumstances, a detention order was the least restrictive disposition.

[10] The appeal is dismissed.

“E.E. Gillese J.A.”

“P. Lauwers J.A.”

“M.L. Benotto J.A.”