

2011 CarswellOnt 2768
Ontario Review Board

Ing, Re

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Harry Ing (DOB: 77.04.04)

C. McGrath Member, F. Yaskiel Alt. Chair, L. Stam Member, P. Kelly Member, W. Komer Member

Heard: June 29, 2010

Judgment: April 11, 2011 *

Docket: 2965

Counsel: Ms G. Nardella, for Accused, Harry Ing
Mr. J. Hammond, for Person in charge of hospital
Mr. A. Spiegel, for Attorney General of Ontario

Subject: Criminal

Table of Authorities

Statutes considered:

Criminal Code, R.S.C. 1985, c. C-46

Generally — referred to

s. 672.54 [en. 1991, c. 43, s. 4] — referred to

s. 672.55 [en. 1991, c. 43, s. 4] — referred to

s. 672.91 [en. 1991, c. 43, s. 4] — referred to

s. 672.92(1)(b) [en. 2005, c. 22, s. 36] — referred to

F. Yaskiel Alt. Chair:

Introduction:

1 On June 16, 1999, the accused, Harry Ing, was found not criminally responsible on account of mental disorder on a charge of robbery, contrary to the *Criminal Code of Canada*. Since that time, Mr. Ing has been subject to Dispositions of the Ontario Review board, most recently a Disposition dated June 8, 2009, granting him a conditional discharge.

2 On June 29, 2010, a panel of the Review Board convened at the CAMH to hold a hearing and review Mr. Ing's disposition. Mr. Ing attended the hearing, represented by counsel, Ms. G. Nardella.

3 The issues to be decided on this hearing were whether Mr. Ing continued to meet the test for significant risk to the safety of the public and, if so, a decision as to the least onerous and least restrictive disposition to be made in the circumstances of this accused including any conditions to be attached to that disposition, bearing in mind the four factors set out in s. 672.54 of the *Criminal Code*.

4 For the reasons set out below the board was in unanimous agreement with the joint position put forward that the test for significant risk continued to be met and that the least onerous and least restrictive disposition was a continuation of the current disposition.

Index Offences

5 The circumstances giving rise to the index offence are set out in the Hospital Report, Exhibit 1 as follows:

Police reports indicate that at approximately 2 am on December 7, 1996, Mr. Ing kicked at a plate glass window of a coffee shop, causing the window to shatter. This resulted in \$800 in damage and Mr. Ing was taken to the Wellesley Hospital to treat a laceration to his foot. Mr. Ing was not arrested until January 23, 1997 when he was under investigation with respect to another matter.

On January 17, 1997, Mr. Ing reportedly walked into a Royal Bank branch, pushed a customer aside, held up "an operable carbon dioxide hand gun" and demanded money from the teller. The teller began filling a plastic bag with money. After Mr. Ing told her that she had placed enough money in the bag, he fled the scene with the money. Mr. Ing reportedly made away with \$2500. The incident was captured on surveillance video. On January 23, 1997, Mr. Ing reportedly waited beside an empty police vehicle until the officers returned to the cruiser, at which point he confessed to the bank robbery that had occurred five days earlier. File information indicates that, prior to his confession, Mr. Ing had reportedly become involved in an altercation with a friend and he believed that he would be safer in jail.

Psychiatric reports prepared following the commission of the index offence suggest that in the days before the index offence, Mr. Ing was demonstrating features of a psychotic disorder, including ideas of reference and auditory hallucinations telling him to rob a bank. There is also a suggestion that Mr. Ing was paranoid. Despite the degree of illness, at no time was Mr. Ing found unfit to stand trial.

Background

6 Mr. Ing's background and history are set out in detail in the Hospital Report and need not be repeated at length here. Briefly summarized, he is 33 years of age, having been born in China on April 4, 1977, the eldest in a sibline of four. Mr. Ing experienced academic difficulties in school at an early age. He repeated Grade 3 and was frequently truant from school when he was in Grade 7. He also repeated Grade 9 and left school at the age of 15. During grades 6 and 7, Mr. Ing delivered Sunday newspapers. He has held a few jobs for short periods since that time including telephone canvassing, dishwashing, being a cook's helper and cleaning in a supermarket.

7 Mr. Ing began smoking marijuana at the age of 15 and using alcohol at the age of 16. He reported smoking heroin approximately six times, including after the index offence. Prior to the index offence, Mr. Ing had criminal convictions mainly for theft offences. Since the index offence, Mr. Ing has been convicted of robbery, assault with a weapon and uttering threats. On June 12, 2003, he was sentenced on those offences to two years less a day conditional sentence and probation for 3 years.

8 Mr. Ing suffered an early onset of Schizophrenia. There is also reference in the Hospital Report that Mr. Ing suffers from antisocial personality disorder. His first psychiatric hospitalization occurred at the age of 13 at the Hospital for Sick Children. He had further numerous admissions to hospital including admissions at St. Michael's Hospital, the Wellesley Hospital and the Whitby Psychiatric Hospital. He has a history of being non-compliant with treatment recommendations. On March 30, 2004, Mr. Ing had not taken his prescribed antipsychotic medication over a weekend and admitted to hearing voices for two weeks. As a result he was re-admitted to hospital and upon discharge on April 13, 2004 he was required to report to the hospital 7 days a week for medication administration. The following month, he attended at the outpatient clinic but left prior to being given his medication. He was apprehended on June 2, 2004 while attending at the hospital to collect his paycheck. He was again admitted to hospital where he reported that he

had not taken his medication for a period of time. He also admitted to securing employment at a karaoke bar at night cleaning, in exchange for alcohol. Approximately three years ago, Mr. Ing again ceased taking his medication resulting in a fluctuation in his mental state. Although he appeared to be hallucinating, he again denied the suggestion. On March 27, 2008, Mr. Ing admitted that he had been taking his medication inconsistently and completely discontinued taking his medication for several weeks. He was again admitted to hospital where clozapine was reinstated, resulting in a substantial improvement in Mr. Ing's mental state. However, three days following discharge, Mr. Ing again admitted to not taking his clozapine since being discharged. As a result, Mr. Ing was again required to report to hospital seven days per week for his administration of medication to be observed directly by clinical staff.

9 Mr. Ing continues to reside in the family home with his parents and all of his siblings. He receives ODSP, a portion of which he contributes to his family.

10 According to the most recent Hospital Report, Mr. Ing continues to be compliant with follow-up with the outpatient service. He also attends at the clinic three times weekly. He continues to telephone call his case coordinator immediately prior to taking his medication at night. His urinalysis has consistently been negative for street drugs and alcohol and there has been no fluctuations in his mental state requiring admission to hospital for risk management. Mr. Ing's negative symptoms continue to be problematic in his overall rehabilitation and recovery. He has not attended any formal hospital based rehabilitation or treatment programming this past year. Most of his time is spent watching television and attending arcades. There has been no incidents of aggression in the community.

11 Mr. Ing presents as dishevelled and disorganized. He appears "perplexed" and "disconnected". He often appears to be hallucinating although he denies the same. His thoughts at times are disconnected and bizarre. Mr. Ing scored 22 out of 40 on the PCL-R and his score on the VRAG placed him in the 6th of 9 ascending categories of risk for violent recidivism.

Evidence at the Hearing

12 Dr. Pallandi, Mr. Ing's attending psychiatrist was present at the hearing to answer questions. All parties chose to rely on the Hospital Report in support of the issues before the Board without hearing evidence from Dr. Pallandi. On being questioned by members of the Board, Dr. Pallandi testified that Mr. Ing acknowledges that he has a psychiatric illness and that he will need to take medication for life.

Positions of the Parties

13 At the commencement of the hearing, all parties were canvassed as to their position. There was no issue between the parties that the test for significant threat continued to be met. All parties relied on the Hospital Report including Mr. Ing's risk assessment to support significant risk and a continuation of the current disposition.

Analysis and Conclusion

14 The Board unanimously agrees with the joint position of all parties both on the issue of significant risk and Disposition. Mr. Ing suffers from a major mental illness, currently diagnosed as schizophrenia. Prior to the index offence, Mr. Ing had numerous admissions to hospital. He has a significant history of non-compliance with medication and substance use. He was admitted to hospital subsequent to the index offence for discontinuing his medication. In March 2008, Mr. Ing stopped taking antipsychotic medication which resulted in him becoming paranoid and suspicious. He was admitted to hospital as a result for risk management. His negative symptoms continue to be problematic in his overall rehabilitation and recovery. Although he often appears to be hallucinating, he denies the same. Although some of his symptoms have been attenuated by clozapine, he continues to demonstrate a vague and disconnected thought form, paranoia and residually auditory hallucinations. He is also plagued by negative symptoms of his illness. He has a history of substance abuse, which remains in remission in a controlled setting.

15 Mr. Ing's risk to the community is minimized as a result of the close monitoring in place with respect to medication. Because of his history of non-compliance with medication, Mr. Ing is attending at the clinic three times a week and he is required to leave a daily voicemail for his case coordinator immediately prior to taking his medication at night. The support and supervision that Mr. Ing receives is essential to ensure his continued success in the community. Without the support offered by the treatment team, Mr. Ing's risk would be significantly elevated. On the positive side, there have not been any problematic behaviours in the community nor any police involvement and no fluctuations in his mental state requiring him to be readmitted for risk management.

16 Accordingly, taking into consideration the four factors set out in s. 672.54 of the Criminal Code, the Board is unanimous that the current Disposition is the least onerous and least restrictive Disposition.

Related Proceedings

Disposition

(Dated August 9, 2010)

WHEREAS the accused was, on June 16, 1999 found not criminally responsible on account of mental disorder on charges of robbery, contrary to the *Criminal Code*;

AND WHEREAS the accused is subject to a discharge on conditions under a Disposition of the Ontario Review Board dated June 8, 2009;

AND WHEREAS the Ontario Review Board held a hearing at the Centre for Addiction and Mental Health, 1001 Queen Street West, Toronto on June 29, 2010 to review its current disposition:

1. IT IS ORDERED that the accused be discharged subject to the following conditions that he:

- (a) reside with his father;
- (b) report to the person in charge of the Centre for Addiction and Mental Health, 1001 Queen Street West, Toronto or his or her designate, not less than once a week;
- (c) abstain absolutely from the non-medical use of alcohol or drugs or any other intoxicant;
- (d) submit samples of his urine and/or breath to the person in charge of the Centre for Addiction and Mental Health, 1001 Queen Street West, Toronto or his or her designate for the purpose of analyzing whether the accused has ingested alcohol, drugs or any other intoxicant;
- (e) refrain from having in his possession any firearm, ammunition or other offensive weapon, or being in the company of any person possessing a firearm other than a peace officer;
- (f) on consent, take treatment pursuant to s. 675.55 of the *Criminal Code*;
- (g) advise the person in charge or his or her designate, in advance, of any absence from his residence of 24 hours or more;
- (h) notify, in writing, the Ontario Review Board within 24 hours of any change of address or telephone number;
- (i) upon notice, attend before the Ontario Review Board as required; and
- (j) keep the peace and be of good behavior.

2. AND IT IS FURTHER ORDERED that the person in charge of the Centre for Addiction and Mental Health, 1001 Queen Street West, Toronto notify the Ontario Review Board and the police if the accused contravenes the terms of this Disposition.

3. AND IT IS FURTHER ORDERED that if the accused is arrested pursuant to section 672.91 of the *Criminal Code* for a breach of the terms of this disposition or for an anticipated breach, he may under section 672.92(1)(b) of the *Criminal Code* be delivered to the Centre for Addiction and Mental Health, 1001 Queen Street West, Toronto.

4. AND IT IS FURTHER ORDERED that this Disposition will remain operative until a new Disposition of the Ontario Review Board is issued.

THIS IS THEREFORE TO COMMAND you, Harry Ing, in Her Majesty's name, to comply with the terms of this Disposition, the failure of which may result in your arrest pursuant to section 672.91 of the *Criminal Code*.

THIS IS THEREFORE TO COMMAND YOU, the person in charge of the Centre for Addiction and Mental Health, 1001 Queen Street West, Toronto, in Her Majesty's name, to execute the terms of this Disposition.

DATED this 9th day of August, 2010, at the City of Toronto, in the Toronto Region

Office of the Registrar

Ontario Review Board

Footnotes

* Disposition dated August 9, 2010