



BRITISH COLUMBIA REVIEW BOARD

**IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE *CRIMINAL CODE*
R.S.C. 1985 c. C-46, as amended S.C. 2005 c. 22**

REASONS FOR DISPOSITION IN THE MATTER OF

MARK ANDREW FINES

HELD: In the Absence of Parties
July 2, 2020

BEFORE: **CHAIRPERSON:** B. Long
MEMBERS: Dr. J. Smith, psychiatrist
 A. Markwart

****Pursuant to s.672.501(3) of the *Criminal Code*, and on the application of Crown, the British Columbia Review Board hereby prohibits the publication, broadcasting or other transmission of any information that could identify a victim or a witness in this matter. Failure to comply with this order is an offence.**

INTRODUCTION AND BACKGROUND

[1] On July 2, 2020, the Review Board held a mandatory disposition review in the matter of Mark Andrew Fines. The hearing was required as a result of an enforcement order that returned the accused to the Forensic Psychiatric Hospital (FPH). The Board agreed to conduct this review in the absence of the parties after accepting their joint submission that the Board should make a broad custodial disposition reviewable in six months.

[2] Mr. Fines is before the Board as a result of an NCRMD verdict of January 27, 2017 on charges of robbery, uttering threats, assault of a peace officer, assault with a weapon and dangerous operation of a motor vehicle.

[3] The index offences took place on April 1, 2016 in Kelowna, BC. They began when the accused punched a stranger in the face and stole his car keys. He then assaulted another stranger who was walking his daughter to school. The accused next drove away in a motor vehicle and encountered a police car that had attended the scene. The accused turned around and rammed his vehicle into the side of the police cruiser, pinning the lone officer inside. He then got out of his vehicle, went to the police car, and tried to take the trapped officer's firearm. The accused was eventually arrested at the scene. Both the second civilian victim and the police officer sustained concussions. A victim impact statement from the civilian discloses that he experienced significant and enduring harm.

[4] The accused's personal history has been reviewed in prior reasons for disposition and will not be repeated in detail in light of the consensual nature of this hearing. In summary, the accused is 46 years of age. He has been married twice and has three children from his second marriage. He has a history of employment in a range of unskilled occupations.

[5] The accused has a lifelong history of poly-substance abuse. Over the years he has used a range of substances that include cannabis, LSD, mushrooms, ecstasy, cocaine, GHB, and amphetamines. Substance use caused him to lose his job in 2015. In October of that year, he developed psychosis after several months of heavy crystal methamphetamine use and was hospitalized for about a week. Although he responded to antipsychotic medication, he failed to return to hospital while out on a pass. It appears that he subsequently became noncompliant with prescribed medication. He was next hospitalized

at FPH for a fitness assessment in January 2016 after he was charged with a number of offences. The accused was hospitalized again in March 2016 in Edmonton after exhibiting erratic behaviour that brought him into contact with the police.

[6] Mr. Fines is diagnosed as having schizophrenia. Although there was some initial diagnostic uncertainty due to the accused's amphetamine abuse, the existence of an underlying mental illness was firmly established by two trials of discontinuing psychiatric medication. In both instances, the accused relapsed to psychosis, ruling out the possibility of a substance-induced psychosis.

[7] The accused has a criminal record. He was convicted of causing a disturbance in 1991, assault in 1994, and mischief in 2016. He also engaged in other problematic conduct in 2015 that led to multiple police contacts.

[8] The accused was detained at FPH following the NCR verdict. He was unable to develop any meaningful insight into his illness. He was adamant that his mental health problems were caused by amphetamine use and insisted that he obtained no benefit from antipsychotic medication despite relapsing to psychosis following the trial discontinuations of medication. The accused's treatment has been further challenged by his adherence to strongly held religious beliefs. He grew up in a family that held fundamental religious values and believes in phenomena such as speaking in tongues. He maintained that he has possessed this power since age 27. He vigorously rejected the possibility that such beliefs might be symptomatic of an underlying illness despite exhibiting a marked increase in religious preoccupation that included speaking in tongues following the trial discontinuations of medication. Notwithstanding the accused's inability to develop any insight into his illness or need for psychiatric medication, he was conditionally discharged in January 2019 based on improvements to his mental health brought about by involuntary treatment and a series of successful of visit leaves to supervised accommodation in Kelowna.

[9] Mr. Fines last appeared before the Board on January 21, 2020. The reasons for disposition noted the accused had not been able to develop any insight into his illness. He remained fixed in his belief that he has no underlying mental illness, obtained no benefit from psychiatric medication, and that prior symptoms were entirely caused by amphetamines. He continued to adhere to fundamental religious beliefs and speak in tongues. The Board found that the accused would not take medication unless legally

compelled to do so and that he would be unlikely to accept appropriate treatment from civil mental health services. Despite the accused's lack of insight, the Board concluded that his risk remained manageable under conditional discharge.

EVIDENCE AT THE HEARING

[10] The new exhibits added to the disposition information consisted of the enforcement order that returned the accused to FPH, reports from the accused's outpatient treatment team, composed of his psychiatrist Dr. Hodelet and case manager Ms. Barone, a letter from the accused's mother, and a report from the accused's FPH psychiatrist Dr. Lacroix.

[11] Mr. Fines began to experience difficulties almost immediately after his last appearance before the Board. He was disappointed that he had not obtained an absolute discharge at his last hearing. He reported that his 16-year-old son, who had been living with him, was suffering from mental health problems, using cannabis, and that the Ministry of Children and Family Development had become involved in his care.

[12] On March 6, 2020, the accused tested positive for cocaine. He acknowledged use of this drug as well as alcohol, contrary to the terms of his disposition. Over the next two months, the accused's circumstances steadily deteriorated. There were numerous positive tests for cocaine. His behaviour grew increasingly unpredictable and erratic. He missed several appointments with the forensic treatment team.

[13] The Director initiated breach proceedings three times. In the first two applications, the accused succeeded in convincing the court that he was prepared to change and commit to abstinence. Despite being released with increasingly stringent conditions, he continued to use cocaine. He experienced financial difficulties and had to pawn some of his personal property. He was unable to look after his son. He lost his job, although this may have been related to the COVID-19 crisis.

[14] On May 11, 2020, Dr. Hodelet noted that the accused appeared agitated upon assessment. His verbal responses appeared mismatched with his circumstances, which appeared to be increasingly desperate. In the opinion of Dr. Hodelet, Mr. Fines was clearly spiraling downwards back into drug addiction. Dr. Hodelet subsequently learned that the accused had attended the emergency department of the Kelowna General Hospital on April 27. He admitted using crack cocaine several times per week, had not slept for two days

and was feeling agitated. The treatment team also received a report from the police that the accused had been observed outside crack houses in Kelowna.

[15] These circumstances prompted the Director to make a third court application to breach the accused. On May 13, 2020, the court found that the accused had breached his disposition and ordered him detained at FPH where he has since remained.

[16] Dr. Lacroix's report summarized the accused's progress following his readmission to hospital. He acknowledged relapse to cocaine use, although he was vague about the extent. He justified some of his use as "why not enjoy myself?" because he anticipated he would be returned to FPH. He stated that he enjoyed using cocaine, that it made him feel good, and that it was not associated with relapse to psychosis or a risk of leading to use of amphetamines.

[17] Dr. Lacroix noted that the accused has lost his accommodation and that he has no other suitable place to reside in the community. The accused is willing to take residential treatment to address his cocaine use. The treatment team has since been searching for an appropriate placement. However, in the absence of finding such a program, Dr. Lacroix recommended that there was no less restrictive alternative to detention in hospital.

ANALYSIS AND DISPOSITION

[18] The parties were agreed that Mr. Fines should be detained in hospital subject to a broad custodial disposition, reviewable within six months.

[19] The Board's first task was to review the decision to restrict the accused's liberties. The evidence clearly established that Mr. Fines had become manifestly noncompliant with the terms of his disposition. He relapsed to serious stimulant use and was using cocaine heavily. At the same time, his mental health markedly deteriorated. He missed appointments with the treatment team, had problems looking after his son, lost his job, and was forced to sell some of his property. Despite being given two opportunities by the court to remain in the community, he failed to comply with the conditions of his disposition. It is clear by the time the court ordered the accused's detention following his third court appearance, his return to hospital was necessary and appropriate in the circumstances.

[20] It next fell to the Board to make a disposition that is necessary and appropriate, taking into account the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society, as well as the other

needs of the accused. Unless the Board is of the opinion that the accused is a significant threat to public safety, it must make an absolute discharge.

[21] Following Mr. Fines' last disposition review of January 21, 2020, the Board concluded that he remained a significant threat based upon factors that included the absence of insight into his mental illness, his history of substance use, and the gravity of the index offences. Since then, the accused has been unable to sustain abstinence and relapsed to serious substance abuse. He has remained unable to develop any insight into his mental illness. He does not consider that cocaine use may cause a deterioration in his mental health. The description of the accused's downward spiral provided by the outpatient treatment team was confirmed by the letter from the accused's mother. In all the circumstances, the Board had little difficulty concluding that the accused's risk has increased since his last appearance before the Board. He therefore remains a significant threat for the reasons expressed by the last panel.

[22] Turning finally to the type of order, the Board accepted that the six-month custodial disposition was necessary and appropriate in light of the foregoing circumstances and accordingly made a broad custodial disposition reviewable within that timeframe.

Reasons written by B. Long in concurrence with Dr. J. Smith and A. Markwart.

