

Citation: *R. v. Carr*, 2020 YKTC 20

Date: 20200630
Docket: 20-00051
20-00051A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Chisholm

REGINA

v.

CHANGA MORRIS CARR

Appearances:
Amy Porteous
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] CHISHOLM C.J.T.C. (Oral): This is the verdict with respect to Mr. Changa Carr's fitness to stand trial hearing.

[2] By way of background, Mr. Carr is charged with three *Criminal Code* offences, namely, the offences of aggravated assault as well as mischief to property, which both occurred on April 23, 2020, in the City of Whitehorse, and the offence of failing to comply with an undertaking on April 26, 2020, at the City of Whitehorse. Mr. Carr has been in custody for approximately two months and he has been before me on at least two prior occasions.

[3] I have the benefit of a comprehensive Psychiatric Assessment that has been prepared by Dr. Lohrasbe. It was filed with the Court subsequent to it being signed by Dr. Lohrasbe on June 4, 2020. It is Exhibit 2 on this fitness hearing.

[4] I should point out that the Report of Dr. Lohrasbe considers the issue of Mr. Carr's fitness to stand trial but also the issue of his mental state at the time of the alleged offences, and whether he was not criminally responsible as a result of his mental state.

[5] Ms. MacDiarmid, who appears on behalf of Mr. Carr, and who was appointed by the Court to be counsel for Mr. Carr, has been unable to obtain instructions from him with respect to the matters before the Court.

[6] Anecdotally, it appears that Mr. Carr's demeanour and medical state has changed somewhat since his initial arrest, in that he is, at least now, based on the evidence of Officer Pearson from the Whitehorse Correctional Centre, able to carry on some form of conversation but, as occurred today in Court, it appears he is unable to maintain conversations for any length of time. It was not clear to me this morning that there has been any significant improvement in his understanding of what is happening to him since the Report of Dr. Lohrasbe was filed.

[7] In dealing with the issue of fitness, Dr. Lohrasbe states at page 16 of his Report that:

Mr. Carr has a major mental disorder. His orientation and mental state have fluctuated, but for the most part he does not appear to grasp the nature, object, and potential consequences of what he faces. Moreover, his capacity to

meaningfully communicate with counsel is grossly impaired. He may be able to 'hold it together' for short periods, but quickly returns to psychotic preoccupations and disorganized speech and behaviour.

[8] Dr. Lohrasbe goes on to state that ". . . Mr. Carr is unfit for trial."

[9] That being said, Dr. Lohrasbe opines that Mr. Carr's mental state is likely to improve, assuming that he continues to take appropriate medications, and ultimately his fitness is likely to be restored.

[10] Counsel have indicated to me today that they are both content with the contents of Dr. Lohrasbe's Report and that they do not see the need to examine Dr. Lohrasbe.

[11] As I said at the outset, this is a very comprehensive Report. Dr. Lohrasbe has testified in front of this Court on many occasions and, based on his Report and on the submissions of counsel in this regard, I am of the view, and I rule, that Mr. Carr is unfit to stand trial at the present time despite the fact that there may have been some change in his mental status since he was first brought into custody.

[12] As a result of that finding, pursuant to s. 672.47 of the *Criminal Code*, I will transfer Mr. Carr's matters to the Yukon Review Board. I decline to make a disposition in respect of Mr. Carr and I order that the Review Board shall, as soon as is practicable but not later than 45 days, hold a hearing and make a disposition in this regard.

[13] I would ask counsel to draft an order with respect to my ruling.

[14] I should add that we have had discussions today with respect to the issue of whether or not Mr. Carr was suffering from a mental disorder at the time of the offences

which would exempt him from criminal responsibility, pursuant to s. 16(1) of the *Criminal Code*. Based on the submissions of counsel, and the fact that Dr. Lohrasbe has noted in his Report that Mr. Carr's mental state will likely improve and fitness will likely be restored, it makes sense, in all the circumstances, to adjourn the matter of whether Mr. Carr was suffering from a mental disorder at the time of the offences to a later date, and at that time, a proper hearing can be held with respect to this issue.

[DISCUSSIONS]

[15] For the record, a hearing will be scheduled for Friday, September 25, 2020, at 11 a.m., with respect to the issue of whether Mr. Carr is not criminally responsible on account of a mental disorder ("NCRMD"), pursuant to s. 672.34. In reality, this will be to check in to see what has occurred between now and then for Mr. Carr.

[DISCUSSIONS]

[16] While waiting for the disposition hearing, Mr. Carr will remain on consent remand for the next 45 days.

[17] Once we transfer Mr. Carr to the Review Board, he is under the auspices of the Review Board so we will no longer deal with the issue of his consent remand status regarding fitness, but it is true that we have the concurrent matter of the NCRMD.

[DISCUSSIONS]

[18] Working it through logically, unless there is a provision in the *Criminal Code* that states otherwise, now that Mr. Carr is transferred to the Yukon Review Board, the

consent remand status remains for the next 45 days. At that point in time, there should be a disposition in place. The Review Board will determine whether Mr. Carr is releasable or not releasable, but he is still required to appear before this Court on September 25, 2020, in order that jurisdiction is maintained.

CHISHOLM C.J.T.C.