



VM v. RIDCA Central (Regional Intellectual Disability Care Agency)

[2009] NZHC 545

Country: New Zealand

Region: Oceania

Year: 2009

Court: High Court

Health Topics: Mental health, Public safety

Human Rights: Freedom from discrimination, Right to due process/fair trial, Right to liberty and security of person

Facts

The appellant, VM, challenged a renewal of her detention under a compulsory care order governed by the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (the "Act").

In 2005, the appellant was charged with possession of a knife in a public place when she became fixated on one of her care workers and showed up at that worker's residence. She was subsequently determined to be unfit to stand trial and was detained under the Act as a care recipient for an initial term of two years. In 2007, a renewal of that detention was ordered. This appeal arose in the context of a second application for renewal. VM had an IQ of 58 and was considered to pose a risk of harm to self and others. While evidence showed that the appellant had stabilized in her ongoing care environment, there was concern from professionals who evaluated her condition that: (1) she was prone to developing unhealthy attachments; (2) had a history of impulsive acts of aggression; and (3) had a tendency to abscond from detention and walk long distances without regard for her own safety.

The appellant argued that her ongoing detention was not justified. Only those faced with charges for a criminal offense fell under the jurisdiction of the Act. The potential criminal punishment for possession of a knife in a public place had a maximum of three months of detention. At the point of this appeal, the appellant had been detained for over three and half years. The appellant also argued that her condition in detention was improved and that she could not be detained on the basis of potential deterioration of her condition if released. She alleged this was discriminatory as criminal offenders are often released back into society at the end of their sentences even though they continue to pose a threat.

The usual understanding was that the relevant section of the Act set out two types of compulsory care orders: secure care and supervised care. The appellant sought a determination that a third option was also available under the Act where she could continue to receive the services associated with supervised care, but in her own choice of location.

Decision and Reasoning

The Court examined three issues:

- (1) whether there was a third type of compulsory care order available under the Act
- (2) what criteria governed the exercise of renewal power under the Act
- (3) whether the facts in the present case justified a renewal of the care order

The Court held that there was not sufficient justification for a renewal of the compulsory care order and therefore quashed the order as of seven days from the date of the decision (to provide the appellant the opportunity to locate housing).

With regards to the first issue, the Court found that there was not a third type of care order available under the Act. The Act specifically referenced secure care and supervised care and used those terms throughout in specifying the conditions and requirements under the Act. While the appellant claimed that the language left

room for a third option of a care order to provide care in a location of the patient's choosing, the Court found that the two named options were the exclusive options available under the Act.

With regards to the second issue, the Court found that multiple factors were to be considered in exercising renewal power under the Act. The Court did not agree with RIDCA Central's (the government agency in the case) argument that ongoing risk of harm to self or others was sufficient alone for ongoing detention. The Court noted that there is no general capacity to control people for their own good. Rather, risk was a factor to be considered alongside other factors, such as the general seriousness of the offense resulting in the detention, the ongoing need for the detention, and the goal of ensuring that the detention is for as short a time as necessary. The Court noted that the maximum penalty under the criminal system for the offense was not a controlling consideration. While the offense was what ultimately placed the individual under the control of the Act, the purposes of the Act were rehabilitative in nature, not punitive, and therefore the time periods for detention were not comparable; however, it was important to maintain proportionality and focus on the behavior that initially brought the patient into the system. The concern was also noted that the Act was not intended to serve as a means for ongoing detention perpetually. The length of time in detention to date and the likelihood of further progress of rehabilitation therefore must be considered.

With regards to the third issue, the Court held that the facts in this case did not warrant ongoing detention under a compulsory care order. The Court noted that while it thought the ongoing care would be in VM's best interests, there were insufficient grounds to maintain a care order at the time of the appeal. VM was doing well in her supervised environment, had rarely shown aggression towards care workers, and was able to conduct local visits around town unassisted. While health care professionals who evaluated VM thought that her condition would deteriorate on her release, it was not possible to detain her further based on potential future acts.

Decision Excerpts

"[78] This reality that we release non-disabled offenders who pose known risks, probably often much greater than VM's, is in my view a powerful indicator that Parliament cannot have intended that s 85 could be used to indefinitely control an intellectually disabled offender who has only ever been assessed as needing supervised care. Because we do not detain, and indeed cannot detain, indefinitely a dangerous offender who is subject to a finite sentence, I do not agree that s 85 contemplates that VM, if her risk remains static, might be subject to repeated extensions."

"[90] The rationale of care orders has nothing to do with punishment. They are about care, treatment, and realistically the controlling of risks."

"[97] It has to always be remembered that persons such as VM are being subjected to a form of detention that must be for as short a period of time as is required. There is no general capacity to impose on people treatment that would undoubtedly be good for them, and this is well illustrated by the total absence of coercive power in relation to the intellectually disabled who have not offended."

"[104] To summarise the various points discussed in the judgment in relation to extension applications: a) risk to self or others is a necessary precondition to any extension. If the risk is primarily to self, it needs to be remembered there is no general capacity to control people for their own good; b) the maximum penalty for the offence which led to the care recipient coming under the Act is not a measuring stick for how long the detention should be. However, the general seriousness or otherwise of the offence is a relevant factor in considering whether further detention can be justified; c) the statutory test of "needed" involves considering a variety of factors including the initial offence, the length of detention to date, the assessments of likely further progress and the timeframes attached to any projected progress; d) the detention must be for as short a time as is necessary."

"[122] I consider that the current arrangements are what are best for VM. Like them [doctors] I have concerns, for her and others, should this situation [detention] be ended. It carries a real risk of setting back progress. If released there is a clear risk that she will act in a way that brings her to the attention of the authorities"

[123] However, if the detention cannot be supported on the criteria I have earlier identified, VM is entitled to the opportunity to live where she wants. That is what has motivated her challenge [of the renewal]. It may be unrealistic but it may be her right to try."