

CANADA / JUDGMENT

Krist (Re)

2026 ONCA 193

COURT

Court of Appeal for Ontario

DECIDED

18 March 2026

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Krist (Re)

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Docket numbers

COA-25-CR-0962

Judges

Roberts, Lois B.; Thorburn, Julie; Favreau, Lise G.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Krist (Re), 2026 ONCA 193

DATE: 20260318

DOCKET: COA-25-CR-0962

Roberts, Thorburn and Favreau JJ.A.

IN THE MATTER OF: Erick Krist

AN APPEAL UNDER PART XX.1 OF THE CRIMINAL CODE,

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

Anita Szigeti, for the appellant

Kevin Chan, for the respondent, Attorney General of Ontario

Heard: March 10, 2026

On appeal against the disposition of the Ontario Review Board, dated June 17, 2025, reported at [2025] O.R.B.D. No. 1540, with reasons dated July 23, 2025, reported at 2025 CanLII 72910.

L.B. Roberts J.A.:

A. Overview [1] The appellant has been under the supervision of the Ontario Review Board (the “Board”) since he was found to be not criminally responsible on December 1, 2004, for the index offences of sexual assault and failure to comply with a probation order. The appellant has not committed a violent criminal offence for over 21 years[1] and has lived independently in the community for many years.

[2] The appellant appeals the Board’s most recent disposition of a conditional discharge order. He submits that the Board erred because he no longer represents a significant threat to public safety. The respondent Crown submits the appeal should be dismissed. St. Joseph’s Healthcare Hamilton takes no position with respect to this appeal and did not appear.

[3] For the reasons that follow, I would allow the appeal.

B. Board’s Disposition [4] On June 11, 2025, the Board held the appellant’s annual review and concluded that he remains a significant threat to the safety of the public and that a conditional discharge order was the least onerous and least restrictive disposition to manage the risk. The Board altered several conditions from the appellant’s prior disposition:

- (1) The Board concluded that weekly reporting was no longer justified, given that the appellant “has been cooperative with the treatment team, attended all appointments and maintain[ed] stability over the reporting year”.
- (2) The Board saw no justification for a requirement that the appellant reside at a specific residence because “[t]here have been no issues with respect to [the appellant’s] residence for several years”.
- (3) The Board concluded that the prohibition from the use of substances was no longer justified because “he has developed insight into the impact of substance use on his mental health and is now internally motivated to abstain”, although the requirement of providing urine and/or breath samples was maintained because of his history of substance abuse and its impact on his mental health.

- (4) Finally, the Board removed the requirement that the appellant take medication and treatment as prescribed because it was “no longer justified given his lengthy history of adherence to prescribed antipsychotic medications”.

C. Analysis [5] The standard of appellate review under s. 672.78(1) of the Criminal Code, R.S.C. 1985, c. C-46, is uncontroversial. As this court explained in *Kalra (Re)*, 2018 ONCA 833, at para. 38:

This court may set aside an order of the Board only where it is of the opinion that: (a) the decision is unreasonable or cannot be supported by the evidence; (b) the decision is based on a wrong decision on a question of law (unless no substantial wrong or miscarriage of justice has occurred); or (c) there was a miscarriage of justice. [Citations omitted.]

- [6] I agree that the Board erred. In my view, the Board’s finding of significant threat cannot be supported by the evidence.

- [7] Section 672.54 of the Criminal Code sets out the Board's obligations in this matter:

672.54 When a court or Review Board makes a disposition under subsection 672.45(2), section 672.47, subsection 672.64(3) or section 672.83 or 672.84, it shall, taking into account the safety of the public, which is the paramount consideration, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is necessary and appropriate in the circumstances:

- (a) where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the safety of the public, by order, direct that the accused be discharged absolutely ...

- [8] The term, “significant threat to the safety of the public” is defined in s. 672.5401 as “a risk of serious physical or psychological harm to members of the public ... resulting from conduct that is criminal in nature but not necessarily violent.” In discussing the nature of significant threat in the context of s. 672.54, the Supreme Court noted in *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625, at para. 57:

[T]he threat posed must be more than speculative in nature; it must be supported by evidence. The threat must also be "significant", both in the sense that there must be a real risk of physical or psychological harm occurring to individuals in the community and in the sense that this potential harm must be serious. A minuscule risk of a grave harm will not suffice. Similarly, a high risk of trivial harm will not meet the threshold. Finally, the conduct or activity creating the harm must be criminal in nature. [Citations omitted.]

- [9] It is well-established that there is no presumption of dangerousness and no burden on the appellant to prove a lack of dangerousness: *Winko*, at paras. 46, 49. There must be evidence of dangerousness that is more than speculative in nature; the threshold for significant threat is “onerous”: *Winko*, at para. 57; *Carrick (Re)*, 2015 ONCA 866, 128 O.R. (3d) 209, at para. 17.

- [10] In reaching its conclusion that the appellant poses a significant threat, the Board relied primarily on the appellant's dated history of turbulent relations with others that was fuelled by his substance abuse and noncompliance with medication, as well as his lack of a community treatment plan. In light of the substantial indicia of the appellant's stability, these circumstances fall well short of the onerous threshold for finding a significant threat.
- [11] The appellant's current diagnoses are: schizoaffective disorder; stimulant use disorder (in remission); cannabis use disorder (in remission); and unspecified personality disorder (narcissistic and antisocial personality traits). He has successfully abstained from substance use since 2021 and is reducing his use of anxiolytics. In its reasons, the Board noted that Dr. Kolawole gave evidence that "[the appellant] acknowledges that he had a problem with cocaine and that it interfered with his life and his mental health" and that "[h]e now has significant internal motivation to refrain from the use of cocaine."
- [12] The appellant is capable for treatment. He has been uniformly adherent with his medication, including taking it independently in the community. Dr. Kolawole agreed on re-examination by the appellant's counsel that there was nothing in the record to suggest that the appellant would likely discontinue his medications and, on cross-examination, he stated that in the event of an absolute discharge, the appellant would "continue this trajectory" of medication compliance and abstinence. Importantly, while the appellant queries the current dosage of his medication, he testified that he would not reduce it without consultation with a psychiatrist.
- [13] The Board's reliance on the appellant's "turbulent history" was unreasonable given his steadfast stability since his most recent discharge to live in the community, his nearly five years of sobriety, and that he has not committed a violent criminal offence since the index offences. The appellant was first discharged from hospital on November 6, 2007, to live in an independent apartment under a detention order. On October 21, 2009, he received a conditional discharge with conditions that included a prohibition on intoxicating substances. Over the next 12 years, the appellant was admitted to and discharged from hospital 10 times.[2] The majority of these admissions involved substance abuse or noncompliance with medication, which also resulted in the incidents of non-physically violent, belligerent behaviour towards others that led to the brief readmissions. Since April 2, 2024, he has continued to live independently and harmoniously in the community with minimal conditions and without any incident.
- [14] The appellant is capable to manage his own finances. For several years, the appellant has carried on a part-time computer business. The letters of support from his clients extol his professionalism. He plans to continue his studies at York University once he puts his student loans into good standing, which he is actively in the process of doing. More letters of support filed by professors extol his academic gifts and prowess. He has created community roots and friendships: organizing poetry readings and preparing a book of recipes for low-income individuals. Again, letters of support from friends attest to his emotional and personal stability.

- [15] Finally, I turn to the Board's reliance on the absence of a formal treatment plan in the community as a significant risk factor in support of its finding that the appellant poses a substantial risk to public safety. In my view, the Board's reliance on this factor is misplaced and unsupported by the evidence in the circumstances of this case.
- [16] The present case is unlike the circumstances in *Wightman (Re)*, 2021 ONCA 429, on which the respondent relies. The lack of a treatment plan in that case was relevant in the context of Mr. Wightman's circumstances that included the index offence of attempted murder. Mr. Wightman had only recently connected with a community psychiatrist and was not yet established in that therapeutic relationship. As this court noted at para. 19, "the evidence demonstrated that the risk that the appellant would stop taking his medication if the necessary psychiatric supports were not provided was more than speculative, and that serious harm would likely result." This evidence included that of his treating psychiatrist to which the court made reference that "if the appellant were absolutely discharged without psychiatric support there was a 'real risk' he would stop taking his medication".
- [17] Here, unlike in *Wightman*, the appellant's treating psychiatrist testified that if absolutely discharged, the appellant would continue to take his medications. Moreover, while there is no formal plan in place, the Board appears to have overlooked Dr. Kolawole's evidence that he intended to assist the appellant if he is absolutely discharged. As Dr. Kolawole testified in response to questions by the appellant's counsel:

Q. ... Let's assume for a minute, hypothetically, the Board disagrees with you, and there is an Absolute Discharge that is granted. I gather, in terms of providing [the appellant] with a prescription ... until he finds another prescriber ... you'd be able to assist him with that. Is that right?

A. I, I would be ethically obligated to do that.

...

Q. ... But I guess all I'm really asking is if the Board discharge[s] [the appellant] absolutely, you as, as part of your professional and ethical conduct obligations as the treating psychiatrist at the minute, would assist him facilitate whatever he's seeking in terms of supports to maintain his medication, prescriptions, and psychiatric support?

A. Again, I would be ethically obligated to do that, and I will do that, but it would not be what I would recommend.

[Emphasis added.]

- [18] As noted, Dr. Kolawole did not recommend proceeding in this way and testified that "the most prudent approach" would be to continue the appellant's conditional discharge disposition over the next reporting year, gradually reducing monitoring and supervision, while putting into place community medical support. While the suggested transitioning may be in the appellant's best interests, that is not the test. As this court instructed in *Carrick*

(Re), 2018 ONCA 752, at paras. 31-32, “the question is not what is best for him; the question is what the law requires”, and:

The law is clear that NCR accused can be detained only so long as they constitute a significant threat to public safety. They are entitled to be released, unconditionally, if they do not. There is no proviso to this; NCR accused cannot be detained because it is best for them, or because there is a risk that they may commit crimes. The Board can detain an NCR accused only if it reasonably concludes that he or she poses a significant threat to public safety. The Supreme Court emphasized in Winko that this means a real risk of serious physical or psychological harm to individuals in the community – a serious criminal offence.

[19] The evidence here does not support that the appellant remains a significant threat to public safety. He is therefore entitled to an absolute discharge.

D. DISPOSITION [20] Accordingly, I would allow the appeal, set aside the Board’s disposition, and order that the appellant be absolutely discharged.

Released: March 18, 2026 “L.B.R.”

“L.B. Roberts J.A.”

“I agree. Thorburn J.A.”

“I agree. L. Favreau J.A.”

- [1] The Board’s July 23, 2025, reasons note that the appellant was charged in August 2013 with theft under. The Hospital Report explains that the appellant advised this charge was for taking a can of cat food and sugar from a convenience store and that he was sentenced to time served after being incarcerated overnight. This incident was not relied upon as an example of reoffending that would impact the issue of significant threat.
- [2] The appellant was admitted to hospital an eleventh and final time on November 23, 2023; however, the Board found on that this admission was not the least restrictive and onerous decision.

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