

STATE OF TASMANIA v OLIVER FELIX KULINSKI
APPLICATION TO DISCHARGE A RESTRICTION ORDER

26 APRIL 2022
PEARCE J

On 16 February 2018 I made a restriction order under s 24 of the *Criminal Justice (Mental Impairment) Act*, requiring that the applicant, Oliver Kulinski be admitted to and detained in a secure mental health unit until the order is discharged by this Court. Application is now made to discharge the order. The State does not oppose the application. For the following reasons I am satisfied that it is appropriate to make the order sought, and, pursuant to ss 21 and 27 of the Act, to make a supervision order, that is, an order releasing Mr Kulinski under the supervision of the Chief Forensic Psychiatrist subject to the conditions I will specify.

Mr Kulinski was tried before a jury for one count of an unlawful act intended to cause bodily harm. He was found not guilty by reason of insanity. On 29 January 2017, when he was aged 20, he attacked his father with a small axe in their family home in Launceston. His father and mother were, and remain, loving parents and provided a stable and supportive environment. He was a previously healthy undergraduate student studying medical research at the University of Tasmania in Hobart. At trial the evidence overwhelmingly established, and it was the common position of the State and the defence, that at the time of the attack Mr Kulinski was suffering from a mental disease to such an extent as to render him incapable of knowing that his acts were ones he ought not do. During 2016 and early 2017 he developed serious schizophrenia which manifested itself in delusional thinking. On 10 January 2017 he was made subject to a treatment order and admitted to the Royal Hobart Hospital for compulsory treatment. The attack occurred on 29 January 2017 after he had been released on leave into the care of his family. At the time he was actively psychotic, likely experiencing aural hallucinations and believing that his father was not really his father but someone or something inhabiting his father's body. Mr Kulinski was thus responding to a delusional belief that his father wanted to kill him.

Mr Kulinski has been subject to the order since then. In the intervening four years or so he has been treated and cared for at the Wilfred Lopes Centre.

In considering this application I am to apply the principle stated in s 34 of the Act, that restrictions on Mr Kulinski's freedom and personal autonomy should be kept to the minimum consistent with the safety of the community. I have had regard to all of the matters listed in s 35(1). In accordance with s 35(2)(b) and (c), I have considered the report on the attitude of his parents. This case is a little unusual in that the victim is Mr Kulinski's father, one of his next of kin. His mother and father both have notice of and support the application. Section 35(2)(a) requires that I consider reports about Mr Kulinski's condition and the possible effects of the order sought prepared by the Chief Forensic Psychiatrist, or a medical practitioner nominated by the Chief Forensic Psychiatrist, and one other expert, who may or may not be a medical practitioner, each of whom has personally examined Mr Kulinski. To satisfy that requirement I requested a report from the Chief Forensic Psychiatrist or his delegate and was provided with a report dated 5 April 2022 prepared by Dr Sonny Atherton, a consultant forensic psychiatrist. Dr Atherton is Mr Kulinski's current treating psychiatrist. I will return briefly to the contents of the report shortly. The application itself was supported by a great many documents and reports which describe the course of Mr Kulinski's treatment. The report which addresses this application was prepared by a forensic psychiatrist, Dr Steven Patchett, dated 10 September 2021. It is addressed to the Mental Health Tribunal, not the Court, but it directly addresses the question of whether the restriction order should be discharged and replaced by a supervision order. As it happens, at the time of that report Dr Patchett was Mr Kulinski's

treating psychiatrist through the Tasmanian Health Service, thus on behalf of the Chief Forensic Psychiatrist. The State submits that it does not satisfy s 35(2)(a) because Dr Patchett is not independent of the Chief Forensic Psychiatrist, but I see no such limitation in the legislation, and have complete faith in the independence of Dr Patchett's opinion. That said, no psychiatrist could be better placed to offer an opinion on the relevant matters than one who has had the opportunity to observe Mr Kulinski over time.

Both Dr Patchett and Dr Atherton have written very detailed and comprehensive reports and there is no need for me to repeat everything which they contain. There is no appreciable difference between their analysis and opinions, which I accept. Mr Kulinski is in remission of his psychotic symptoms. He is adherent to antipsychotic treatment which consists of injections of slow release medication. Dr Atherton delayed the finalisation of his report to enable him to observe Mr Kulinski during a period of unescorted leave in the community. There has been no significant issue during this extended period of leave, and most recently he has been ostensibly living full time in the community. He has resumed his university studies and appears to be coping with the demands. He engages with his peers, eats out, and catches public transport. He has stable accommodation and contact with his parents. He engages well with the treating staff. There have been no significant incidents of aggression since this incident and its immediate aftermath. He does not abuse drugs or alcohol. The main risk is a deterioration in his psychotic condition but monitoring of his treatment and compliance will mitigate that risk. Although there have been some difficulties with insight into the nature of his condition he has been compliant with his treatment plan. He will be monitored by the Forensic Mental Health Service and there has already been some engagement with his appointed case manager. He will continue to be treated by a psychiatrist and will be required to engage with a psychologist in the community. He will likely be deterred from deviation from his treatment and the conditions of a supervision order by the prospect of return to Wilfred Lopes. There is little utility or therapeutic benefit in his remaining there. I am informed that there are adequate resources for his treatment in the community. Of course I do not lose sight of the potential risk to the community by his release, but provided his condition remains stable the risk of future violence is low. I will impose the conditions recommended by Dr Atherton.

I order that the restriction order made 16 February 2018 is discharged. I make a supervision order releasing Mr Kulinski under the supervision of the Chief Forensic Psychiatrist (the CFP). In the following orders reference to the CFP includes his or her delegate. There will be conditions of that order that Mr Kulinski comply with any directions as to supervision given by the CFP, including, but not limited to, the following:

- (a) that he reside at an address approved in advance by the CFP and to not change that address without prior approval;
- (b) that he comply with mental health treatment requirements of the CFP and any treating psychiatrist or psychologist and submit to the administration of prescribed medication and relevant ancillary treatment;
- (c) that he inform his treating psychiatrist of any and all other medication, including supplements or over the counter products, which he may be prescribed or is regularly taking;
- (d) that he attend and engage with medical and health professionals, including psychiatrists, psychiatric registrars, general practitioners, psychologists and other mental health clinicians for assessment, treatment and review;

- (e) that he advise the CFP of the name and address of any medical practitioner from whom he receives medication or treatment and authorise that medical practitioner to provide the CFP with all information with regard to his medication or treatment;
- (f) that he abstain from using any controlled substance within the meaning of that term in the *Misuse of Drugs Act 2001*, or any drug unless prescribed by a medical practitioner and used in accordance with that prescription;
- (g) that he abstain from the excessive use of alcohol;
- (h) that he submit to testing, including by urine test, blood test, hair follicle or breath analysis testing, for the presence of any drug or alcohol as and when directed to do so by the CFP;
- (i) that he not leave the State of Tasmania without the prior approval of the CFP.