

# MENTAL HEALTH COURT

CITATION: *Re MG* [2008] QMHC 16

PARTIES: **APPEAL FROM THE MENTAL HEALTH REVIEW TRIBUNAL**  
**MG**  
Appellant  
**DIRECTOR OF MENTAL HEALTH**  
Respondent-By-Election  
**ATTORNEY-GENERAL FOR QUEENSLAND**  
Respondent

PROCEEDING: No 0259 of 2007

DELIVERED ON: 4 June 2008

DELIVERED AT: Brisbane

HEARING DATE: 4 June 2008

JUDGE: Philippides J

ASSISTING PSYCHIATRISTS: Dr F T Varghese  
Dr E N McVie

FINDINGS AND ORDER: **1. In respect of the alleged offences there is reasonable doubt as to the commission of the offences and I make no finding;**  
**2. The defendant is fit for trial;**  
**3. The proceedings will continue according to law.**

CATCHWORDS: MENTAL HEALTH – DECLARATION OR FINDING OF MENTAL ILLNESS OR INCAPACITY – where defendant charged with four counts of indecent treatment of a child under 16, one count of deprivation of liberty, and one count of rape – where the defendant has Asperger’s Syndrome – whether Asperger’s Syndrome combined with a mood and anxiety disorder render the defendant incapable of pleading, instructing counsel or enduring a trial – whether the defendant is fit for trial

COUNSEL: Mr J Benjamin for the defendant  
Mr W Isdale for the Director of Mental Health  
Mr C Kelly for The Director of Public Prosecutions (QLD)

SOLICITORS: Legal Aid Queensland for the defendant  
Crown Law for the Director of Mental Health  
The Director of Public Prosecutions (QLD)

- [1] **PHILIPPIDES J:** The defendant is charged with four counts of indecent treatment of a child under 16, one count of deprivation of liberty and one count of rape, all on 6 August 2007.
- [2] There is a dispute as to the facts of the alleged offences. I am satisfied that that dispute is not attributable to the defendant's mental condition which is one of Asperger's Syndrome. There is, in my view, a reasonable doubt as to the commission of the alleged offences. This Court therefore makes no finding as to the defendant's state of mind at the relevant times.
- [3] The issue that arises is that of fitness for trial. The Court has had the benefit of reports from Dr Ross, the defendant's treating psychiatrist since 2000, and Dr Stathis who provided a report to the Court. The Court also heard oral evidence from both doctors.
- [4] Dr Ross is of the opinion that the defendant is unfit for trial. In his view the defendant's mental condition is such, combined with a mood and anxiety disorder, that the defendant would not be capable of pleading, instructing counsel or enduring a trial. Dr Ross states in his report that the defendant's attribution, style, rigidity and recall of the events indicate that he would not be able to give a full count of himself or be able to describe the actions of others in a Court process. He does not consider that the defendant would withstand the process of giving evidence or cross-examination and he is of the view that exposure to a Court process would precipitate an acute anxiety reaction or oppositional and aggressive behaviour which would not be conducive to a just investigation or trial of events with which he is charged.
- [5] In his oral evidence Dr Ross expanded upon the view expressed in his written report. He indicated a view that, in his mind, the defendant would have problems in following the substantial effect of any evidence because he would become fixated about particular points and that he would be able to give an account of events but only at a concrete and basic level and so would be impaired in making his defence.
- [6] This opinion offered by Dr Ross is not borne out by the detailed answers recorded in the exchanges between Dr Stathis and the defendant outlined in Dr Stathis' report. In completing his report, Dr Stathis had access to all the relevant documentation including the police brief. In an extensive interview with the defendant he was able to obtain a version of the facts as the defendant saw them to which the defendant held quite firmly. That version, which is outlined in the report, is a much more detailed version than that which Dr Ross was able to obtain.
- [7] Dr Stathis noted in particular, when cross examined about the matter, that in giving his account the defendant did not fixate on any particular matter other than a very firm view that his conduct was consensual. The dispute of fact concerning the alleged offences is in relation to that aspect. Dr Stathis was well aware of the difficulties arising from the defendant's Asperger's condition and mindful of those matters when asking the defendant questions going to the Presser criteria, relevant to determining whether an individual is fit for trial.
- [8] Dr Stathis accepted that the defendant did have specific needs which would need to be accommodated by a Court at trial and that he would need to be supported and would benefit from educational and other measures in dealing with a trial. However, he did not consider that any of the matters raised for consideration in

respect to the question of fitness for trial were such that a conclusion that the defendant was unfit for trial ought to be made. He did acknowledge that the Court process may exacerbate the defendant's anxiety and may result in deterioration in his mental condition and no doubt a Court hearing would be distressing for the defendant. But Dr Stathis was of the opinion with that emotional and psychological support, the defendant would be able to endure a trial without serious consequences for his mental condition being likely.

- [9] The advice of the assisting psychiatrists that the clinical opinion of Dr Stathis is to be preferred over that of Dr Ross accords with the view I take. In particular, I note as mentioned that Dr Stathis was able to obtain a detailed version from the defendant. Dr Stathis noted the internal consistency of that version and that the defendant was able to hold firmly to that version. He also based the opinion he offered to the Court upon the very specific and meticulous questions and answers outlined in his report.
- [10] Accordingly, I find that the defendant is fit for trial. In the circumstances the proceedings will continue according to law.
- [11] I grant leave to the parties to use the medical reports before the Court in further proceedings. A transcript of the hearing before this Court is to be made available to any Court hearing the charges.