COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Haggerty, 2026 ONCA 360[1]
DATE: 20260521
DOCKET: COA-24-CR-1193

Huscroft, Thorburn and Dawe JJ.A.

BETWEEN

His Majesty the King

Appellant

and

Brian Scott Haggerty

Respondent

Stephanie A. Lewis, for the appellant

Stefan Rinas, for the respondent

Heard: April 23, 2026

On appeal from the sentence imposed by Justice Brian Weagant of the Ontario Court of Justice on October 28, 2024.

REASONS FOR DECISION

[1] This appeal is subject to publication bans pursuant to s. 486.4 of the *Criminal Code*, R.S.C. 1985, c. C-46 and s. 110 of the *Youth Criminal Justice Act*, S.C. 2002, c. 1.

[1] The respondent was designated a Dangerous Offender (DO) in 2019 and sentenced to a determinate penitentiary sentence followed by a 10-year long-term supervision order (LTSO). The designation arose from numerous incidents of serious domestic violence against female intimate partners. Shortly following his release, and while subject to that LTSO, he began a relationship with another woman. Within a short period of time, he began threatening and abusing her, making her his sixth victim.

[2] The trial judge convicted the respondent of extortion, assault, assault with a weapon, unlawful confinement, criminal harassment, breach of an LTSO, and uttering threats. The Crown sought an indeterminate sentence pursuant to s. 753.01 of the *Criminal Code*, R.S.C. 1985, c. C-46. The sentencing judge rejected the Crown's request and imposed a 9-year sentence along with a 10-year LTSO.

[3] The Crown argues that the sentencing judge erred in law in sentencing the respondent to a determinate sentence. We agree. The appeal is allowed for the reasons that follow.

Indeterminate detention was required unless there was a reasonable expectation that a determinate sentence would adequately protect the public

[4] As the respondent is a DO, sentencing is governed by s. 753.01(5) of the *Criminal Code*, which provides as follows:

> If the application is for a sentence of detention in a penitentiary for an indeterminate period, the court shall impose that sentence unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a sentence for the offence for which the offender has been convicted — with or without a new period of long-term supervision — will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.

[5] The sentencing judge was required to impose a sentence of indeterminate detention unless there was a reasonable expectation that a determinate sentence would adequately protect the public from the commission of murder or a serious personal injury offence by the respondent.

[6] The reasonable expectation standard requires more than simply a reasonable *possibility*; it requires a "likelihood", "a belief that something would happen", or "a confident belief, for good and sufficient reasons": *R. v. Straub*, 2022 ONCA 47, 160 O.R. (3d) 721, at para. 62.

The sentencing judge's decision

[7] The sentencing judge relied on a report prepared by Dr. Gray, who also prepared the assessment for the respondent's first DO proceeding, at which he was declared a DO and sentenced to a term of five years' imprisonment. Dr. Gray expressed the view that if the respondent's risk was manageable in 2019, this assessment was not rebutted by the respondent having committed the offences

while on an LTSO. He based this on the fact that treatment recommendations he and other doctors had made had been ignored.

[8] Dr. Gray was critical of programming at Correctional Service Canada (CSC), which offered sex offender treatment to the respondent rather than rehabilitative treatment for domestic violence. He also faulted the CSC for falling short on monitoring the respondent's future romantic relationships, which Dr. Gray had recommended. Dr. Gray stated that because the respondent had not had the opportunity for the treatment he needed and the failure of supervision of his relationship, his reoffences provided evidence of the intractability of his risk but were not evidence that his risk could not be managed with successful treatment and appropriate supervision.

[9] At the same time, however, he stated that the prospect of managing the high risk the respondent posed was "guarded at best", even with appropriate treatment and supervision. The best that could be hoped for, he stated, is that the respondent could be brought back into custody "with the first instance of uttering of a threat or relatively minor physical violence such as a slap or punch causing minor injuries."

[10] The sentencing judge found that the respondent was the same untreated man he was when first sentenced as a DO in 2019, and as a result a determinate sentence remained appropriate. He stated:

> A plan of care has been presented to CSC which involves programming that exists. It is up to CSC to implement that program and not frustrate the outcome by denying access to needed services. Should the programming fall short of being entirely successful with this particular offender, the plan can be shored up with proper and intensive supervision in the one area in which Mr. Haggerty lacks success in the community: domestic relationships.

[11] The sentencing judge went on to make several recommendations as to how the respondent should be dealt with by CSC – recommendations he acknowledged were no more than suggestions once the respondent is turned over to CSC.

The reasons for sentence do not establish a reasonable expectation

[12] The sentencing judge identified the correct legal standard and legal authority but failed to apply it. His reasons do not address the basis for rebutting the presumption that an indeterminate sentence was required. Specifically, the reasons do not establish that there was a reasonable expectation a determinate sentence followed by an LTSO would adequately protect the public against the commission of murder or a serious personal injury offence by the respondent.

[13] Although Dr. Gray's evidence can be read as suggesting that the risk posed by the respondent might be managed if a different approach to treatment and supervision is taken, there was no assurance that the treatment he considered

necessary would be made available to the respondent, even assuming that he was willing to take that treatment. In any event, Dr. Gray noted:

> While [the respondent] has not had the opportunity to engage in appropriate intensive treatment since his last offences to address his most important specific risk factors of anger management and spousal abuse, it is unclear at this point whether even successful completion of intensive in-custody programs would result a reduction in his risk.

[14] There was also no evidence that the supervision the sentencing judge considered would be required after the respondent was released from custody – supervision that the sentencing judge said required special training – is available, or that the CSC has the resources necessary to provide this level of supervision in any event. Finally, there was no evidence that the CSC can provide regular meetings with the respondent's partners or that they would be willing to participate in such meetings in any event.

[15] In short, the evidence did not support the factors the sentencing judge relied on in displacing the presumption that an indeterminate sentence was required.

[16] It may be that on a proper evidentiary record a finite sentence of 9 years and a 10-year LTSO could reasonably be expected to adequately protect the public in accordance with s. 753.01(5), so as to displace the presumption that an indeterminate sentence is required. We are not in a position to determine the

matter on the record before us. Accordingly, the appropriate course is to remit the matter for a new hearing pursuant to s. 759(3)(a)(ii).

Disposition

[17] The appeal is allowed, and a new hearing is to be held before a different judge of the Ontario Court of Justice.

"Grant Huscroft J.A."
"Thorburn J.A."
"J. Dawe J.A."