

**THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH
REVIEW TRIBUNAL PROCEEDINGS IN RELATION TO MR
GUSTAV ZORBA AUTHORISED BY THE PRESIDENT OF THE
TRIBUNAL ON 9 SEPTEMBER 2016**



This is an edited version of the Tribunal's decision. The forensic patient has been allocated a pseudonym for the purposes of this Official Report

FORENSIC REVIEW: Gustav Zorba
FXXXX - 28th Review

s46(1) Review of forensic patients
Mental Health (Forensic Provisions) Act 1990

TRIBUNAL: Patricia Staunton AM Deputy President
June Donsworth Psychiatrist
Peter Bazzana Other Member

DATE OF HEARING: 13 October 2015

PLACE: Hearing Room 2, Mental Health Review Tribunal

APPLICATION: Unconditional Release

DECISION

Having determined pursuant to section 43 of the *Mental Health (Forensic Provisions) Act 1990* that neither the safety of Gustav Zorba nor any member of the public would be seriously endangered by his unconditional release, that an independent forensic psychiatric report is also of that opinion and having regard to the other matters to which sections 43 and 74 refer, the Tribunal determines that Gustav Zorba be unconditionally released.

Signed

Patricia Staunton AM
Deputy President

Dated this day: 21 October 2015

REASONS

This is the 28th review of Gustav Zorba who is currently released to Mental Health Service on an order of the Tribunal. Mr Zorba's treating team is seeking unconditional release at this review.

BACKGROUND

In 2000 the Supreme Court found Mr Zorba not guilty by reason of mental illness of the charge of murder and was ordered to be detained. Background information concerning Mr Zorba's history, care and treatment as a forensic patient is provided in Annexure 'A' to these reasons. In reaching its decision in this matter, the Tribunal has had regard to, and accepts as accurate, this background information which is maintained by the Tribunal's registry.

TRIBUNAL REQUIREMENTS

This is a review pursuant to section 46(1) of the *Mental Health (Forensic Provisions) Act 1990* ("the Act"). Under section 46 the Tribunal is required to review the case of each forensic patient every six months. On such a review the Tribunal may make orders as to the patient's continued detention, care or treatment or the patient's release.

The Act has special evidentiary requirements in relation to leave or release which must be satisfied before the Tribunal can grant leave or release. In view of this, the Tribunal requires notice of applications for leave or release to ensure that the necessary evidence is available. This process also enables the Tribunal to provide notice of such applications to the Minister for Health, the Attorney General, and any registered victims who are entitled to make submissions concerning any proposed leave or release. A notice was provided to the Tribunal prior to this review for an application for unconditional release.

The Tribunal must be satisfied pursuant to section 43 of the Act that:

- (a) *the safety of the patient or any member of the public will not be seriously endangered by the patient's release, and*
- (b) *other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient or that the patient does not require care.*

Without limiting any other matters the Tribunal may consider, the Tribunal must consider the principles of care and treatment under section 68 of the *Mental Health Act 2007* (MHA 2007) as well as the following matters under section 74 of the Act when determining what order to make:

- (a) *whether the person is suffering from a mental illness or other mental condition,*
- (b) *whether there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious harm or the protection of others from serious harm,*
- (c) *the continuing condition of the person, including any likely deterioration in the person's condition, and the likely effects of any such deterioration,*

- (d) *in the case of a proposed release, a report by a forensic psychiatrist or other person of a class prescribed by the regulations, who is not currently involved in treating the person, as to the condition of the person and whether the safety of the person or any member of the public will be seriously endangered by the person's release,*
- (e) *in the case of the proposed release of a forensic patient subject to a limiting term, whether or not the patient has spent sufficient time in custody.*

DOCUMENTARY EVIDENCE

The Tribunal considered the documents listed in the Forensic Patient Exhibit List annexed to these reasons.

ATTENDEES

Mr Zorba attended the hearing and was represented by his lawyer, Ms S of the Mental Health Advocacy Service. Also in attendance was Mr Zorba's case manager, Mr C.

PRESENT CIRCUMSTANCES

As part of the present review, Mr Zorba's treating team have requested the Tribunal's approval for Mr Zorba to be unconditionally released from his forensic order and for a community treatment order (CTO) to be approved.

Mr Zorba was conditionally released in 2011. Since that time he has resided in his home and there have been no breaches of his conditional release provisions. Mr C has been Mr Zorba's Care Coordinator since 2010 in preparation for his conditional release in January of the following year. It is apparent he has a sound professional knowledge of Mr Zorba's mental health and his progress since the time of his conditional release.

Mr Zorba was placed on 12 monthly reviews by the Tribunal in October 2014 when the last review hearing was held. Since that time Mr Zorba's mental state has remained stable with no evidence of psychotic symptoms. He has remained medication compliant and his serum Clozapine levels undertaken monthly have remained within a therapeutic range. Dr P, Mr Zorba's treating psychiatrist reported that he has increased Mr Zorba's Clozapine since the last review in order to maintain the serum Clozapine levels within a therapeutic range because of Mr Zorba's increased smoking.

Mr Zorba has continued to remain abstinent from alcohol and illicit substances and random CDT testing has confirmed that.

As his Care Coordinator, Mr C has met with Mr Zorba on a fortnightly basis. He reported and verbally confirmed to the Tribunal that on all occasions, Mr Zorba has been 'polite, courteous and cooperative' with no evidence of any thought disorder or psychoses. Mr Zorba is continuing to look for ongoing employment utilising Centrelink and ORS Employment Services to assist him in this objective. To date he

has managed to secure a few regular lawn-mowing jobs as well as some car detailing. In relation to the latter, he is hoping to be able to grow the business.

Mr Zorba has taken steps to strengthen his community connections. He has made friends from meeting people he has worked with when doing voluntary work with the Salvation Army as well as the Anglican Church when he was transitioning to the community. As reported by Mr C, Mr Zorba continues to assist on a voluntary basis doing furniture pick-ups and help with garage sales. He also socialises with the friends he has made from time to time enjoying a meal at their home or cooking for them at his.

Mr C noted that Mr Zorba has struggled financially on occasions but has been able to seek the assistance of the Salvation Army. Notwithstanding some setbacks, Mr C stated Mr Zorba remains 'positive and motivated.....he has shown resilience and a dogged determination to maintain a reasonable lifestyle' in the community.

The Tribunal received an independent report from the Community Forensic Mental Health Service (CFMHS) in relation the present review and the application by Mr Zorba's treating team for his unconditional release. That report is supportive of his unconditional release and the proposed CTO that accompanies it. In expressing its support for that, the CFMHS assessed Mr Zorba's risk status. Overall, they noted that Mr Zorba presents with a moderate loading of static risk factors and a low loading of dynamic risk factors. As well, the report noted, the current absence of psychotic illness and mood disturbance together with Mr Zorba's ongoing abstinence from alcohol and illicit substances ameliorate Mr Zorba's risk for violence in the future although he will require monitoring in the long term.

Dr P also risk assessed Mr Zorba for the purposes of the present review utilising the HCR-20 risk assessment tool. On overall assessment he reported that 'the risk Mr Zorba poses at this time is low'. In doing so, Dr P acknowledged that the two prominent risk factors that could lead to a relapse of Mr Zorba's mental illness and risk of violence were the need to ensure his ongoing adherence to medication and abstinence from alcohol and illicit substances.

The purpose of putting a proposed CTO before the Tribunal for approval was to ensure that the necessary ongoing support, monitoring and supervision of Mr Zorba would continue if he is to be unconditionally released. All the evidence would suggest it is important it continue if Mr Zorba's mental health is to remain settled and stable.

Before the Tribunal Mr Zorba was quietly spoken but responded appropriately when engaged. It was apparent he has a good therapeutic relationship with Mr C and that is to continue. The proposed Treatment Plan provides for Mr Zorba to meet with Mr C or delegate on a fortnightly basis and to see Dr P or delegate monthly. Obviously his serum Clozapine levels will continue to be monitored. Any change in contact and monitoring will be determined by Mr Zorba's treating team as they consider appropriate.

DETERMINATION

It is apparent on the evidence that Mr Zorba has continued to make good and positive progress in his community reintegration. His mental health has remained stable and significantly he has remained abstinent from alcohol for 11 years. The Tribunal is satisfied that Mr Zorba has a committed determination to continue to do so which augers well for his continued mental health stability.

Being satisfied on the evidence currently before the Tribunal that the grant of unconditional release would not seriously endanger Gustav Zorba or any other member of the public and having regard to the other matters to which sections 43 and 74 of the Act refer, the Tribunal is minded to make an order granting Gustav Zorba unconditional release. That unconditional release is conditional on the proposed Community Treatment Plan, as approved, commencing on the day of Mr Zorba's unconditional release. Further, that proposed Community Treatment Plan will remain in force for a period of 12 months when Mr Zorba will be further reviewed by the Tribunal.

A copy of these reasons together with the proposed order will be forwarded to Gustav Zorba's legal representative and to the Minister for Health and Attorney General. The Tribunal will accept written submissions regarding the proposed order up until 28 days after the date of these reasons.

If no further submissions are received, the Tribunal will make the order as proposed. If further submissions are received, the Tribunal will consider the substance of that material and may hold a further hearing before the final order is issued.

Parties will be notified of any further hearing as soon as practicable and of the making of the final order following the expiry of the 28 day period.

Signed

Patricia Staunton AM
Deputy President

Dated this day 21st October 2015.

ANNEXURE A

BACKGROUND

Index Event

In XXXX the Supreme Court found Mr Gustav Zorba (not guilty by reason of mental illness of the charge of murder. The charge arose from the index event found to have occurred in 1999. In 1999 Mr Zorba was seen to be acting strangely in Coles. He telephoned a nurse and told her that he had stopped taking his medication and that he was an alien and that “bad Gustav” was taking over. The nurse tried to arrange for immediate psychiatric assistance. A concerned neighbour rang police who attended Mr Zorba’s home. Police located the body of Mr Zorba’s father in a bedroom. His death had taken place one to two days prior. Mr Zorba had tried to commit suicide, and was found with lacerations to his throat, wrist and abdomen.

Prior History

Mr Zorba experienced the onset of mental illness in 1994 with an admission a Clinic. Following that admission, he was managed by the Health Service in the area and was noted as having depressive and paranoid symptoms about persecution by bikies and the police. Mr Zorba reports that he ceased taking medication in 1998 but started to become depressed and paranoid and recommenced medication a few months later. In December 1998 Mr Zorba took an overdose of Risperidone tablets, following which he attacked his mother with a knife, cutting her hands. He was admitted to B Hospital, where his paranoia resulted in him jumping onto a roof which led to an overnight siege with police. He was transferred to G Hospital in December 1998, where he was stabilised on his medication and discharged two weeks later.

Mr Zorba’s mother applied for an Apprehended Violence Order and Mr Zorba moved. He was cared for by Dr M of the local Community Health Service. He discontinued his medication about a month prior to the index event.

There is a family history of schizophrenia from Mr Zorba’s father, paternal aunt and probably paternal niece. When Mr Zorba was 17 he was involved in a motor bike accident which knocked him unconscious and left a gap in his memory of several hours. Mr Zorba used marijuana about 15 years prior to the index event, but there does not appear to be any significant use. He used alcohol to “*self-medicate*”, but from January 1999 he had reduced intake from drinking up to six cans of alcohol a day to two to three cans a day. Mr Zorba has no known prior criminal history.

Forensic Patient History

After the index event, in 1999, Mr Zorba was taken to D Hospital, where he was treated for acute renal failure and was ventilated via tracheotomy (presumably due to the neck wound) in the intensive care unit. He was admitted to L Hospital. In 2000 the Supreme Court found Mr Zorba not guilty by reason of mental illness and ordered that he be detained in L Hospital.

He was then transferred to K Hospital in 2001 and granted escorted ground leave, supervised ground leave, unsupervised ground leave and escorted outside day leave by the Governor-in-Council. He was granted supervised outside day leave in 2002.

In 2003 the Tribunal was contacted by the Centre for Mental Health. Mr Zorba had been caught tampering with phone installations at K Hospital. He had also engaged in standing over staff and threatening to kill them if they wrote notes in his patient file. He was transferred to L Hospital. Mr Zorba reported that he was merely tampering with the Telstra box to see if he could access an internet line and denied being abusive and threatening to staff. He implied that he had been having ongoing issues with staff. He realised that he acted inappropriately by tampering with the phone lines, but was shocked that it had led to him being transferred to L Hospital, as there were three patients involved in the incident and only he was transferred. The Tribunal reviewed Mr Zorba and was not in a position to make a determination on the circumstances of the transfer due to lack of information.

In 2005 Mr Zorba was conditionally released from L Hospital to the care of his local Mental Health Service.

In 2005 Mr Zorba was directed to the T Unit by his treating psychiatrist due to deterioration in his mental state. He had begun displaying psychotic symptoms and was living in inappropriate living conditions (in a hotel). He had had an altercation with his mother and she later took out an AVO against him. Mr Zorba believed that his mother had mishandled his savings of over \$100,000 which he had entrusted to her. Whilst he was in T Unit, Mr Zorba's mental state continued to deteriorate and he became threatening to staff and patients. The Minister signed an order for apprehension and Mr Zorba was transferred back to L Hospital. He was later transferred to the J Hostel in 2006.

In 2007 an order was signed by the Director-General's delegate for Mr Zorba to be transferred to P Hospital. In 2008 the Director General's delegate granted Mr Zorba escorted and supervised outside day leave. The Governor-in-Council confirmed escorted outside day leave in 2009, but the Minister indicated that supervised outside day leave should continue on a trial basis under the order of the Director-General's delegate. By operation of Schedule 1, Part 3, Clause 6(2) of the Act in 2009, the Tribunal's recommendation that Mr Zorba be granted escorted and supervised outside day leave became an order to that effect.

Mr Zorba was transferred to the cottages at P Hospital in 2009.

At the review held in 2009 the Tribunal heard an application by the treating team for Mr Zorba to be granted unsupervised day leave, the intention being that the leave would initially be exercised for the purpose of attending Alcoholics Anonymous (AA) meetings without having to be reliant on his AA supervisor to take him to those meetings. The Tribunal determined that Mr Zorba should be granted unsupervised day leave and signed an order in 2009 to that effect. In 2010 the Tribunal signed an order granting Mr Zorba unsupervised overnight leave.

In 2010 the Tribunal signed an order granting Mr Zorba conditional release to the care of Supported Recovery. Mr Zorba was discharged from P Hospital in 2011.

The Tribunal varied the conditional release order to include additional clauses in relation to name change conditions and for Mr Zorba to be of good behaviour.

At the review held in 2012 the Tribunal heard that Mr Zorba remained well and was compliant with medication and abstinent from alcohol and illicit substances. Mr Zorba had increased smoking and as a consequence the treating team was proposing to increase his dose of Clozapine to 450mg nocte.

At the review held in 2012 Doctor P reported that there was no formal thought disorder or evidence of psychotic symptom, no evidence of suicidal or homicidal ideation. Mr Zorba was oriented and displayed good insight into his illness and the need for treatment and abstinence from alcohol and illicit drugs. Clozapine had been increased to reach a therapeutic range as his cigarette smoking was causing reduction in serum levels of the drug. He was smoking less than before but had been stable in this regard making it easier to monitor serum Clozapine levels.

At the review held in 2013 the Tribunal heard that Mr Zorba continued to pursue employment opportunities. The treating team requested 12 monthly reviews. The Tribunal determined that given the current job search plans, and possible changes to the community mental health service, it was not appropriate to move to 12 monthly reviews at this stage.

At a later review in 2013 the Tribunal heard that there had been no significant developments since the last review. Mr Zorba was compliant with his medication and displayed good insight into his illness. He was reported to have remained abstinent from alcohol and illicit drugs. Drug screening tests and a blood CDT test support that conclusion.

The CFMHS recommended that the condition of Mr Zorba's his release that he use alcohol only at the discretion of his case manager be removed. Neither the case manager nor the Tribunal believed that that was a necessary step since Mr Zorba had abstained from alcohol for about 10 years.

Mr Zorba had received in excess of \$5,000 from Centrelink after that organization recognized that he had not been overpaid (as it had previously claimed). Mr Zorba was progressing well and all interested parties, including the CFMHS, supported an extension of the review period.

PREVIOUS REVIEW

The Tribunal last reviewed Mr Zorba in 2014. At the review the Tribunal heard that Mr Zorba's mental state remained stable with no psychotic symptoms. He remained abstinent from alcohol and said that he did not think about it anymore.

Both Dr P and the CFMHS reported Mr Zorba's current risk to be low.

Mr Zorba had been offered casual employment at a Chicken Factory. However at the time of the hearing the work had not materialised. Mr Zorba continued to actively look for work and was applying for other jobs with the assistance of his ORS employment consultant. This was being monitored by the treating team who suggested that shift work would not be appropriate at this stage.

Mr Zorba advised that he was interested in pursuing unconditional release at the next review. The Tribunal was concerned by the case manager's evidence that if unconditionally released, his Clozapine prescription and review would be transferred to his GP and he would only receive a psychiatric review every six months. Mr Zorba was living very well with the support he currently had and acknowledged the utility of these supports. Having regard to the index offence, the Tribunal was concerned that without appropriate support and with monitoring of serum levels, relapse could occur and a rebound psychosis could go undetected.