

Citation: *R. v. Linklater*, 2017 YKTC 6

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15-10094
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Lilles

REGINA

v.

RICHARD LINKLATER

Appearances:
Noel Sinclair
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] Mr. Linklater has entered guilty pleas to a number of charges, all arising during the month of September 2015.

1. Breach of probation, failing to report, between September 3 and September 15, 2015, contrary to s. 733.1(1) of the *Criminal Code*;
2. Fraud, money not exceeding five thousand dollars, on or about September 12, 2015, contrary to s. 380(1) of the *Criminal Code*;

3. Robbery, using personal violence, on or about September 16, 2015, contrary to s. 344(1)(b) of the *Criminal Code*;
4. Escape lawful custody, on September 26, 2015, contrary to s. 145(1)(a) of the *Criminal Code*;
5. Operate a motor vehicle while disqualified on September 26, 2015, contrary to s. 259 of the *Criminal Code*;
6. Breach of probation, fail to keep the peace and be of good behaviour, on September 26, 2015, contrary to s. 733.1(1) of the *Criminal Code*.

[2] On May 18, 2016, Crown counsel filed an application for remand for assessment of Richard Linklater for the purpose of a possible dangerous offender or long-term offender application pursuant to s. 753.01 of the *Criminal Code*. An assessment order was granted by this Court on May 20, 2016.

[3] On December 23, 2016, the Crown filed a Notice of Application for a finding that Mr. Linklater is a Dangerous Offender and an order imposing a sentence and supervision order pursuant to s. 753(4)(b) of the *Criminal Code*. On the same date, the consent of the Attorney General of Canada was filed with the Court pursuant to s. 754(1)(a) of the *Criminal Code*.

[4] The dangerous offender application was adjourned to February 6, 2017. In the meantime, the parties agreed instead to proceed with an application for a finding that Mr. Linklater is a Long Term Offender pursuant to s. 753.1(1) of the *Criminal Code*. This application comes before me as a joint submission, both as to the designation and as to

sentence. The parties have also agreed on sentences for the other charges to which Mr. Linklater has entered guilty pleas.

The Law

[5] As this proceeding was initiated as a Dangerous Offender application, s. 753(5) of the *Criminal Code* applies

- (5) If the court does not find an offender to be a dangerous offender,
 - (a) the court may treat the application as an application to find the offender to be a long-term offender, section 753.1 applies to the application and the court may either find that offender is a long-term offender or hold another hearing for that purpose;

[6] Counsel agreed that I should consider the Long Term Offender application without holding another hearing.

753.1 (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that

- (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
- (b) there is a substantial risk that the offender will reoffend;
and
- (c) there is a reasonable possibility of eventual control of the risk in the community.

...

- (3) If the court finds an offender to be a long-term offender, it shall
 - (a) impose a sentence for the offence for which the offender has been convicted, which must be a minimum punishment of imprisonment for a term of two years; and
 - (b) order that the offender be subject to long-term supervision for a period that does not exceed 10 years.

Materials Filed by Counsel

[7] The following materials were filed as exhibits in this application by the Crown;

- (a) the criminal record of Richard Linklater;
- (b) the Agreed Statement of Facts dated May 20, 2016;
- (c) a Psychological/Psychiatric Assessment Report prepared by E. Lopez and K. Dercole at the Regional Reception Assessment Center dated January 3, 2002;
- (d) a Psychological Report by D.P. Boer dated April 17, 2004;
- (e) a Psychological and Risk Report by C. Dempsey dated April 25, 2012;
- (f) a *Gladue* Report prepared by Chantal Genier dated December 7, 2011;
- (g) a Psychiatric Assessment Report and an update both prepared by Dr. Shabehram Lohrasbe.

[8] In addition, the Crown materials included numerous pre-sentence reports, bail supervision reports, and progress reports prepared in relation to previous charges and court appearances by Mr. Linklater.

[9] Defence counsel also filed a number of documents, which included the following:

- (a) an Assessment Report from the Adult FASD Diagnostic Clinic;

- (b) a letter from Mr. Linklater to his counsel, Mr. Coffin, which Mr. Linklater read into the record;
- (c) a Proposed Release Plan prepared by Kyle Risby, an Aboriginal Court Worker with the Council of Yukon First Nations;
- (d) a “Needs Assessment” prepared by the Fetal Alcohol Syndrome Society Yukon.

Mr. Linklater’s Criminal Record

[10] As indicated by the consolidated criminal record filed by the Crown, Mr. Linklater has a lengthy criminal record beginning when he was 13 years old. As a youth, he was convicted of 26 property offences and 29 offences against the administration of justice, mainly breaches of court orders.

[11] As an adult, Mr. Linklater has accumulated 50 *Criminal Code* convictions. They can be summarized as 17 property offences, four Controlled Drugs and Substances convictions, 14 offences against the administration of justice, four breaches of conditional sentences, two driving offences, and eight offences involving violence. While recognizing that all crimes involving violence are serious, two convictions stand out.

[12] On April 26, 2004, Mr. Linklater was convicted for armed robbery, for which he received a sentence of three years’ incarceration and on October 22, 2001, for robbery, for which he received a sentence of two years’ imprisonment.

Family History and Background

[13] Mr. Linklater was raised in Old Crow, Yukon by his mother, Louise Linklater, and his adoptive father, Howard Linklater. The home situation was disruptive due to alcohol

abuse and family violence. As a result, Mr. Linklater spent a lot of time with his great grandmother, Clara Frost, with whom he had a close relationship.

[14] Mr. Linklater's education was limited due to his cognitive issues, including difficulty reading and writing. On an individualized program, he nevertheless quit school at age 13 because it was too frustrating for him, due in part to the fact that the Old Crow School did not have the resources to adequately support him. It was at age 13 that he also became involved in the youth criminal justice system.

[15] The nature of Mr. Linklater's cognitive limitations is fully detailed in a report prepared by the Yukon FASD Diagnostic Clinic. This report will be a critical resource for all agencies and individuals working with or supervising Mr. Linklater in the future. I have included some extracts from that report in order to provide some insight into the challenges facing Mr. Linklater.

Cognitive Functioning

Richard has some uneven intellectual, academic, and executive functioning abilities, which may make it difficult to set consistent expectations in his learning, work, and daily living activities. First, regarding his intelligence and core academic abilities, results from the 2015 assessment suggest that he demonstrates significant impairments, particularly for verbally-based tasks. Specifically, although Richard understands some verbal concepts and can present quite well, difficulties with his vocabulary and work knowledge limit his abilities to consistently understand what is said to him and to communicate effectively with others.

...

Richard also struggles with how quickly he can process information; he may take longer than similarly-aged peers and may lose track of a conversation as he may not have finished processing one piece of information before another is presented. Taken together, these issues ultimately impact different aspects of his executive functioning (e.g., mental flexibility, planning, initiating goal-directed behaviour). For

example, as hands-on, visual and verbal tasks become more complex, abstract, or less meaningful to him, he is likely to struggle with planning and organization, working memory, and mental flexibility. This also impacts his ability to effectively problem solve, as this requires the ability to generate and organize options and flexibly consider the options, before making a choice. Therefore, Richard is most likely to succeed in different life areas (interpersonal, school, work, daily living) when he is given tasks which are basic (one or two steps) in nature, he is given clear instruction (either visually as in a flow-chart, or by speaking slowly, one concept at a time) and time to ask clarifying questions, and additional time to complete tasks. Additionally, since Richard shows some abilities to feign comprehension of verbal information presented to him, those working with him should ask clarifying questions to help ensure that his comprehension of the task or instructions has adequate depth, and is not simply a retelling of surface information given. Those working with Richard should try to use as many close-ended questions as possible, because open-ended or complex questions may overwhelm his thinking abilities, and cause him to ignore or respond inappropriately.

...

Richard can best learn and retain information in visual formats that are presented in meaningful or concrete ways. He will learn best by doing a task rather than being told how to do it. In contrast, he appears to struggles [sic] with all aspects of verbal memory, even with cues or reminders, which is consistent with other language-based difficulties noted. He may struggle to learn, retain, or recall verbal information presented to him, such as instructions or rules. Consequently, he may present as non-compliant at times, when in fact he simply did not understand or remember what was asked of him. He will therefore likely benefit from visual memory aids, and techniques, which [sic] him to be able to mentally organize information in ways which help him remember or recall at a later time. External reminders for important events, such as court or probation meetings, will likely be needed, as will support setting up reminder systems, such as those available on a phone.

...

Richard's ability to regulate his emotional state was described as an overarching issue during his interview and was also observed during testing. In particular, Richard appears to struggle to appropriately regulate his behavioural reactions in response to social/environmental cues, particularly in situations charged with high emotional content. Also, Richard reported that he feels that he struggles with low self-esteem, impulse control, and anxiety and depression. It is likely that these factors,

when combined with the cognitive issues described above, could worsen his functioning overall.

...

Also, although he perceives he is generally able to complete basic self-care activities (e.g., personal hygiene), he struggles with aspects of his independent living (e.g., self-control, planning and following directions and/or daily routines). Because he has been in and out of jail so much of his youth and adult life, and has struggled with addictions as well, Richard has not had the opportunity to learn and practice many of the skills of daily living, such as paying bills, working at a job, or maintaining a relationship. As such, he will likely [sic] to continue to require significant external supports and extensive training in order to help him achieve success within different life domains (e.g., learning, work, daily living).

...

In conclusion, the previous and current assessment results revealed a number of strengths, as well as some significant challenges with how Richard thinks, learns, remembers information, and manages his behaviour. Richard has some relative strengths in his abilities to reason without words, to be able to learn and remember visually presented information, to pay attention and focus, to inhibit responses, and to understanding his own thinking style. He has much to build upon. However, when the significant impairments he has demonstrated within his general cognitive, academic, memory and executive functioning abilities are coupled with his reported behavioural regulation issues (e.g., anger, addictions, impulse control, anxiety), they appear to greatly impact major aspects of his daily living (e.g., communication, learning, work).

[16] The Assessment Report concludes by recommending that those individuals working with or supporting Mr. Linklater need to understand how he functions so that they can adjust expectations and approaches to be more in line with his abilities. For example, a modified approach as described in the report needs to be taken when communicating with him.

[17] Dr. Shabehram Lohrasbe prepared two psychiatric assessment reports at the request of this Court after interviewing Mr. Linklater several times and reviewing the

extensive material on his court file. These reports will also be extremely important sources of information for those individuals working with Mr. Linklater. It is not practical to summarize these lengthy reports here, but several observations are pertinent to the agreement reached by counsel and accepted by this Court.

[18] Although Mr. Linklater has significant cognitive difficulties, he is still quite capable of a fairly high level of functioning, provided he can maintain sobriety. He has been persistent in his efforts to force the justice system to identify and respond to his criminogenic needs. He has also demonstrated persistence in improving himself, for example, learning to read, although he is not yet able to write.

[19] Dr. Lohrasbe also notes that while the factors that have contributed to Mr. Linklater's criminality and violence are longstanding and are part of his personality, it is expected that his personality dysfunction will decline with age. In other words, his offending will likely decrease as he gets older.

[20] Alcohol and substance abuse generally are significant risk factors for Mr. Linklater and serve to escalate the risk for violence. Although he acknowledges the role of substance abuse as contributing to his criminal behaviour, it has been and will continue to be a major challenge for him. It follows that long term supervision of Mr. Linklater with a zero tolerance for substance abuse will be important for his rehabilitation.

[21] In addition to the reduction of risk through abstinence, ageing, and maturity, programming and treatment will also be important factors. Based on Mr. Linklater's cognitive limitations and the fact that his criminal behaviour is longstanding, treatment

will necessarily be lengthy and intense. But Dr. Lohrasbe has not ruled out the possibility that it would be effective.

[22] Dr. Lohrasbe states, in his August 18, 2016 report as follows:

To reiterate, Mr. Linklater's risk for violence has long been rated to be high and, as things stand, remains so. Moreover, his record for complying with Court orders and general cooperation with the system has been abysmal. There are nevertheless some glimmers of hope that collectively suggest that his high risk does not mean that it cannot be lowered to the point where he can be managed within the community in the foreseeable future.

One source of hope is the fact that Mr. Linklater now feels heard and vindicated after his sustained efforts to lodge his complaints. Moreover, his complaints have led to greater attention from correctional authorities, and therapeutic resources have been made available to him. He is especially gratified that the long-awaited FASD assessment is in the works. Hence a source of anger and frustration may be in decline. Between these responses from 'the system' and his resultant sense of empowerment, the cycle of mistrust and hostility may be winding down. It is hard to overemphasize the potential significance of such a shift, not so much through direct risk reduction as much as opening up levels of openness and cooperation. Many high risk offenders are nevertheless manageable offenders, if, and only if, they cooperate wholeheartedly in their own risk management.

Aging is also a consideration. Research on criminal violence is unequivocal in demonstrating that there is a decline with age. However, this is a group statistic, and there are many exceptions. At this time, I see no clear indications that Mr. Linklater is going to be an exception to the general expectation of a decline in his violence as he ages. An associated finding, related to the earlier point, is that older offenders in general are more cooperative with supervision as they identify less and less with their younger, more aggressive, more antisocial peers.

Current sentencing proceedings are also likely to have a deterrent effect, at least in the short term. Mr. Linklater is now fully aware and extremely fearful of what he faces if he reoffends. Although external deterrents are not an ideal motivator, it can nevertheless be critical in starting an offender on a different path.

[23] Dr. Lohrasbe notes that Mr. Linklater has demonstrated a capacity for being a diligent student and a good worker. He gets satisfaction and fulfillment from learning and from working. This is in contrast to most antisocial offenders.

[24] Mr. Linklater also has a long-standing and real relationship with his partner, Ms. Vance, and his children. He is aware that he is capable of offering support for them.

[25] These interests should be encouraged and supported as they provide a path leading away from criminal behaviour, especially the drug trade.

[26] Dr. Lohrasbe concludes his report as follows:

Assuming that a risk management strategy can be put in place within the community where Mr. Linklater will reside upon release, a lengthy follow-up is essential. Decades of experience inform us that benefits from treatment while in custody need follow up and reinforcement in the community. The frequency and duration of such follow up depends varies (sic) considerably from offender to offender. However, as a general principle, the longer the follow up the greater the possibility of effectively managing risk in the community.

Sentence

[27] Mr. Linklater has pled guilty to the following offence.

On or about the 16th day of September in the year 2015 at the City of Whitehorse in the Yukon Territory, did steal a purse from Shirley Kakfwi and at the time thereof did use personal violence to Shirley Kakfwi and did thereby commit robbery contrary to Section 343(b) and Section 344 of the Criminal Code.

[28] Ms. Kakfwi was standing in front of the Westmark Hotel in Whitehorse holding her purse. Mr. Linklater grabbed Ms. Kakfwi's purse and pulled, causing Ms. Kakfwi to

be dragged to the ground. Mr. Linklater ran away. During the incident, Ms. Kakfwi's wallet fell out and was later recovered along with its contents.

[29] The offence of robbery is one for which the maximum penalty is life imprisonment. The Crown relies on this offence as a predicate offence for an application for a finding that Mr. Linklater is a Long Term Offender pursuant to s. 753.1(5).

[30] Mr. Linklater has a lengthy criminal record with approximately 50 convictions of which eight are offences involving violence.

[31] Based on the information provided and the joint submission of counsel, I am satisfied that it would be appropriate to impose a sentence of imprisonment of two years or more for this offence. I am also satisfied, based on Mr. Linklater's extensive record, that there is a substantial risk that Mr. Linklater will re-offend. But at the same time, I am also satisfied by Dr. Lohrasbe's reports, as well as the information provided by others, that there is a reasonable possibility of eventual control of the risk of future offending behaviour in the community.

[32] In other words, the requirements of s. 753.1(1) of the *Code* are satisfied.

[33] In addition, Mr. Linklater has eight previous convictions involving violence. These convictions, in conjunction with the aforementioned predicate offence, demonstrate a pattern of repetitive behaviour that satisfies the requirement set out in s. 753.1(2)(b)(i).

[34] In the result, I find Mr. Linklater to be a Long Term Offender and sentence him to a period of imprisonment of two years. With credit for the 475 actual days of time

served, grossed up by a factor of 1.5, this results in a total credit of 713 days, leaving 17 days to be served in custody.

[35] I accept counsel's joint submission that a 10-year Long Term Supervision Order should be imposed.

[36] Further, I impose a \$200 victim surcharge payable forthwith.

[37] In addition, Mr. Linklater has entered guilty pleas to the following charges for which counsel have also made joint sentencing submissions.

1. Between September 3, 2015 and September 15, 2015 in Whitehorse, Yukon Territory, did while bound by a probation order made by Judge P. Chisholm in Territorial Court at Whitehorse, Yukon Territory on the 25th day of April, 2014, fail without reasonable excuse to comply with such order, to wit: Report to a probation officer immediately upon your release from custody, and thereafter, when and in the manner directed by the probation officer, contrary to section 733.1(1) of the Criminal Code of Canada.

[38] Mr. Linklater had received a period of incarceration followed by an 18-month probation order for a break and enter offence contrary to s. 348(1)(b) of the *Criminal Code*. While on this probation order, he failed to report as required.

[39] I impose a sentence of 30 days incarceration, consecutive to the predicate robbery charge and a \$100 victim surcharge, payable forthwith.

2. On or about the 12th day of September, 2015 at Watson Lake, Yukon Territory did by deceit, falsehood or other fraudulent means defraud Alfred HENDRIX of money not exceeding five thousand dollars contrary to Section 380(1) of the Criminal Code of Canada.

[40] Mr. Linklater used Mr. Hendrix's bank card to deposit an empty envelope and make multiple cash withdrawals totalling \$1,340 without Mr. Hendrix's consent.

[41] I impose a sentence of 120 days custody, consecutive to the predicate robbery sentence but concurrent to all the other sentences. In addition, there will be a victim surcharge of \$200, payable forthwith.

3. On the 26th day of September, 2015 at Whitehorse, Yukon Territory, did operate a motor vehicle while disqualified from so doing by reason of an order pursuant to s. 259 of the Criminal Code, contrary to Section 259(4) of the Criminal Code.

[42] Mr. Linklater's vehicle was stopped because he was observed to make a lane change without signalling and he was not wearing a seat belt. It was determined that he was disqualified from driving as a result of a previous court order.

4. On the 26th day of September, 2015 at Whitehorse, Yukon Territory, did, while being bound by a probation order made by Judge P. CHISHOLM, on the 24th day of April, 2015, fail without reasonable excuse to comply with such order, to wit: keep the peace and be of good behaviour, contrary to Section 733.1(1) of the Criminal Code.

[43] At the time, he was still bound by the probation order referred to above in relation to Count #1.

[44] For the charges 3 and 4 above, I impose a sentence of 45 days custody, concurrent to each other, consecutive to the predicate robbery sentence and concurrent to all of the other sentences imposed today. Also, for each charge there will be a victim surcharge of \$100, for a total of \$200, payable forthwith.

5. On or about the 26th day of September in the year 2015 at the City of Whitehorse in the Yukon Territory, did escape from lawful custody at Andrew A. Phillipsen Law Centre, contrary to Section 145(1)(a) of the Criminal Code.

[45] Mr. Linklater attended court for the purpose of a show cause hearing in relation to the previous charges. As the Justice of the Peace was giving his reasons for detaining Mr. Linklater, he ran out of the courtroom and escaped.

[46] I impose a sentence of 120 days consecutive to the predicate robbery sentence but concurrent with the other sentences. In addition there will be a victim surcharge of \$200, payable forthwith.

[47] The charge contrary to s. 266, dated August 17, 2016, Court file 16-00430, is stayed at the direction of the Crown.

[48] With respect to the robbery charge, the s. 344(1)(b) charge, I make the following ancillary orders. Pursuant to s. 109(2)(a), I impose a 10-year firearms prohibition order as specified in that section. In addition, pursuant to s. 487.051, I direct that Mr. Linklater provide a DNA sample as provided in Form 5.03.

[49] Further, pursuant to s. 760 of the *Code*, an order will go providing disclosure to the Correctional Service of Canada as provided in that section.

LILLES T.C.J.