

Citation: *R. v. Linklater*, 2012 YKTC 45

Date: 20120508
Docket: 11-10026B
11-10027
11-10028
Registry: Watson Lake
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

RICHARD WILLIAM LINKLATER

Appearances:

Terri Nguyen
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] LILLES T.C.J. (Oral via teleconference): This is the decision with respect to the Notice of Motion filed by the Crown in the case of Richard William Linklater.

[2] Perhaps a brief history of this matter would be helpful. Mr. Linklater's matter came before me in Whitehorse in March of 2012. At that time, I heard the facts and accepted guilty pleas on a number of charges and thus became seized of the case. At that time, I also directed the preparation of an updated Pre-Sentence Report and a psychological assessment. These reports have now been prepared and filed.

[3] At issue before the Court is whether, as a deputy judge of the Yukon Territorial Court, I should now proceed with the sentencing of Mr. Linklater by way of telephone or video conferencing. Mr. Linklater urges me to proceed expeditiously, using communications technology, without returning to Whitehorse.

[4] The Crown, by way of Notice of Motion, objects to my proceeding by way of telephone or video conferencing and to that end has filed the decision of *R. v. Gates* (2002), 163 C.C.C. (3d) 274, B.C.C.A. 128. I agree with Mr. Coffin that this case is not directly on point. Nevertheless, it does raise a number of relevant issues. The *Gates* decision notes that as the accused consented to a technological appearance, his s. 7 and 11 *Charter* rights were not violated. Considerable discussion in the case dealt with the compliance with s. 650 of the *Criminal Code* and, in particular, said subsection 650(1.1) referred to by Crown counsel in our earlier discussion. I agree with Mr. Coffin that circumstances in *R. v. Gates, supra*, are somewhat different than in Mr. Linklater's case, and as I understood that case, the accused, Crown counsel and the judge were all in different locations. The Court opined in those circumstances that the accused was not fully present for the sentencing hearing.

[5] I am not going to decide this matter on statutory or *Charter* grounds. In my view, that should be left to another day. Rather, I am going to proceed today on the basis that as the presiding judge I can exercise my discretion and determine, in this case, how the Court should be constituted and how the Court should proceed.

[6] On the facts of this case, I observe as follows:

1. The charges faced by Mr. Linklater are serious. They include theft over, attempted robbery, uttering threats, and obstruction of justice. Depending on Mr. Linklater's circumstances and criminal record, the sentence imposed could be of significant duration.
2. The Judge's perception of remorse expressed by the accused by way of demeanor or words, if he chooses to address the Court, can have a significant impact on the sentence imposed. My ability to evaluate remorse by the accused would be significantly limited if this hearing proceeds via telephone or even by video conference. For example, if it proceeded by way of video conference, the accused would not continuously be on the screen. The situation might very well be different if counsel had a joint sentencing submission or were otherwise very close in their sentencing submissions to the Court.
3. I also agree with the comments of Campbell J. in *R. v. Fecteau* (1989), 49 C.C.C. (3d) 534, cited in the *Gates, supra*, decision as follows:

There is another element involved here and that is the human element in the sentencing process. It is one thing for a judge to sentence to imprisonment a live human being who stands physically before the judge in open court. The judge before imposing a term of imprisonment at least has to look the accused in the eye. It may be quite another thing to sentence to imprisonment a disembodied television image that appears on a screen on the judge's dais. While the sentencing process has many faults one of its strengths is that it is at least a human process. It does not add to the human strength of sentencing process to turn it into a disembodied electronic exercise.
4. On the facts of this case, as a matter of fairness, of openness and justice, I have concluded, as a matter of discretion, that a sentencing hearing for

Mr. Linklater should proceed in open court with the judge present in person. It will not, on the facts of this case, proceed by way of video conferencing or telephone hearing. As a result, the matter will be adjourned as indicated by Crown counsel.

[7] Was that June the 11th?

[8] MS. NGUYEN: Sir, the date we were provided was June 11th at two o'clock.

[9] THE COURT: At two o'clock?

[10] MS. NGUYEN: Yes.

[11] THE COURT: Mr. Coffin, are you available on that date?

[12] MR. COFFIN: I believe so, but I'll just -- if I could have a moment.

[13] THE COURT: Yes.

[14] MR. COFFIN: Yes.

[15] THE COURT: Okay. So June 11th at two o'clock. Counsel, thank you very much for your assistance in this matter. Let me just say, as well, I do fully appreciate that Mr. Linklater has been in custody for a significant period of time and I have taken that into account in coming to the decision I have today. I strongly believe that in serious matters like this, the judge must be present in the courtroom with the accused for conducting the sentencing hearing. That, of course, in my view, is distinguished from those cases where the hearing itself has been completed, the judge

has prepared written reasons, and merely reads those reasons into the record. In my view, that is a different situation altogether.

[16] In any event, June 11th at two o'clock. Madam Clerk, is there anything else from you?

[17] THE CLERK: I believe that's everything, Your Honour.

[18] MS. NGUYEN: I'm not sure of Mr. Linklater's remand status at this point.

[19] THE CLERK: He is on consent remand.

[20] THE COURT: Mr. Coffin?

[21] MR. COFFIN: Yes, that will continue. And, Your Honour, one other thing that I would point out, you had referred earlier to the charges that Mr. Linklater was being sentenced for, and it included an attempted robbery, and I don't believe that that is correct.

[22] THE COURT: Okay. Well, I will double check that.

LILLES T.C.J.