

Citation: *R. v. Larkin*, 2006 YKTC 50

Date: 20050608
Docket: T.C. 04-000718
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

TRAVIS DENY LARKIN

Appearances:
Tony Brown
Lynn MacDiarmid

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Travis Larkin is before me having pled guilty to an offence contrary to s. 267(a) of the *Criminal Code*. The facts are that on the 7th of January 2005, the complainant, Mr. Birckel, was in the Gold Dust Lounge. He noted a Ms. Tulk sitting at a table with a Mr. Parkinson. He took offence to their sitting together. He approached the table and subsequently punched Mr. Parkinson in the head. Mr. Larkin was nearby and noted what was happening, at which point he intervened and struck Mr. Birckel over the head with a pool cue. The pool cue broke in half.

[2] It appears that Mr. Birckel initially felt that he was all right, and despite the urging and advice of his family, did delay seeking treatment. Fortunately, his family was

ultimately able to persuade him that he needed medical intervention. He had to be medevac'd to Vancouver to deal with a blood clot on the left side of his head. It appears that there was a significant amount of surgery that was required to rectify the injuries that he had suffered.

[3] I have the benefit of a very thorough pre-sentence report before me, which provides me an outline of the personal circumstances of Mr. Larkin. For the record, I am going to refer to those that I think are particularly important as it relates to the disposition today.

[4] It appears that Mr. Larkin comes from a very close and supportive family, and his youth and early developmental years were relatively uneventful. Unfortunately, it appears that, after completing Grade 12, he returned to his original home in Ontario to visit with some friends and was involved, at that time, in a high-speed, rollover collision, which resulted, firstly, in the death of a long-time friend whom he had urged to attend on the trip. As well, it resulted in severe head trauma to Mr. Larkin, which required extensive surgery -- excuse me, it also twisted his arm which required extensive surgery to save.

[5] The information from those who know him was that there was significant change in his personality and behaviour following that time. It appears that, despite some efforts, he has been unable to further his education as a result of difficulties in short-term memory and concentration. He did complete Grade 12 but is one credit short of his diploma. I understand that prior to the accident he appears to have excelled quite significantly at sports and he was involved in many activities, many of which he has not

been allowed to continue, particularly the contact sports, as a result of the injuries that he suffered.

[6] In terms of his employment, it appears that he does have a solid work history. He has worked consistently over the last several years. He is currently 34 years of age. Since completing high school, he has been able to maintain employment and he is described by prior employers as being someone who is reliable and hard working and always willing to help out. In particular, he worked for some time for a Mr. Schmidt (phonetic) in North Vancouver, B.C., who has indicated that he would be prepared to offer him employment in the future, should he return to that area.

[7] However, it is important to note, as it relates to this offence, and as it relates to the appropriate disposition, as I am required to consider both the circumstances of the offence and also of the offender in determining what is appropriate, that following his accident, after Grade 12, Mr. Larkin has suffered from chronic and significant depression. He, as well, has developed significant problems with substance abuse, as it appears that self-medication using alcohol has been his only coping mechanism to attempt to deal with the depression and the other things that he has suffered as a result of that accident.

[8] As well, although I noted that he does have a very supportive family who appear to want to assist him in any way they can, it appears that he has removed himself from this support to some extent, has become somewhat reclusive, and has been for some time, but more so since the offence before the Court. He appears to have some reluctance to take advantage of the support of those around him. He appears to clearly

recognize that he needs some significant assistance, both with his substance abuse issues and also the mental health issues that he is struggling with.

[9] On the other side, however, it has to be recognized that we are dealing with a very, very serious offence, which had very significant consequences for the victim, and also a significant impact on his family. It is also clear to me that this has led to significant divisions within the community and a fair amount of friction between a number of people, as a result. Hopefully following today there will be some closure and people can move on, but we have to come back to the fact that this was not a minor offence. This is a significant one which warrants a significant response. But in determining what that response should be, while I am satisfied that there needs to be a custodial term, all of the information before me suggests that it is appropriate and reasonable that that be served within the community.

[10] Mr. Larkin is an individual with no prior criminal record. As well, he appears to be an individual who has indicated a motivation and a willingness to accept treatment for the difficulties that he suffers. He is also an individual who does not have a history of violence.

[11] I am satisfied in those circumstances that the custodial term can be served conditionally within the community and that the focus of the sentence can, and should be, on rehabilitation, to ensure that there is no future behaviour from Mr. Larkin such as what led him to court today.

[12] Accordingly, the sentence is going to be as follows: There will be a jail term of 12 months. That sentence will be served conditionally, within the community, on the following conditions:

[13] There will be the statutory terms, Mr. Larkin:

1. That you keep the peace and be of good behaviour and appear before the Court when required to do so by the Court;
2. That you report to a conditional sentence supervisor forthwith and thereafter when required by the supervisor and in the manner directed by the conditional sentence supervisor;
3. That you remain within the jurisdiction of the Court unless written permission to go outside that jurisdiction is obtained from the Court or the conditional sentence supervisor;
4. That you notify the supervisor in advance of any change of name or address and promptly notify the supervisor of any change of employment or occupation;
5. That you are to have no contact, directly or indirectly, with Brandon Frank Birckel;
6. That you are to abstain absolutely from the possession, consumption or purchase of alcohol, and submit to a breathalyzer test, or other bodily fluids test, upon demand by a peace officer who has reason to believe that you have failed to comply with this condition;

7. You are not to attend any licensed premises whose primary purpose of business is the sale of alcohol. That would include the Gold Dust Lounge;
8. You are to take such alcohol assessment, counselling or treatment, including residential alcohol treatment, as and when directed by the conditional sentence supervisor. You are to take such assessment counselling and treatment as directed by the Conditional Sentence Supervisor for mental health issues.

[14] The remaining conditions relate to the issue of curfew. I have three different suggestions in front of me. One being a curfew of 10:00 p.m. to 6:00 a.m., which the probation officer has included in her report. The other being a suggestion by defence that there be a curfew of 6:00 p.m. to 6:00 a.m., and a suggestion by Crown that there be complete house arrest except for specified conditions.

[15] It appears to me, from all that I have read and seen, that Mr. Larkin has essentially placed himself under house arrest, as it appears that he is spending most of his time alone in his room. In the circumstances, it does not seem that there is much need to control his movements within the community as he appears to have been doing that on his own. I am also concerned that there be sufficient freedom to allow for him to attend the counselling and the programming. Because this is a community that is not Whitehorse, where a lot of these resources are available, I am concerned that he have enough flexibility to access those resources when they are in town, as they come at different times throughout the year.

[16] In all of the circumstances, I am satisfied that it can be dealt with by way of a curfew as opposed to complete house arrest, but I am going to make it a restrictive curfew because of the nature of the offence. I do not think that he should have complete freedom in wandering around. So at this point, the curfew is going to be as follows: That you are to abide by a curfew by remaining within your place of residence between the hours of 6:00 p.m. and 6:00 a.m. daily, except with the prior permission of your conditional sentence supervisor. You are to present yourself at the door, or answer the telephone in person for any random curfew checks that may be conducted by a peace officer, or a probation officer. Failure to do so will be a presumptive breach of that condition.

[17] Counsel, are there any conditions that have not been included that were suggested, with respect to the conditional sentence?

[18] MR. BROWN: No, Your Honour.

[19] THE COURT: The conditional sentence is going to be followed by a period of probation. That period of probation is going to be a further 12 months. The intention of that is to assist you in continuing to access the resources that you very clearly need to deal with the issues that you are struggling with.

[20] The conditions of the probation order which will be the same as the conditional sentence order with the exception of the curfew. So all of the other conditions will remain the same. The ones with respect to the treatment, the ones with respect to no contact, and no drinking, no drugs, all of those remain the same, except you will not be on a curfew at that point in time, because a probation order is not a jail sentence.

[21] The first part of it is a jail sentence, and you need to understand that if you breach any of those conditions, you could be serving the rest of that 12 months in jail.

[22] Ms. Casselman, you need to come forward.

[23] MS. CASSELMAN: Your Honour, I am sorry. I just didn't hear. Is there a report to conditional sentence supervisor and probation?

[24] THE COURT: There are reporting conditions, yes.

[25] MS. CASSELMAN: Thank you.

[26] THE COURT: The reporting condition is a statutory condition on the conditional sentence, but it will be a condition of the probation order as well, that you report to and be under the supervision of the probation officer. That will likely be the same person through both, but you need to be following what that person tells you to do.

[27] The only other issue is the one of the apology, whether there be an apology. I certainly took from what I read, Mr. Birckel, in the report, that he very clearly understood that what he did was wrong. He very clearly understood why you would be angry and why your son and your family would be upset and angry by what happened. It appears that there is some friction between the two families. I think it is best, at this point in time, that I encourage Mr. Larkin to make that apology in writing, but apologies need to be something that come from the heart as opposed to something that is Court ordered. But I will tell you, I took from the information provided to me by the very thorough report done by Ms. Casselman, that he very clearly did appreciate that he should not have

done what he had done, and that it had quite significant consequences for your son and for your family.

[28] So, Mr. Larkin, I would very much encourage you to do that. Perhaps in writing, as it appears that there is some ongoing difficulties between the two families, but it is something that you want to seriously consider, from your own point of view. I think it is important that you clearly recognize that you have done wrong and accepted responsibility. I think it would be helpful for them if you are able to make them understand that you truly do have remorse for what you did.

[29] MR. BROWN: Section 487, this is a primary, designated offence, Your Honour, I am asking for a DNA Order.

[30] THE COURT: Thank you.

[31] In addition, there will be a DNA order and your lawyer can explain what that is. Because of the type of offence it is, I am required to do that. What it basically means is the police are going to take a blood sample from you, and that goes into the DNA databank. If you have questions, your lawyer can set all that out with you, but there will have to be an order that you comply with that as well.

[32] The only other thing I wanted to say to you, Mr. Larkin, before we finish, is you appear to have a very close and supportive family that very much want to help you out. I know -- and I took from the report that you feel that in allowing them to do that, it is almost as if you think that is unfair to them. I can tell you from what I read, I think it is probably more fair to let them help you. I think they need to do that, and I think you

need to let them do that. You have a lot of stuff that you have to deal with. You are going to need as much help as you can to deal with it. They want to and need to do that. They are your parents. They want to be there for you, and you need to let them be there for you. Okay?

[33] MS. MACDIARMID: Your Honour, I believe there is also the discretionary weapons prohibition that you need to address. Is that not --

[34] THE COURT: It is not an issue. Crown has not put it on the table at this point in time.

[35] MS. MACDIARMID: The victim's fine surcharge as well, I would --

[36] THE COURT: He is not working at the moment?

[37] MS. MACDIARMID: He is not, no.

[38] THE COURT: Okay, I am going to waive it in the circumstances.

[39] THE CLERK: Your Honour, I have one question for clarification. On the probation order there is no curfew.

[40] THE COURT: No, there is no curfew on the probation order. Is there anything we missed?

[41] MR. BROWN: I don't think so, Your Honour.

[42] THE COURT: Mr. Larkin, there is going to be some papers that you need to sign, both for your conditional sentence order and your probation order. So, if you don't mind waiting, the clerk will let you know when those are ready for your signature.

RUDDY T.C.J.