

Citation: *R. v. Linklater*, 2008 YKTC 58

Date: 20080801
Docket: T.C. 08-00068
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Cozens

REGINA

v.

RICHARD LINKLATER

Appearances:
Jennifer Grandy
Jennifer Cunningham

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): Richard William Linklater has entered guilty pleas to two charges of committing offences contrary to the *Criminal Code*. The first is a charge under s. 264.1(1)(a) of the *Criminal Code* and the second is a charge under s. 266 of the *Criminal Code*.

[2] The facts are that on April 29, 2008, Mr. Linklater was at the Tags Store in the downtown Whitehorse area. He got into a car with Jay Taylor. At this point in time he had no prearranged plan of getting into this car. This car had John Eriksen and Tanana Profeit in it.

[3] By way of background, Mr. Taylor had been given some drugs on April 20th by Mr. Eriksen. These drugs were fronted to him. He did not pay for them at that time and did not pay for them within the time Mr. Eriksen expected to be paid. Mr. Taylor is a self-admitted cocaine addict. What happened is that Mr. Eriksen, Ms. Profeit and Mr. Linklater, once Mr. Taylor got into the vehicle with Mr. Linklater, then drove the vehicle out on the Long Lake Road, which is a fairly remote area of Whitehorse.

[4] En route there were a number of threats to Mr. Taylor to cause him bodily harm. Mr. Linklater made some of these threats himself. Mr. Linklater admits that his presence in the vehicle and in making the threats certainly had an intimidating impact on Mr. Taylor. He was well aware of this intimidating impact. He would, in the submissions of his counsel, certainly be aware of it having been the victim of such intimidating actions himself in the past.

[5] Once they arrived at the location on the Long Lake Road, Mr. Linklater pushed Mr. Taylor out of the car, whereupon Mr. Eriksen began to punch and kick Mr. Taylor. Ms. Profeit was also there, encouraging them as well. During the course of the assault by Mr. Eriksen on Mr. Taylor, a metal pipe was swung at Mr. Taylor's head, and in the context of some of the threats that were made, Mr. Taylor thought someone may have had a knife. Mr. Linklater's plea to having committed the offence of assault of Jay Taylor involves the physical act of pushing him out of the vehicle, and then as party to the assault that Mr. Eriksen then continued on Mr. Taylor.

[6] While Mr. Linklater is acknowledging the fact that a weapon was used in this assault, he himself was not aware of the nature of the weapon, but he takes no issue with

the fact that Mr. Eriksen swung the pipe at Mr. Taylor's head without connecting with the head. The injuries to Mr. Taylor as a result of the assault included a large welt on the side of his head, bruises and scratches to his face and an injury to one leg, for which he received some initial medical treatment.

[7] Mr. Linklater originally attempted to accept full responsibility in his statement to the police for all of these actions, but in the end has agreed to plead guilty on the basis of what his actual limited involvement in these events was. This is relevant in the sense that he is not attempting to cover up for others that were involved but is simply dealing with his responsibility as being his responsibility and leaving others to deal with their own responsibility for their actions.

[8] There is a joint submission before me for a period of 15 months in custody with a period of probation of one year, and I say joint submission with respect to the time in custody. There is some dispute with respect to the probation order, but that, of course, does not impact upon my view of the appropriate sentence of incarceration. He also has the equivalent of four and a half months in custody, giving him credit for his three months at one and a half times, and this is to be applied to the 15 months to reduce the sentence.

[9] Mr. Linklater has a considerable criminal record with some 50, approximately, entries, the bulk of which were all property entries until later, when in 2001, we are dealing with robbery; 2004 attempted armed robbery and armed robbery and assaulting a peace officer. Mr. Linklater has done penitentiary time on two occasions, at least, in the past. He is 26 years old. It is a very serious record, in particular, in its escalation from property offences to offences of violence. Crown counsel made submissions with respect

to the impact of drugs on a community that is not limited to the immediate impact of drug use and addiction, but there is a broader sweeping approach to the impact on the community. In some respects, I am looking at Mr. Linklater's record and accepting the acknowledgement that he has been dealing with a very serious drug addiction problem and in fact, at the time that these offences were committed, he had been dealing with a very strong and serious addiction to, as I understood it, heroin and cocaine.

[10] Drugs have led him from property offences into offences of violence, and a continuation of drug addiction is likely to lead him to further offences of violence, and as Crown has pointed out, with the new amendments to the *Criminal Code* and his record, any further offences that result in penitentiary time, offences of violence, could see him at risk of being found a dangerous offender and subject to court scrutiny for life. So drugs have had a serious impact on his life as well as others in the community.

[11] Mr. Linklater is a First Nations member of the Vuntut Gwitchin First Nation from Old Crow. He is the oldest brother of several other brothers and sisters who provide support for him. He has additional family support.

[12] I am sure that if Mr. Linklater thinks about it, as an older brother, he would probably like to occupy a somewhat better leadership role for his younger siblings and be able to be more of a support to them. The indication from his counsel today is that he has stayed clean while he has been in jail the last three months, and that he wishes to take advantage of a probation order and he wishes to seek any rehabilitative treatment that he could get, which, to me, is a sign that maybe he is recognizing the impact of the lifestyle

he has chosen so far in his life and wants to change that. He should be given every opportunity to do so.

[13] This joint submission appears to do that. It deals with the issues Crown has raised with respect to both the aggravating and mitigating factors, being, of course, the criminal record and the recency of the record as being quite aggravating, and the facts of this case. There was an addicted person who was obviously in a state of fear and a very vulnerable situation not only in the remoteness of the location but in the fact that it was three individuals against one, and two of whom were certainly capable of following through on the physical harm he was threatened with, and in fact, to some extent, suffered.

[14] We have the importance of setting the principles of general deterrence and denunciation of such kind of vigilante action in the context of a drug trade. Not that it was said today, but it is not uncommon to see on the news reports, and hear reports in many of the larger centres, of killings that are labelled as drug-related killings that impact not only those involved but the wider community that may happen to be in the way at the time. So vigilante-type action to enforce drug debts certainly needs to be dealt with by sentences that deter individuals from being involved and reflects society's denunciation of such actions.

[15] The concept of separation from society is important in a case like this, in that it is balanced with rehabilitation, which is hopefully reintegration into society. It is not such a long sentence in this case that is being proposed, that the ability of Mr. Linklater to

rehabilitate himself back -- to find strength to be rehabilitated and be brought back into the community is over-shadowed by the length of the sentence.

[16] The migrating factors have been well pointed out with respect to the guilty plea. I acknowledge that this was on the day of an application in respect of a preliminary inquiry, but this is clearly, as Crown counsel said, a complicated matter; three individuals accused on the Information, a lot of discussion, and there is no question that Mr. Linklater's acceptance of responsibility, at least as far as he is able to do, has spared the Court considerable time and effort. When I say the Court, I include the prosecution, defence, and all the individuals involved in the system. It has also spared someone who I understand to be a very fragile witness the need to testify in a trial, as much as Mr. Linklater is able to do that. This action in and of itself may well not alleviate him of the need to testify, because he may end up testifying at the trial of someone else. To some extent, Mr. Linklater's actions were part of what may result in that, but he has done the best he could to minimize the impact on the victim at this point in time.

[17] There is no question that had he gone to trial and been found guilty of all of these offences here after trial on what could perhaps have been not just the facts today but perhaps even more, that he may well have been facing a very long sentence that clearly would have taken him into penitentiary time.

[18] In all of these circumstances, the sentence will be 15 months, less credit of four and a half months for time served. It will be 15 months on each charge concurrent to each other. Then the four and a half months credit will be applied to that, which will leave 10 and a half months left, I expect.

[19] MS. CUNNINGHAM: I was scribbling and I did nine and a half, but I might have done the math wrong.

[20] THE COURT: I think it was 15 months joint submission, less --

[21] MS. GRANDY: Leaves nine and a half.

[22] MS. CUNNINGHAM: Nine and a half.

[23] THE COURT: Nine and a half.

[24] MS. GRANDY: Fifteen less --

[25] THE COURT: All right. Fifteen less four, nine and a half, thank you.

Wait a minute, I am thinking here. We have 15 months less four months is 11, less half a month is 10 and a half.

[26] MS. GRANDY: Ten and a half.

[27] THE COURT: I was right. So that will leave 10 and a half months left to go. There will be one year probation to follow. The terms will be to:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Court or probation officer in advance of any change of name or address and promptly notify the Court or probation officer of any change of employment or occupation;
4. Report to a probation officer immediately upon your release from custody and thereafter when and in the manner directed by the probation officer;

5. Reside as approved by your probation officer and not change that residence without the prior written permission of your probation officer;
6. For the first three months of this order abide by a curfew by remaining within your residence between the hours of 10:00 p.m. and 6:00 a.m. daily, except with the prior written permission of your probation officer. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;
7. For the first six months of this order you are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
8. Take such alcohol and drug assessment, counselling or programming as directed by your probation officer --

[28] I understood he was consenting to treatment. Is he consenting to residential treatment if there is a residential treatment program that is available?

[29] MS. CUNNINGHAM: Not specifically consenting to residential treatment.

[30] THE COURT: Well, I will leave it as:

-- assessment, counselling and programming as directed and to take such other assessment, counselling and programming as directed by your probation officer;

9. Have no contact directly or indirectly or communication in any way with Jay Taylor, John Eriksen or Tanana Profeit,

[31] In the event that at some point in time that it may be appropriate and it may be wished, because I am not going to order it, for an apology or something to be done and there needs to be a change of this term to allow for that, that could happen. I am just simply raising that.

10. Participate in such education or life skills programming as directed by your probation officer;
11. Make reasonable efforts to find and maintain suitable employment and provide your probation officer with all necessary details concerning your efforts;
12. Provide your probation officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this probation order;
13. Not have in your possession any firearm, ammunition, explosive substance or weapon.

[32] There will not be a DNA order as I understand there is already one in place. There will not be a firearms prohibition order. It is a discretionary order. There are already what appear to be two orders on his record; one is as recent as 2004. There will not be a further order. The victim fine surcharges will be waived.

[33] Is there anything with respect to these terms or anything else?

[34] MS. GRANDY: No. I would direct a stay of proceedings on the other counts as against Mr. Linklater only. And just -- I'm not sure how it works from a practical perspective, but if there is a way, if the probation order goes, so that WCC is aware of the no contact order, for Mr. Linklater's benefit as much as anything else, given that Eriksen and Profeit are at the WCC for now.

[35] THE COURT: I am not sure; Madam Clerk, will a copy of this order go to the administration at WCC to let them know?

[36] THE CLERK: A copy of the order does go, but I understand that there is often a difficulty because probation does not take effect until he is released.

[37] THE COURT: Mm-hmm.

[38] THE CLERK: Occasionally, the Court does make a recommendation on the warrant of committal --

[39] THE COURT: I will make a recommendation.

[40] MS. CUNNINGHAM: He advises me that right now he is working in the same area as Mr. Eriksen and he would hope, if possible, that that would not continue.

[41] MS. GRANDY: So that would probably be to Mr. Linklater's benefit if Your Honour would put a recommendation on that.

[42] THE COURT: I will make a recommendation. I mean he is a serving prisoner; he is not a remand prisoner. I will make a recommendation that the Whitehorse Correctional Centre ensure that there is no contact between Mr. Linklater and either Ms.

Profeit or Mr. Eriksen at this time. My understanding is as a serving prisoner he would effectively be in a better position with respect to a remand prisoner when it comes to access to programming or employment.

[43] I do understand, I believe, that the new amendments that are coming to the *Code* are going to allow for orders to be made with respect to serving prisoners and no contact that are currently not -- I have no jurisdiction to make. That should deal with your client's concerns in that regard with this recommendation.

[44] Mr. Linklater, you are a young man. You have been around a lot; you do not need to hear anything from me. I just wish you the best, you know. You are an oldest brother; you obviously have the ability to do a lot better than you have done. I would encourage you to do that and I just wish you the best.

[45] THE ACCUSED: Thank you.

[46] MS. CUNNINGHAM: Thank you.

COZENS T.C.J.