

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Cite as: R. v. Garland, 2013 NSPC 27

Date: April 11, 2013

Docket: 2093690
2093692

Registry: Halifax

BETWEEN:

Her Majesty The Queen

v.

Ross Garland

SENTENCING DECISION

JUDGE: The Honourable Anne S. Derrick
HEARD: April 2, 3, 5 and 8, 2013
DECISION: April 11, 2013
CHARGES: sections 344 and 279(2) of the *Criminal Code*
COUNSEL: Eric Taylor and Terri Lipton, for the Crown
Brian Church, Q.C., for Ross Garland

Introduction

[1] On May 30, 2011, Ross Garland pleaded guilty to robbing Dorothea Pronk and unlawfully confining her. These offences occurred on September 16, 2009. Mr. Garland originally pleaded not guilty and trial dates were set. There was a change of counsel, an unsuccessful referral to the Mental Health Court, and finally, a change of plea. The issue of fitness was addressed and sentencing was adjourned on various occasions.

[2] The Crown advised Mr. Garland of its intention to make an application to have him designated a long-term offender. The formal notice for the application pursuant to section 753.1 of the *Criminal Code* is dated March 20, 2013. The notice indicates that the Crown is seeking an order, pursuant to the provisions of section 753.1, declaring Mr. Garland to be a long-term offender and imposing on him a penitentiary sentence of two years or more, and long-term supervision for a period not exceeding 10 years.

[3] The Crown has also filed, in accordance with section 754(1)(a), the consent of the Attorney General to the long-term offender application.

[4] As required by the *Criminal Code* long-term offender provisions, an assessment of Mr. Garland was prepared and submitted by Dr. Grainne Neilson, a forensic psychiatrist with the East Coast Forensic Hospital. Dr. Neilson testified as an expert witness in these sentencing proceedings, having been qualified by consent of Mr. Garland, as a psychiatrist “able to provide opinion evidence in the area of psychiatry, including, but not limited to, the practice of forensic psychiatry, the diagnosis, assessment, and treatment of mental disorders, the diagnosis and classification of violent offenders, identifying patterns of repetitive violent behaviour, the assessment of risk for future violence or recidivism for violent offenders, the treatment for violent offenders, the ability to control the risk of violent offenders in the community, and the nature and degree of psychological harm caused by violent offenders to their victims.”

[5] Dr. Neilson has conducted eight assessments that have started out as either dangerous offender or long-term offender applications. The object of these assessments is to try and address risk and the potential to manage risk in the

community. Dr. Neilson has testified in court in relation to her assessments, her appearance as an expert witness in Mr. Garland's case being the fifth such occasion. Dr. Neilson has also managed offenders under long-term supervision orders.

Process to be Followed in this Sentencing

[6] I have two tasks to perform in relation to the sentencing of Mr. Garland. I must impose a sentence for what are referred to as the "predicate" offences, the robbery and unlawful confinement on September 16, 2009. I must also determine whether to designate Mr. Garland a long-term offender and fix a period of supervision under the *Criminal Code* long-term offender provisions.

[7] As for the process to be followed in a sentencing such as this one, I am satisfied that the law requires me to deal first with the sentence for the September 16, 2009 offences and then address the Crown's long-term offender application. In taking this approach I am guided by the Supreme Court of Canada's decision in *R. v. L.M.*, [2008] S.C.J. No. 31 where the Court held as follows:

... it is important to remain faithful to the distinction between sentencing and the imposition of a supervision period. A judge who confuses these two processes risks straying from the normative principles and the objectives of sentencing. A judge who does so would also neglect the specific objective of the procedure for finding an offender to be a long-term offender, which requires the application of different principles. Parliament intended that the judge determine the appropriate sentence first. After doing so, the judge is to ask, in light of Parliament's objective of protecting the public, whether a period of supervision is warranted. The period of community supervision cannot therefore be equated with a new period of deprivation of liberty consecutive to the one resulting from the sentence. (*L.M.*, paragraph 49)

[8] I will therefore first be dealing with sentencing Mr. Garland for the robbery and unlawful confinement and then I will move on to the long-term offender application.

Facts of the Predicate Offences

[9] Mr. Garland and the Crown have agreed on the facts of what happened on September 16, 2009. The facts, which I recite below, are contained in an Agreed Statement of Facts filed as an exhibit in these proceedings. (*Exhibit 9*) What is revealed by the Agreed Facts is that in the course of the afternoon of September 16, 2009, Mr. Garland, a complete stranger, subjected Ms. Pronk to a terrifying ordeal over several hours. He unlawfully confined and robbed her, these being the offences to which he has pleaded guilty.

[10] On September 16, 2009, Dorothea Pronk, a 40 year old University Professor, was dropping off a friend at the Halifax International Airport.

[11] On the same day, Ross Garland, still dressed in Central Nova Scotia Correctional Facility inmate clothing, took a cab from the Delta Barrington Hotel to the Halifax International Airport. He had been released from jail two days earlier. Upon arrival at the Halifax International Airport, he exited the cab without paying. While being followed by the cab driver through the airport, he faced the driver, opened his jacket and revealed a steel pipe.

[12] At approximately 1:00 p.m. Mr. Garland approached Dorothea Pronk's vehicle and jumped in to the passenger seat instructing her to drive away fast, that he had explosives and a gun. He told her to drive as fast as possible to the highway and to drop him off somewhere along the highway.

[13] Mr. Garland continued to threaten Ms. Pronk claiming he would blow up her family members if she did not do what he told her to do. He showed her a dagger with a 15 cm blade and told her again that he had a gun. He instructed her to drive approximately 150-160 kms/hr until he was certain they were not being followed and then told her to drive the speed limit so the police would not stop them.

[14] As they were driving, Mr. Garland went through the pockets of Ms. Pronk's coat and emptied the contents of her purse, examining her ID. He told her he

wanted to go to a bank machine and withdraw approximately \$4000.00 to \$5000.00 and would then let her go unharmed. He told her if they were stopped by the police he would blow them up. He showed her wires that were actually going in to his skin which she described as looking like intravenous wires. He told her they were wires leading to explosives.

[15] Mr. Garland and Ms. Pronk stopped first in Brookfield, Nova Scotia and tried several bank machines that would not work. They eventually got \$600.00 after visiting four separate locations.

[16] They continued driving looking for more bank machines. They made a number of stops each time attempting to use the bank machines. They stopped at various convenience stores, drug stores, gas stations, hardware stores and grocery stores. Each time Mr. Garland instructed Ms. Pronk to take money. Her cards were eventually cancelled due to the number of attempts at usage. By the time they were cancelled, Mr. Garland had taken close to \$5000.00. At all times Ms. Pronk was in fear for her life and cooperated with Mr. Garland's instructions in the hope that he would let her go unharmed.

[17] Mr. Garland continued on and he began to instruct Ms. Pronk to take dirt roads. He told her he needed to catch an airplane. She knew he was lying about that and wondered where he was actually forcing her to drive. At approx. 3:20 p.m. he told her to pull over and get out of the car. She told him she did not want to get out. He ordered her out and opened the trunk instructing her to get in to the trunk. In Ms. Pronk's statement at Page 11, she says "so that was the moment, this is it. I'm running. I'm taking the risk, if he shoots, he shoots, but I'm going to run. And the funny thing is I didn't even hear him following me or anything, so I don't know what he did at that moment but I just...I ran and....up to the first house there, and I was like, I hope the door is open. And that's when I called 911."

[18] Subsequent investigation revealed that Mr. Garland abandoned the vehicle and took a cab from Truro to Moncton. Moncton RCMP located clothing matching clothing worn by inmates of the Central Nova Scotia Correctional Facility. Inquires revealed that Mr. Garland had recently been released from the institution and matched the description provided by Ms. Pronk. A photo line-up was conducted and Ms. Pronk identified Mr. Garland as the perpetrator. On

September 17, 2009, Mr. Garland was located in Moncton and arrested with the assistance of Moncton RCMP and Halifax Regional Police Major Crime officers.

[19] The facts I have just recited are a dry narrative of the terror Ms. Pronk experienced while confined by Mr. Garland. When she escaped, she ran for her life, fearing that if she ended up in the trunk of her car, she would have no hope of emerging alive.

Victim Impact Statement

[20] Ms. Pronk was deeply affected by what Mr. Garland subjected her to. This is unsurprising as Dr. Neilson notes that his hostage-taking "...assures psychological harm to all but the most robust of victims." (*Neilson Report, page 45*)

[21] In her victim impact statement Ms. Pronk describes experiencing the events "as if all the rules of life had been changed." Mr. Garland's behaviour was "aimed at letting me know that he was in control." She talks of spending most of her energy "at trying to keep him calm so that he would not do something extremely harmful." She was fearful of what Mr. Garland might do to "conclude this situation." She was "scared tremendously" when he made her drive down the dirt road. She drew on the strength of her religious faith to stop from panicking. When she managed to escape, "it felt like running back to the normal world." Ms. Pronk says her journey to "becoming normal" again has taken a long time. This is how she has described the aftermath of her terrifying few hours with Mr. Garland:

After calling 911 I just felt completely drained and disoriented, and had a hard time calming down. I remained stressed even though I tried to relax, especially during the first night, but to a lesser extent over a longer period of time. Although I wanted life to be normal I was not the same as before. What made this extra hard was the fact that this had happened in my home-town of Halifax, the place I considered myself to be safe.

[22] Ms. Pronk has said in her victim impact statement that even after processing her emotions and anger, she continued "to carry a certain level of fear, heaviness, and tiredness that just permeated everything..." She describes being burnt-out and exhausted by the end of the university term, needing an extended break during

January 2010 to recover from her ordeal. She had found teaching her courses more challenging although she stoically got through the term. Sacrificing time from work, she had to deal with all the fall-out from the forced withdrawals from her bank account, damage to her passport, and insurance-related issues. Interviews requiring her to detail the events were “long and painful.”

[23] Over the months following her abduction by Mr. Garland, Ms. Pronk was very easily overwhelmed, “...as if the smallest thing, just any challenge, could bring me back to that feeling of confinement and fear.” She experienced a desire to withdraw from social contact in order “to keep [herself] safe that way.” She has experienced this effect over the past several years since the events and it is only very recently that she is noticing a gradual change. Ms. Pronk says: “As I am healing I am reminded of who I used to be and I am more clearly able to see how I have not been my normal self since September 2009.”

[24] Ms. Pronk also suffered significant financial losses. Even with insurance, Ms. Pronk was out of pocket, including for the replacement of her car, which was so badly damaged it was written off.

Position of Crown and Defence

[25] Crown and Defence have made a joint recommendation for Mr. Garland’s sentence on the predicate offences and with respect to the Crown’s application for a long-term offender designation, which I will discuss later in these reasons. It is being jointly recommended that the sentence on the robbery and unlawful confinement charges should be eight years with credit for time Mr. Garland has spent in pre-sentence custody.

[26] Mr. Garland has been in custody on these offences since September 18, 2009. Up to February 22, 2010 when amendments to the *Criminal Code* led to changes to how remand credit is to be calculated (Bill C-25, now subsections 719(3) and (3.1) of the *Code*), Mr. Garland spent five months in custody. Crown and Defence have agreed he is entitled to double credit for those five months, that is, a remand credit of ten months for the period of September 18, 2009 to February 22, 2010. Since then, Mr. Garland has spent almost three further years on remand,

and Crown and Defence have agreed that his total remand credit should be rounded up to 48 months.

[27] Therefore, it is jointly recommended that Mr. Garland's go-forward sentence for the robbery and unlawful confinement of Ms. Pronk should be four years; that is, eight years less four years' credit for time on remand.

Joint Recommendations

[28] A judge dealing with a joint recommendation must have "sound reasons" for departing from it. Joint recommendations are to be given "very serious consideration". An assessment must be made as to whether the jointly recommended sentence is "within an acceptable range", that is, whether it is a fit sentence. (*R. v. MacIvor*, [2003] N.S.J. No. 188 (C.A.), paragraph 31) In *MacIvor*, Cromwell, J.A., now a justice of the Supreme Court of Canada, adopted the viewpoint of Fish, J.A. (also now a justice of the Supreme Court of Canada) in *R. v. Verdi-Douglas*, (2002), 162 C.C.C. (3d) 37 (C.A.) where the following point was made: "...the interests of justice are well served by the acceptance of a joint submission on sentence accompanied by a negotiated plea of guilty – provided of course, that the sentence jointly proposed falls within the acceptable range and the plea is warranted by the facts admitted." (*MacIvor*, paragraph 33, citing *Verdi-Douglas*, paragraph 51)

[29] The Nova Scotia Court of Appeal has also adopted the approach of the Manitoba Court of Appeal in *R. v. Sinclair*, [2004] M.J. No. 144, where the following was said:

The sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons may include, among others, where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest. (*R. v. G.P.*, [2004] N.S.J. No. 496, paragraph 15, citing *Sinclair*, paragraph 17)

The Joint Recommendation on Mr. Garland's Sentence for Robbery and Unlawful Confinement

[30] In the Crown's very helpful written submissions it is noted, with reference to a number of cases, that the sentencing range for offences such as Mr. Garland's goes from a low of three years to a high of twelve years. The Crown points out that sentences at the low end of the range have been imposed on offenders "with little or no criminal record, a fairly fleeting period of confinement of the victim, and an expression of remorse." Cases near the high end "often involve the use of firearms, lengthy confinement of victims who are traumatized by the ordeal, and extensive related records." (*Crown Brief, pages 23 and 24*) Although rehabilitation cannot be lost sight of, the sentencing principles emphasized in such cases are denunciation and deterrence.

[31] The Nova Scotia cases referenced in the Crown's brief illustrate the sentencing range indicated in the Crown's submissions:

- ***R. v. West, [2006] N.S.J. No. 146 (S.C.)*** - The Accused met two bank employees as they arrived for work — Accused showed employees handle of what appeared to be gun and uttered verbal threats — Accused confined employees for 45 minutes in two-seat vehicle — Accused took employees into washroom where he ordered them on their knees and bound them — In 2001, accused was convicted of seven charges arising out of robbery and sentenced to total of eight years — Convictions were overturned on appeal — At second trial, accused was convicted of two counts of robbery, three counts of unlawful confinement, and one count of use of imitation firearm while committing indictable offence — Sentencing hearing was held — On application of totality principle, accused was sentenced to total of nine years and 362 days after credit from time served was deducted from total 11-year sentence — Total sentence included six years for robbery, two years for unlawful confinement, and three years for use of imitation firearm — Trial judge's characterization of incident as primary property offence and not offence of personal violence was incorrect — Confinement for 45 minutes in two-seat sports car with robber who they thought had gun and kneeling and being taped in washroom were acts of violence — While none of employees

suffered serious personal injury, they did suffer great trauma — Additional aggravating factors included threats made to employees, fact that length of intrusion in bank was in excess of one hour, and fact that accused had previous criminal convictions for robbery of bank.

- ***R. v. Johnson, [2007] N.S.J. No. 430 (C.A.)*** – Successful appeal by the Crown from an order imposing a conditional sentence of two years less a day. Johnson was charged with robbery, unlawful confinement and breach of probation. All charges arose out of the same incident. Johnson originally entered a guilty plea to the offences which, on the date of trial, he changed to guilty on the robbery and breach of probation charges. The Crown subsequently withdrew the unlawful confinement charge. Hines was sitting in his car, waiting for his girlfriend to finish work. Johnson, wearing a stocking over his face, jumped into Hines' car. He removed the mask and demanded that Hines drive him to Brunswick Street, several blocks away. Johnson warned Hines that he would "shank" him if he tried any moves. When they arrived at Brunswick Street Hines pleaded with Johnson not to take his laptop. He offered Johnson \$500 cash. Johnson took the money and entered a building where Hines had parked. Hines encountered the police as he was driving away and Johnson was apprehended after a brief struggle. At the time of the offence Johnson was on probation. A victim impact statement revealed that Hines was significantly affected by the robbery. HELD: Appeal allowed. The conditional sentence order was set aside and a term of imprisonment of three years was substituted. Johnson was to be given credit for the nine months he had already served on his conditional sentence. Given the circumstances of the offence and the circumstances of Johnson, the court concluded that he presented a very real risk of re-offending. The fact that he was intoxicated when he robbed Hines did not negate the prospect of re-offence should Johnson be released into the community. Johnson had been convicted of eight property related offences. He was convicted twice of assault with a weapon. With respect to the length of the sentence, the usual starting point for the offence of robbery was three years, which was deemed appropriate in this case. The Court of Appeal held that "but for Mr. Johnson's youth [he was nineteen at the time of the offences] and the hopes

that a period of incarceration [his first as an adult] will finally bring home to him the consequences of his predatory criminal behaviour” they would have imposed a longer sentence. (*Johnson, paragraph 41*)

- ***R. v. Downey, [2012] N.S.J. No. 577 (S.C.)*** - Downey was charged in a multiple count Indictment alleging that in May of 2009, he conspired to, and did commit an armed robbery, in which two people were abducted at gunpoint by masked men. The robbers forced one of those persons to provide access to her place of employment at Beazley Bowling Lanes, where the robbers stole approximately \$10,000. The victims were released without physical harm. The offender had convictions for robbery as both a youth and an adult. Sentence: Eight years for robbery, five years concurrent for unlawful confinement, three years concurrent for possession of a weapon.

[32] In examining the sentencing-range issue, I have also considered the other cases provided by the Crown, all from British Columbia: from the B.C. Court of Appeal - *R. v. Hiltz, [1998] B.C.J. No. 2742* and *R. v. Randhawa, [2007] B.C.J. No. 2723*, and from the B.C. Provincial Court, *R. v. L.A.M., [2006] B.C.J. No. 1173 (P.C.)*. In *Hiltz*, the offender did not have a significant or recent criminal record but nonetheless, the kidnapping and confinement of the victim at gunpoint for the purpose of robbing him of valuables in his home attracted sentences of 10 years for the robbery, 9 years for kidnapping, and 4 years for unlawful confinement, all to be served concurrently.

[33] As is illustrated later in these reasons, Mr. Garland has an extensive criminal record. It includes violence: a robbery with an imitation firearm in 1984 which netted him 3 years in prison; an aggravated assault in December 1999; a February 2002 robbery at knifepoint, aggravated assault (stabbing a pursuer), forcible confinement (of individuals whose car he jumped into), and assault with a weapon. These offences resulted in a total sentence of six years. In August 2007, Mr. Garland assaulted a private security officer who had observed him shoplifting.

Aggravating Factors

[34] The offences committed by Mr. Garland on September 16, 2009 are aggravated by the degree of violence, threats, and intimidation he used to force Ms.

Pronk to comply with his instructions. This is readily apparent from the Agreed Facts. Ms. Pronk experienced a significant and lingering trauma.

Mitigating Factors

[35] As the Crown notes, Mr. Garland pleaded guilty to these serious offences at a relatively early stage of the proceedings, and with the full knowledge that the Crown was intending to proceed with a long-term offender application. This spared Ms. Pronk having to re-live painful and distressing events and it avoided what could have been a protracted trial. Mr. Garland's agreement with the facts abbreviated the sentencing proceedings and indicated a willingness to take responsibility. Mr. Garland has also expressed remorse, to Dr. Neilson, and in court directly to Ms. Pronk.

[36] Ms. Pronk read her victim impact statement to the court on Friday, April 5. Mr. Garland had earlier indicated he wished to apologize to Ms. Pronk in person. Although she was not obliged to stay and listen to what Mr. Garland might have to say, Ms. Pronk wanted to do so, and further requested that she be able to respond to Mr. Garland. What occurred was an unusual exchange between offender and victim that had an authentic resonance and reflected a genuine recognition of each other's essential humanity. Mr. Garland told Ms. Pronk that he wanted her to know how deeply sorry he is for what he did to her and that the fact he was coming off a lot of drugs at the time was no excuse for what he put her through. Ms. Pronk, for her part, had the generosity of spirit to tell Mr. Garland that she has forgiven him and urge him "to seek healing" and "continued spiritual growth." I was deeply impressed by Ms. Pronk's courage and resilience and also credit Mr. Garland for taking responsibility for his actions and for apologizing directly to Mr. Pronk.

Sentencing of Mr. Garland for the Predicate Offences

[37] I am satisfied that the jointly recommended sentences for the robbery and unlawful confinement charges are fit and proper sentences that fall within the range, given the circumstances of the offences and Mr. Garland. I am therefore sentencing Mr. Garland to eight years for the robbery and a concurrent sentence of eight years for the unlawful confinement of Ms. Pronk. I accept the joint recommendation that Mr. Garland receive four years' credit for the time he has

spent in pre-sentence custody. Applied against his total sentence of eight years, Mr. Garland therefore has a “go-forward” sentence of four years to serve.

The Long-Term Offender Application

[38] It has also been jointly recommended that I find Mr. Garland to be a long-term offender under section 753.1 of the *Criminal Code* and that the long-term supervision order under section 753.1(3)(b) be for eight years. This recommendation is supported by Dr. Grainne Neilson’s assessment report ordered pursuant to section 752.1 of the *Code* and her testimony.

Long-term Offender Provisions

[39] The long-term offender provisions are set out in section 753.1(1) of the *Criminal Code*:

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.

[40] The purpose of a long-term supervision order is “to protect society from the threat that the offender currently poses – and to do so without resort to the blunt instrument of indeterminate detention.” (*R. v. Johnson*, [2003] S.C.J. No. 45, paragraph 32) A long-term supervision order allows for “control beyond the reach of conventional sentencing, and more in prevention of future injury when the risk of re-offence is substantial.” (*R. v. Weasel*, [2003] S.J. No. 854 (C.A.), paragraph

45) Risk and propensity are central to the assessment of whether a long-term offender designation is warranted:

The concern is to better protect members of society from the threat of harm at the hands of offenders who have committed serious crimes against the person and who, because of their demonstrated propensities, are at considerable risk of doing so again. (*Weasel, paragraph 45*)

[41] Where there is a realistic prospect of management in the community of the offender's risk – control of the threat of dangerousness “within tolerable limits not elimination of the threat”, a long-term supervision order is appropriate. (*R. v. Payne, [2001] O.J. No. 146 (S.C.J.) paragraph 115*)

[42] As noted by Wright, J. in *R. v. L.E.B., [2002] N.S.J. No. 285*:

...The long-term offender regime has been designed to allow correctional authorities to closely control the offender over an extended period in his or her eventual transition to the community. The supervision period...is specifically focused on relapse prevention strategies and envisions a proportionate degree of restraint of the liberty, rights, and privileges of the individual. (*L.E.B., paragraph 5*)

[43] The Ontario Court of Appeal has held that:

...The determination of whether an offender's risk can be reduced to an "acceptable" level requires consideration of all factors, including treatability, that can bring about sufficient risk reduction to ensure protection of the public. This does not require a showing that an offender will be "cured" through treatment or that his or her rehabilitation may be assured. What it does require, however, is proof that the nature and severity of an offender's identified risk can be sufficiently contained in the community, a non-custodial setting, so as to protect the public. (*R. v. G.L., [2007] O.J. No. 2935, paragraph 42*)

[44] Whereas the sentence for the predicate offences must be determined in accordance with the principles set out in section 718 of the *Criminal Code*, “the objectives of and rationale for the supervision of an offender in the community are to ensure that the offender does not re-offend and to protect the public during a period of supervised reintegration into society.” (*R. v. L.M., [2008] S.C.J. No. 31, paragraph 46*) “...the length of the period of community supervision is based on the offender’s criminal past and on the likelihood that he or she will reoffend, which are addressed in the assessment report.” (*L.M., paragraph 48*)

Criminal Record

[45] I have already indicated that Mr. Garland has accumulated a substantial criminal record from 1977 up to the offences of September 16, 2009, a total of 36 convictions:

Date of Sentence	Offence	Description	Sentence
October 25, 1977 (Halifax, NS)	313(a) C.C.	Possession of Stolen Property Over \$200	2 year suspended sentence
March 12, 1982 (Hamilton, ON)		Break Enter and Theft	30 days and probation for 18 months
December 15, 1983 (Halifax, NS)	4(1) N.C.A.	Trafficking in Narcotics	1 day and \$1000 fine and costs
March 1, 1984 (Halifax, NS)	303 C.C.	Armed Robbery	3 years
January 16, 1990 (Halifax, NS)	253(b) C.C.	Driving Over .80	\$700 fine
November 25, 1991 (Halifax, NS)	334(b) C.C.	Theft Under \$1000	\$100 fine and costs
December 15, 1994 (Halifax, NS)	380(1)(b) C.C. 334(b) C.C.	Fraud Under \$1000 Theft Under \$1000	2 years probation and 50 hours community service
February 13, 1995	334(b) C.C.	Theft Under \$1000	Suspended sentence and 12 months probation

Date of Sentence	Offence	Description	Sentence
(Halifax, NS)			
December 20, 1999 (Halifax, NS)	334(b) C.C. x 2 268(1) C.C. 145(3) C.C.	Theft Under \$5000 Aggravated Assault Failure to Comply with Undertaking	1 day concurrent and time served 1 day concurrent 1 day concurrent
February 12, 2002 (Montreal, PQ)	344(b) C.C. 268(2) C.C. 279(2)(a) C.C. x 2 267(a) C.C. 264.1(1)(a)(2)(a) C.C. x 4 129(a)(d) C.C.	Robbery Aggravated Assault Forcible Confinement Assault with a Weapon Uttering Threats Resisting a Peace Officer	6 years 6 years concurrent 4 years on each concurrent 2 years and 6 months concurrent 18 months on each concurrent 3 months concurrent
March 19, 2003 (Moncton, NB)	334(b)(ii) C.C. 334(b)(I) C.C. x 4 380(1)(b) C.C. x 2 145(2)(b) C.C.	Theft Under \$5000 Theft Under \$5000 Fraud Under \$5000 Failure to Attend Court	6 months concurrent on each but consecutive to sentence serving 1 month consecutive

Date of Sentence	Offence	Description	Sentence
March 26, 2003 (Halifax, NS)	380(1)(b) C.C. x 3 334(b) C.C.	Fraud Under \$5000 Theft Under \$5000	5 days consecutive on each \$460 restitution to Aim Construction 5 days consecutive
November 17, 2003 (Moncton, NB)	140(1)(a) C.C.	Public Mischief	30 days consecutive
March 10, 2004 (Dartmouth, NS)	380(1) C.C.	Fraud	1 day deemed served
August 2, 2007 (Moncton, NB)	334(b) C.C. 145(2)(b) C.C. 342(1)© C.C. 266 C.C. 334(b) C.C.	Theft Under \$5000 Failure to Attend Court Possession of Credit Card Assault Theft Under \$5000	1 month consecutive and consecutive 1 month consecutive and consecutive 1 month consecutive and consecutive 1 month concurrent and concurrent 1 month concurrent and concurrent
April 6, 2009 (Halifax, NS)	145(5) C.C. 334(b) C.C.	Failure to Attend Court Theft Under \$5000	1 day concurrent - time served \$100 fine
February 2, 2010	334(b) C.C.	Theft Under \$5000	7 days concurrent

Date of Sentence	Offence	Description	Sentence
(Halifax, NS)			
June 9, 2010 (Halifax, NS)	249(1)(a) C.C. 252(1) C.C.	Dangerous Operation of a Motor Vehicle Failure to Stop at an Accident	6 months concurrent (and consecutive to any other sentence) and 2 years probation 3 year driving prohibition and restitution order and DNA order
Dartmouth, NS (Pleaded Guilty May 30, 2011)	344 C.C. 279(2) C.C.C.	Robbery Unlawful Confinement	Long-term Offender Application pending

Evidence at the Long-term Offender Hearing -The Report and Testimony of Dr. Grainne Neilson

[46] As I noted, the only evidence on the long-term offender application came from Dr. Neilson who testified in relation to her 47 page, October 19, 2011 assessment of Mr. Garland. Her report and opinions were not challenged by Mr. Garland. In pre-trial conferences I was advised that Mr. Garland had retained his own expert but ultimately decided not to tender his report or call any evidence from him. I think it is fair to say that the nature and content of the cross-examination of Dr. Neilson and the Defence submissions on the long-term offender application indicate an acceptance by Mr. Garland of Dr. Neilson's opinions.

[47] Dr. Neilson interviewed Mr. Garland on four occasions for her report, between September 15 and October 20, 2011, for a total of five hours. Collateral sources of information provided by the Crown were relied on as the quality of information supplied by Mr. Garland was poor. This collateral information included file materials documenting Mr. Garland's prior offences and his correctional history. Mr. Garland's Capital District Health electronic medical and psychiatric records from October 19, 2007 to October, 2011, were also reviewed.

[48] As part of Dr. Neilson's assessment, a psychological report was prepared by Dr. Jacqueline Cohen, Staff Psychologist at the East Coast Forensic Hospital,

regarding Mr. Garland's personality and response style. Dr. Neilson included the Cohen consultation verbatim in her report.

[49] Dr. Neilson's assessment is divided into five parts: Part I – Developmental and Family History; Part II – Criminal and Violence History; Part III – Psychological Assessment; Part IV – Violence Risk Assessment; and Part V – Report Conclusions.

Part I - Developmental and Family History

[50] Dr. Neilson reports that despite Mr. Garland's relatively stable upbringing and early family life, there are indicators of early childhood maladjustment such as minor thefts, deceit, very early substance abuse, suicide attempts, truancy, failure to comply with parental control, running away, and youth criminality. There is no evidence that Mr. Garland was either the victim or perpetrator of significant physical or sexual aggression as a youth. (*Neilson Report, page 4*) In her testimony, Dr. Neilson described Mr. Garland as "quite a troubled youth."

[51] Mr. Garland reportedly completed grade 8 or 9 in formal schooling. Dr. Neilson testified that Mr. Garland quit school due to the combination of substance use and association with anti-social peers. He may have achieved some educational upgrading although his level of attainment is unclear. His educational deficits are likely the result of poor effort and motivation rather than learning difficulties or intellectual deficits. (*Neilson Report, page 5*)

[52] Dr. Neilson notes that Mr. Garland has been unable to sustain employment. Presently Mr. Garland has no marketable job skills and, as he perceives himself to be permanently disabled, physically and psychologically, he is poorly motivated to work in the future. Dr. Neilson characterized Mr. Garland's issues this way: "Over the years, his motivation to acquire/sustain employment appears to have been hampered by the easy profits that property crimes and drug trafficking represented, and also by his perception that he is 'permanently disabled' and the receipt of a long-term disability pension since 1986." (*Neilson Report, pages 7 and 8*) The significance of this is that the structure of employment contributes to the potential for a pro-social lifestyle.

[53] Mr. Garland self-describes as a “loner” and does not have a social support network. Dr. Neilson testified that he is distanced from his family. She notes in her report that his family “has found him to be a challenging individual to support at times and that their support of him may be waning in recent years.” (*Neilson Report, page 7*)

[54] Dr. Neilson reports that Mr. Garland has “a long and complex psychiatric history.” She testified that he has “a perplexing array” of conditions – mood and anxiety disorders, drug-seeking behaviour, disordered thinking, religiosity, and fearfulness. Dr. Neilson referred to Mr. Garland having a very full spectrum of psychiatric symptoms, none of which fit very clearly in the diagnostic categories. There has never been a unifying diagnosis and Dr. Neilson was also unable to make one. She indicated that Mr. Garland does meet the criteria for anti-social personality disorder, a DSM diagnosis associated with behavioural criteria. Mr. Garland told Dr. Neilson that he has been on antidepressant or anti-anxiety medications “of one form or another for most of his adult life (approximately 30 years).” (*Neilson Report, page 8*)

[55] Dr. Neilson indicates that Mr. Garland demonstrated evidence of thought disorder and paranoid thinking and has improved subjectively and objectively on two antipsychotic medications. However, he continues to report ongoing psychological disturbance and distress. (*Neilson Report, page 9*)

[56] In Dr. Neilson’s opinion, Mr. Garland’s largest issues relate to substance use and poor stress management. Substance abuse has been a significant contributor to Mr. Garland’s criminality. As Dr. Neilson notes: “His substance abuse has caused serious psychosocial adjustment problems over the years.” Mr. Garland has apparently been unable or unwilling to apply what he has been exposed to in treatment programs to life on the street as he has immediately returned to substance use on release. (*Neilson Report, page 12*)

[57] Mr. Garland has had a variety of physical health issues over the years including diabetes, asthma, and high blood pressure. He had been managing his diabetes, diagnosed in 1980, with diet and exercise, but since 2002 he has been insulin dependent. He has been Hepatitis C positive since 1984. He has also sustained significant physical injuries: head trauma in 1996 from being struck on

the back of his head with a baseball bat during a robbery attempt; stabbed while in jail; shot by Montreal police in 2001; and facial fractures after a 2009 hammer attack. Despite these injuries, there is nothing to indicate a physical or medical cause of Mr. Garland's violence or lack of impulse control. None of his current prescription drugs or their side effects is associated with increased aggression or violent behaviour. (*Neilson Report. Pages 10 and 11*)

Part II - Criminal and Violence History

[58] Mr. Garland's criminal history includes violent offences referenced earlier in these reasons.

[59] A 1997 aggravated assault was perpetrated by Mr. Garland against the owner of a building that he had been evicted from the year before. While being shown an apartment, Mr. Garland struck the victim on the back of the head with what was probably a rock. The victim required 20 stitches to three lacerations on his head.

[60] Mr. Garland was 38 at the time of this offence. Four years later, in June 2001 at the age of 42, Mr. Garland perpetrated a series of offences in Montreal, some of which bear a resemblance to the offences committed against Ms. Pronk in 2009. I will note that Dr. Neilson has observed in her report that Mr. Garland's predicate offences, while "reminiscent of past offence behaviour" do not appear to represent "an escalation in level of aggression, or degree of harm inflicted." (*Neilson Report, page 37*)

[61] In the 2001 Montreal case, Mr. Garland, using a knife, robbed a restaurant of \$200. While being pursued in the street he claimed to have a gun and threatened to shoot. He stabbed one of his pursuers in the chest, perforating his lung. He then jumped into a car containing two American tourists. He confined them in the car, threatening them with the knife. When he got out of the car he was confronted by police and ultimately shot.

[62] Dr. Neilson testified that the Montreal offences did represent a departure from Mr. Garland's prior violent offending, describing it as "somewhat of an escalation." She went on to note that Mr. Garland had been intoxicated or under the influence of substances when he started a robbery that then spiraled out of

control. He put many people at risk and caused considerable physical and psychological harm. In his interviews with her, he did not take responsibility and failed to recognize the harm that could have been the result of armed police having to become involved.

[63] Mr. Garland also has a record for non-violent offences such as thefts, possession of stolen property, and fraud. He has been convicted of impaired driving, dangerous operation of a motor vehicle, and mischief. Dr. Neilson notes that Mr. Garland's own account of his offences "is characterized by an ongoing denial of responsibility, or externalization of blame, and/or accusing others of escalating situations that resulted in his resorting to violence. In addition, he tended to minimize the seriousness of the harm caused to others, preferring instead to focus on his own [perceived] victimization in the incidents." (*Neilson Report, page 23*) I do note, as indicated earlier, that this was not Mr. Garland's stance when he apologized in court to Ms. Pronk.

[64] The 1984 robbery garnered Mr. Garland his first federal penitentiary term of three years. He received full parole in July 1985. However he was suspended in February 1986 for breaching parole conditions by possessing marijuana and drinking alcohol. His suspension was later cancelled and he returned to the community on full parole, completing it in March 1987 with no further difficulties. His next offences were not until December 1989 and October 1991. Dr. Neilson indicates that it is "unclear what factors contributed to this (apparent) period of stability in the community." (*Neilson Report, page 24*)

[65] Mr. Garland's next federal sentence, imposed for the Montreal robbery and related offences, did not go smoothly. His releases into the community were unsuccessful. He continued to abuse substances. His parole officer took a dim view of Mr. Garland, describing him as "a master manipulator whose commitment is to deceive those persons tasked with monitoring his compliance with abstinence conditions from intoxicating substances and overseeing his supervision in the community." (*Neilson Report, page 25*)

[66] At the time of a further parole suspension at the end of October 2008, the Correctional Service of Canada parole staff was expressing concerns about Mr. Garland's paranoia, his possible return to drug use, his lack of progress, his

disinterest in programs, and his unstable residence. He was deceptive and failed to attend for scheduled meetings with his parole officer. (*Neilson Report, page 25*)

[67] Mr. Garland's treatment gains are described by Dr. Neilson as having been "minimal, judging from the program assessments, and noting that...he soon resumed the very behaviours that the programs were supposed to have addressed (i.e. substance abuse, and criminal attitudes/reasoning)." (*Neilson Report, page 28*) Dr. Neilson testified that Mr. Garland has "a very serious and very unrelenting" substance dependence that has been "unresponsive to treatment." It was her evidence that in a highly structured environment Mr. Garland can "toe the line and control his behaviour."

Part III - Psychological Assessment

[68] Dr. Cohen assessed Mr. Garland using three self-report measures, the Personality Assessment Inventory, the Paulhus Deception Scales, and the State-Trait Anger Expression Inventory. She concluded that the current test results are "equivocal" suggesting on the one hand, overstated psychopathology and on the other hand, possible significant psychopathology.

[69] Dr. Cohen noted that Mr. Garland experiences "a range of problems, most of which relate to somatic complaints, anxiety and generalized distress, thought problems, and persecutory ideas." She observed that he "endorses intense, situationally determined anger, which he tends not to suppress or hold in." It was her view that how much Mr. Garland will benefit from psychological treatments is uncertain. She felt "...if considerable time is spent developing a strong therapeutic alliance, over time Mr. Garland may become more open to considering his role in regulating his emotions and behaviour." (*Neilson Report, page 30*)

[70] Mr. Garland's DSM IV diagnosis is alcohol dependence, poly-substance dependence, and psychosis not otherwise specified (NOS) (Axis I – Psychiatric Syndromes) and Antisocial Personality Disorder (Axis II – Personality Disorders). The psychosis NOS diagnosis means that Mr. Garland does not meet the criteria for other mental disorders. It is a disorder that is expressed through his Axis II anti-personality disorder.

Part IV - Risk Assessment of Mr. Garland

[71] Mr. Garland was assessed using the Psychopathy Checklist – Revised PCL-R, the Violence Risk Assessment Guide (VRAG), and the Historical/Clinical/Risk Management (HCR-20).

[72] Dr. Neilson notes in her report that Mr. Garland does not meet the clinical criteria for designation as a psychopath, although he does show “a variety of traits associated with psychopathy.” He evidenced some traits to a large degree: pathological lying; conning/manipulative; irresponsibility; failure to accept responsibility for his own actions; revocation of conditional release; and criminal versatility. To a lesser degree he has traits of glibness/superficial charm; need for stimulation/proneness to boredom; shallow affect; early behavioural problems; lack of realistic long-term goals, and juvenile delinquency. However his score of 28 places him below the cut-off for “a prototypical psychopath.”

[73] The psychopathy analysis does not really tell us anything that cannot be learned from examining Mr. Garland’s history. As Dr. Neilson notes, the nature of his psychopathic characteristics, divided into categories or “factors” and assessed, produce findings that “are entirely consonant with Mr. Garland’s offence history in which criminal acts are committed to obtain cash to fund a parasitic/criminal lifestyle, and in which reactive violence sometimes occurs when he is thwarted in this aim.” (*Neilson Report, page 35*)

Violence Risk Assessment Guide (VRAG)

[74] The VRAG is an actuarial violence risk assessment instrument constructed using data from a study of over 600 Canadian male offenders that included those with personality disorders, mental disorders and learning disabilities. The study identified a set of socio-demographic, criminal history, and clinical variables (that is, generally static variables) that distinguished between those who re-offended violently and those who did not. The VRAG is a 12-item instrument designed to assess risk of violent recidivism. It gives a numerical value representing the probability of re-offence over periods of 7 years and 10 years. (*Neilson Report, Page 36*)

[75] Mr. Garland's VRAG score placed him in the 7th highest of 9 categories. Dr. Neilson notes that for offenders in this category, the probability of future violent recidivism is 55% over 7 years and 64% over 10 years. Compared to the base rate of violent recidivism (43%), Mr. Garland is "about one and a half times as likely to commit a violent offence over 10 years when compared to the validation sample." (*Neilson Report, page 36*)

[76] Mr. Garland's risk was also assessed according to the HCR-20. The HCR-20 is a guided assessment method developed by academic and forensic mental health professionals affiliated with the Mental Health, Law, and Policy Institute at Simon Fraser University in British Columbia. It is not an actuarial instrument; rather it is "a structured clinical guide employed to ensure proper consideration of pertinent variables (static and dynamic factors) known to be associated with general or domestic violence respectively." (*Neilson Report, page 36*)

[77] Taking into account the variables on the HCR-20 relevant to Mr. Garland, he was assessed as "a moderately high risk of future violence." (*Neilson Report, page 36*) Dr. Neilson examined historical factors, clinical items, risk management items, and moderating factors, noting that Mr. Garland has a history of previous violence; relationship instability; a relatively parasitic lifestyle; substance abuse problems; an antisocial personality disorder; and a long history of supervision failures, all of which are factors linked to an elevated risk for violent recidivism. (*Neilson Report, pages 37 – 40*) These are all static, immutable factors. As for clinical items, which can be amenable to treatment, Dr. Neilson notes that: "Offenders who lack a reasonable understanding and evaluation of their own mental processes and behavioural reactions, and in particular the risk of violence that they pose are at an additional risk for future violence." (*Neilson Report, page 40*) Mr. Garland is one such offender, someone who "has not demonstrated any significant awareness/insight with regard to his risk factors for violence." Dr. Neilson indicates that he "fails to fully appreciate the impact of substance abuse on his criminal lifestyle and violent behaviour." He has also not demonstrated any significant awareness/insight in relation to the impact his violent behaviour and criminal lifestyle has had on his victims and society. (*Neilson Report, page 40*)

[78] Dr. Neilson notes that these issues “are typically addressed in Cognitive Skills/Reasoning and Rehabilitation Programs, and Violence Prevention Programs. (*Neilson Report, page 41*) Her report indicates that Mr. Garland has apparently never been recommended for the Correctional Service of Canada Violence Prevention Program or the CSC Anger and Emotions Management/Living Skills Program, or their current equivalents. (*Neilson Report, page 27*) In her testimony, Dr. Neilson called this “a glaring omission.”

[79] Mr. Garland’s pro-criminal attitudes and values can be addressed in “typical Cognitive Skills/Reasoning and Rehabilitation programs.” (*Neilson Report, page 41*) Such programming will be essential as Dr. Neilson identifies substances and anti-social peers as Mr. Garland’s “most likely destabilizers”

Part V - Report Conclusions

[80] Dr. Neilson offers an opinion in her report about the likely nature of Mr. Garland’s future re-offending:

...The nature of [Mr. Garland’s] offence behaviour that is on his criminal record (i.e. sporadic; usually mediated by intoxicants; indiscriminate in victim choice; use of weapon/makeshift weapon; generally instrumental) makes it likely that the *form* of any future violence will be similar to those which have occurred in the past: sporadic, impulsive, poorly planned, poorly executed acquisitive offences that occur when Mr. Garland is under the influence of/withdrawing from intoxicants, which will likely involve intimidation, threats, or actual violence in order to get others to relinquish their money or belongings, so that Mr. Garland can support his criminal and substance abusing lifestyle. (*Neilson Report, page 45*)

[81] Dr. Neilson notes in her report that Mr. Garland’s risk to public safety occurs when he is “disinhibited by, or withdrawing from, intoxicants thereby putting innocent and other accidental victims in danger, a situation for which he reports minimal victim remorse.” (*Neilson Report, page 45*) Indeed, this is what Mr. Garland indicated when he apologized in court to Ms. Pronk: that when he

jumped in her car at the airport he was “coming off a lot of drugs [and] was into drugs pretty heavy...” He also acknowledged that he is an alcoholic. However, in contrast to past offences, he has expressed considerable remorse as I discussed earlier. That, Dr. Neilson acknowledged on cross-examination, is progress if genuine and representative of a true understanding of how Ms. Pronk was affected by his actions.

[82] Dr. Neilson concludes her report with the opinion that “it remains likely that an eventual safe release into the community will be an attainable future goal, with the presence of close and appropriate supervision and monitoring, as well as strict adherence to a Correctional Plan that thoroughly addresses the risk factors that are noted above.” (*Neilson Report, page 47*) She observes that Mr. Garland has “not had the benefit of the full range of programs and services offered by the Correctional Service of Canada designed to rehabilitate and re-integrate violent offenders into the community.” She recommends that some programs Mr. Garland has taken in the past should be repeated and that “individual counseling, and attention to his mental health needs will also be important.” (*Neilson Report, page 46*)

[83] Dr. Neilson is alive to the challenges associated with Mr. Garland’s rehabilitation and reintegration. She observed that Mr. Garland’s “community re-integration needs will require considerable coordination of service providers and service agencies” but that “Community management should only be attempted after Mr. Garland has successfully demonstrated (over a sustained period of time) that he is willing to fully participate in, and demonstrate benefit from, relevant institutional treatment programs.” (*Neilson Report, page 46*)

Long-term Offender Designation

[84] I have found no basis to disagree with Dr. Neilson’s findings and opinions. She testified that a long-term supervision order will be beneficial to Mr. Garland and the community and that it will be “disastrous” for both Mr. Garland and the community if he was to be released into the community without supervision. Her evidence satisfies me that the joint recommendation that I find Mr. Garland to be a long-term offender should be accepted. I have already found that it is appropriate to impose a sentence of imprisonment for the predicate offences, of eight years,

satisfying the first criteria for long-term offender status. I further find, on the basis of Dr. Neilson's report and testimony that there is a substantial risk Mr. Garland will re-offend, and that there is a reasonable possibility of eventual control of his risk in the community. These findings address all the criteria for long-term offender status in section 753.1(1) of the *Criminal Code*.

Length of the Long-term Offender Supervision Order

[85] The Crown and Mr. Garland have jointly recommended that the length of Mr. Garland's supervision order be eight years. Dr. Neilson was asked to comment on this recommendation. It is her opinion that this is an appropriate length of time. Although her observation that Mr. Garland will be in his 60's by the time he has served his sentence for the robbery and unlawful confinement charges is inaccurate - he will in fact be a few weeks short of 58 - her point that his risk should have reduced by that time is still valid as it recognizes that he is getting older. She noted that if Mr. Garland is released on Statutory Release at two-thirds of his sentence, or 32 months, he will be on conditions until warrant expiry at 48 months. The long-term supervision order would take effect at warrant expiry. Eight years of supervision in the community is a substantial amount of time to address and manage his risk once his sentence has concluded.

Sentencing

[86] As indicated earlier in these reasons, I am sentencing Mr. Garland to eight years for the robbery and unlawful confinement on September 16, 2009 of Dorothea Pronk, crediting him for four years on remand, and imposing a go-forward sentence of four years. In relation to that sentence I am recommending that the Correctional Service of Canada ensure that Mr. Garland is given the opportunity to participate in programs he may have already taken as suggested by Dr. Neilson and the CSC programming he has not received, as noted by Dr. Neilson - the Correctional Service of Canada Violence Prevention Program and the CSC Anger and Emotions Management/Living Skills Program, or their current equivalents. I also recommend, as emphasized by Dr. Neilson, that Mr. Garland be offered individual counseling and that his mental health needs be addressed while he is in prison.

[87] I also recommend that Mr. Garland's vision and dental needs be promptly attended to, which are matters of health and dignity and directly related to the promotion of his rehabilitation.

[88] I also find that Mr. Garland qualifies as a long-term offender and I am ordering that he be subject to long-term supervision for a period of eight years.

Recommendations for Terms of Supervision

[89] During these long-term offender proceedings I heard testimony and submissions on the issue of possible recommendations I could make in relation to Mr. Garland. A particular focus was the issue of Mr. Garland's alcohol and drug abuse and the high rate of relapse described by Dr. Neilson.

[90] The *Criminal Code* does not confer any authority on the court to craft binding conditions or terms for a long-term offender's supervised release. The order, which comes into effect once the offender has finished serving his or her sentence, is supervised in accordance with the *Corrections and Conditional Release Act*. (*R. v. Payne*, [2001] O.J. No. 146 (S.C.J.), paragraph 130, citing sections 753.1(3) and 753.2(1) of the *Criminal Code*)

[91] Hill, J. in *Payne*, explains there should be "special regard" given to the sentencing judge's recommendations when the terms of supervision are set. He notes that the National Parole Board "enjoys the advantage of setting conditions in an environment informed by current information about the offender's mental health and rehabilitative progress, the medical science of the day and the community-based resources in existence." (*Payne*, paragraph 131)

[92] A consensus emerged in the course of the long-term offender application that recommendations for Mr. Garland's long-term supervision order are appropriate. Therefore, I recommend as follows:

- that Mr. Garland comply with intensive counseling and treatment to address his substance abuse issues, the triggers that give rise to his substance-abusing, and relapse management;

- that Mr. Garland comply with any medically appropriate medications prescribed to assist him in abstaining from drugs and alcohol or both, as approved for him by a qualified medical practitioner who is fully informed about Mr. Garland's underlying medical conditions;
- that Mr. Garland comply with urinalysis or breathalyzer screening as required to assess his abstinence from drugs and alcohol;

[93] These were all recommendations that were addressed in submissions by counsel and by Dr. Neilson in her evidence.

[94] Failure to comply with a condition of a long-term offender order can mean very heavy consequences. I note for Mr. Garland's benefit that s. 753.3 of the *Code* provides that a long-term offender who, without reasonable excuse, fails or refuses to comply with a condition of the order may be tried and, if found guilty, may be punished by imprisonment for a term not exceeding ten years. As Hill, J. has observed: "The severe consequence for a breach of the order is meant to catch the attention of anyone declared to be a long-term offender." (*R. v. Guilford*, [1999] O.J. No. 4894 (S.C.J.), paragraph 47)

Conclusion

[95] Mr. Garland, by this decision I have placed very significant limitations on your liberty for many years to come. The fact that this is underpinned by a joint recommendation indicates to me that you are resolved to make significant changes in your life and choices. You will have to do so to avoid the potential of spending the rest of your life locked up. A long-term offender designation is one step away from the ultimate in loss of liberty that accompanies a dangerous offender designation. You must also recognize that without a sincere and determined commitment to rehabilitation you will probably kill yourself through substance abuse and its effects on your already seriously compromised health. I wish you the best in making the right choices to the benefit of yourself and your community. It is not enough to have good intentions: you have to do what is required to change.

Ancillary Orders

[96] The Crown is seeking, and the Defence consents to, ancillary orders for:

- a DNA order for a primary designated offence under section 487.051 of the *Code*;
- a lifetime weapons prohibition under section 109 of the *Criminal Code*;
- a forfeiture order for money seized from Mr. Garland at the time of his arrest which the Crown wishes to have returned to Ms. Pronk.

[97] I have now signed these orders.

[98] Finally, I order that a copy of these reasons be attached to Mr. Garland's warrant of committal and that these reasons are also to be provided to the National Parole Board when Mr. Garland is released from prison, either on parole or under the long-term supervision order.

[99] At the conclusion of these reasons, the Crown brought section 760 of the *Criminal Code* to my attention which provides that where a court finds an offender to be a long-term offender,

...the court shall order that a copy of all reports and testimony given by psychiatrists, psychologists, criminologists, and other experts and any observation of the court with respect to the reasons for the finding, together with a transcript of the trial of the offender, be forwarded to the Correctional Service of Canada for information.

[100] I am making such an order.