

CANADA / JUDGMENT

R. v. Starnaman

2026 ONCA 183

COURT

Court of Appeal for Ontario

DECIDED

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Judges

van Rensburg, Katherine; Thorburn, Julie; George, Jonathon C.

Subject

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Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Starnaman, 2026 ONCA 183

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van Rensburg, Thorburn and George JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Walter Starnaman

Appellant

Jocelyn Rempel, for the appellant

Hannah Freeman, for the respondent

Heard: December 15, 2025

On appeal from the dangerous offender designation imposed on March 31, 2021, and the indeterminate sentence imposed on June 25, 2021, by Justice Kevin B. Phillips of the Superior Court of Justice.[1]

Thorburn J.A.:

OVERVIEW

- [1] In 2019, the appellant was convicted of sexual assault and sexual interference involving a 10-year-old girl contrary to ss. 151 and 271 of the Criminal Code, R.S.C. 1985, c. C-46. The appellant had involved himself in the complainant's life by befriending her mother and offering to be a babysitter for her young daughter. While babysitting the child at his apartment in the absence of her mother, the appellant invited the complainant into his bed and rubbed her genital area over her clothing. This happened several times.
- [2] At the time of the appellant's conviction, he was a 60-year-old man with a lengthy record. Between 1976 and 1992, he was convicted of four counts of sexual assault on female children between the ages of 5 and 14 as well as an adult woman. After his release from the penitentiary in 1994, he was involuntarily committed under the Mental Health Act, R.S.O. 1990, c. M.7, and held in a variety of psychiatric institutions.
- [3] After his release into the community in 2008, and before the commission of the index offences in 2015, the appellant did not commit any further offences. From 2008 to 2011, he was subject to two consecutive peace bonds and, from 2011 to 2015, he was without supervision.
- [4] The index offences occurred between January 1, 2015, and May 24, 2016. The appellant was arrested on September 1, 2016. He was on bail for the offences until his conviction in 2019 without incident.

- [5] After his conviction on these offences, the Crown sought to have the appellant declared a dangerous offender pursuant to s. 753(1)(a)(ii) and an indeterminate sentence imposed pursuant to s. 753(4)(a) of the Criminal Code.
- [6] The appellant sought a penitentiary sentence of three to five years followed by a 10-year Long-Term Supervision Order (“LTSO”) pursuant to s. 753(4)(b) of the Criminal Code.
- [7] The sentencing judge declared the appellant a dangerous offender and imposed an indeterminate sentence. The sentencing judge reasoned that there was no basis to believe that the appellant’s “proclivities” would abate in the future:

His history suggests otherwise. While Dr. Klassen did present evidence that sex offenders show significant declines in re-offending as they age, that actuarial data does not address the unique aspects of [the appellant who] has already re-offended during an age bracket (56-57 years old) where the empirical evidence demonstrates a much smaller group of sexual offenders offend. He re-offended multiple times as recently as 2015-2016. He re-offended in a situation where he had engineered things to be alone with a child despite the repeated warnings he had received over the course of his life to avoid those situations. [The appellant] is an anomaly. He is very untrustworthy and unreliable and is possessed of little sincere insight or genuine motivation to really address his deviant sexuality and to wholeheartedly do the work necessary to keep it under control.

- [8] The appellant appeals both the dangerous offender designation and the indeterminate sentence. Although counsel for the appellant acknowledges that the appellant will require ongoing supervision for an indeterminate period, she argues that the Crown could apply for a common law supervision order or peace bond once the proposed 10-year LTSO expires. As this lesser measure is available, the appellant submits that an indeterminate sentence is not appropriate.
- [9] Accordingly, the appellant seeks to set aside the dangerous offender designation and substitute a long-term offender designation, vacate the indeterminate sentence and find that the appellant has served his time,[2] and commence a 10-year LTSO.
- [10] For reasons to follow, I would uphold both the dangerous offender designation and indeterminate sentence.

THE TEST FOR DANGEROUS OFFENDER DESIGNATION AND INDETERMINATE SENTENCE

- [11] Section 753(1)(a)(ii) of the Criminal Code provides that an offender “shall” be found to be a dangerous offender if he commits a “serious personal injury offence” and the Crown proves beyond a reasonable doubt that the offender exhibits a “pattern of persistent aggressive behaviour”, of which the offence for which he was convicted forms a part, and which shows a substantial degree of indifference respecting the reasonably foreseeable consequences of his behaviour.

- [12] A sentencing judge must be satisfied on the evidence, that the offender poses a high likelihood of harmful recidivism and intractable conduct before designating him a dangerous offender. The designation involves both a retrospective and prospective assessment of continuing risk: *R. v. Boutilier*, 2017 SCC 64, [2017] 2 S.C.R. 936, at paras. 27, 37 and 43. Treatability informs the assessment of the threat posed by the offender: *Boutilier*, at para. 45.
- [13] Under s. 753(4.1) of the Criminal Code, once the offender is found to be a dangerous offender, an indeterminate sentence is imposed unless the sentencing judge is satisfied that a lesser measure will adequately protect the public: *R. v. Straub*, 2022 ONCA 47, 160 O.R. (3d) 721, at paras. 62-71. The sentencing judge must conduct a “thorough inquiry” into the possibility of control in the community before imposing an indeterminate sentence: *Boutilier*, at para. 68. Treatability assists to determine the ability to manage the recognized threat posed by the offender: *Boutilier*, at para. 45.

THE GROUNDS OF APPEAL

- [14] The appellant disputes the sentencing judge’s finding that he is a dangerous offender. He concedes that the predicate offence was a “serious personal injury offence”. However, he disputes that the Crown has established the second prong of the test, namely that the appellant has engaged in a “pattern of persistent aggressive behaviour” which shows “a substantial degree of indifference” regarding “the reasonably foreseeable consequences of his behaviour to other persons”.
- [15] He claims that in making the dangerous offender designation, the sentencing judge:
- i. Failed to consider Dr. Klassen’s uncontested expert evidence that the appellant is at “substantial risk” to reoffend (the test for a long-term offender), and not the higher risk of “likelihood to reoffend” (the test for a dangerous offender);
 - ii. Failed to appreciate the long gaps in the appellant’s offending behaviour and therefore the risk that he will reoffend; and
 - iii. Failed to consider that the appellant has a long history of complying with treatment, as well as his positive future treatment prospects.
- [16] The appellant also disputes the imposition of an indeterminate sentence. Although his counsel conceded in oral submissions that the appellant should be on supervision when released into the community, she notes that if he is subject to a LTSO, by the time the 10-year LTSO order expires, he will be 77 years old and will no longer be a risk to the community. Moreover, in the unlikely event he is seen to be a future risk to the community at that point, he could be subject to a common law supervision order.

STANDARD OF REVIEW [17] Pursuant to s. 759(1) of the Criminal Code, a person designated as a dangerous offender can appeal the designation or sentence on any ground of law, fact or mixed fact and law. Appellate review is “concerned with legal errors and whether the dangerous offender designation was reasonable”: *R. v. Sawyer*, 2015 ONCA 602, 127 O.R. (3d) 686, at para. 26 and *R. v. Sipos*, 2014 SCC 47, [2014] 2 S.C.R. 423, at para. 23.

[18] Errors of law are reviewed on a correctness standard and errors of fact are reviewed on a reasonableness standard: *R. v. Ahmed*, 2023 ONCA 676, at para. 99.

[19] While the sentencing judge’s determinations of credibility and the appropriate sentence are entitled to deference, appellate review in dangerous offender cases is “somewhat more robust” than “regular” sentence appeals: *Boutilier*, at paras. 81 and 88; *Sipos*, at paras. 23-27; *Sawyer* at paras. 26-29; and *R. v. Hunter*, 2015 ABCA 276, 26 Alta. L.R. (6th) 348, at para. 5.

[20] The same standard of review applicable to an appeal of a dangerous offender designation applies to a review of an indeterminate sentence. This court will review the imposition of an indeterminate sentence for legal error and reasonableness but should defer to the factual and credibility findings of the trier of fact: *Sawyer*, at paras. 26-29; and *R. v. Jackman*, 2024 ONCA 150, at para. 21.

ANALYSIS

i. Whether the sentencing judge properly considered and should have accepted Dr. Klassen’s uncontested expert evidence that the appellant is at “substantial risk” but not “a likelihood” to reoffend [21] The appellant claims the sentencing judge erred by failing to consider and accept the Crown expert, Dr. Klassen’s opinion regarding his risk to reoffend.

[22] Dr. Klassen was the only expert witness to provide a psychiatric opinion. His “purely psychiatric opinion” was that the appellant was at a “substantial risk of re-offence not a likelihood of re-offence”. A “substantial risk” is consistent with a long-term offender designation under s. 753.1(1) of the Criminal Code; not a dangerous offender designation under s. 753(1).

[23] Dr. Klassen based his risk opinion on the fact that the appellant was 60 years old at the time of trial, there is a rapid decline in recidivism once an offender reaches age 60, and the appellant had previously voluntarily taken Lupron for approximately 14 or 15 years. He also noted that from the time of his release in 2008 to 2015, the appellant had not committed any sexual offences. Dr. Klassen therefore concluded that there was a “reasonable possibility of eventual control of the risk in the community”.

- [24] The sentencing judge determined that, notwithstanding the reduced risk of persons over the age of 60 to commit sexual offences, the appellant's actions over an extended period while in his late 50s demonstrate that he does not fit the usual pattern of offenders of this age. I note that Dr. Klassen himself when asked about whether the appellant fit within the usual reduced risk of those over 60 to commit sexual offences, acknowledged that, "[y]our point is a fair one."
- [25] The sentencing judge also noted that although the appellant had not been convicted of other sexual offences since 1992, he had been incarcerated or involuntarily committed under the Mental Health Act until 2008. Furthermore, from 2008 to 2011 he was under judicial supervision orders.
- [26] The sentencing judge held that the appellant went to "considerable lengths" to engineer the situation leading to the index offences, by courting the complainant's single mother and offering to babysit. This was not a lapse in judgment but rather a failure to take the "elementary precautions necessary to adequately minimize the risk of offence".
- [27] The sentencing judge therefore concluded that:
- Given his long history of aggressive behaviour, the sheer regularity and persistence with which he has molested children, I am satisfied beyond a reasonable doubt that [the appellant] setting himself up as a babysitter for a 10-year-old girl and ultimately molesting her shows a substantial degree of indifference on his part respecting the reasonably foreseeable consequences of his behaviour. [The appellant] will remain a paedophile for the rest of his life. The question is, will he act on his wrongful desires again? In light of the substantial degree of indifference he showed about managing or at least minimizing the risks inherent in his permanent sexual disorder in this case, the answer is most assuredly yes.
- [28] The sentencing judge's opinion was based on: (i) the appellant's long history of sexual assaults on minors; (ii) the planning and circumstances of the offences which reflect a conscious intention to repeat his pattern of sexual assaults on minors, and (iii) that the appellant was 56-57 years old when he committed these offences such that, although the data relied on by Dr. Klassen may show that the chance of reoffending in sexual offences is generally lower after middle age, the appellant does not fit into that pattern of behaviour and reduced risk of reoffending.
- [29] The sentencing judge's conclusion does not demonstrate that he misapprehended Dr. Klassen's evidence. The problem articulated by the sentencing judge, was not just the appellant's sex drive, but that the appellant could not or would not "do what is necessary to manage his inappropriate sexual desires."
- [30] While psychiatric evidence may assist the court, the court must come to its own conclusions on the likelihood of reoffence on all the evidence adduced: *R. v. Lyons*, [1987] 2 S.C.R. 309, at para. 98; and *R. v. R.M.*, 2007 ONCA 872, 228 C.C.C. (3d) 148, at para. 53, leave to appeal refused, [2008] S.C.C.A. No. 91.

[31] For these reasons, it was reasonable for the sentencing judge to conclude that, although the data relied on by Dr. Klassen may show that the chance of reoffending in sexual offences is generally lower after middle age, the appellant does not fit into that pattern of behaviour and reduced risk of reoffending. I would therefore dismiss this ground of appeal.

ii. Whether the sentencing judge failed to appreciate the gaps in the appellant's convictions [32] Although the appellant claims he did not commit any offences from 1992 to 2015, it is important to note that he was involuntarily committed from 1992 to 2008 and was subject to a peace bond and court supervision from November 2008 to September 2011. As such, he was only unsupervised and not committing offences for approximately three and a half years.

[33] The sentencing judge held that, although there were gaps in his record of offending, the appellant was nonetheless likely to reoffend. He did so based on the appellant's long history of sexually abusing young girls, his discontinuance of the medication Lupron to address his sexual urges, his decision to disengage from professional supports and treatments in the community after 2011, and his decision to cease any further sex offender treatment after 2013 on the basis that "he was doing well and no longer needed to come to therapy".

[34] Despite being advised not to associate with single mothers or to engage in babysitting for others during his sexual offender treatment programming while under psychiatric care, the appellant began a relationship with a single mother and gained access to her young child for sexual purposes.

[35] I therefore see no error in the sentencing judge's conclusion that, despite the gaps in the appellant's convictions, he remains likely to reoffend.

[36] For these reasons, I would dismiss this ground of appeal.

iii. Whether the sentencing judge failed to consider the appellant's future treatment prospects

[37] The appellant claims the sentencing judge failed to appreciate his future treatment prospects. He submits that the sentencing judge discounted evidence of his treatability and track record of compliance, his stated willingness to resume taking Lupron, and that he had committed no offences while he was subject to the conditions of a peace bond and judicial interim release.

[38] The Supreme Court in Boutilier held at paras. 44-46, that future treatment prospects must be considered in deciding whether to impose a dangerous offender designation.

[39] Counsel for the appellant notes that the appellant had taken Lupron for 13 years which Dr. Klassen said was rare, and that he will have a strong incentive to resume taking Lupron if it is a required term of the LTSO because if he does not, he will likely be sent back to prison. His counsellors have also indicated that they are willing to resume counselling and noted that he contacted them immediately after the index offences and expressed a willingness to continue programming when released.

- [40] I do not agree that the sentencing judge failed to consider the appellant's future treatment prospects as required by *Boutillier*.
- [41] The sentencing judge noted in his reasons that when the appellant was discharged from the Royal Ottawa Hospital Sexual Offender Treatment Program in 2008, he was supported by case workers and was being treated with Lupron. However, when the peace bonds elapsed in 2011, he disengaged from those supports and began associating with marginalized single mothers with children which he had been counselled not to do. He went to "considerable lengths" to "engineer a situation where he would have access to a young female child".
- [42] The evidence before the sentencing judge at the dangerous offender hearing was that the appellant had declined or discontinued sex-drive reducing medications. Moreover, although the appellant submitted that he had agreed to take Lupron which had helped control his desires in the past, he told Dr. Klassen that "he does not feel that Lupron is needed now" and that he would take it again "if he needed to". The trial judge found this was an equivocal commitment.
- [43] The sentencing judge did not articulate the wrong threshold for assessing future risk. He asked if the appellant would "act on his wrongful desires again" and concluded that "[i]n light of the substantial degree of indifference he showed about managing or at least minimizing the risks inherent in his permanent sexual disorder in this case, the answer is most assuredly yes." As such, he determined that the appellant's prospects were poor.
- [44] The reasons were in line with the requisite consideration a sentencing judge must give to future treatment prospects before imposing a dangerous offender order.
- [45] The sentencing judge's findings of fact were reasonable and he committed no error of law in finding that there was a likelihood that the appellant would reoffend.
- [46] For these reasons, I would dismiss the appeal of the sentencing judge's imposition of a dangerous offender designation.

iv. Whether the sentencing judge erred in imposing an indeterminate sentence [47] In the alternative, the appellant argues that the imposition of an indeterminate sentence is inappropriate.

- [48] Section 753(4.1) of the Criminal Code requires the court to impose an indeterminate sentence on a dangerous offender in the following circumstances:

The court shall impose a sentence of detention in a penitentiary for an indeterminate period unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure under paragraph (4)(b) or (c) will adequately protect the public against the commission by the offender of murder or a serious personal injury offence. [Emphasis added.]

- [49] The appellant submits that the sentencing judge misapprehended evidence concerning his history of compliance and the likelihood that he will take Lupron, as well as its effect on managing his risk in the community.
- [50] I disagree.
- [51] After designating the appellant a dangerous offender, the sentencing judge considered the offender's management in the community in accordance with s. 753(4.1) of the Criminal Code. The sentencing judge correctly instructed himself that an indeterminate sentence should only be imposed if there is no reasonable expectation that anything less than an indeterminate sentence would adequately protect the public. Then he considered whether in this case, there was a reasonable expectation that a lesser measure than an indeterminate sentence would adequately protect the public: Straub, at paras 62-71.
- [52] The sentencing judge acknowledged that there were extended periods where the appellant complied with treatment and medication during which he committed no offences. However, those periods were interrupted by the appellant's inability or unwillingness to maintain his treatment. The sentencing judge concluded that the appellant's behaviour when viewed in its totality, demonstrated that "he has refused treatment, failed to take advantage of treatment, refused medication, or unilaterally discontinued pharmacological treatment on numerous occasions."
- [53] Furthermore, the sentencing judge found as a fact that "[o]nly the coercive power inherent in parole could possibly keep [the appellant] motivated to take Lupron or follow similar restrictions". The evidence before the sentencing judge included the challenge of protecting the public by requiring an offender to take certain medication through an LTSO.
- [54] This court has acknowledged the challenge on several occasions: R. v. Sowell, 2023 ONCA 398, at para. 18; R. v. Veysey, 2016 ONCA 97, at para. 14; Sawyer, at paras. 46-49.
- [55] The decision to prescribe Lupron is ultimately one to be made by the treating physician. Even if the medication were prescribed to the appellant, failing to take it would not necessarily result in a breach of the LTSO. The appellant would not be found in breach of such a condition under s. 753.3(1) of the Criminal Code if he has a "reasonable excuse" for refusing to take the prescribed medication.
- [56] The sentencing judge turned his mind to lesser sentencing options but found they were insufficient to adequately protect the public.
- [57] I see no legal error in the sentencing judge's analysis and his weighing of the evidence is entitled to deference. He engaged carefully with the psychiatric evidence, and evidence of the appellant's long pattern of sexual assaults on minors including the index offences, his repeated failure to restrain his behaviour, and the likelihood of causing injury or severe psychological damage.
- [58] I would therefore dismiss this ground of appeal.

THE PARTIES' JOINT REQUEST TO SEAL OR REDACT EXHIBITS

- [59] Following the hearing, counsel made a joint request that Exhibits 1 and 5 from the dangerous offender hearing, which form part of the appeal record, be sealed or redacted.
- [60] Exhibit 1 is the physical USB of the appellant's private medical records spanning decades. The parties ask that all the contents of Exhibit 1 be sealed because redaction is not possible. Exhibit 5 is Dr. Klassen's s. 752.1 psychiatric assessment. The parties request that Exhibit 5 be sealed, but that a redacted version of the exhibit be made publicly available. Exhibit 5 also appears in the appeal book, so the parties propose that the already filed version of the appeal book be sealed, and a public version be filed with the redacted Exhibit 5.
- [61] The Supreme Court of Canada's decision in *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 S.C.R. 75, sets out the test for imposing discretionary limits on court openness. To succeed, a party seeking to limit court openness must establish that (i) court openness poses a serious risk to an important public interest; (ii) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk, and (iii) as a matter of proportionality, the benefits of the proposed order outweigh its negative effects: para. 38.
- [62] Sealing Exhibit 1 and the proposed redactions to Exhibit 5 is reasonable and satisfies the factors set out in *Sherman Estate*.
- [63] With respect to the important public interest at stake, the parties submit, and we agree, that the detailed medical information – which spans decades and includes highly private information about collateral medical diagnoses, medications, and treatment – contained in the exhibits strikes at the appellant's biological core in a way that threatens his dignity. Sensitive personal information, including information about stigmatized medical diagnoses, has been recognized as information which, if disclosed, could give rise to a serious risk to the public interest in protecting dignity: *Sherman Estate*, at para. 77.
- [64] Exhibit 1 is entirely composed of sensitive medical information, so no amount of redaction will prevent the risk. With respect to Exhibit 5, the parties propose to make a redacted version of the report available to the public and seal the unredacted version. This alternative measure to sealing the document in its entirety promotes the open courts principle as much as possible in the circumstances. Further, the parties' proposed redactions are reasonable and restrained. There remains ample unredacted information in the report that can help the public understand the basis for the assessment.
- [65] Finally, as a matter of proportionality, we agree with the parties that the benefits of the order – protecting the appellant's dignity and integrity – outweigh the negative effects to court openness, which are limited.
- [66] Accordingly, I would grant the order on the terms of the draft order submitted by the parties.

CONCLUSION [67] For the above reasons, I would dismiss the appeal of the imposition of a dangerous offender designation and the appeal of the indeterminate sentence. I would grant the order to seal Exhibit 1 and Exhibit 5, including the versions filed on appeal, and to make a redacted version of Exhibit 5 publicly available.

Released: March 13, 2026 “K.M.v.R.”

“Thorburn J.A.”

“I agree. K. van Rensburg J.A.”

“I agree. J. George J.A.”

- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.
- [2] The appellant submits that he has served approximately eight years in custody for the index offences.

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