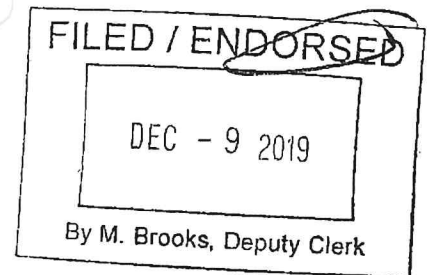


SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO



<b>PEOPLE OF THE STATE OF CALIFORNIA,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>LINDSAY ANN RICHARDSON,</b>  <b>Defendant.</b>	<b>Case Number: 19FE013012</b>  <b>TENTATIVE RULING RE INDICATED SENTENCE</b> <b>Department: 63</b> <b>(1-21-20)</b>
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"Thousands of times every day, judges across this country attempt the difficult, daunting task of predicting with confidence what a human being may do in the future. Judges must do so every time a criminal defendant is sentenced or conditions of pretrial release, supervised release, or probation are set."<sup>1</sup> The matter was referred to the Probation Department for pre-plea report. It has been received. Probation recommends a 4-year period of incarceration pursuant to Penal Code section 1170(h).

This is a case that has compelled the court to examine with particular regard and circumspection whether some offenses preclude probation and compel a prison sentence. And, concomitantly, whether some defendants, despite the nature or severity of their offenses, should be granted probation.

The defendant, Lindsay Ann Richardson, inebriated while operating a motor vehicle killed a pedestrian, the father of a 6-year old boy who will now never know his father. The child's grandfather poignantly shares that the child knows his father is dead but still talks about his father with evidently his paternal grandfather. Ms. Richardson, 24, is exceedingly remorseful.

Charged with violating Penal Code section 191.5(b); Ms. Richardson has no prior criminal record. The paternal grandfather shares from reportedly observing her social media characterizes the 24-year old's lifestyle as "partying." Several people have written on behalf of Ms. Richardson who share her focus on community, church, and the permanent affect her imprudent conduct has had on her and her family and friends. Since this offense she has voluntarily participated in various programs focused on DUI victims and deterring youth from engaging in similar misconduct. The defendant, remaining at the scene, and despite initially minimizing her alcohol ingestion, tested at blood alcohol level of .184 with a PAS of .175 and .168. Counsel have also shared that her remorse commenced immediately at the scene when she displayed comprehension of the enormity of her conduct to the victim and his family. That evening, the defendant was inebriated—very inebriated.

In the aftermath of this tragic event, the defendant has devoted herself to sobriety, reformation, and restorative justice to mitigate the extent of her conduct on her victim's son. Indeed, she has reportedly "started a fund" for the child's future education. Her response to her conduct is not a common occurrence. Those who know her share that this young and highly educated young woman and professional is changed with a life that seeks to give meaning to her victim's death and the void his family has sustained.

<sup>1</sup> *United States v. Hinckley* (2016) 200 F.Supp.3d 1, 172-173.

In sharp but comprehensible contrast, the victim's family seeks the maximum sentence and, it would appear from submissions from the defendant, the defendant seeks probation. Referred to the Probation Department, the report recommends denial of probation and the 4-year upper term—the maximum sentence.

In the more than 40 years that I have been in this profession, and in the more than 12 years that I have had the privilege and responsibility of serving this community as a superior court judge, I have become acutely aware that each of us is truly connected to one another. Actions have consequences that not only directly impact the persons encountered but many others with whom we have had no direct interaction—what one victim once shared as a “ripple effect.”

Sadly and separately, Ms. Richardson's conduct is repeated too often. Indeed, this court is host each day to others who inebriated, operate a motor vehicle on a public highway, and, sadly, all too often effect harm to others. This is an event too often repeated and, at this juncture of my life, I have come to realize will continue to be repeated by others, posing either a threat of harm, or as in this case actual harm to others.

But noticeably different from the others who have come before me for similar offenses is Ms. Richardson's response. Counsel, in chambers, shared that the enormity of her conduct was reflected in the intense regard for the victim and his family expressed by the defendant at the scene of the incident. She dutifully remained at the scene. Her reported remorse appears born of circumspection. Multiple letters have been received by the court that share a deep affection for Ms. Richardson and an awareness of the impact this event has had on this young woman.

In my capacity as a superior court judge, I am required to discharge my obligation to the law without regard to passion, emotion, anger, love, hatred. My obligation is to be dispassionate and be faithful to the law. This is not to suggest that I am without feelings but that my role is distinct from the prosecution, the defense, and even victims—or their friends or family. All too characteristically, victims seek the maximum sentence; while defendants or their friends or family seek probation. While, in some instances, a maximum or even minimum or probation sentence is evident; more often a balance between both extremes is more proper.

Penal Code section 191.5(b) is punishable by a triad of 16, 2, and 4. The Legislature does not preclude a grant of probation for an offense of this nature. Accordingly, I am dutifully required to consider such option.

The Probation Department's seemingly singular focus on the offense<sup>2</sup> is somewhat unsettling inasmuch as the Legislature has provided a triad that reflects an inherent obligation to consider various factors. That singular focus would appear to suggest that no defendant should ever be eligible for any other alternate consideration but the maximum sentence. Mindful of the legislative triad I have a clearly different responsible obligation to the public, errant defendants, and the interests of justice.

As indicated at the outset, this case has compelled particular circumspection. In conducting its analysis, the court has begun with focus on the objectives of sentencing. And, in that respect, the California Rules of Court, rule 4.410(a) references such objectives as:

- (1) *Protecting society;*
- (2) *Punishing the defendant;*

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<sup>2</sup> California Rules of Court, rule 4.414(a)(1).



- (3) *Encouraging the defendant to lead a law-abiding life in the future and deterring him or her from future offenses;*
- (4) *Deterring others from criminal conduct by demonstrating its consequences;*
- (5) *Preventing the defendant from committing new crimes by isolating him or her for the period of incarceration;*
- (6) *Securing restitution for the victims of crime;*
- (7) *Achieving uniformity in sentencing; and*
- (8) *Increasing public safety by reducing recidivism through community-based corrections programs and evidence-based practices.*

This court, and this department in particular, handles hundreds of felony cases each week. On a continuum of offenses, this department handles the full panoply of felonies. On a continuum of offenders, this department handles a spectrum that includes youthful first offenders, ala Ms. Richardson, to older recidivist offenders. Bluntly, not all offenders are treated the same, nor are all criminal offenses treated the same. Against a sentencing triad relevant to most felony offenses, this should axiomatically come as no surprise.

As previously indicated, a common theme among all too many defendants is an expectation for probation and, in contrast, a common theme from victims or their families is an expectation for the maximum sentence. At the risk of being repetitive but to be fair to each, in some instances probation is warranted and, conversely, in some instances the maximum sentence is warranted. Simply put, it depends. And the meting of a sentence between these two extremes compels an analysis of various considerations relevant to sentencing.

Probation eligible, this court begins by considering whether a grant of probation would meet the interests of justice and, specifically, the objectives of sentencing (see Rule 4.410(a)). And to that end, California Rules of Court, rule 4.414 sets forth criteria affecting probation. Unsurprisingly, the criteria are divided between two general categories: (a) facts relating to the crime, and (b) facts relating to the defendant.

I begin with the criteria relating to the crime, starting with Rule 4.14(a) factors:

<b>Criteria Relating to the Crime</b>	<b>Facts Relating to the Crime</b>
<b>The crime's nature, seriousness, and circumstances compared to other instances of the same crime</b>	Probation Marginally Suggested (cf. Vehicle Code section 23578, <sup>3</sup> combined with No VC 20002 and contemporaneous remorse and regard for the defendant and his family)
<b>Whether the defendant was armed/used a weapon</b>	Not applicable
<b>The victim's vulnerability</b>	Probation Not Suggested - Pedestrian
<b>The defendant's infliction of physical/emotional injury</b>	Death
<b>Monetary loss degree to the victim</b>	Probation Not Suggested – Incalculable Loss
<b>Whether the defendant was active/passive participant</b>	Probation Not Suggested – Active
<b>Whether the crime was committed because of an unusual circumstance which is unlikely to recur</b>	No evidence presented
<b>Whether the manner in which the crime occurred</b>	Not applicable

<sup>3</sup> Vehicle Code section 23578, a significant factor, while not barring consideration of a probation sentence permits in such event “additional or enhanced terms and conditions of probation.”

<b>demonstrated criminal sophistication/professionalism</b>	
<b>Whether the defendant took advantage of a position of trust or confidence to commit the crime</b>	Not applicable

As the Probation Department shares in its preplea report, the criminal conduct per Rule 4.414(a) would suggestively appear to rule out a grant of probation. But the court's analysis does not end with only a consideration of the facts relating to the crime (Rule 4.414(a)). The court turns to Rule 4.414(b) factors:

<b>Criteria Relating to the Defendant</b>	<b>Facts Relating to the Defendant</b>
<b>Prior criminal record</b>	Relevant – Probation Eligible
<b>Prior performance and present status on probation, mandatory supervision, postrelease community supervision, or parole</b>	Not applicable
<b>Willingness to comply with probation</b>	Relevant – Probation Eligible
<b>Ability to comply with probation</b>	Relevant – Probation Eligible
<b>Incarceration effect on defendant/dependents</b>	No evidence submitted
<b>Felony conviction's collateral consequences on defendant</b>	No evidence submitted
<b>Whether the defendant is remorseful</b>	Relevant – Probation Eligible
<b>The likelihood that if not imprisoned the defendant will be a danger to others</b>	No evidence submitted

When considering the criteria relevant to Rule 4.414(b), the defendant is, in equal contrast to Rule 4.414(a)'s factors, suggestively eligible for probation. Based on the submissions thus far provided the court, the balance extant between the two criteria compels the court does not appear to suggest a grant of probation; accordingly, the court must dutifully consider the appropriate sentence in this matter in the absence of a grant of probation not be granted.

Parenthetically, the court observes that the Advisory Committee Comment to Rule 4.414 states, in pertinent part, "The decision whether to grant probation is normally based on an overall evaluation of the likelihood that the defendant will live successfully in the general community. Each criterion points to evidence that the likelihood of success is great or small."

The offense charged compels consideration of mandatory supervision among the triad of 16, 2 and 4 pursuant to Penal Code section 1170(h)(5)(A). When a sentence of imprisonment is to be imposed or even the execution of such sentence suspended, the court must still select among the triad in the exercise of judicial discretion among various factors (see Rule 4.420). To that end, the court balances the following circumstances in aggravation (Rule 4.421) and mitigation (Rule 4.423):

<b>Rule</b>	<b>Circumstance</b>	<b>Relevant Factor</b>
<b>4.421(a)(1)</b>	<b>The crime involved great violence, bodily harm or other acts disclosing a high degree of cruelty, viciousness, or callousness</b>	Relevant – Aggravation
<b>4.421(a)(2)</b>	<b>The defendant was armed with/used a weapon</b>	Not relevant
<b>4.421(a)(3)</b>	<b>The victim was particularly vulnerable</b>	Relevant – Aggravation
<b>4.421(a)(4)</b>	<b>The defendant induced others to participate</b>	Not relevant
<b>4.421(a)(5)</b>	<b>The defendant induced a minor to participate</b>	Not relevant
<b>4.421(a)(6)</b>	<b>The defendant threatened/dissuaded witnesses</b>	Not relevant
<b>4.421(a)(7)</b>	<b>The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed</b>	Not relevant
<b>4.421(a)(8)</b>	<b>The manner in which the crime was carried out indicates</b>	Not relevant



	planning, sophistication, or professionalism	
4.421(a)(9)	The crime involved an attempted or actual taking or damage of great monetary value	Not relevant
4.421(a)(10)	The crime involved a large quantity of contraband	Not relevant
4.421(a)(11)	The defendant took advantage of a position of trust or confidence to commit the crime	Not relevant
4.421(a)(12)	The crime constitutes a hate crime	Not relevant
4.421(a)(12)(A)	No hate crime enhancements are imposed	Not relevant
4.421(a)(12)(B)	The crime is not subject to sentencing under §1170.8	Not relevant
4.421(b)(1)	The defendant has engaged in violent conduct that indicates a serious danger to society	Not relevant
4.421(b)(2)	The defendant's prior convictions are numerous or of increasing seriousness	Not relevant
4.421(b)(3)	The defendant has served a prior term in prison or county jail	Not relevant
4.421(b)(4)	The defendant was on probation, mandatory supervision, post release community supervision (PRCS), or parole when the crime was committed	Not relevant
4.421(b)(5)	The defendant's prior performance on probation, mandatory supervision, PRCS, or parole was unsatisfactory	Not relevant
4.421(c)	Other statutory factors relating to aggravation: Vehicle Code section 23578.	Relevant – Aggravation
4.423(a)(1)	The defendant was a passive participant or played a minor role in the crime	Not relevant
4.423(a)(2)	The victim was an initiator of, willing participant in, or aggressor or provoker of the incident	Not relevant
4.423(a)(3)	The crime was committed because of an unusual circumstance, such as great provocation, that is unlikely to recur	Not relevant
4.423(a)(4)	The defendant participated in the crime under circumstances of coercion, duress, or the criminal conduct was partially excusable for some other reason not amounting to a defense	Not relevant
4.423(a)(5)	The defendant, without predisposition, was induced by others to participate in the crime	Not relevant
4.423(a)(6)	The defendant exercised caution to avoid harm to persons, or damage to property, or the amounts of money or property taken were deliberately small, or no harm was done or threatened against the victim	Not relevant
4.423(a)(7)	The defendant believe (s)he had a claim or right to the property taken, or for other reasons mistakenly believed that the conduct was legal	Not relevant
4.423(a)(8)	The defendant was motivated by a desire to provide necessities for his/her family or self	Not relevant
4.423(a)(9)	The defendant suffered from repeated or continuous physical, sexual, or psychological abuse inflicted by the crime victim who inflicted the abuse and was the defendant's spouse, intimate cohabitant, or parent of the defendant's child, and the abuse does not amount to a defense	Not relevant
4.423(b)(1)	The defendant has no prior record, or has an insignificant proximal or infrequent record of criminal conduct	Relevant – Mitigation
4.423(b)(2)	The defendant was suffering from a mental or physical condition that significantly reduced crime culpability	Not relevant
4.423(b)(3)	The defendant voluntarily acknowledged wrongdoing before arrest or at an early stage of the criminal process	Relevant – Mitigation
4.423(b)(4)	The defendant is ineligible for probation and but for that	Not relevant

	<b>ineligibility would have been granted probation</b>	
<b>4.423(b)(5)</b>	<b>The defendant made restitution to the victim</b>	Relevant - Mitigation <sup>4</sup>
<b>4.423(b)(6)</b>	<b>The defendant's prior performance on probation, mandatory supervision, PRCS, or parole was satisfactory</b>	Not relevant

Admittedly, and ordinarily when considering the imposition of a state prison commitment, this court is guided initially by factors relating to the crime (Rules 4.421(a) and 4.423(a)) and factors relating to the defendant (Rules 4.421(b) and 4.423(b)). It would appear at the outset that probation, in its recommendation, has explicitly focused on the former (the offense) with evident little weight to the latter (the defendant's history). When selecting a sentence, this court ordinarily begins by considering a midterm sentence, then turns focus to both California Rules of Court, rule 4.421 relating to aggravation and rule 4.423 relating to mitigation, in arriving at its sentence selection. In addition to the foregoing, a DUI invites Vehicle Code section 23578 (see also Rule 4.421(c) consideration re blood content—particularly when excessive). Balancing the foregoing criteria, a 2-year mid-term sentence emerges.

It would appear from meeting with counsel in chambers that the People's position is firm on a 4-year sentence because of the taking of a human life and, conversely, the defendant's effort for a probation sentence is unsurprising. As it pertains to each party—it is both understandable and, under the circumstances of the effect of her conduct and conversely lack of any criminal history, expected as to each. Mindful of the polar extremes, this is a tentative ruling of an intended sentence. It is not final but a tentative ruling to share with counsel the court's analysis. The matter is accordingly deferred for counsel to submit submissions, if any, for further court consideration relating to the imposition of sentence in this matter. Mindful of the January 2020 setting, counsel are directed to file, with notice to each other, any further submissions no later than January 13 to permit adequate time and opportunity for the court to timely consider the matter.

Dated: December 7, 2019

JAIME R. ROMÁN  
Judge of the Superior Court

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<sup>4</sup> In several respects the defendant has embarked on various efforts to effect restitution to the victim's family.