Citation: *R.* v. *Blackwell*, 2007 YKTC 89

Date: 20071129
Docket: T.C. 07-00400
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Luther

REGINA

v.

MARCEL JUNIOR BLACKWELL

Appearances:
Jennifer Grandy — Counsel for Crown
Lynn MacDiarmid — Counsel for Defence

REASONS FOR SENTENCING

[1] LUTHER T.C.J. (Oral): Earlier this week, the Court convicted Mr. Blackwell of assault causing bodily harm on Mark Duquette as a result of an incident in the springtime of this year, here in Whitehorse. The Crown has proceeded by indictment, and under s. 267(b) of the *Criminal Code*, where the Crown proceeds by indictment, the maximum sentence would be 10 years.

[2] Now, obviously, the maximum sentence is reserved for the worst offender under the worst circumstances, neither of which applies here. However, I would like to say that if persons persist in committing crimes of violence, that will be met with substantial periods of imprisonment.

[3] For that, I would mention the case of *R.* v. *White*, [2007] N.J. No. 227 (QL), from the Newfoundland Court of Appeal, June 21st of this year. Mr. White, unlike Mr. Blackwell, had a very, very substantial criminal record, including convictions for common assault and eight convictions for assault causing bodily harm or assault with a weapon. Prior to being sentenced for the last one, the longest sentence that he had been subject to before was a period of seven months. The trial judge in that case imposed a sentence of five years, which the Court of Appeal upheld was on the high side but was not one with which they were going to interfere. The Court of Appeal in that case said that, "The trial judge did not err in failing to consider the [so-called] jump effect."

[4] Now, with regard to this particular case, the facts are as I found them earlier in the week, and I do not need to go into any more detail. Clearly, the case is going to be met here by a jail sentence. The Court is not going to impose a sentence any longer than the local judicial authorities from the past would suggest. One of the cases that I am paying close attention to is the case of *R.* v. *B.S.C.*, [2002] Y.J. No. 17 (QL), from this court, per Chief Judge Lilles, back in 2002. In that case, unlike here, there was only one punch, but it led to very serious harm. That was clearly an aggravating factor, and in paragraph 22:

> It is an aggravating factor that the level of injury was as serious as it was, and permanent. The victim has suffered significant emotional, economic and physical losses.

In that case, the seriousness of the consequences were not entirely foreseeable as per paragraph 7.

[5] In this particular case, there were numerous punches to the head, which caused serious injuries to the complainant, of which he outlined in his testimony, and which are commented on by the victim in the victim's statement. The victim's statement, paragraph 1.

> PHYSICAL INJURIES:
>
> Was left with blood clot on right side of brain witch (sic) left me peralized (sic) on left side. I have headacks (sic) daily, dizzy unstable balance, blurry vision, in hospital for a week, black and blue bruising from my head to upper torso. I will not be the same person I was before this.
>
> 2. EMOTIONAL INJURIES:
>
> I feel helpless at times and angry, frustraded (sic). I don't do as much as I used to. I would go help family friends. Now it's much harder to get around. My co-workers depended on me as well as family.
>
> 4. FINANCIAL:
>
> I am unable to perform normal work duties. I worked construction for five years, oporating (sic), driving, maintain work crew. I cannot financially support my family anymore as a result of injury. Loss in wages approx $50,000, 1 years (sic) work.

[6] So quite clearly, there was significant damage here caused to the victim, Mr. Duquette. The Court concluded that Mr. Blackwell responded excessively to what I termed "an awkward lunge by a drunken man," and his temper took over. There were aspects of vengeance to this as a result of what the offender believed the victim had done to his auntie.

[7] Mr. Blackwell comes before the Court as a First Nations man, born and raised in the Yukon, who had a career with the RCMP, and unfortunately since, especially, say 2006, is undergoing a very significant downward spiral in his life. Actually, perhaps

back as far as 1996 with an assault in High Prairie, Alberta. The record does contain this assault from 1996, a sexual assault, which the offender thought was actually a common assault; from 1999, a weapons charge in 1999, mischief in 2006, criminal harassment in 2007, uttering of threats in 2007. It is really unfortunate because there seemed to be a promising career here for this young man back in the 80s and the 90s, and, as I have said, it has gone downhill and that is very sad.

[8] Nonetheless, the Court has to be guided by the principles of sentencing as set out in the *Criminal Code*, and where we are dealing with crimes of violence, we clearly want to denounce unlawful conduct and to deter this particular offender and others from committing these types of offences, to separate offenders from society where necessary, to assist in rehabilitation, and so on. The sentence, of course, must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[9] Unlike some of the offenders in the Crown's book of sentencing authorities, this is not a young person before the Court, and it seems that perhaps the issues of mental health, emotional anguish and anger management have taken over in what would have otherwise been a very productive life. The fact that this offender elected to have a trial is clearly not an aggravating factor on sentence. There were issues here that needed to be examined by the Court, and that is why the trial was held.

[10] With regard to the provocation, the Court did rule that provocation did exist but it was relatively minor. The Court is not prepared to give double credit for pre-trial custody here, but we will give 1.5.

[11] As to the probation order, the Court feels that the main conditions of probation were addressed in the prior order; however, there will be a fairly basic order imposed on this offender in the amount of two years, but the conditions will be the statutory ones:

1. Remaining within the Yukon unless he obtains written permission;
2. Reporting immediately upon release from custody;
3. To continue with the psychological assessment, counselling and programming as directed by the probation officer, particularly in relation to anger management and mental health;
4. To have no contact, directly or indirectly, or communication in any manner with Mark Duquette, except with the prior written permission of the probation officer, and, of course, Mr. Duquette himself.

[12] The Court feels that the letter of apology tendered by the offender is sincere, but the fact that it was given when it was, is not going to be held against him, because it is often difficult for a person to apologize and acknowledge responsibility when the matter is going to trial. That will not be held against him, the timing of the apology.

[13] Based on the local judicial authorities, and also based on the provisions in the *Criminal Code*, the Court feels that the appropriate sentence in this case is a period of 10 months, for which I will give 77 days credit. Thus, the sentence will be 10 months less 77 days. The probation order I have already addressed. Section 109 of the *Criminal Code* will take effect; it will be in existence for 10 years. There will be an order under s. 487.051 of the DNA provisions of the *Criminal Code*, as this is a primary designated offence. With regard to the victim surcharge, in view of the fact that the

offender will be serving a significant period of time in custody, the Court is not going to impose the victim surcharge.

[14] Are there any questions here for the Crown?

[15] MS. GRANDY: No.

[16] THE COURT: Any questions for the defence?

[17] MS. MACDIARMID: No.

[18] THE COURT: Anything else then, Ms. MacDiarmid?

[19] MS. MACDIARMID: No, thank you.

[20] THE COURT: Okay. Then that is all.

_____
LUTHER T.C.J.