

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Blanchard*, 2006 YKSC 35

Date: 20060206
Docket: S.C. No. 04-01532
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

ROBERT RICHARD BLANCHARD

Before: Mr. Justice R.S. Veale

Appearances:
John Phelps
Malcolm Campbell

For the Crown
For the Defence

**MEMORANDUM OF SENTENCE
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): On February 16, 2005, Robert Blanchard was convicted of dangerous driving, impaired driving, driving while prohibited, and consuming alcohol, contrary to a probation order. The offences occurred during the course of a driving that took place on September 29, 2003, in Pelly Crossing, Yukon Territory.

[2] Mr. Blanchard seeks a curative discharge on the impaired driving conviction and a conditional discharge on the dangerous driving offences. His counsel submits that time served would be appropriate on the driving while prohibited and consuming alcohol contrary to a probation order offence.

[3] The Crown does not oppose the curative discharge application on the impaired driving offence, but recommends a three-year term of probation. In addition, the Crown seeks a conditional sentence order for the remaining offences. Specifically, the Crown seeks a conditional sentence of 12 months incarceration on the dangerous driving conviction, six months on the driving while prohibited, and 90 days for consuming alcohol contrary to the probation order. Under the Crown's submission, the effective sentence is four and a half years based on a conditional sentence of 18 months and a curative discharge probation order of three years.

The Facts

[4] The complete facts are set out in my reasons for judgment of February 16, 2005, cited as *R. v. Blanchard*, 2005 YKSC 10. I will summarize those facts here.

[5] Mr. Blanchard is an alcoholic with 10 prior drinking while driving offences between 1982 and 2002. In addition, there were five offences between 1992 and 2002 for driving while disqualified because of the impaired driving convictions.

[6] Mr. Blanchard admitted to drinking half a bottle of vodka on Sunday, September 28, 2003. On the following Monday, he had a drink when he got up. Instead of going to the work site in Pelly Crossing, a small Yukon First Nation community, he went to the First Nation's equipment yard and began to drive a one-half ton Ford truck. At this point, he committed his first two offences, that of drinking while prohibited and driving while disqualified. He drove around Pelly Crossing to pick up the other crew members and drove them to the work site. Driving to the work site from the community of Pelly

Crossing involves driving across the Pelly River Bridge on the highway that runs by Pelly Crossing.

[7] Later that morning, Mr. Blanchard drove the same vehicle back into Pelly Crossing and he got stuck on a chain link fence. He was spotted by the equipment manager who observed his condition and took the keys of the truck away from him, as he found him to be in no condition to drive because of his alcohol intoxication.

[8] Mr. Blanchard was not easily deterred. He found a three-quarter ton flat deck truck owned by the First Nation and began to drive it erratically. He managed to drive back to the work site, which involved crossing the highway bridge.

[9] Shortly after, he was driving across the same bridge in the opposite direction when he struck Jenna Joe, a young schoolgirl on her bike. He struck her on the shoulder and knocked her and her bike into a guard rail. She was observed at the nursing station for a hurt shoulder and prescribed some painkillers, but she had no further problems. Mr. Blanchard continued driving his passengers and eventually returned to the work site, where he was arrested. He had approximately 270 milligrams of alcohol in 100 millilitres of blood at the time of driving.

The Application for a Curative Discharge

[10] Mr. Blanchard took a residential program for his alcoholism in Kitwanga, British Columbia, and he remained sober for a period of seven months. He had a relapse in November of 2004, and took a 28-day in-patient alcohol treatment program in January of 2005, on the direction of his bail supervisor. He has, at this point, stopped drinking, except for the slips in November of 2004, since June 2004.

[11] He was remanded into custody after his conviction on February 16, 2005. However, after a court application he was released on April 15, 2005, for the purpose of assessing his suitability for a curative discharge. Although somewhat unusual, it was the only way, realistically, to assess his potential for a curative discharge. These reasons are found at *R. v. Blanchard*, 2005 YKSC 22.

[12] Under very restrictive release conditions, Mr. Blanchard was assessed in the community by Dr. De La Mare, a physician in Whitehorse with extensive experience in treating alcoholics. Dr. De La Mare was ordered to conduct blood tests as he saw fit. Dr. De La Mare has made a diagnosis of alcoholism. He finds Mr. Blanchard to be a fit, healthy 42-year-old person of Yukon First Nation ancestry. The blood tests that he administered in March 2005, August 2005 and January 2006, show no evidence of relapse. Mr. Blanchard has attended Dr. De La Mare's clinic 17 times punctually, always dressed appropriately and never smelling of alcohol.

[13] Mr. Blanchard has two families. The first is his now-separated wife and 16-year-old daughter. They reside close to him in a trailer community in Whitehorse. His second family consisted of his common-law wife in Pelly Crossing and her three children, aged from 17 to 21 years. His common-law wife was struggling with her own alcohol problems and she recently died in a motor vehicle accident, which has been a very stressful event for Mr. Blanchard. However, he did not slip or relapse into his old ways.

[14] Dr. De La Mare is favourably impressed with Mr. Blanchard and has the opinion that there is an 80 percent chance that he will remain abstinent over the next two

years. He is prepared to assist in any follow-up program. Shayne King, the probation officer involved, was at one point, in April 2005, of the view that Mr. Blanchard was a marginal candidate for a community disposition. However, he has consistently stated that if a sentence could be crafted to be both a conditional sentence and a curative discharge, there would be a reasonable chance for success.

[15] All of Mr. Blanchard's counsellors have stated the importance of Mr. Blanchard staying employed, which he has. He works for a very supportive employer in the construction industry in Whitehorse, which coincidentally is in a boom phase at the moment. Mr. Blanchard's probation officer concluded that Mr. Blanchard has exceeded all expectations. In October 8, 2005, he wrote:

In summation, Mr. Blanchard continues to be successful while on bail. His ability to hold onto a full-time job, reconnect with his daughter, make all appointments with his doctor, counsellor and bail supervisor, point to an individual who at the moment is committed to maintaining a pro-social lifestyle.

[16] Mr. King also testified that Mr. Blanchard was present for all 20 curfew checks at his residence. He says that Mr. Blanchard takes great pride in his sobriety. He describes Mr. Blanchard's chances of remaining sober as better than average. However, he believes Mr. Blanchard continues to require a support group and continued contact with himself, Dr. De La Mare, Alcoholics Anonymous and Lynn Moylan-White, an addiction counsellor at the probation office.

[17] Ms. Moylan-White is favourably impressed with Mr. Blanchard. He is presently involved in a relapse prevention program with Ms. Moylan-White. She views Mr.

Blanchard as being at, what is described as the maintenance stage, in the model of change as he moves towards complete recovery.

[18] Mr. Blanchard also testified before me. He candidly admitted that he still has urges to drink that last five to ten minutes. He admitted that he and his probation officer had a rocky relationship at the outset but that they get along better now. He considers AA to be helpful. He acknowledged that his family issues remain somewhat stressful, as well as his continued court appearances. I am favourably impressed that he wants to succeed in a sober lifestyle.

Sentence

[19] Section 255(5) of the *Criminal Code* permits the Court to order a curative discharge for an impaired driving conviction, rather than convicting the offender and sentencing him to jail. Firstly, he must be found to be in need of curative treatment in relation to the consumption of alcohol. I have no difficulty in making that finding on the evidence of Dr. De La Mare and Mr. Blanchard's record.

[20] The second condition to be met is that the curative discharge must not be contrary to the public interest. While there is no doubt that Mr. Blanchard has a very disturbing record of drinking and driving while impaired, even in the face of driving prohibitions, I am satisfied that the public interest is better served by reinforcing Mr. Blanchard's recent sobriety and his motivation to lead a sober life. I have no doubt that there is a risk of repetition, but I have concluded that the public interest and safety can be better protected by supporting Mr. Blanchard in his new lifestyle, rather than

incarcerating him where he has no opportunity to work towards the goal of sobriety, as he does now in the real world.

[21] Mr. Blanchard takes legitimate pride in his employment, his lifestyle and his positive relationship with his daughter. Nevertheless, his multiple convictions occurred over a period of time in extremely dangerous circumstances and that conduct cannot be punished and deterred by a simple conditional discharge. In my view, a conditional sentence of incarceration to be served in the community will best protect society and condemn the past conduct. Please stand, Mr. Blanchard.

[22] I am sentencing you to a global sentence of 15 months incarceration to be served in the community for the offences of dangerous driving, driving while prohibited and consuming alcohol while prohibited by a probation order. I have taken into account your pre-sentence custody of two months and credited you with three months in arriving at the sentence of 15 months, which will be applied as 12 months for the dangerous driving, three months for the driving while prohibited, to be served consecutively, and three months for consuming alcohol while prohibited by a probation order, to be served concurrently. You will receive a curative discharge on your impaired driving conviction. I direct that you will be discharged under a probation order of three years.

[23] The terms of the conditional sentence and curative discharge are as follows:

1. Keep the peace and be of good behaviour;
2. Report to the Court when required to do so by the Court;

3. To remain in the Yukon unless you have the written permission of your conditional sentence supervisor/probation officer to leave temporarily;
4. To report to your conditional sentence supervisor within 48 hours of the commencement of this order and thereafter in the manner directed by your conditional sentence supervisor/probation officer;
5. Notify the conditional sentence supervisor/probation officer in advance of any change of name or address and immediately notify your conditional sentence supervisor/probation officer of any change of employment or occupation;
6. Abstain absolutely from the purchase, possession or consumption of alcohol or other intoxicating substances and non-prescribed drugs;
7. Not to attend at or near any establishment whose primary purpose is the sale of alcohol;
8. Attend meetings with Alcohol Anonymous at least twice a week and provide proof of your attendance, satisfactory to your conditional sentence supervisor/probation officer as directed;
9. Obtain an Alcoholics Anonymous sponsor and provide their name and contact number to your conditional sentence supervisor/probation officer;

10. Take and complete such alcohol assessments, treatment and counselling as your conditional sentence supervisor/probation officer may direct, including attendance at residential treatment facilities;
11. Submit to blood testing for liver enzymes on any basis deemed necessary by Dr. De La Mare and, in any event, once every three months during the course of the conditional sentence order and once every six months during the course of the probation order.
12. You will execute any medical consent necessary to enable the release of information relating to your testing and treatment to your probation officer as well as providing a written release to any drug counsellors and medical personnel in order to provide full disclosure of relevant information pertaining to this order to a conditional sentence supervisor/probation officer.
13. You will prepare a relapse prevention plan and provide a copy to your conditional sentence supervisor/probation officer within six months of this order.
14. You will perform 50 hours of community work service during the conditional sentence order, as supervised by your conditional sentence supervisor, and 100 hours of community

work service during your probation order, to the satisfaction of your probation officer.

15. You will appear in this court for a review of this order as required by the conditional sentence supervisor/probation officer.
16. You will reside as directed by your conditional sentence supervisor/probation officer.
17. You will maintain employment and not change or terminate your employment without the prior written permission of your conditional sentence supervisor/probation officer.
18. You will not drive or operate any vehicle in any place.
19. You will abide by a curfew, except with the prior written consent of your conditional sentence supervisor/probation officer by remaining within your place of residence between the hours of 9:00 p.m. and 7:00 a.m., and
20. If a conditional sentence supervisor/probation officer or peace officer comes to your residence, you must allow them to enter to ensure that these conditions are abided by.

[24] THE COURT: What number are we on, counsel?

[25] THE CLERK: That was number 20, My Lord.

[26] THE COURT: Okay.

21. To contact Dr. De La Mare within one week of the date of this order and to report to Dr. De La Mare as he directs thereafter.
22. You will be prohibited from driving for a period of 10 years, commencing at the conclusion of the conditional sentence order.

[27] THE COURT: You can be seated, sir. Are there any matters arising, counsel?

[28] MR. PHELPS: Two very brief questions, My Lord. With respect to the time served, does that apply to any specific charge; in other words, is the s. 259 effectively a six-month sentence?

[29] THE COURT: It is applying to the dangerous driving.

[30] MR. PHELPS: Okay, thank you. My second point, My Lord, is my friend advised that Mr. Blanchard consents to there being a term of his probation order to provide such samples of his breath as may be required by his probation officer or peace officer with reasonable grounds to believe he is violating the term, I think it's term 6, which is the abstain absolutely. In any event, the Crown's position is that although there are some difficulties with them on probation orders without that consent, they are appropriate on conditional sentence orders. Those are my only two points, My Lord.

[31] THE COURT: Just to have it clarified then, you wish to have the additional condition on the conditional sentence order, and I take it that -- did you say,

Mr. Campbell, did you say that you were consenting to have that in the probation order?

[32] MR. CAMPBELL: Yes.

[33] THE COURT: So I can put it into this order then, as whatever the last term is, Madam Clerk, that:

23. Mr. Blanchard consents to submitting to random breath sample tests, breathalyzer tests, urine analysis, bodily fluids or blood tests upon demand by a peace officer, conditional sentence supervisor or probation officer who has reason to believe that he has failed to comply with this condition.

[34] MR. PHELPS: As a matter of due course there is the victim fine surcharges that would apply, I believe, to each of the offences. I do not have any submissions on that and my friend did make submissions on the device in the vehicle, the --

[35] THE COURT: Yes, he made --

[36] MR. PHELPS: -- I am tongue tied on that, I am not too sure if that's been dealt with.

[37] MR. CAMPBELL: Interlock.

[38] MR. PHELPS: Interlock, yes.

[39] THE COURT: Yes, my view on that is that he can make an application at a later date if the condition is warranted. I am sorry, what did you say before that?

[40] MR. PHELPS: Victim fine surcharges on each --

[41] THE COURT: Oh yes, in the circumstances, I am going to waive the victim fine surcharge.

[42] MR. CAMPBELL: My Lord, is it the Court's intention to have the curfew apply during the probation order as well as the --

[43] THE COURT: Well, that was the intention -- that was the intention, but you are aware, as your client is aware, that an application can be made if there is grounds for changing that for some reason, and that could be initiated either by the probation officer or by yourself.

[44] MR. CAMPBELL: With respect to the knock and talk clause with respect to curfew. In my experience, the usual wording is that he is to present himself at the door as opposed to allowing entry. Right after the curfew. He is to answer the door and allow entry, I believe was your wording.

[45] THE COURT: Yes, that is the wording. I have taken that wording right out of the bail order.

[46] MR. CAMPBELL: I am just thinking of search issues. If it is only to confirm the curfew, then presenting at the door and answering the phone, if they are doing a telephone check, would be all that is required. I am not sure what greater --

[47] THE COURT: So I understand what you are saying. I do not think I have any difficulty saying - Madam Clerk, you can amend that accordingly - to say that he must present himself at the door or answer the telephone as the case may be.

[48] MR. PHELPS: That is fine, My Lord, no issue.

[49] MR. CAMPBELL: The other concern I had was with respect to the maintaining employment clause. I do not recall exactly how you worded it, but he must maintain employment unless permitted from --

[50] THE COURT: I think I took it directly from the bail order for 13, to maintain employment and not to change or terminate his employment without the prior written permission of his conditional sentence supervisor/probation officer.

[51] MR. CAMPBELL: The concern I have with that is if he gets laid off or fired --

[52] THE COURT: Well, I do not think there is any issue there. I mean, this is just that he is to maintain employment -- oh, I see, if he gets -- oh I see.

[53] MR. CAMPBELL: If he is suddenly released, he is in breach of his sentence and goes to jail.

[54] MR. PHELPS: Perhaps shall make reasonable efforts to seek and maintain, something like that.

[55] THE COURT: Yes, we will just change that, Madam Clerk, to say shall make reasonable efforts to seek and maintain employment.

[56] MR. CAMPBELL: That will be fine. I believe those are all the --

[57] THE COURT: Thank you, Mr. Campbell.

[58] Mr. Blanchard, it has been a long process for you to get to this point and I have to say that I am very impressed with your conduct since the offences occurred back in 2003. You have made some very sincere efforts and the sentence that I have given you is rewarding you for those efforts. You have, at the age of 42, discovered that a sober life is a better life and I am convinced that you have the power within you to maintain a sober life for the rest of your days and contribute to your First Nation, to your daughter, to everyone that is important to you and I wish you luck in doing so.

[59] THE ACCUSED: Thank you.

VEALE J.