

Citation: *R. v. Blanchard*, 2012 YKTC 96

Date: 20121012
Docket: 12-11008A
Registry: Dawson City
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

JOSEPH GORDON BLANCHARD

Appearances:
Keith Parkkari
Malcolm Campbell

Counsel for the Crown
Counsel for the defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Joseph Blanchard has entered a guilty plea to having committed an offence under s. 259(4) of the *Criminal Code*, and an offence under s. 254(5). Circumstances are that on May 15, 2012 at 2:00 p.m. in Dawson City, RCMP observed a vehicle being driven by Mr. Blanchard with another passenger operating at a speed of 112 kilometres an hour in a 70 kilometre zone. The vehicle was pulled over. Mr. Blanchard was known to be a driver that was disqualified under the *Criminal Code* for driving at that time in respect of an offence for which he was convicted on June 13, 2008. A moderate odour of liquor was noted on his breath and open liquor observed in the vehicle. The officer had a suspicion that Mr. Blanchard may

have been consuming alcohol and made a demand that he provide a sample of his breath into an approved screening device. Mr. Blanchard refused to do so.

[2] Mr. Blanchard has nine prior convictions for operating a vehicle while impaired or refusing to provide a breath sample, in 1987, 1989, 1990 twice, 1997 twice, 2004 twice and 2008. He also has driving while disqualified convictions, two in 1990, one in 2002 and one in 2008. The Crown is suggesting 18 to 24 months and a ten-year driving prohibition. Defence counsel is suggesting 15 months. For his convictions in 2008, Mr. Blanchard was sentenced to one year on the impaired charge and three months consecutive on the driving while disqualified charge.

[3] Mr. Blanchard is 47 years of age. He is a member of the Tr'ondek Hwech'in First Nation. He is single. He has a 17-year-old child.

[4] A pre-sentence report had been ordered. That was not prepared and not through the fault of Offender Supervision Services, as I understand it, but because Mr. Blanchard had indicated that there was a *Gladue* report being done. There is a difference between the *Gladue* reports that are being done and the pre-sentence reports in that pre-sentence reports deal with risk and they have tools that are used to assess risk and they deal with certain other factors. The *Gladue* report that has been filed, and I might mention at this point in time that this is a draft report that was prepared by the Tr'ondek Hwech'in First Nation Justice and Community Support Worker, was provided in draft form only. As I understand it, the final copy of the report will be provided to the Court. I understand, from counsel for Mr. Blanchard, that in his discussions with the worker that prepared the report nothing substantive will change

and it is more to simply put it in a format that is more consistent with what it would be were it completed and concluded. I can indicate at this time for the purpose of sentencing, obviously, nothing will change by the filing of the final report. It will simply remain on the file.

[5] The report that is filed certainly indicates that the impact on the Tr'ondek Hwech'in First Nation of the Klondike gold rush was, in the words of the writer, profound and traumatic in the change that it brought. New diseases, alcohol, racial segregation, discrimination and all forms of abuses took place in the immediate. Afterwards, the report indicates that the Canadian Government developed a policy of aggressive assimilation that was in operation in the Dawson City area, and the report states that the residential school system took children away from their families and robbed them of the opportunity to learn their traditional ways.

[6] The report points to, of course, the well-known ripple effect of the trauma experienced by those individuals that were in the residential schools, and some of the trauma that they suffered themselves in this ripple effect has, of course, caused these parents to be unable to care for their own children, who then ended up going into group homes or foster care, and this is exactly what happened to Mr. Blanchard. The trauma of residential schools had that effect in his family. His mother was in residential school. He himself was basically abandoned by his family and he ended up being placed into group homes, where he was also subjected to abandonment and further abuse.

[7] The report states that his life mirrors the pattern of abuse, neglect and institutional cruelty that is endemic to First Nation cultures of today. At times he was

forced to steal food to feed himself and his siblings. He had been locked in a basement and he reported rampant sexual abuse in the home. Prior to being in the group homes he had been left alone at three to care for a one-year-old child. He was often left home alone and other individuals would come in and take the food from the house. There was an incident where his mother was bound and gagged and doused in gasoline and set on fire by an abusive partner and the children witnessed this. He witnessed the stabbing death of his uncle at a very young age, and his home life, to the author of the report, was replete with images Mr. Blanchard has, that resulted in his first words to the author of the report being that people getting stabbed is what he described his home life as. There was much violence in the home. One aunt refers to him as basically having been punished his whole life.

[8] Mr. Blanchard is an artist and a carver. He had maintained sobriety for a considerable period of time after his release from custody for the 2008 offence until just prior to this offence, where a relationship breakdown did not cause, but certainly created, an environment where he fell into the life pattern that has characterized his life and that of his family in so many ways, going back many years.

[9] He accepts his responsibility for drinking and driving. He knows he should not have done that. I do note that outside of the speed itself there was no indication of any other driving that could be characterized as dangerous. That said, however, I do not know a lot about how many people were around and I am not going to look at that as making it less serious. It is an extremely serious offence any way you cut it. It just is not aggravated by additional factors in this case that we sometimes see, in that there

was no accident. There was no indication that anyone was actually put at risk, beyond the risk that is always there when an impaired driver operates a vehicle.

[10] There is a report filed from the Correctional Centre. Mr. Blanchard has been in custody for 151 days awaiting disposition. The report indicates that Mr. Blanchard has not been employed, although there is no indication he has refused any employment. He is involved in the carving program at the Whitehorse Correctional Centre and he has voluntarily signed up to take the Spousal Abuse Management Program that is to start today. His counsel indicates he has been involved in AA, but there is no indication of that in the report. There is nothing here that indicates he has refused; however, I am aware of the fact that remand inmates are not directed to take counselling and it is a voluntary choice of theirs to do that, which places them in a different situation from serving prisoners who can be directed to take counselling.

[11] There have been 126 entries in his log; 28 of them are negative. Many of them involve covering windows or some rude and confrontational behaviour. One involves hiding a pill, which, of course, can be part of supporting an underground sort of jail exchange of drugs, although I have no evidence that is actually what was happening in this case. He notes that the majority of the entries are positive, describing that Mr. Blanchard socializes well with other inmates, keeps to himself in the unit, frequently works on artwork or plays board games and he can be polite and respectful to staff.

[12] In dealing with charges of impaired driving and repeat offenders, denunciation and deterrence, both specific and general --

[13] MR. CAMPBELL: Just to clarify, there is no charge of impaired before the Court. He's on a refusal.

[14] THE COURT: Oh, sorry, not impaired. It is a refusal. But I will say that when I talk about impaired I was using it in the sense of refusals and impaireds and over .08. But it is a refusal, you are correct, it is not impaired driving. I will rephrase that. When dealing with charges that involved either impaired driving or driving over .08 or refusal to provide a sample, whether it is to an ASD or a breathalyzer upon demand by a peace officer, the principles at play are denunciation and deterrence, and one cannot circumvent the abilities of police officers to properly investigate whether an impaired driving offence has been committed by refusing to provide a breath sample and expect that that would mitigate in any way that charge or differentiate it in any substantial way from an actual impaired charge or an over .08 charge.

[15] There is no question that those principles, without going into the many cases in the Yukon that say this, are at play in the case of Mr. Blanchard. The difficulty in his case, of course, is that he has been subjected to a traumatic and extremely difficult childhood that started earlier than the residential school program, through the horrific impacts on the culture that he lived in by the infusion of another completely different way of living, and then the residential school system. The courts have made it very clear that in sentencing Aboriginal offenders or First Nations offenders we have to be very mindful of the impacts of the systemic discrimination and treatment of First Nations individuals. It is difficult sometimes to find a balance between those and certainly the range suggested by the Crown of 18 to 24 months is by no means beyond

that for which a sentence could be imposed in this case. Neither is what is suggested by defence counsel beyond the bottom end of a range.

[16] Being mindful of the principles of sentencing, being aware of Mr. Blanchard's history and circumstances, the length of time since the last offence, recognizing that there was a significant period of custody in there, the uncontested point that he managed to maintain periods of sobriety, and his potential, the sentence I am going to impose is going to result in a period of 16 months incarceration. It will be 16 months on the refusal and there will be four months concurrent on the driving while disqualified. I could make them consecutive, but in accord with the principles of trying to use restraint, recognition of s. 718.2(e), and recognition of the positive steps Mr. Blanchard has made and potentially has, this is about the lowest sentence that I can impose and still be within the range of sentences that I consider appropriate in the circumstances.

[17] With respect to the time in custody, this is not as clear with respect to the one and a half to one credit, but I am satisfied, in looking at the information that is provided to me, looking at the circumstances of his upbringing and his First Nations status in this particular case, that applying those two together and how they would interact with the report that I see here, which is generally a positive report, I will give him credit of seven months for his pre-trial custody. That leaves nine months to go. The seven months will be on the s. 254 and the four months concurrent will be on the time served as well, leaving only the nine months on the s. 254.

[18] There will be a driving prohibition for a period of ten years prohibiting Mr. Blanchard from operating a motor vehicle on any street, road, highway or other public place as the case may be.

[19] I do not actually disagree with much of anything that is said in the report and the idea that you may feel like you have been punished your whole life, because in some ways, you have certainly either been punished or suffered from the trauma that your family has gone through. It is to be hoped that you will change that. You have the power to change it. I am not saying it is easy. You can do it. You will need support, you will need help, but it is surely worth fighting to do because the alternative to not fighting is a continual punishment. Maybe, with everything you have learned in life, and because you still have got a lot of life left to go, you can actually become a leader. I guess that is your choice. You certainly have the potential to do more.

[20] I am going to waive the victim fine surcharge. Is there anything else, remaining count?

[21] MR. PARKKARI: Stay of proceedings.