Citation: *R.* v. *Quock*, 2012 YKTC 49

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Registry: Whitehorse

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

REGINA

v.

KENNETH BLAINE QUOCK

Appearances:
Susan Bogle — Counsel for the Crown
Melissa Atkinson — Counsel for the Defence

REASONS FOR SENTENCING

[1] LUTHER T.C.J. (Oral): Kenneth Blaine Quock pled guilty to five offences under the *Criminal Code*; assault on Amber Blanchard, s. 266 from January 4, 2011; assault causing bodily harm to Amber Blanchard, s. 267(b) from September 24, 2011. The Crown elected to proceed by Indictment. Also, there are three offences under s. 145(3) involving curfew, contact with the victim, and alcohol consumption.

[2] The offender, now 32 years of age, is a member of the Kwanlin Dun First Nation. He has a substantial record, both as a youth, including assault causing bodily harm,

and, more importantly, as an adult, including five crimes of violence. In the sentence hearing he advised me that he has no pleasant childhood memories, although in the February 2008 Pre-Sentence Report he acknowledged that his aunt and uncle were good foster parents who took time to teach him how to hunt and fish. The Pre-Sentence Reports reveal how he was apprehended by Family and Children's Services because of substance abuse in the home. As a foster child he lived in Yukon, Northwest Territories and British Columbia. Mr. Quock now has a limited relationship with his father, who has worked as a carpenter in Edmonton for several years. After no contact with his mother between the ages of four and 12, he now has a very good relationship with her. Linda Quock noted a maturing in her son, believing he may be turning a corner. His work experience last summer with ALS Minerals was positive, and when he finishes this sentence, he should be able to work again in the mining industry.

[3] His relationship with the victim, Amber Blanchard, has deteriorated due to issues flowing both ways in terms of cheating, and also his stated resolve to stop drinking and her unwillingness to do so. Mr. Quock indicated directly in the sentence hearing, in relation to a direct question posed by me, that the relationship is over and he will stay away from her. There were no prior spousal assaults before the one dealt with by Judge Ruddy in her May 2010 YKTC 58 decision. The facts were succinctly stated in paragraph 3:

> The police attended at the residence as a result of a complaint. They knocked at both doors demanding entry, to no avail. They were able to hear a female screaming inside and they ultimately decided to enter the residence on the basis of there being exigent circumstances. While they

> were pursuing the means to do so, Mr. Quock finally opened the door. When the police entered, Ms. Blanchard was in the bathroom having a shower and appears to have been quite uncooperative. They were finally able to get her to open the door at least and noted there to be a great deal of blood on her face. Emergency Medical Services was fortunately able to get into the room to treat her. There were two lacerations on her forehead and scalp, one of which required four stitches and the other required five. I am also advised that there were some minor injuries suffered by Mr. Quock which included some bruising to his lips and a cut on the inside of his lip.

[4] As to the facts in the present situation, the Court was assisted considerably by the introduction into evidence of the Agreed Statement of Facts [as read in]:

> 1. On January 4, 2011, at approximately 6:23 p.m. Whitehorse RCMP received a call from a witness reporting a male beating up a female in front of Extra Foods. The caller indicated that members of the public were now involved in restraining the male.
>
> ….
>
> 3. Amber Blanchard spoke with the RCMP and advised that she met Mr. Quock downtown that afternoon. They were both drinking. There was a verbal argument between the two as the accused wanted to leave the area but she wished to remain downtown.

4. At one time Amber Blanchard walked away from the accused, causing him to follow her. When they were in front of Extra Foods he pushed her to the ground, kicked her in the arm and on the side of the face, and punched her a number of times before another member of the public stopped the accused and held him back from her. She had a slight bruise on her left cheek and a cut on her chin.

….

10. On September 24, 2011 at 12:41 a.m. Whitehorse RCMP received a 9-1-1 call from Amber Blanchard stating that she was at 90 McClennan Road and had been assaulted by Mr. Quock.

….

13. Constable Penton located Amber Blanchard in a bedroom down the hall. It was noted that she had multiple facial injuries and EMS was called to attend to her and to take her to the hospital.

….

15. She told police that she had been drinking with the accused during the day on September 24th. She had then gone to 90 McClennan Road and continued drinking with Justin Charlie and his brother. She was in the back bedroom sitting on the bed when Kenneth Quock came into the bedroom and threw a plank-type piece of wood at her which hit her in the temple area, causing it to bleed. He continued to assault her by hitting

and slapping her at least ten times to her head and body while she was on the ground.

….

17. Medical reports indicate that Amber Blanchard had swelling and bruising to her face, arms, legs, chest and kidney area. Part of her lower lip had been torn, requiring three stitches.

18. On September 22 and September 24, Kenneth Quock was subject to the recognizance noted in paragraph 8 that required him to have no contact directly or indirectly with Amber Blanchard and to abstain directly from the possession or consumption of alcohol.

[5] Mr. Quock initially violated his judicial interim release order by leaving the ARC on the morning of September 21, 2011. Five days later he surrendered himself into police custody. This offender admitted his responsibility quickly. He has either completed or substantially participated in a number of programs including Just Us Program, Violence Prevention, Respectful Relationships, formerly Spousal Abuse Program, and Relationship Violence Treatment Program.

[6] The most compelling mitigating factors here are:

1. The solid bonding with adult males who genuinely care for him. Ms. Atkinson stated the offender has come to realize the importance of kinship with First Nations men;
2. Housing arrangements with his mother;
3. Taking responsibility for his criminal offences;

4. His stated intention to stay away from Amber Blanchard and have nothing to do with her;
5. The ease with which he can find lawful, gainful employment in the mining industry;
6. Behaviour while in custody.

[7] This offender has spent 279 days in pre-sentence custody. I am satisfied with counsel's analysis of *R.* v. *Vittrekwa*, 2011 YKTC 64, and that the ratio of 1.5 should apply in this case. Thus, Mr. Quock will be given credit for 419 days. That is almost 14 months.

[8] The Crown seeks a high territorial sentence. The defence submits that time served or a conditional sentence order followed by probation would suffice. In her book of authorities, the Crown more than adequately set out justification for her position. Authorities included *R.* v. *Quock, supra,* where the sentence was ten months imprisonment less 49 days; *R.* v. *Kirby*, 2010 NWTTC 15, 12 months plus three years probation; *R.* v. *Morris*, 2004 B.C.C.A. 305, 12 months and two years probation; *R.* v. *Gill,* 2007 B.C.S.C. 1216, 15 months. This was his third conviction for assaulting his wife.

[9] Amongst the aggravating factors here are the injuries to the victim and the fact that she has been assaulted by Mr. Quock at least three times. The most serious offence, the s. 267(b), was committed while Mr. Quock was in violation of three of his judicial interim release conditions. He has a long, significant criminal record with perhaps only one notable gap between 2004 to 2008. In a helpful report from Joshua

Robinson, Mr. Quock was assessed to be in the high risk category with respect to the chance of the client reoffending violently against an intimate partner and high risk of violence towards others. Also noted was that this risk is significantly reduced when he is sober. The Pre-Sentence Report stated that normative data from the publisher of the LS/CMI indicate that scores such as Mr. Quock's are indicative of a 71.7 percent probability of reoffending.

[10] The victim has chosen not to file a victim impact statement. It would appear that there is no permanent physical damage, but surely there must be emotional and psychological trauma. The principles in *R.* v. *Ipeelee* and *R.* v. *Ladue*, [2012] S.C.C. 13, released on March 23rd are noted, and I would refer to three parts of that decision. At paragraph 71*:*

> In *Gladue*, this Court rejected Ms. Gladue's argument that s. 718.2(e) was an affirmative action provision or, as the Crown described it, an invitation to engage in "reverse discrimination" (para. 86). Cory and Iacobucci JJ. were very clear in stating that "s. 718.2(*e*) should not be taken as requiring an automatic reduction of a sentence, or a remission of a warranted period of incarceration, simply because the offender is aboriginal"....

And at paragraph 75:

> Section 718.2(*e*) does not create a race-based discount on sentencing. This provision does not ask courts to remedy the overrepresentation of Aboriginal people in prisons by artificially reducing incarceration rates. Rather, sentencing judges are required to pay particular attention to the circumstances of Aboriginal offenders in order to endeavour to achieve a truly fit and proper sentence in any particular case.

Paragraph 86:

> … A second question arises: who are courts sentencing if not the offender standing in front of them? If the offender is Aboriginal, then courts must consider all of the circumstances of that offender, including the unique circumstances described in *Gladue*. There is no sense comparing the sentence that a particular Aboriginal offender would receive to the sentence that some hypothetical non-Aboriginal offender would receive, because there is only one offender standing before the court.

[11] This most recent decision of the Supreme Court of Canada has, within the first six weeks of its release, already been considered by numerous courts around the country, as far east as Newfoundland.

[12] *R.* v. *Knott*, 2012 MBQB 105, is a sentencing decision for aggravated assault involving an Aboriginal offender with no prior record who, along with his nephews, brutally beat the victim, Mervin Beardy, leaving him with permanent brain damage and major physical disabilities. McCawley J. applied the Supreme Court of Canada cases in such a way that the offender received a suspended sentence with probation for two years, despite serious aggravating factors not present in this case, including celebrating the beating, the serious injuries to the victim, the lack of acceptance of responsibility for his involvement, and that he had armed himself. The Crown had sought a six-year penitentiary term.

[13] In *R.* v. *Knockwood*, 2012 ONSC 2238, Hill J. sentenced a 54-year-old female from Kahnawake Reserve to a six-year sentence for importing 997 grams of heroin from Colombia. Her circumstances were described in paragraph 67:

> Kathleen Knockwood has resided almost her entire life on the Kahnawake Reserve in Quebec with its population of about 7500 persons. As a Mohawk of Kahnawake, she has sustained many of the systemic experiences of Aboriginal Canadians including a broken home, involvement with alcohol at a young age, the death of family members from alcoholism, living with alcoholism and family violence, minimal education or employable skills, teenage pregnancy, poverty, victimization by sexual abuse, crack cocaine addiction, loss of children through state apprehension, multiple domestic relationships, and failed attempts at addiction control.

[14] In *Knockwood*, the Crown had sought a much higher sentence, but because of Mr. Justice Hill's application of the principles outlined in *Gladue*, [1999] S.C.J. No. 19*, Ipeelee* and *Ladue, supra*, and given the major systemic problem by the reprehensible failure of the Quebec authorities to provide a *Gladue* report, he reduced what otherwise would have been a sentence of perhaps 12 years down to six.

[15] There has been reference to the case from the Alberta Court of Appeal, *R.* v. *Highway, Brown, and Umpherville*, (1992) 73 C.C.C. (3rd) 242 (ABCA). It was mentioned in the Northwest Territories case of *Kirby, supra,* and this case has been revisited by the Alberta Court of Appeal in a decision called *R.* v. *Turtle*, 2010 ABCA 334, and at paragraph 5 of the *Turtle* decision, the Court stated as follows:

> In *Brown,* the offender received an 18 month sentence after repeatedly striking his spouse causing a bloody nose, swollen eyes, cuts and scratches. He had prior convictions for violence including manslaughter. In *Highway*, an 18 month jail sentence was imposed for assault and death threats. The assault involved repeated punching, kicking and choking while the spouse was intoxicated. The offender had a prior assault conviction against the same victim for which he was sentenced to 30 days' imprisonment. The conviction in *Umpherville* was for aggravated assault, the victim having sustained permanent damage. Umpherville also had a prior record, had committed an assault on the victim two months earlier and, in defiance of a no contact

> provision, had resumed living with the victim. In *Bonneteau,* the global sentence was two years for three separate instances of assault, assault causing bodily harm and uttering threats in a domestic context. In *Ollenberger*, the sentence was four years for aggravated assault, involving stabbing, multiple serious injuries including permanent loss of three fingers, a fractured skull and broken arms.

[16] Taking into account the principles of sentencing as outlined in the *Criminal Code of Canada*, plus these important decisions from the Supreme Court of Canada, a fit and proper sentence for this 32-year-old First Nations man would be, on the s. 267(b) charge, 14 months time served. On the assault, nine months consecutive. On the s. 145 charges, two months concurrent on each with the 14 months time served, taken as an aggravating factor on the s. 267(b) charge, for a total of 23 months. I have given credit for the 14 months, essentially taking care of the s. 267(b) sentence.

[17] As made abundantly clear by the Supreme Court of Canada in *Ipeelee* and *Ladue, supra,* and cases before, sentencing is very much an individualized process.

[18] There is, at long last, a ray of hope to be found in this young man. Despite all he has gone through, and his upbringing, and the serious errors of judgment for which he has taken responsibility, I do believe there is a viable release plan with the support of his mother, his First Nation male supporters and his enhanced opportunity for work in the mining industry. Largely because of the Supreme Court of Canada decisions in *Ipeelee, Ladue, supra,* and *Gladue, supra,* and others, and given that I see that there is a ray of hope in this case, I am prepared to order that the nine months remaining be served conditionally in the community. I never thought I would do that in a case where the most serious offence was committed while he was violating three conditions of his

bail and while there have been so many previous instances of violations of court orders, but I do believe the Supreme Court of Canada is telling us that if there seems to be a viable plan and a ray of hope, sentencing is very much individualized, and we should work to have a creative sentence which will not endanger the community but will foster a major turnaround for this young man.

[19] That having been said, the nine months conditional sentence order will have some very onerous conditions, and they will be as follows:

1. Keep the peace and be of good behaviour, and report to the Court when required to do so, including on Friday, May 18th at 10:30 a.m.

And that will be before me.

2. Remain within the Yukon Territory unless you have the written permission from the Supervisor or the Court;
3. Notify the Supervisor in advance of any change of name or address, and promptly notify the Supervisor of any change of employment or occupation;
4. Report to the Supervisor within two working days immediately upon your release from custody and thereafter when required by the Supervisor and in the manner directed by the Supervisor;
5. Reside with your mother as approved by your Supervisor, abide by the rules of the residence, and not change your residence without the prior written permission of your supervisor;

Very important:

6. Abide by a curfew by remaining within your place of residence between the hours of 1:00 p.m. and 9:00 a.m. daily for the first two months, except with the prior written permission of your Supervisor, except in the actual presence of a responsible adult approved in advance by your Supervisor. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition. For the remaining seven months, the curfew will be from 4:00 p.m. to 9:00 a.m.

So what that means in a nutshell is that for the first two months, instead of serving the time at the Correctional Centre, he will be serving the time in the community at his mother's residence, and he is not to be outside the residence after 1:00 p.m. in the afternoon or before 9:00 a.m. In other words, he has a four-hour opportunity to be outside of his residence for the first two months. After that, it enlarges to a seven-hour window of opportunity for doing what he needs to do in the community. Now, having said that, Term 6 does give the discretion to the Supervisor to grant a work release. So, for example, if he were to get a job in a mining camp that can all be written up pursuant to the Term 6.

7. Abstain absolutely from the possession or consumption of alcohol and controlled drugs and substances except in accordance with a prescription given to you by a qualified medical practitioner;
8. Provide a sample of your breath or urine for the purposes of analysis upon demand by a Peace Officer who has reason to believe that you may have failed to comply with this condition;

9. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
10. Take such alcohol and/or drug assessment, counselling or programming as directed by the Supervisor;
11. Report to the Family Violence Prevention Unit to be assessed and attend and complete appropriate programming as directed by your Supervisor;
12. Take such other assessment, counselling and programming as directed by your Supervisor, including meeting regularly with an identified support group;

Another extremely important condition, and I have included this condition for three reasons: one, what you told me in court; two, what was mentioned in the Pre-Sentence Report by Mr. Brass; and thirdly, in making this condition, I want to make it abundantly clear that I am not blaming the victim for what happened here, but clearly the relationship with Amber Blanchard is not good for you. I am not saying whose fault it is; I am just saying that it is not good. Therefore, it cannot continue. Thus, the condition is:

13. Not to contact directly or indirectly or communicate in any way with Amber Blanchard, and report immediately to your Supervisor any attempts by her to contact you;
14. Not to attend at or within 50 metres of Amber Blanchard's residence;
15. Make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts.

[20] Now, that conditional sentence order is on the s. 266 charge. Also on the s. 266 charge, there will be a probation period following that for two years. It will contain many of the same conditions as before. In terms of the tick sheet that I have, it will contain conditions 1, 2, 3, 7, 8, 9, 12, 13, and I am adding 14:

> 14. There will be 60 hours of community service work within ten months of the commencement of the probation order.

The curfew will be over when the conditional sentence order expires.

[21] There will be a $100 victim surcharge on all of the five charges, for a total of $500, and I will give him a year to pay that.

[22] Based on the correspondence that we had from the Crown, which the defence is aware of, I will make an order for the DNA sample. Essentially, it goes to update his profile. Section 267(b) would be a primary designated offence.

[23] Now then, Ms. Atkinson, do you have any questions on this?

[24] MS. ATKINSON: No, nothing arising.

[25] THE COURT: Okay, and Ms. Bogle?

[26] MS. BOGLE: No, thank you, Your Honour.

[27] THE COURT: Now, in terms of the logistics of this, Madam Clerk, this order can be prepared today for him?

[28] THE CLERK: Yes. I just have a question. Are the other two months also to be served conditionally?

[29] THE COURT: The two months will run concurrently with the 14 months that is time served.

[30] For purposes of today, and we can add this to the conditional sentence order it now being past 1:00 p.m., he is to proceed immediately to his mother's residence in the company of -- and who is here today with him?

[31] UNIDENTIFIED SPEAKER: Mr. Brass, Johnny Brass.

[32] THE COURT: Mr. Brass, I would like you to accompany him directly to his mother's house when he has his court papers, okay, and then, Mr. Quock you are not allowed out again until tomorrow morning at nine o'clock.

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LUTHER T.C.J.