

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Blanchard*, 2005 YKSC 22

Date: 20050415
Docket No.: 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
Elaine Cairns

For the Crown
For the Defence

MEMORANDUM OF RULING (Judicial Interim Release)

INTRODUCTION

[1] This is an application by Mr. Blanchard to adjourn sentencing and be released from custody in order to prepare an application and be assessed for a curative discharge pursuant to section 255(5) of the *Criminal Code*. The curative discharge procedure is available for persons convicted of impaired driving who are in need of curative treatment for alcohol consumption so long as it is not contrary to the public interest. Mr. Blanchard's need is great but the question is whether it is in the public interest.

[2] The Crown does not oppose the application but has significant reservations. The difficult aspect of the application is that Mr. Blanchard cannot be adequately assessed to determine if a curative discharge should be granted without being released from custody.

THE FACTS

[3] Mr. Blanchard has recently been convicted of driving while impaired, dangerous driving, driving while prohibited and consuming alcohol contrary to a Probation Order. All these offences occurred on September 29, 2003. I have described them in detail in my reasons for judgment in *R. v. Blanchard*, 2005 YKSC 10. The offences were committed in a vehicle owned by the Selkirk First Nation. I remanded Mr. Blanchard into custody on February 16, 2005, to await sentencing.

[4] Mr. Blanchard has a horrendous record of ten impaired charges and numerous breaches of court orders, most of which relate to a serious addiction to alcohol.

[5] There has been a ray of hope. Prior to his convictions for these recent offences and since August 2004, he was residing at the Adult Resource Centre (ARC) in Whitehorse. The ARC is a half-way house that permits remand prisoners or recently released persons to receive treatment and reside at a structured residence. The ARC is not available as a residence at this time.

[6] Mr. Blanchard has attended weekly sessions with an addictions counsellor to work on recovery from his alcoholism and planning for maintaining sobriety on his return to Pelly Crossing.

[7] However, he experienced some relapses and was placed in the Alcohol and Drug Services Live-In Treatment Program from January 10 to February 4, 2005, which he

completed. He was an active participant and developed his own after-care plan addressing future goals, high-risk situations and lifestyle changes. There is a follow-up program in October 2005. He has also attended local Alcoholics Anonymous meetings.

[8] His proposed release is not without risk. According to the LSI - R risk assessment tool, he has a moderate risk of reoffending. He has a poor record of complying with court orders. However, he has taken responsibility for his actions and offered some remorse. He has yet to grasp that his alcoholism is his responsibility and that it can result in injuring or killing people if he gets behind the wheel of an automobile.

[9] He has been sober since November 24, 2004, under a structured environment. He has met with Dr. de la Mare, who has a great deal of experience with assessing suitability for curative discharges. Dr. de la Mare described Mr. Blanchard as having no evidence of recent alcohol use. He states that it is necessary to assess Mr. Blanchard's ability to function at a job and in society before he can provide the Court with an assessment of Mr. Blanchard's suitability for a curative discharge. He also indicated that having a spouse who drinks makes recovery difficult, as it requires major lifestyle changes. He described Mr. Blanchard as being totally out of control when he drinks. Dr. de la Mare will be able to provide an opinion on Mr. Blanchard's suitability by November 2005.

[10] Mr. Blanchard has potential employment doing siding for residential houses. The employment could last until the Fall.

DECISION

[11] The curative discharge provision of the *Criminal Code* is not restricted to those with less extensive criminal records. In fact, the repeat offender may be a suitable

candidate because of his chronic alcoholism. The underlying assumption is that curative treatment may offer more hope for rehabilitation than a long period of incarceration which does not address the underlying causes of alcoholism nor provide for a plan on release from prison. Curative treatment does offer the hope of Mr. Blanchard taking control of his life and ending his cycle of alcoholism and incarceration.

[12] I have no concern about Mr. Blanchard's attendance in court. The issue is the protection and safety of the public while he is awaiting sentence. That can only be addressed by release conditions that are strict and enforced. The potential for rehabilitation must be given a chance but the public understandably has no tolerance for releasing alcoholics without strict terms and conditions. It is important that Mr. Blanchard have a support system that includes Dr. de la Mare, an alcohol counsellor, an Alcoholic Anonymous sponsor, and his employer as well as his Bail Supervisor. I order the Bail Supervisor to deliver a copy of these release terms to Dr. de la Mare, Tracy Korotash, J.R. Ray, Gilbert Trudeau and his sponsor at Alcoholics Anonymous. It is also a condition of this release order that the Bail Supervisor, Shayne King, approve the residence or any change of residence by Mr. Blanchard.

[13] The terms of Mr. Blanchard's judicial interim release are;

1. to keep the peace and be of good behaviour;
2. to remain in the Yukon unless you have the prior permission of this Court;
3. to report to your Bail Supervisor as directed;
4. to appear in this court on June 2, 2005 at 9 a.m., August 30, 2005, at 1:30 p.m. and on October 4, 2005 at 1:30 p.m. for progress reviews;

5. to reside with Fred Blanchard and then as directed by your Bail Supervisor and not to change your residence without the prior written permission of your Bail Supervisor or the court;
6. to abstain absolutely from the possession, consumption and purchase of alcohol, non-prescription drugs and other intoxicating substances and submit to random breath sample tests, breathalyser tests, urinalysis, bodily fluids or blood tests upon demand by a peace officer or probation officer who has reason to believe that you have failed to comply with this condition;
7. not to be at any place where the primary purpose is the sale of alcohol;
8. attend for alcohol assessment, treatment and counselling as directed by your Bail Supervisor;
9. attend Alcoholics Anonymous meetings twice a week and obtain an AA sponsor and inform the Bail Supervisor of your sponsor within 30 days;
10. not to be at Pelly Crossing or Mayo without the prior written permission of your Bail Supervisor, such written permission to be kept on your person during such visit and forwarded by the Bail Supervisor to the RCMP detachments in Pelly Crossing and Mayo;
11. not to drive or operate any vehicle in any place;
12. to abide by a curfew, except with the prior written consent of your Bail Supervisor, by remaining within your place of residence between the hours of 9:00 p.m. and 7:00 a.m. and if a Bail Supervisor or peace officer comes to your residence, you must allow them to enter in order to ensure that these conditions are abided by;

13. to maintain employment and not to change or terminate your employment without the prior written permission of your Bail Supervisor;
14. to report to Dr. de la Mare as he directs once a week for the first month of this order and every two weeks thereafter as directed by Dr. de la Mare;
15. to submit to blood tests as requested by Dr. de la Mare.

[14] The sentencing of Mr. Blanchard is adjourned to the criminal chambers on October 4, 2005, at 1:30 p.m. or such earlier date as may be required, to fix a date for sentencing.

VEALE J.