

Citation: *R. v. Blanchard*, 2006 YKTC 8

Date: 20060120
Docket: 04-00489
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

R e g i n a

v.

Carl David Blanchard

Appearances:

Kevin Drolet

Malcolm Campbell

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] Mr. Blanchard is a 45 year old First Nations man who has pled guilty to driving a motor vehicle when the concentration of alcohol in his blood exceeded 80 mg. of alcohol in 100 milliliters of blood, contrary to s. 253(b) of the *Criminal Code*. This offence took place in Pelly Crossing on October 7, 2004. The police received a complaint from Valerie Silas, Mr. Blanchard's girlfriend. She told the police that Mr. Blanchard had taken her vehicle while he was intoxicated. Mr. Blanchard was stopped when he arrived home, in his own driveway. The police detected a strong odour of liquor. He registered "fail" on an approved screening device, was arrested and provided breath samples with readings of 180 mg. of alcohol in 100 milliliters of blood.

[2] At the time, Mr. Blanchard was disqualified from holding a driver's licence. As a result, he also plead guilty to the offence contrary to s. 266(1) of the *Yukon Motor Vehicles Act*.

Criminal History

[3] Mr. Blanchard has a criminal record consisting of 35 prior convictions, beginning in 1978 when he was 17 years of age. Of these convictions, six are of particular interest, involving drinking and driving. The dates of these offences and the sentences imposed are set out below.

1986	over .08	\$350
1990	over .08	14 days plus 1-year prohibition
1994	over .08	90 days plus 1-year prohibition
1997	over .08	4 months plus 18 months prohibition
1998	over .08	45 days
2000	refuse breath sample	5 months plus 3-year prohibition

Moreover, Mr. Blanchard has 16 process convictions, primarily for breaching probation orders.

[4] Notwithstanding the high blood-alcohol reading of 180 mg/%, a reading that is to be considered an aggravating fact on sentencing, the Crown did not file a notice that would trigger the application of a minimum period of incarceration. In light of the information contained in the pre-sentence report, Crown counsel intended to provide the court with flexibility when considering an appropriate sentence.

Family History

[5] Mr. Blanchard is one of nine children and a member of the Na-Cho Nyak Dun First Nation based in Mayo, Yukon. His father was often absent and his mother abused both alcohol and the children. He left home when he was 16 years of age.

Education

[6] Mr. Blanchard got as far as grade nine in school, when he was expelled after an altercation with a teacher.

Employment

[7] Mr. Blanchard has held a variety of jobs and has a number of skills that have kept him employed steadily, although often seasonally. At the current time, he is a woodcutter.

Family

[8] Mr. Blanchard has had three prior significant relationships. He has four children, for whom he is required to pay maintenance. At the time of the offence, he was in a relationship with Valerie Silas. It was a dysfunctional relationship, with reports of Ms. Silas physically assaulting Mr. Blanchard when they were intoxicated.

[9] Mr. Blanchard is currently in a relationship with Paula Short, one that the pre-sentence report describes as a healthy one, with good communication, mutual respect and many common interests.

Emotional

[10] Mr. Blanchard has not fully resolved some abuse and grieving issues. In the past, he has resorted to alcohol to deal with stress in his life. This is an area he needs to address.

Alcohol and Drugs

[11] Although he and Ms. Short currently use alcohol in moderation, Mr. Blanchard's personal history involves long-standing and consistent alcohol abuse. He started drinking when he was 12 years of age. His mother was an alcoholic and was not concerned when the children drank. He became

dependent on alcohol as the only way he knew how to cope with life's stresses. He has, in the past, been able to maintain sobriety for extended periods of time.

[12] The pre-sentence reports states:

He recognizes that his drinking has gotten in the way of social relationships, it has been a factor in his criminal behaviours, it has fogged his judgement and conscience and allowed him to do things he knew were wrong and would not have done had he not been drinking.

His current alcohol consumption is limited to a couple of beer each week. Because of his current living environment, his stressors have been reduced.

Attitude

[13] Mr. Blanchard has cooperated with his bail supervisor in preparing the pre-sentence report and has reported regularly as required. He is motivated to deal with his alcohol problem (at page 7):

Mr. Blanchard believes that he could comply with all of the conditions of a curative discharge or a conditional sentence. This would include a curfew, house arrest, abstaining from intoxicants and treatment programs. He indicates that he is motivated to comply with any order given by the court and he would follow all of his conditions "right down the line" if given what he calls "a second chance".

Recommendations

[14] Based solely on Mr. Blanchard's criminal record and past performance in following court orders, Mr. Blanchard would not be a candidate for a curative treatment or a conditional sentence. More recently, however, Mr. Blanchard has changed his lifestyle significantly. Indeed, the change is so dramatic that his bail supervisor writes (at page 8):

Mr. Blanchard has struggled with substance abuse his whole life, but he has had periods of sobriety, the longest lasting for almost two years. He has had treatment in the past, without success. During the past year this pattern or lifestyle did not change until he entered into a new relationship. For almost three months now Mr. Blanchard has severely curtailed his substance usage, he has made all of his appointments with this writer and he has found stable work and a good home in the Whitehorse community. He feels that a treatment based sentence would be of best benefit to him.

The writer has known Mr. Blanchard both while he was incarcerated and in the community. He has done extremely poorly in the past and was never able to offer any indication that he wanted to change his lifestyle or quit drinking. He resisted any kind of authority over him which is evident in the eleven breaches of probation that the writer is aware of. The writer would not have supported any kind of community based sentence prior to October, 2005. Since that date however, Mr. Blanchard has made a recognized effort to make productive changes in his life. His progress has been monitored and he has impressed me with his motivation to change.

This report does not rule out a community-based sentence, but does emphasize that it should provide for close supervision.

[15] Mr. Blanchard's change in lifestyle has also made an impression on Crown counsel. As mentioned earlier, Crown counsel did not file a notice to seek greater punishment so as to allow the court the flexibility to consider a community based disposition. Crown counsel also filed the case of *R. v. Fordyce*, 2004 YKSC 36, which I will deal with later.

The Law: General Deterrence and Denunciation

[16] There is a large body of case law which states the importance of general deterrence and denunciation in cases of impaired driving, starting with *R. v. McVeigh* (1985), 22 C.C.C. (3d) 145 (Ont. C.A.).

[17] The Ontario Court of Appeal returned to the issue in *R. v. Biancofiore* (1997), 119 C.C.C. (3d) 344, after conditional sentences were introduced as a sentencing option. Rosenberg J.A. reviewed case law and amendments made to the *Criminal Code* in 1985 and stated at paras. 23 and 24:

The issue presented by this Crown appeal is whether in the circumstances of this case the objective of general deterrence can be met by a conditional sentence. The general deterrent effect of incarceration is somewhat speculative and I adhere to the view I expressed ... that incarceration should be used with great restraint where the justification is general deterrence. There are, however, offences that are more likely to be influenced by a general deterrent effect. For the reasons expressed by this court in *McVeigh*, as reinforced by the 1985 statutory initiatives, it is my view that incarceration for crimes like those committed by this respondent can be justified on the basis of general deterrence....

[18] The Supreme Court of Canada followed this line of reasoning in *R. v. Proulx*, [2000] S.C.C. 5, stating at para. 129:

...[D]angerous driving and impaired driving may be offences for which harsh sentences possibly provide general deterrence. These crimes are often omitted by otherwise law-abiding persons, with good employment records and families. Arguably, such persons are the ones most likely to be deterred by the threat of severe penalties.

[19] These principles have been applied in many Yukon cases: for example, *R. v. Redies*, 2004 YKTC 88; *R. v. Stone*, 2004 YKCA 11; *R. v. Mullins*, 2002 YKTC 3.

[20] On the other hand, Yukon courts have also imposed conditional sentences of imprisonment in cases involving a history of drinking and driving convictions:

See *R. v. Gagnon*, 2003 YKTC 89; *R. v. Charlie*, 2002 YKTC 86; *R. v. Fordyce*, 2004 YKSC 36. In the Fordyce case, the accused had a criminal record with five previous, albeit, dated convictions. The court stated (at para. 28):

I have no difficulty accepting the principle that denunciation is an important factor when dealing with drinking and driving offences. I fully agree with the statement that every drinking driver is a potential killer.

However, I am also of the view that incarceration is not the only means to denounce drinking and driving and deter others from drinking and driving. In my view, the sentencing Judge has erred by not considering the particular circumstances of this offender and this offence when he assessed the safety of the community and the fundamental purpose and principles of sentencing.

The statements that a conditional sentence should be rare for an impaired driver, that impaired drivers make unusually poor candidates for conditional sentences, that impaired drivers are difficult to supervise, are all generalizations that do not address the circumstances of this impaired driver.

Mr. Fordyce has in fact made some significant efforts to change his life-style. Incarceration, unfortunately, does nothing to create the Alcoholics Anonymous support system that he and the safety of this community so badly need.

[21] Reference should also be made to the Supreme Court of Canada decision in *R. v. Gladue*, [1999] 1 S.C.R. 688 and the fact cited therein that Canada's record of over-incarceration cannot instill a sense of pride. Moreover, Parliament requires all sentencing judges to advert to s. 718.2(e) of the *Criminal Code* and consider all available sanctions other than imprisonment that are reasonable in the circumstances for all offenders, with particular attention to the circumstances of aboriginal offenders.

[22] Parliament has recognized that in some instances the public interest can be better served, not by incarceration, but by curative treatment of drivers convicted of drunk-driving offences: see s. 255(5) of the *Criminal Code*.

Mr. Blanchard, recognizing that a curative discharge would probably not be available to him because of the delay already occasioned in proceeding with this case, has asked that I impose a curative disposition by way of a conditional sentence of imprisonment. He indicated through counsel that he would abide by any and all conditions that the court considered appropriate, including treatment conditions.

[23] I am prepared to consider such an exceptional sentence on the facts of this case for the following reasons:

- i) Mr. Blanchard grew up in an alcoholic and abusive family – an environment where alcohol abuse was normal and expected behaviour.
- ii) He clearly has a long-standing alcohol addiction, having started drinking at age 12.
- iii) He appears to have turned his personal life around, in that he has changed his lifestyle significantly, he is in a supportive and positive relationship, he is employed and he is committed to pursuing a therapeutic and curative program.
- iv) He has been incarcerated on numerous occasions in the past, with no positive effect (not surprising, I might add, since historically there has been a dearth of programming at the Whitehorse Correctional Centre and few, if any at all, in small Yukon communities, including Mr. Blanchard's home town).
- v) In the Yukon, conditional sentences are rigorously supervised and community safety would not be endangered by such an order.
- vi) Neither the pre-sentence report nor Crown counsel ruled out the possibility of a community disposition.

- vii) There was no evidence of erratic driving, accident or injuries.
- viii) I am satisfied that a conditional sentence can be crafted that sends the message of general deterrence and denunciation to the community.
- ix) Where the offending behaviour is driven by a long standing addiction to alcohol, a therapeutic intervention can be more effective and can better protect the public than traditional punishment – provided the offender has demonstrated both readiness and willingness to change.

[24] I also take judicial notice of the history of First Nations people in the Yukon and their disadvantaged position in relation to the dominant culture. While approximately 20% of the Yukon population is First Nations, about 75% of the clients of the justice system are aboriginal.

[25] In *R. v. Proulx*, supra, at para. 104, the Supreme Court of Canada held that there need not be any equivalence between the duration of the conditional sentence and the jail term that would otherwise have been imposed. In my opinion, a just and appropriate sentence in this case would be a conditional sentence of imprisonment for a period of 16 months followed by a probation order of 12 months. This disposition is intended to be therapeutic and curative: failure by Mr. Blanchard to follow through on programming as directed should result in immediate consequences. The terms of the conditional sentence are as follows:

1. Keep the peace and be of good behaviour and appear before the court when required to do so by the court;
2. Report to a supervisor immediately after the making of the conditional sentence order, and thereafter, when required by the supervisor and in the manner directed by the Conditional Sentence Supervisor;

3. Remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the Conditional Sentence Supervisor;
4. Notify the supervisor in advance of any change of name or address, and promptly notify the supervisor of any change of employment or occupation;
5. Take any psychological assessment, counseling, programming and treatment as and when directed by your Conditional Sentence Supervisor;
6. Take such other assessment, counseling, programming and treatment as directed by your Conditional Sentence Supervisor;
7. Take such alcohol assessment, counseling, programming, treatment, attend a residential alcohol treatment program and abide by the rules of that residence as and when directed by your Conditional Sentence Supervisor;
8. Abstain absolutely from the possession, consumption or purchase of alcohol, non prescribed drugs and other intoxicating substances as outlined in Schedule I – VIII of the *Controlled Drugs and Substances Act* and submit to a breathalyzer test upon demand by a peace officer or Conditional Sentence Supervisor who has reason to believe that your have failed to comply with this condition;
9. Perform 40 hours of community work service at the times and places as directed by the Conditional Sentence Supervisor or such other person as the Conditional Sentence Supervisor may designate. This community work service is to be completed by September 1, 2006;
10. Make such reasonable efforts to find and maintain suitable employment and provide the Conditional Sentence Supervisor with all necessary details concerning your efforts;

11. Abide by a curfew by remaining within your place of residence between the hours of 6:00 p.m. and 6:00 a.m. daily unless in the actual presence of a responsible adult designated by the Conditional Sentence Supervisor or unless with the prior written permission of the Conditional Sentence Supervisor. You are to answer the telephone and the door during reasonable hours of your curfew. Failure to do so will be a presumptive breach of this order;
12. You are not to allow any alcohol or consumption of alcohol in your residence or on your property associated with your residence. You will allow the Conditional Sentence Supervisor to inspect your house and surrounding property upon demand and without notice to ensure that you are complying with this condition;
13. You are not to attend at any licenced bar, tavern, off-licence or other premise whose primary purpose is the sale of alcoholic beverages;
14. You are to participate in such relationship or family counseling (preferably with your partner) as and when directed;
15. You will attend court for a review of this order on March 24, 2006 at 11:00 o'clock; on April 10, 2006 at 1:30 o'clock; on May 19, 2006 at 11:00 o'clock and thereafter as directed by the court or by your supervisor;
16. You are to contact a medical practitioner willing to counsel and supervise you throughout this order by liver enzyme and other testing and direct said medical practitioner to provide such testing results to your supervisor and otherwise report to your supervisor or the court on your progress.

[26] The terms of the 12 month probation order are as follows:

1. Keep the peace and be of good behaviour and appear before the court when required to do so by the court;
2. Notify the Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change in employment or occupation;
3. Report to a Probation Officer within two working days after the coming into force of the probation order, and thereafter, when required by the Probation Officer and in the manner directed by the Probation Officer;
4. Remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the Probation Officer;
5. Take such psychological assessment, counseling, programming and treatment as and when directed by a Probation Officer;
6. Take such other assessment, counseling, programming and treatment as directed by your Probation Officer;
7. Take such alcohol assessment, counseling, programming, treatment and attend a residential alcohol treatment program as and when directed by a Probation Officer and abide by the rules of that residence;
8. Abstain absolutely from the possession, consumption or purchase of alcohol, non prescription drugs and other intoxicating substances as outlined in Schedule I – VIII of the *Controlled Drugs and Substances Act* and submit to a breathalyzer test upon demand by a peace officer or Probation Officer who has reason to believe that you have failed to comply with this condition;
9. Make reasonable efforts to find and maintain suitable employment and provide the Probation Officer with all necessary details concerning your efforts;

10. You are not to allow any alcohol or consumption of alcohol in your residence or property associated with your residence;
11. You are not to attend at any licenced bar, tavern, off-licence or other premise whose primary purpose is the sale of alcoholic beverages;
12. You are to participate in such relationship or family counseling (preferably with your partner) as and when directed.

[27] Pursuant to s. 259 of the *Criminal Code*, you are prohibited from operating a motor vehicle for a period of 64 months, comprised of the length of the conditional sentence plus five years. I am satisfied that notice for greater punishment could be and was given by the Crown with respect to the s. 259 driving prohibition, although not with respect to the punishment prescribed by s. 255.

[28] I also recommend that Mr. Blanchard be eligible for the Interlock Program at the earliest opportunity, provided he has not breached his conditional sentence order.

[29] As Mr. Blanchard is working, he will also pay a \$100.00 victim fine surcharge; nine months to pay.

[30] With respect to the charge contrary to s. 266 of the *Yukon Motor Vehicles Act*, there will be a fine of \$500.00, payable within six months.

Lilles T.C.J.