

Citation: *R. v. Blanchard*, 2008 YKTC 49

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Docket: T.C. 07-11006A  
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T.C. 07-11058  
Registry: Dawson City  
Heard: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Cozens

**REGINA**

v.

**JOSEPH GORDON BLANCHARD**

Appearances:  
Eric Marcoux  
Nils Clarke

Counsel for Crown  
Counsel for Defence

**REASONS FOR SENTENCING**

[1] COZENS T.C.J. (Oral): Mr. Blanchard has entered guilty pleas to six counts, the first count being a s. 253(a). The circumstances related to this charge are that on May 2, 2007, police were responding to an anonymous complaint that Mr. Blanchard had been drinking and was driving, and located him at his home in the City of Dawson with his engine running and him behind the wheel. He did not provide a breath sample when asked to do so but was clearly impaired. At that time, he was also under

a five year driving prohibition pursuant to the *Criminal Code* made July 5, 2004 that prohibited him from driving. That is Count 3 on that Information. File 11006A is also further aggravated by the fact that on February 22, 2008 he was observed driving a Skidoo in the City of Dawson contrary to that order.

[2] There is a further count under s. 267(b) to which he has entered a guilty plea. The circumstances of that charge are that on February 9, 2008, he, in the company of two others, entered the residence of Mr. Larry Lockrem. They had not been invited in. They went through an unlocked door. They were intoxicated. There was a dispute between Mr. Blanchard, another co-accused and Mr. Lockrem. There appears to be some history and in the context of that dispute, Mr. Blanchard struck Mr. Lockrem a number of times, causing him to have a cut above his nose and a black eye. There was some information that Mr. Lockrem may have been kicked in the groin as well.

[3] There are three charges under s. 145(3). One involves three curfew breaches, February 28th, 29th and March 2nd, in which Mr. Blanchard did not answer the door contrary to the terms of the recognizance that he was on. When he was arrested for these breaches on March 8th, he was noted to display symptoms of alcohol impairment and to have beer in his residence, which was contrary again to the terms of his recognizance, that he abstain from the consumption and possession of alcohol.

[4] There is one further charge under s. 145(3), the facts of which are admitted, that between February 14th and March 6th, 2008, after being released on a recognizance that required him to report, he never reported at all.

[5] He has approximately 100 days in custody for which there is a suggestion that he be given five months credit at one and a half to one, which is reasonable. Crown's position is for a global sentence of 18 months. Defence position is a global sentence of 16 months. They both agree that five months is appropriate credit for the time served.

[6] With respect to the criminal record of Mr. Blanchard, he has seven prior impaired driving convictions from 1987, 1989, 1990, twice, 1997, and two in 2004. He has three prior drive disqualifies, two from 1990 and one from 2002, and he has 11 prior assault offences, which include assault with a weapon, assault and unlawfully causing bodily harm. These go from 1988 through to 2004, as well as a number of breach charges on his record.

[7] His personal circumstances: he has some skills, known skills as an artist, as a carver. He has some mechanical aptitude. He has been the victim of a serious accident in which he was the intentional victim of an attack using a motor vehicle, which has caused him some ongoing medical issues and some cognitive issues that sort of ebb and flow into how much they affect him, but he still maintains some potential to make use of the skills that he has and to be a functional member of the community.

[8] His parents went to residential school. He is First Nations. There is no question that, of course, the impacts of his First Nation status need to be considered when looking at all of the circumstances that surround his life and surround the offences for which he finds himself in today, and without adding anything, to what the section of the *Criminal Code* under s. 718 dealing with the special status of First Nation individuals and the considerations that need to be taken when dealing with them in sentencing is.

That has, of course, simply been given further widespread credit in the community through the recent apology from the Government of Canada. So there is a recognition of that and that is a factor that needs to be taken into account in dealing with the sentence that reflects his personal circumstances, as well as the need to, of course, protect society.

[9] He has entered guilty pleas with respect to the s. 267. While it was close to trial, it was still sufficiently in advance of trial to ameliorate any of the expenses. It is not like it was on the morning of trial, where the witness was there on the day. He should be given considerable credit for that guilty plea and I will do so.

[10] The impaired driving offences: the circumstance of the impaired, in this case, is certainly not one of where the risk to the public is clearly obvious, in any sense of the word, but he did get from where he was drinking to his home, he was on a street, he does have a significant record, and, with impaired driving offences, the protection of the public is, of course, paramount. He should be given some credit for his efforts to try to deal with the alcohol issues that he has struggled with for so much of his life. They were not successful and did not result in a discharge, but hopefully he can continue to pursue some form of healing in that regard.

[11] With respect to the s. 259 offences, clearly aggravating are the priors, the fact that we are dealing with two rolled into one here. One of the only ways to really protect the public from the serious harm in impaired driving offences is the aspect of the loss of a driver's licence, which is and has been shown to be a great deterrent. When people do not comply with the driving prohibitions, they effectively nullify one of the greatest

deterrence aspects of impaired driving. So these offences need to be looked at quite seriously, and the sentence proposed certainly reflects the seriousness of it, the 90 days suggested, as well as the priors. It is just simply for your benefit, Mr. Blanchard, just to know that it is important, the compliance, with these driving disqualifications because of the fact that -- I think you are well aware of the harm that, in your case, you were the intentional victim of a vehicle, but there are a lot of unintentional victims of impaired driving offences and it is very important that you do not drive and that you never drive impaired again, because, frankly, when it comes to the sentence with your record, the sentence proposed in the globality is reasonable, but you could have been easily been looking at a greater sentence, as well, if there had been any aggravating circumstances on the impaired. You are going to get the benefit of a sentence today that does provide you with the -- it is inevitable, as Crown has tendered notice, but that made no difference in this case; this was not a suitable case for a conditional sentence in any event, and the range of sentence sought would clearly be in excess of what filing notice requires at a minimum, but you are still getting the benefit of a sentence that could have easily been higher with respect to the impaired and with respect to the globality.

[12] I am going to deal with the sentencing this way: There will be a sentence of one year on the s. 253(a). The record should reflect the one year; however, there will be credit of five months for his time in custody, so there is a remaining seven months left to serve on that.

[13] With respect to the 259, there will be a sentence of three months consecutive.

[14] With respect to the s.145 charges, there will be, on the failing to report charge, a sentence of 30 days consecutive. That is on the 57A file.

[15] With respect to the curfew breaches, there will be 30 days consecutive. That is on the 58 file.

[16] With respect to Count 4 of that Information, the abstain, there will be 30 days. That will be concurrent to the other two 145's.

[17] There will be a sentence of six months on the 267(b), and considering the principle of globality and the ranges sought and the closeness of the ranges, that time will be concurrent to time remaining to be served. That provides a sentence, not that that is always going to happen, kind of right in the middle of what both parties were seeking. The circumstances of the abstain breach, frankly, one reason it is concurrent is even though it could well be as a separate matter, consecutive, has nothing particularly aggravating about those circumstances, such as being in public or being in a situation that made it worse than it was. That is one of the factors that went into making that concurrent. There will be an order that you provide a sample of your DNA. That is a mandatory order,

[18] There will also be a s. 109 order with respect to the firearms prohibition; that will be for 10 years.

[19] The driving prohibition, in these circumstances I am prepared to go with the five year order, so the driving prohibition will be for a period of five years plus any period to which you are sentenced to imprisonment, as per s. 259(1).

[20] You shall be prohibited from operating a motor vehicle on any street, road, highway or other public place. So that is for five years. That includes, of course, snow mobiles, and I am aware your counsel would well have explained that all to you, what that means.

[21] There will be no order of probation. I agree with Crown, that this is not the case where that would be appropriate or necessary, and Mr. Blanchard will either - and noting that there has been gaps in his record and there have been times - Mr. Blanchard will either take the initiative to do the best he can to stay away from the system or he will not, and with respect to the driving prohibition, that is the same.

[22] Mr. Marcoux?

[23] MR. MARCOUX: The only comment I would like to add is concerning the firearms prohibition, considering the fact that he has already been ordered a 10 year one, we are submitting that this one should be for life. I think it is mandatory under s. 109.

[24] THE COURT: Is he on a prohibition right now?

[25] MR. MARCOUX: No, but he has been.

[26] THE COURT: There was an indictment on the 267, is that correct?

[27] MR. MARCOUX: That is correct.

[28] THE COURT: So we are dealing with a 109 order that -- I am just looking at the order.

[29] MR. MARCOUX: Yes. So the duration of the order in this case should be subparagraph (3).

[30] THE COURT: Any other case?

[31] MR. MARCOUX: And under s. 2, it is the first time, on the first conviction.

[32] THE COURT: From the offence --

[33] MR. MARCOUX: You can see on the record that in 2004, he already has been --

[34] THE COURT: It was in 2004 he was --

[35] MR. MARCOUX: -- that was there was a prohibition order imposed.

[36] THE COURT: A discretionary order. Was it a mandatory or discretionary? Okay, how does that read? It is not clear to me that that was mandatory or discretionary in 2004.

[37] MR. MARCOUX: Concerning the charges, he had the careless use of a firearm and assault causing bodily harm.

[38] THE COURT: Section 269 is --

[39] MR. MARCOUX: I would think it was a mandatory order but --

[40] THE COURT: So your position is it is mandatory, that it has to be for life?

[41] MR. MARCOUX: That is correct.

[42] THE COURT: Under (2). Any dispute with that, Mr. Clarke?

[43] MR. CLARKE: No.

[44] THE COURT: In that case, there shall be a prohibition order under s.109 that prohibits Mr. Blanchard from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance during the period specified in the order, which will be for life, noting that he has received a prohibition order in 1993 for 10 years, and then there was a subsequent order made in 2004, which is not exactly clear from the record but it was in relation to firearms offences in s. 269.

[45] Is that clear Madam Clerk?

[46] THE CLERK: Yes

[47] MR. CLARKE: Of course, Mr. Blanchard can come before the Court pursuant to s. 113, should he fall within the prescribed exemption, so.

[48] THE COURT: Anything else?

[49] MR. MARCOUX: I believe now the only issue left is the estreatment of the bail money but I guess -- I think the Crown has to file the application, then we will address it in due course.

[50] THE COURT: I am sure that the registry will be in contact with the Crown at some point to see what it intends to do. So that will go there. The remaining charges?

[51] MR. MARCOUX: Yes, I will direct the clerk to enter a stay of proceedings on all pending charges against Mr. Blanchard.

[52] THE COURT: The victim fine surcharges will be waived on all the charges.

[53] That is it, Mr. Blanchard; I wish you well. You have had a hard road; I hope it gets better.

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COZENS T.C.J.