

Citation: *R. v. Blanchard*, 2009 YKTC 140

Date: 20091211
Docket: 09-00434
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

ROBERT BLANCHARD

Appearances:
Nicola Pfeifer
Malcolm Campbell

Counsel for the Crown
Counsel for the defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Robert Blanchard is before me having entered guilty pleas to one count of driving while the concentration of alcohol in his blood exceeded the legal limit, and one count of driving while prohibited.

[2] The offences arose on September 1, 2009, at which point the RCMP received a complaint of a possible impaired driver at 2:30 in the afternoon. The caller had observed occupants within the vehicle consuming alcohol.

[3] The RCMP located the vehicle on 4th, confirmed it was the vehicle by the plates, which were apparently expired plates. They activated the emergency equipment, the vehicle turned and pulled into the first available parking spot, at which point Mr.

Blanchard, who had been the driver, exited the vehicle and began to walk away. He was given instructions by the officers to get back in the vehicle and he indicated to them that it was not his car. The instruction was repeated on several occasions and he did not comply. He did not, however, attempt to leave the scene after being told to get back in the vehicle, but he would not, nonetheless, get back in the vehicle.

[4] He admitted to the officers that he had been consuming alcohol and also admitted that he was on conditions requiring him to abstain from the possession or consumption of alcohol. The police noted a number of beer cans and bottles in the vehicle, and they also noted some indicia of impairment with respect to Mr. Blanchard. He was provided a demand to provide a breath sample into an approved screening device, which registered as a fail. He was ultimately returned to the detachment. There appears to have been some difficulty in securing a sample. He made indications that there were some difficulties with his lungs, but ultimately the police were able to secure two suitable samples, one at 160 milligrams percent, and another at 150 milligrams percent.

[5] Mr. Blanchard comes before the Court with a prior criminal record. It is a lengthy record, and it is a very related record. There are a total of 11 drinking and driving incidents that resulted in convictions on his record. There are also, at least on six of those occasions, convictions for driving while disqualified. So Mr. Blanchard does have a lengthy history. His most recent conviction relates to an incident in 2003. He was ultimately granted a curative discharge in 2006, at least with respect to the impaired driving count. There were some related offences arising from the incident which resulted in a conditional sentence, but he was granted a curative.

[6] Unfortunately, he appears to have struggled considerably over the course of his curative and it was ultimately revoked in 2009 and he was re-sentenced to a term of three months in jail, in recognition of some of his ongoing efforts and renewed commitment to sobriety. That decision of Mr. Justice Veale was recently upheld by the Yukon Court of Appeal. However, it appears that following that revocation and sentencing, Mr. Blanchard has again struggled with the issue of alcohol and maintaining sobriety. He had been attending AA and ADS and seeing Dr. De la Mare. However, in May of this year, as described by his counsel, he appears to have gone off the rails.

[7] He contracted tuberculosis and became significantly ill and unable to work. He also experienced some family difficulties, all of which resulted in depression, and ultimately his returning to alcohol. He is now 46 years of age, a member of the Selkirk First Nation. He is currently single but does have an adult daughter.

[8] One of the positives in his background is he appears to have a very strong work ethic and a good work record. Up until his illness in May he had been working for Han Construction, as well, over the past few years, with other individuals doing construction. He does not have his carpentry qualifications but he has been working while in custody on upgrading with the hopes to challenge the exam for those qualifications. So that is a positive.

[9] However, this is a case in which there are also numerous aggravating factors, most notably his criminal record and the number of related offences on that record. Also, of course, the presence of alcohol in the vehicle and the four passengers that were also present in the vehicle are aggravating features, and the fact that he was

subject at the time to a probation order with an abstain condition and a driving prohibition.

[10] There have been a number of cases filed before me which speak of the seriousness of impaired driving and the importance of there being sentences which speak to the issue of deterrence and denunciation, sentences which make it significantly less attractive for other individuals to similarly get behind the wheel under the influence of alcohol. They are also cases which, of course, speak to the significant risk to public safety, which is presented by individuals who get behind the wheel under the influence of alcohol.

[11] We are, in this case, as in any impaired case, fortunate that we are talking only about the offence of impaired driving and not the offence of impaired driving causing either bodily harm or death. I am satisfied, based on everything that is before me, that the dominant sentencing principles in this particular case are denunciation, deterrence and protection of the public.

[12] In terms of the range of sentence, Crown is suggesting that I consider a sentence of three years for the impaired to be followed by one year consecutive on the driving while disqualified and a lifetime driving prohibition.

[13] Defence does not take issue with the appropriateness of a lifetime driving prohibition in Mr. Blanchard's circumstances, but suggests that a global sentence of two years less a day reduced by credit or time spent in remand would be appropriate in all of the circumstances. It should be noted that Mr. Blanchard has spent 102 days in

remand to this point. At the regular credit of one and a half to one he would be entitled, in my view, to credit for five months of pre-trial custody.

[14] In balancing all of the factors and considering the positions of counsel, I am satisfied that the sentence must be a lengthy one. However, there have been no cases that have been presented before me that would put it quite in the range as suggested by Crown. *R. v. Donnessey*, [1990] Y.J. No. 138, has been included and it has long been considered one of the most significant impaired driving decisions in the Yukon. It is a decision out of the Yukon Court of Appeal in which they overturned the original sentence that Mr. Donnessey had received and raised that sentence to one of two years less a day, as they were sentencing him on his 11th impaired drinking and driving related conviction.

[15] In considering the appropriate range of sentence for this case, I would note that *Donnessey* does extend back to 1990; the Court of Appeal decision is in March of 1990. There has been a general increase in sentences for drinking and driving offences since that time and there have also been two occasions upon which Parliament has chosen to raise the mandatory minimums that relate to impaired driving offences.

[16] So when I consider that general progression as well as the *Donnessey* decision, and when I consider the personal circumstances of Mr. Blanchard, I am satisfied that the appropriate sentences are as follows. I am satisfied that the sentence for the drinking and driving offence itself would be two years less a day and that the appropriate sentence with respect to the driving while prohibited would be one of -- sorry, I think the most appropriate way of resolving the driving while prohibited is to deal

with the credit for the remand time. So I am going to sentence him to one day deemed served by his attendance in court today and I am going to credit him for five months spent in pre-trial custody.

[17] The sentence, as I indicated, for the impaired driving offence will be one of two years, less a day. I do believe, in reaching that conclusion, that there is value in Mr. Blanchard remaining in the Territory, a significant factor that I have considered, as well, in arriving at that sentencing length.

[18] I will waive the victim fine surcharge and also make the order that there be a lifetime driving prohibition. In Mr. Blanchard's circumstances, given his history, particularly for driving while prohibited, I think it is entirely appropriate that he not be entitled to drive at all.

[19] THE COURT: The remaining counts?

[20] Ms. PFIEFER: Stayed, Your Honour.

[21] THE COURT: Okay, thank you.

RUDDY C.J.T.C.