

Citation: *R. v. Blanchard*, 2012 YKTC 24

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11-00210
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Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

MICHELLE GEORGINA BLANCHARD

Appearances:

John Phelps
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Ms. Blanchard is before me for sentencing with respect to one offence of assault with a weapon, four offences for breaching the terms of her release, and one offence for fraudulent personation. The most serious of the offences is the assault with a weapon. There are very limited facts with respect to that matter, but essentially it amounts to Ms. Blanchard stabbing her mother, resulting in a punctured lung, at a time where both of them were consuming large amounts of alcohol. There is some question as to whom, if anyone, recalls clearly what did or did not

happen on that night, but Ms. Blanchard has accepted responsibility for causing those injuries.

[2] She was released and subject to conditions on a number of occasions, and has now entered pleas for various breaches of those conditions, including failing to report in March of 2010 as required, also failing to remain within the Yukon Territory, as she decided to leave the Territory without permission. Lastly, there is a breach for failing to abstain in November of this year. The final offence, the fraudulent personation, involves Ms. Blanchard giving a false name to the RCMP when she was pulled over in a vehicle knowing that there were outstanding warrants for her arrest.

[3] She comes before the Court with no prior criminal record, but is going to have one now with a number of convictions. As noted, she has done a number of things in Wellness Court which are very positive. Those included the completion of a 90-day residential treatment program in B.C. while residing on strict conditions at a halfway house in B.C. She has also done some counselling and programming here in the Yukon upon her return from B.C., including counselling with Evann Lacosse and Kate Hart. She has been in custody since the November offence, but I understand has used her time positively by engaging in some counselling or programming with Mr. Morton, as well as meeting with the psychiatrist and an elder. It is evident to me, from the number of people that have taken the time to be here that she has a great deal of support from her community and from her family, which, certainly, it is my hope will be of assistance to her once she is back in the community and working on the issues which have brought her into conflict with the law.

[4] Ms. Blanchard suffers from a significant substance abuse problem. She has had periods of time where she has been able to maintain sobriety, and others where she has struggled, so it is clear that additional work is required. But I understand from Mr. Morton that there appears to be a real change in her level of commitment, and that she is looking forward to making those changes in the future.

[5] There is a joint submission before me suggesting, essentially, a sentence of time served plus two years probation to give her ongoing supports, and structure and supervision as she continues to address those underlying issues. I am satisfied that what is being suggested is within the range because of the efforts that Ms. Blanchard has put into Wellness Court. Although she did not fully complete, there were some things that she did finish that were in her best interests, and she certainly is entitled to credit for the efforts that she did make.

[6] So, I am satisfied, based on all of the information before me that the appropriate sentence is one of time served plus two years probation. I am satisfied that the breakdown as suggested by Crown is appropriate. The formal sentence is going to be one day in custody on each of the counts that are before me. As there is no actual sentence of time served in the *Code*, what we do is one day deemed served by her attending court today. Then I would ask that her record reflect credit as follows: On the s. 267(a), there will be credit of eight months, and there will be in addition a probation order added to that count for a period of two years. With respect to the first 145, a credit for seven days consecutive, the next 145, again, credit for seven days consecutive; the third 145, credit for seven days concurrent; on the 403, credit for 30 days consecutive; and on the final 145, credit for 15 days consecutive.

[7] The terms of the probation order will be, Ms. Blanchard, that you:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;
4. Remain within the Yukon Territory unless you obtain a written permission from your Probation Officer;
5. Report to a Probation Officer within two working days, and thereafter, when and in the manner directed by the Probation Officer;
6. Reside as directed by your Probation Officer, abide by the rules of the residence and not change that residence without the prior written permission of your Probation Officer;

I understand that you are going to start with your grandparents, which sounds like, at this point, the most positive residence for you, as it is a sober household, which will give you a nice transition back into the community. Also, to help transition you back, for the first six months you are to:

7. Abide by a curfew by remaining within your place of residence between the hours of 9:00 p.m. and 7:00 a.m. daily, except with the prior written permission of your Probation Officer, or except in the actual presence of a responsible adult approved in advance by your Probation Officer. 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;

That will only last for the first six months, not the whole period of time. And talk to your Probation Officer at the beginning about who might be a suitable adult. Maybe you want your grandparents named as people that you can be out with after your curfew time, but talk to your Probation Officer in advance. Wherever there is permission, ask first; do not ask after.

8. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
9. Not to attend any bar, tavern, off sales or other commercial premises whose primary purpose is the sale of alcohol;
10. Take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;

And, I note, there is an indication with respect to a residential treatment program. Was that discussed and agreed to?

[8] MR. CHRISTIE: Yes, that was one of them, yes.

[9] THE COURT: So, she is prepared to consent to that?

[10] MR. CHRISTIE: With the treatment, yes.

[11] MR. PHELPS: Yes.

[12] THE COURT:

11. Having given the Court your consent, attend and complete a residential treatment program as directed by your Probation Officer;
12. Take such psychological assessment, counselling and programming as directed by your Probation Officer;
13. Take such other assessment counselling and programming as directed by your Probation Officer;

It is my understanding, from submissions by defence counsel, as well as the reports that I have read, that it may well be worth everyone's while to look into some cognitive assessments to see if there are additional areas of concern or, at the very least, a greater knowledge that can help everybody in determining what will best assist Ms. Blanchard.

14. You are to have no contact, directly or indirectly, or communication in any way with Frieda Brown, except with the prior written permission of your Probation Officer;

That is going to be dependent on how you are both doing. So if you are both clean and sober and things are going well, then you may well get permission to have contact. If not, then you should not be having contact.

15. You are to perform 40 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. This community service is to be completed within the first 12 months of this order, any hours spent in counselling or programming may

be applied as against the community service at the discretion of the Probation Officer;

16. You are to participate in such educational or life skills programming as directed by your Probation Officer;
17. You are to make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
18. You are to provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this probation order.

[13] That leaves me with the issue of weapons. Crown has noted that this is a discretionary situation where I am entitled, pursuant to s. 110, to order a firearms prohibition if I am satisfied that it is appropriate, and Crown is suggesting it is appropriate in this case because of the assault with a weapon. Defence is suggesting, given her young age and lack of prior criminal history, that it is not appropriate in this case.

[14] I am sorry, dad, you wanted to say something?

[15] ACCUSED'S FATHER: I understand that she might be in the bush, kind of thing. So if she has to use a gun, she'll have to use a gun.

[16] THE COURT: Well, that all depends on what order I make.

[17] Now, as noted, it is discretionary for me to order it under s. 110. Crown is seeking that I make an order for a period of ten years. Here is what I think is appropriate in all of the circumstances. What I am going to do is add a condition to the probation order for that period of two years that will prohibit you from having weapons in your possession. I am not going to make a ten-year order. I am going to attach it to your probation order for that period of time. There are options to return if everyone thinks it is appropriate to remove that condition, but for the period of time you are on probation, while they are trying to get you settled and reintegrated into the community, you will not be entitled to have any weapons. So:

19. You are not to have in your possession any firearm, ammunition, explosive substance or weapon for the period of time of the probation order.

[18] That leaves me with two additional matters. The first is that s. 267 is a mandatory offence for the purposes of the DNA provisions. I am required by law to make an order that you provide such samples of your blood as are necessary for DNA testing and banking. So the police are going to prick your finger and take a bit of your blood.

[19] The last thing I am required to consider is the victim fine surcharge, and given your recent custodial status I am satisfied that, at this point, you do not have the means to pay. So I am going to waive that, and you need not pay a victim fine surcharge.

[20] Is there anything that we have missed?

[21] THE CLERK: Actually, Your Honour, on court file 09-331C I show that there was a guilty plea for Counts 1 and 3.

[22] THE COURT: Mm-hmm.

[23] THE CLERK: And then -- so I'm missing --

[24] THE COURT: You are missing a 145?

[25] THE CLERK: Yes.

[26] THE COURT: There was a 145 from March 12, 2010. From that information you just referred to, there were two 145's.

[27] THE CLERK: Yes.

[28] THE COURT: And then the additional 145 was a single count abstain breach, November 7, 2011; that was the fourth one.

[29] THE CLERK: Okay. And what about 09-331D? There was a guilty plea entered on August 8, 2011.

[30] MR. PHELPS: I noted that, see, Your Honour, on my file that there was a D Information, but I didn't see it on the lists so I assumed that it had been dealt with.

[31] THE CLERK: Next page. Next page.

[32] MR. PHELPS: Pardon me?

- [33] THE CLERK: Next page.
- [34] THE COURT: It is a fail to attend.
- [35] MR. PHELPS: Thank you. In any event, I would consent to my friend withdrawing his guilty plea to that.
- [36] MR. CHRISTIE: Thank you, I will, yes.
- [37] THE COURT: So that will be withdrawn. Thank you, Madam Clerk.
- [38] MR. PHELPS: I would request all outstanding matters be stayed.
- [39] THE COURT: Great.
- [40] MR. PHELPS: Your Honour, and just for clarification, the credit for the s. 267 was eight months, is it?
- [41] THE COURT: Eight months
- [42] MR. PHELPS: Thank you.
- [43] MR. CHRISTIE: Thank you.
- [44] THE COURT: To be followed by the two-year probation order. So the probation attaches only to the substantive s. 267.

RUDDY T.C.J.