

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Blanchard*, 2006 YKSC 34

Date: 20060504
Docket: S.C. No. 04-01532A
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

ROBERT RICHARD BLANCHARD

Before: Mr. Justice L.F. Gower

Appearances:
Michael Cozens
Fia Jampolsky

For the Crown
For the Defence

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral): Mr. Blanchard is before me in the circumstances of having breached his conditional sentence imposed by Justice Veale on February 6, 2006. One of the conditions of that conditional sentence was that Mr. Blanchard remain within his residence and abide by a curfew between the hours of 9:00 p.m. and 7:00 a.m. daily.

[2] Mr. Blanchard admits that on April 20, 2006, just after 11:00 p.m., he was outside of his residence, where he lives, in a building called the long house, which is proximate to the Casa Loma Motel complex in Whitehorse. He says that he went to visit his boss

at his boss' house to get some moose meat and to talk to him about employment matters. His boss apparently lives nearby in the same neighbourhood, and Mr. Blanchard was seen returning to his residence at the long house via the parking lot of the Casa Loma Motel. He was seen by two probation officers who had just been to his residence to do a curfew check.

[3] This is apparently the first time that Mr. Blanchard has breached his conditional sentence. Other than that, his sentence supervisor, I am told through defence counsel, acknowledges that he has been doing well.

[4] There was an issue regarding his employment about six weeks ago, where Mr. Blanchard stopped working because of some concerns over how he was being treated relative to other employees, but has recently returned to that employment, where he works as a carpenter. The sentence supervisor describes him as being well-regarded in that line of work.

[5] As a result of having been seen by the probation officers, the sentence supervisor had arranged for a warrant for Mr. Blanchard's arrest to be issued on April 21st, and on that same day, he was in contact with Mr. Blanchard to advise him that he was about to be arrested and taken into custody to have this breach dealt with. Mr. Blanchard apparently requested a few days to get his affairs in order so that he could deal with the issue of his young daughter, who resides with him, and also to make sure that the rent was paid, and so on. The sentence supervisor apparently agreed. Mr. Blanchard, himself, went to the RCMP to turn himself into custody on April 27th.

[6] He appeared for the first time before a Justice of the Peace on this matter on April 28th. As a result of the law, which has been cited to me by the Crown, and pursuant to the operation of s. 742.6(12), I take it that his conditional sentence started running again as of the date of that first appearance on April 28th. However, between the time of the warrant being issued on April 21st, and that first appearance date, the period of his conditional sentence was in suspension pursuant to the operation of s. 742.6(10). Therefore, the actual length of his conditional sentence will be increased by that period of time, subject to any calculations for remission. Mr. Blanchard has additionally been in custody since April 27th, until today, which is May 4th.

[7] Counsel have jointly asked me to recognize both the length of his suspension of conditional sentence and the time that he has been in custody in mitigation of this breach. Having recognized those two things, both counsel are suggesting that I take no action under s. 742.6(9)(a) and because, in effect, Mr. Blanchard has already been punished and suffered the consequences of this breach.

[8] I am prepared to accept that joint submission. I recognize the comments of Mr. Justice Veale in *R. v. Goodman*, 2005 YKSC 70, at paragraphs 14 through 16, that this Court treats breaches of conditional sentence very seriously and that such breaches must be appropriately denounced. However, I must also recognize the particular circumstances of this case, which, in relative terms are minor. Further it is a situation where Mr. Blanchard acknowledges that what he did was wrong and illegal, and he has suffered the consequences of that misjudgment.

[9] I also note that defence counsel tells me, after speaking with the sentence supervisor, that Mr. Blanchard has been present in his residence on numerous previous curfew checks during the course of the conditional sentence. So this is not a situation which has been problematic. This is apparently the first and only time that Mr. Blanchard has been in violation of his curfew.

[10] In addition to that, I note from reviewing the reasons for judgment of Mr. Justice Veale, made February 6, 2006, that there were some 20 curfew checks done upon Mr. Blanchard while awaiting the conditional sentence and he was present on all of those occasions.

[11] So for all these reasons, I order that no action be taken under s. 742.6(9)(a) of the Criminal Code. Is there anything further counsel?

[12] MS. JAMPOLSKY: No, thank you.

[13] MR. COZENS: No, thank you, Your Lordship

[14] THE COURT: All right, thank you to both.

GOWER J.