

Citation: *R. v. Blanchard*, 2007 YKTC 62

Date: 20070802
Docket: T.C. 06-00507
Registry: Whitehorse
Heard: Mayo

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Schmidt

REGINA

v.

DAVID HARRIS BLANCHARD

Appearances:
Michael Cozens
Malcolm Campbell

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] SCHMIDT T.C.J. (Oral): The accused is a 34-year-old First Nations person living in the community of Mayo, Yukon. He is a person that has a record and has been on probation a number of times. As well, has served a short period of time in custody on a break and enter charge.

[2] On this particular occasion that brings him to court today, charged under s. 267(a) of the *Criminal Code*, to which he has pled guilty, he was drinking in his home with a friend, and in the course of that evening, got into an argument with his friend. As part of the argument, Mr. Blanchard picked up a significant knife, which I have a picture

of on Exhibit 1. It appears to be a kitchen knife with a serrated edge and pointed and sharp, by the looks of it. He attacked his friend with that knife, causing a number of wounds. The wound on the first picture shows the superficial wound under his friend's eye, another wound on his friend's neck, which has six stitches, which is in the area of the jugular vein. By luck, he missed the jugular vein and his friend did not die on the spot.

[3] There is another wound of some length to the chest area, which required, in the center portion of it, six stitches. There is another stab wound, which is a penetrating wound, and which required a number of stitches, no doubt the width of the knife. It appears like five stitches. That wound penetrated an inch and a half, which would have taken some force, and is in the area of vital organs and could, again, have led to the immediate death of his friend. There is also wounding to the hand of his friend, and another scraping wound on the right side.

[4] Mr. Blanchard comes before us, his brother having been killed in a similar incident within the last year and a half, and another relative having been seriously injured in another similar incident in the recent past. Mr. Blanchard is fortunate that he is before the Court on charges of assault rather than being before the Court on charges of murder or possibly manslaughter. It is only the intervention of a few centimetres or perhaps even millimetres that makes that difference; otherwise all the actions of Mr. Blanchard were the same, had it been a murder or this assault.

[5] In sentencing, the Court must sentence in such a way that there is a deterrence which penetrates into the minds of persons who get into arguments, but an even

stronger message must be sent because those minds are often fuzzy because of alcohol. Somehow, even persons who have been drinking, and drinking to that extent that appears to be the case here, have to have some knowledge that comes to their mind, that should they pick up that knife and carry on with that aggression, that the Court will respond, and it will not be dissuaded with respect to a response that has, at its core, the deterrence of other persons who would visit violence upon others.

[6] Mr. Germaine has said in his victim impact statement that he forgives Mr. Blanchard for his actions and hopes that Mr. Blanchard can get help so that this does not happen again. Counsel has put forward the facts that Mr. Blanchard appears, in this last short while to be getting some control over his life and has obtained employment, and that is a good thing. That employment may lead, over the long term, to some resolution of his alcohol issues, if he comes home too tired to engage in drinking with his friends. That, the Court must note, is admirable and a hope for the future, but it is a two week period in a man who is 34 years old and has been fairly set in his ways of alcoholism.

[7] The primary consideration that the Court must bear in mind is general deterrence in a case such as this, where death was so close. Bearing in mind Mr. Blanchard's hopes to reform himself, the possibility that that may well be achievable by him, given the help that may be offered to him in the future in the community, and given the fact that he appears that he frightened himself a little bit with this action as well, he may be coming to his senses and has certainly shown the initial signs of that in obtaining employment and trying to stay away from the abuse of alcohol. However, it is a long road for him.

[8] Bearing those things in mind, the Court is willing to sentence at the lower end of the custodial sentence. The Court believes a custodial sentence is important for general deterrence. The Court sentences Mr. Blanchard to nine months in custody.

[9] Dealing with the aspect of conditional sentence, the Court notes that the criminal record, marked Exhibit 2, indicates in his record, four convictions for failing to comply with a disposition. In the Court's view, that record disqualifies him from a conditional sentence. The Court is not satisfied a community sentence would be effective in keeping Mr. Blanchard in line in the community.

[10] This is an isolated community and we could set up some attempts to deal with some of his issues in the community, but I think where there is an indication or where there is a record that, in this community, on four different occasions, he has been convicted for failing to comply with a disposition, it is not appropriate on a charge such as this that he be released to the community. The community knows that he has failed to comply with the Court's orders in the past, and to release him when he has committed a violent offence like this to the community, again, I think would bring the administration of justice into disrepute in this community.

[11] Following the release from custody, he will be on probation for a period of one year. The terms of the probation are:

1. To keep the peace and be of good behaviour and to appear before the Court when required to do so by the Court;

2. To notify the probation officer in advance of any change of name or address, and promptly notify the probation officer of a change of employment or occupation;
3. To report to a probation officer immediately upon your release from custody and thereafter when and in the manner directed by the probation officer.

[12] There have been a number of terms that have been recommended by the probation officer and most of them involve alcohol. I have sympathy with your counsel's submissions with respect to alcohol on a conditional sentence and we have to think about that, but this is not a conditional sentence. I think on probation you should be required to work on your alcohol problems. The remainder of your terms will be:

4. To abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
5. Not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
6. Take such alcohol and/or drug assessment, counselling or programming as directed by your probation officer, and
7. Having given the Court your consent, attend and complete a residential treatment program as directed by your probation officer;

8. Take such psychological assessment, counselling and programming as directed by your probation officer;
9. Make reasonable efforts to find and maintain suitable employment, and provide your probation officer with all necessary details concerning your efforts;
10. Give a sample of your DNA upon request.

[13] What is the section for that?

[14] MR. COZENS: It is s. 487.012, I believe -- not it is s. 487.051(a).

[15] THE COURT: Section 487.051(a).

[16] There is a prohibition of the possession of firearms.

[17] MR. COZENS: The s. 109 prohibition.

[18] THE COURT: Under s. 109 for a period of -- what does s. 109 say, is it ten years?

[19] MR. COZENS: It is the ten years from possessing a firearm, cross-brow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, explosive substance. Section 109(a) says -- the duration is in (2) first conviction, for -- it begins on the day the order is made and ten years minimum.

[20] THE COURT: All right, ten years. Is there anything that anybody needs clarification on?

[21] MR. CAMPBELL: I am going to ask that the victim fine surcharge be waived.

[22] THE COURT: It will be waived.

[23] MR. COZENS: And there will be a stay of proceedings on the remaining counts.

[24] THE CLERK: Thank you. Is there an issue of no contact seeing how Mr. Germaine is in custody also at WCC?

[25] THE COURT: No, I did not make that order. It was recommended, but I did not make that order, given the victim impact statement.

[26] THE CLERK: Just for the record, I am going to do up a warrant to get Mr. Blanchard down and I will have him in Whitehorse, come to the registry to attend to do paperwork there.

[27] THE COURT: All right, so no papers to sign now?

[28] THE CLERK: No.

[29] THE COURT: How does he go into custody?

[30] RCMP OFFICER: Pardon me?

[31] THE COURT: How does he go into custody?

[32] RCMP OFFICER: We will take him to the local detachment and then transport him.

[33] THE COURT: All right, you will need to with the RCMP.

SCHMIDT T.C.J.