

Citation: *R. v. Capot-Blanc*, 2010 YKTC 69

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Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

REGINA

v.

VERNON CAPOT-BLANC

Appearances:
John Phelps
Nils Clarke

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Vernon Capot-Blanc is before me for sentencing on two break and enters and two abstain breaches. The first break and enter occurred August 26, 2009. At the time, Mr. Capot-Blanc was on probation with a condition requiring him to abstain from the possession or consumption of alcohol and not attend any bars or licensed premises.

[2] On this particular evening, Mr. Capot-Blanc and friends attended at Flipper's Bar, where he was consuming alcohol. In the early morning hours of the 26th of August he and his cousin found themselves behind the Klondike Rib & Salmon

Barbecue. The two of them jumped the fence onto the back deck and pushed their way into the establishment through a window. They went into the freezers, into the bar fridge, and into a number of drawers. Initially, they took large quantities of meat along with alcohol, but then located money in one of the drawers, approximately \$10,000 in cash. They then dropped the meat and left the establishment with the money and with some 30 bottles of alcohol in the form of beer and coolers. Investigation led the RCMP to Mr. Capot-Blanc's co-accused, where they recovered \$1,200 of the money. Difficulty comes from the fact that it appears that the two are pointing fingers at each other in terms of where the remaining funds went.

[3] Mr. Capot-Blanc, it appears, was released following that particular offence with a reporting condition. No, sorry, he had been released previously. The reporting condition was on his probation order; is that right?

[4] MR. PHELPS: That's correct, yes.

[5] THE COURT: Okay, sorry. It is not one of the offences that he has pled to but, from an aggravating perspective, on the 27th of August, Mr. Capot-Blanc was required to report pursuant to his probation order and failed to do so. He was taken into custody, it is my understanding, on September 2nd with respect to the first break and enter. He remained in custody until January, when he was accepted into the Community Wellness Court Program, was released on a number of conditions on January 11th, but the release was not perfected until the 18th of January as it was dependent on his acceptance into the ARC. He resided at the ARC. There was an abstain condition.

[6] On February 20th he provided a breath sample at the ARC registering .038 milligrams, contrary to the rules of the residence. In addition, I am advised it was his second positive test. He was then kicked out of the ARC and returned to custody, where he remained for approximately ten days before being released again, where he resided first with his sister, I believe, and then with his uncle.

[7] He continued in the Wellness Court program until he subsequently reoffended on May 2, 2010. At that point, in the early morning hours of May 2nd, the police were called to the China Garden Restaurant with respect to an alarm. They found the front doors to be unlocked. Evidence suggested that at least two individuals had entered the store through the commercial stove vent. There were footprints and grease marks throughout and there was alcohol that was missing. They located Mr. Capot-Blanc along with another male and a female in the area, covered in grease, with the missing alcohol in their possession. Mr. Capot-Blanc was noted to be quite intoxicated and belligerent, and I am advised by his counsel that he has little recollection of the events.

[8] He comes before the Court with a criminal record, including a number of related offences. There are numerous process offences on his record, as well as at least four property-related offences. Most importantly, there is a break and enter in 2004, a robbery in 2002, and there are various other property offences.

[9] This is, I must say, somewhat of a difficult sentencing to do. On the one hand, Mr. Capot-Blanc has a record which clearly would demand a custodial term. On the other hand, I do have information with respect to efforts that he made in Wellness Court, and while he did not successfully complete the program, he is entitled to credit

for partial completion. So any resulting sentence, as it relates to the earlier charges, should be reduced by that partial credit. Obviously, it will not be what he would have been looking at had he successfully completed the program altogether.

[10] Crown is suggesting that this matter be resolved by way of a sentence which would effectively be two years less a day, less credit for time spent in remand, which they calculate at eight and a half months - defence calculates it at nine months - to be followed by 18 to 24 months probation, suggesting as a breakdown that he receive ten months on the first break and enter, and 14 months on the second, with concurrent time on the two breaches.

[11] Defence is suggesting a sentence more in the range of approximately 12 months, which would, after credit for remand, be a remaining three-month sentence, to be followed by a probationary term.

[12] In determining the appropriate outcome, there are a number of things that I have considered. On the aggravating side, there is Mr. Capot-Blanc's history, his record, the nature of the offences, particularly the significant financial loss to the one business, and, of course, the significant inconvenience that would have been occasioned to the owners of both businesses, as is evident in the statement from the owners of the China Garden in terms of some of the difficulties that they have incurred in responding to Mr. Capot-Blanc's actions.

[13] On the mitigating side, I do have guilty pleas with respect to these matters and, as indicated, information with respect to Mr. Capot-Blanc's efforts in the Community Wellness Court Program.

[14] Of particular note, Mr. Capot-Blanc, while he spent some time in custody, he by and large did quite well over the three months that he was actively engaged in the Wellness Court process in terms of following his conditions. He also completed a fair amount of programming, including the White Bison program. He started the Substance Misuse Program and was able to complete it once he entered into custody. He also met regularly with substance abuse counsellor Joshua Robinson and has continued to meet with him in custody. He participated in AA meetings. He has continued to do so in custody as well. He also completed the Violence Prevention Program. In addition to those steps that he took, some of which he completed in custody, he has also, while in custody, completed the Gathering Power Program, Addictions Awareness, and has obtained three tickets which he hopes to use for employment, including transportation of dangerous goods, industrial safety, and first aid.

[15] He addressed the Court, indicating remorse for his actions. In particular, he appears to have recognized that there is an impact on the businesses, regardless of whether or not they might have insurance. He also, to his credit, recognizes that there may well be a sense, for those people who were supporting and helping him in the Wellness Court process, that he may well have let them down. They have, however, continued to support him. As I indicated, he is continuing to meet with some of the counselling professionals while in custody and hopes to continue.

[16] He has also suffered from a number of medical issues, which have resulted in a significant amount of pain which has exacerbated his already significant alcohol addiction, leading him to self-medicate. He has struggled with respect to his peer group, and while he was able to change some of his friends and meet some new

positive influences, he was not able to cut all of those ties, some of which led him back into using and reoffending.

[17] There are some positives at the end of the day. Of particular note, I think, is the indication that the three-month period that Mr. Capot-Blanc had with Wellness Court was probably the best he has ever done in recent years, and he appears to still maintain some degree of commitment to pursue the initiatives that he started with respect to that program.

[18] At the end of the day, I am satisfied the sentences should break down as follows: Mr. Capot-Blanc, I would have felt that a ten to 12 month sentence on the first break and enter would have been appropriate. I am going to reduce it to four months because of the time and effort that you put in at Wellness Court. It would have gone lower and there probably would have been some kind of community-based sentence if you had successfully completed, but when I consider how well you did, as against your particular struggles, I am satisfied that the sentence should be reduced to four months. So you are getting a big chunk of credit for partial completion.

[19] The second break and enter, though, happened after Wellness Court, and I am satisfied that the 14 months being suggested by the Crown is appropriate. I am, however, going to reduce it by credit for nine months spent in pre-trial custody. That is an 18-month total sentence that will be reduced by nine months, leaving nine months more to serve, to give you some time to do some effective planning with your supports to prepare for when you are released. You have to have a really strong plan in terms of residence and programming and employment, if possible, to make sure that you

have a good chance to succeed when you get out. It is not just walking out the doors. You have to plan for it. If you go back into the same situation where you are around the same friends that are using, it will not be long before you are using as well, and you know that.

[20] The two breaches will both be 30 day concurrent sentences.

[21] Do you have a preference as to which sentence the credit comes off of? I can split it between the two or just take it off of the lengthier sentence.

[22] MR. CLARKE: The lengthier sentence is fine.

[23] MR. PHELPS: Either way. I had written it out that it's four months time served for the first one and then 14 less five for the second one. That's fine with me.

[24] THE COURT: So a remainder of nine on the second.

[25] MR. CLARKE: So that's how it's going to be, then?

[26] THE COURT: Yes. I think that probably makes the most sense, to take it off the initial one. So one day deemed served on the first break and enter, asking that the record reflect credit for four months spent in pre-trial custody. The second break and enter will be 14 months less the remaining five months credit, for a remainder of nine months.

[27] That will be followed by a period of 18 months probation. That will be intended, Mr. Capot-Blanc, to get you back on track and assist you with access to resources.

The terms are going to be:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you notify your 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. That you report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
5. That you 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;
6. That you 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;
7. That you not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
8. That you take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
9. That you take such other assessment, counselling and programming as directed by your Probation Officer including, but not limited to, an assessment for Fetal Alcohol Spectrum Disorder;
10. That you not attend at the Klondike Rib & Salmon Barbecue or the China

Garden Restaurant;

11. That you make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
12. That you provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this probation order.

I think that covers all of the conditions that were discussed.

[28] That leaves me with the issue of restitution. On the one hand, I would quite like to be able to ensure that the victims are fully compensated for what happened with respect to this matter. My difficulty is two-fold. Firstly, I have a real question about Mr. Capot-Blanc's ability to pay, which is a concern to me in making the order. Secondly, there are some distinct differences in the way that Mr. Capot-Blanc and his co-accused, on the first offence have been treated, for, in my view, justifiable reasons based on the differences in their circumstances. But there was no similar restitution order with respect to the co-accused, and if I accept, at least on some level, that they are jointly responsible for that debt, that causes me concern as well.

[29] I also do not have any information before me with respect to whether or not there was any insurance coverage in terms of this matter, which would likely have an impact, in my view, on the appropriate outcome. At the end of the day, I am going to decline to

make the order for restitution, and I am going to waive the victim fine surcharges, given his financial circumstances. Does that leave us anything outstanding?

[30] MR. PHELPS: Any outstanding counts that exist against Mr. Capot-Blanc, I would request a stay of proceedings.

[31] THE COURT: Okay. Thank you.

[32] MR. PHELPS: Oh, I apologize. The probation order itself, does it apply to both the s. 348 offences?

[33] THE COURT: Yes, it should. Just the substantive offences; I am not concerned about it attaching to the breaches, but it should attach to both s. 348 offences.

[34] So, Mr. Capot-Blanc, it is my hope that you get back on track. I am happy to hear that you continued to work in custody, but do some serious planning with them before you are released so that you are ready when you get out there. Good luck.

RUDDY C.J.T.C.