

Citation: *R. v. Grant*, 2003 YKTC 38

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Docket: T.C. 02-00340
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T.C. 02-11003A
Registry: Whitehorse
Trial Heard: Dawson City

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Lilles

R e g i n a

v.

Jason Stuart Grant

Appearances:

David McWhinnie
Samantha Wellman

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] After trial, Jason Grant, was found guilty of dangerous driving causing bodily harm to Joseph Gordon Blanchard, contrary to s. 249(3) of the *Code* and leaving the scene of the accident, contrary to s. 252 of the *Code*. These charges arose as a result of an incident that occurred on May 24, 2002. Subsequently, Mr. Grant was required, as a condition of his bail, to reside at the Salvation Army Adult Resource Centre (hereinafter referred to as the "YARC"). Mr. Grant plead guilty to a charge of mischief as a result of kicking and damaging a door at the YARC, contrary to s. 430(4) of the *Code*. This occurred on August 28, 2002. And then, beginning around December 2, 2002, he absented himself from the YARC without permission for a period of six weeks, breaching his bail conditions, an offence contrary to s. 145(3) of the *Code*. Mr. Grant did not commit any additional offences during this interval until he turned himself in late in January 2003.

[2] With respect to the substantive offence, Mr. Grant veered the motor vehicle he was operating off the road, across a grassy area and over a Mr. Joseph Blanchard. He did not stop the vehicle after striking Mr. Blanchard and continued driving back on the road, dragging Mr. Blanchard for a distance of 40 to 50 feet before his body was freed from the bottom of the truck. Mr. Grant continued driving and left Mr. Blanchard lying in the street without stopping to check on him or render any assistance. Mr. Grant left the scene of the accident and was later apprehended outside of town up the second Dome Road when he attempted to return to the vehicle which had been earlier abandoned in the bushes beside the road. Mr. Grant admitted to having driven over the victim with his truck, but his account was that he had attempted to swerve to avoid Mr. Blanchard, who Mr. Grant claimed was trying to attack him with a rock that Mr. Blanchard was about to throw at the vehicle. Mr. Grant admitted to leaving the scene of the accident, but asserted that he did this because he thought he had killed the other man and had become scared.

[3] As the court was left with a reasonable doubt that Mr. Grant deliberately swerved to hit Mr. Blanchard, he was acquitted of aggravated assault, but convicted of dangerous driving causing bodily harm.

[4] Mr. Blanchard suffered significant injuries and was medivaced to Edmonton where he remained in a coma for a period of time. The fact that he was recovered from his injuries, which involved a number of serious injuries, is very fortunate. Mr. Grant could very easily be facing sentencing on a charge involving death. Although Mr. Blanchard had been drinking the night before and had consumed a small amount of beer earlier in the morning, alcohol consumption was not shown to be a factor in this offence.

[5] The August 28, 2002 charge of mischief arose when Mr. Grant returned to the YARC with a package. Mr. Grant got very upset when the staff insisted on examining the package, in accord with standard policy. He mumbled some

disturbing words which were perceived to be threatening. Mr. Grant also kicked and damaged a door in the facility.

[6] On December 2, 2002, Mr. Grant failed to return to the YARC after being out on a pass. Mr. Grant had stayed at an isolated cabin for six weeks. He returned on his own to the YARC and was charged.

[7] Prior to sentencing, Mr. Grant spent approximately seven weeks in custody. The rest of the time he lived at the YARC, a halfway house, with rules and structure, including curfews and random drug testing that are quite restrictive. Residing at the YARC approximates a conditional sentence of imprisonment. Mr. Grant should get double credit for the time spent in custody, but in addition, the court will also recognize and give some credit for the time he spent at the YARC.

[8] **Criminal History:** Mr. Grant has a limited criminal history. He was convicted of possession of property obtained by crime; a gas can, on May 18, 1994 contrary to s. 354 of the *Code*. He received a conditional discharge for that offence. Mr. Grant was charged and convicted of an offence contrary to s. 265(1)(b) of the *Code* on September 2, 1994 and sentenced for probation for two years and a two-year firearm prohibition.

[9] **Family History:** Mr. Grant was born in the Yukon. His father continues to be supportive of him and has attended court with him on the day of trial. His birth mother left while he was very young, and although he keeps in touch with her, she has little or no interest in him. Mr. Grant's stepmother lives in Whitehorse with his father. Mr. Grant indicates he is getting along well with his parents now.

[10] Mr. Grant has two children with Joanne Blanchard but they are not in a relationship at this time due to the court matters. Joanne was a fulltime student at Yukon College during the 2002 fall and 2003 spring semesters and she and the

two children lived in student housing at the college. Mr. Grant's father and stepmother provided babysitting services during the time the children were not in day care and Joanne was in class. Mr. Grant Sr. picked the children up every day and drove them to day care and school.

[11] **Social Development/Companions:** Mr. Grant has some difficulty developing friendships. He is usually the scapegoat in pranks when his peers get to know him. This results in Mr. Grant feeling inadequate and he withdraws. Mr. Grant is well aware of his disability and becomes frustrated with himself and others when he cannot communicate or function at their level.

[12] Mr. Grant has very few friends that are his own age. He has some older people he calls friends who take him fishing and camping occasionally. He enjoys fishing and being in the wilderness. Mr. Grant's father knows this and has taken him fishing on several occasions. Mr. Grant enjoys being with his father.

[13] Mr. Grant lacks the day-to-day skills needed to stay employed and function as a productive member of society. Mr. Grant tends to share sensitive personal information. This happened with his co-worker when he was employed, and resulted in him being ostracized within the work force and finally having his job terminated. Not surprisingly, Mr. Grant's employment has not been consistent. In recent years, he has worked as a laborer but has had difficulty maintaining employment.

[14] **Family/Marital:** Mr. Grant met Joanne Blanchard in Whitehorse when he was nineteen years old. Mr. Grant states that they have spent about eight years in the relationship altogether. They have two children as the result of their relationship, Alicia is six years old and Jonathon is four years old. In the course of the relationship, there are frequent arguments about money, Mr. Grant's ability to hold a job, methods of housework, child rearing, relatives, ex-partners, and alcohol and drug use. There are communication problems as well as fidelity

issues with both partners. The current charges that Mr. Grant comes before the court for sentencing came about in part because Mr. Grant believes his brother-in-law, Joseph Blanchard, may have sexually abused Mr. Grant's children.

[15] **Alcohol and Drug Problems:** Mr. Grant has a history of alcohol and drug abuse. In fact, there is some concern he may have been drinking prior to committing the offences that bring him before the court.

[16] Since Mr. Grant has been living at the YARC, he has not consumed alcohol or drugs. This may be due to the structured living conditions at the YARC. As a result of maintaining sobriety for an extended period of time, Mr. Grant's cognitive functioning has improved mildly.

[17] **Attitude:** Mr. Grant has done well, in relative terms, while at the YARC. He needs and responds well to this level of supervision. While at the YARC, he has had the continued support of his father and stepmother. Mr. Grant is sorry for what happened and hopes that his brother-in-law will be alright. Mr. Grant takes responsibility for causing the accident and understands he must be punished for his actions. Mr. Grant considered suicide just after the accident, but realized he would be leaving his wife and children. He then decided then to wait for the police to arrest him. He also understands that he may not be able to go back to Dawson City until he has served whatever sentence the court may impose on him. Mr. Grant does not want to go to jail as he has a hard time getting along with the other inmates. He has indicated that he would be willing to remain at the YARC or some other placement with similar controls. He is worried about his children and his partner and is also concerned about retribution from the Blanchard family in Dawson City.

[18] The Probation Officer, Mr. Netzel, has discussed Mr. Grant's situation with Social Services. His social worker is in the process of making application for Mr. Grant to be considered for a home placement. This type of placement would

have Mr. Grant live independently in a home with a family who would monitor his behaviour and ensure he is looking after himself. He would be free to come and go with minimal supervision, unless he proves he can not function under that type of supervision. This kind of placement, in a supervised, but not locked environment, could, according to Dr. Brodie's evaluation, be suitable for Mr. Grant.

[19] Mr. Grant has been diagnosed with a learning disability. He was last assessed by Dr. Brodie on April 11, 2003. Mr. Grant knows he has a learning disability and becomes very frustrated when he fails at doing simple tasks he feels he should be able to complete. In the past, this has resulted in him turning to alcohol and drugs which, in turn, caused more problems for him. Mr. Grant has found several jobs while in Whitehorse waiting to go to trial. He has always been laid-off in a short period of time due to his short attention span, inability to follow directions, and disclosing personal information to his co-workers.

[20] Mr. Netzel notes that Mr. Grant is not suitable for a custodial sentence. The Adult Probation Branch is willing to support Mr. Grant in remaining at the YARC until Social Services can place him in the home care supervision program, providing he can be placed in the program for a reasonable length of time.

[21] Mr. Netzel is an experienced probation officer. He recommends Mr. Grant be placed on community supervision, in the form of a conditional sentence or a probation order with terms that would support his need for an on-going structured living environment and counseling.

[22] Some observations by Dr. Brodie, who conducted a detailed psychological assessment of Mr. Grant, are worth noting:

...

It is also apparent from the findings of this assessment that Jason continues to display clear and compelling evidence of a serious underlying Attention Deficit Hyperactivity Disorder, and it is very likely that the impulsiveness that is directly associated with this disorder has played a significant role in reducing his likelihood of employing self-restraint over his actions even when he is capable of doing so. As was indicated in 2001, this condition should be medically evaluated and particularly whilst he is under direct monitoring and supervision it would likely be useful to attempt a trial on medication for this condition, to determine if this will have any major impact on his behaviour and tendencies to act without sufficient consideration of the clearly predictable consequences.

...

While Jason clearly has very significant limitations in his cognitive capacity for verbal reasoning and consideration of abstract concepts, it is also apparent that he can recognize that acting out in anger has caused him significant problems and that he needs some additional treatment for same. While medication management of his ADHD may be a significant factor in this area, it is also possible that he may require additional treatment of his anger and emotional reactivity with additional medication that reduces such tendencies. He may also benefit from some very concrete and directive treatment using simple cognitive behavioural therapy strategies (such as developing relaxation strategies and cognitive refocusing strategies to reduce his anger and tendencies to dwell upon and escalate his angry feelings), if these can be done in a fashion that emphasizes direct training exercises and simplified verbal directions. He also still requires some pragmatic counselling with a focus on challenging and confronting his tendencies to project blame onto others and avoid accepting personal responsibility for his own actions.

...

While Jason has asserted that he was able to discontinue drinking on his own without external assistance, it appears that this assertion minimizes the actual impact of the close monitoring and supervision that he has been under for most of the past year. In the event of his eventual release to the community in a less supervised living situation, it would be potentially beneficial for there to be a very long period of enforced continued monitoring of his behaviour and compliance with conditions for abstinence, including a

requirement for him to submit to random drug and alcohol testing or at any time as required by his supervising Probation/Parole Officer.

[23] **The Sentence:** Both Crown and defence counsel are in agreement that a period of incarceration in the range of 12 to 18 months would be appropriate in these circumstances. In my view, taking into account the authorities cited by counsel, an appropriate sentence for all the charges before the court is 18 months in custody. I am giving a credit of six months for the seven weeks spent in custody and the nine months at the YARC under conditional sentence conditions. The total additional sentence will be 12 months. This will be allocated as follows: 12 months for the s. 249(3) offence; one day deemed served for the s. 252 offence; one month concurrent for the s. 430(4) mischief charge; and three months concurrent for the s. 145(3) charge.

[24] In my opinion, this 12 month custodial sentence should be followed by 18 months supervision.

[25] The issue that remains to be determined is whether Mr. Grant could serve this sentence of incarceration in the community under a conditional sentence order.

[26] The headnote is *R. v. Proulx* (1999), 14 C.C.C. (3d) 449 (S.C.C.) reads as follows:

In determining whether the safety of the community would be endangered by the offender serving the sentence in the community, the focus should be on the risk posed by the individual offender. Two factors must be considered: (1) the risk of the offender re-offending; and (2) the gravity of the damage that would ensue in the event of re-offence. The risk of re-offence should be assessed in light of the conditions attached to the sentence which may reduce the risk to a minimal one. However, the phrase "would not endanger the safety of the community" should be broadly construed and include the risk of any criminal activity, thus encompassing the risk of economic harm.

The final issue is whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the Criminal Code. A conditional sentence is available in principle for all offences in which the statutory prerequisites are satisfied. Each case must be considered individually. There is no presumption for or against the use of a conditional sentence for particular offences. It would be an error in principle not to consider the possibility of a conditional sentence seriously where the statutory prerequisites are met, and failure to advert to the possibility of a conditional sentence in reasons for sentence where there are reasonable grounds for finding that the first three prerequisites have been met may well constitute reversible error. To the extent that both punitive and restorative objectives can be achieved in a given case, a conditional sentence is likely a better sanction than incarceration. However, even when restorative objectives cannot be readily satisfied, a conditional sentence will be preferable to incarceration in cases where a conditional sentence can achieve the objectives of denunciation and deterrence as effectively as incarceration. Although incarceration will usually provide more denunciation, a conditional sentence can still provide a significant amount, particularly when onerous conditions are imposed and the duration of the conditional sentence is extended beyond the duration of the jail sentence that would ordinarily have been imposed. Furthermore, while incarceration may also provide more deterrence than a conditional sentence, judges should be wary of placing too much weight on deterrence given the uncertain deterrent effect of incarceration. Whether or not the need for deterrence will warrant incarceration will depend in part on whether the offence is one in which the effects of incarceration are likely to have a real deterrent effect, as well as on the circumstances of the community in which the offences were committed.

The trial judge should be guided by the following principles in exercising his or her discretion in imposing optional conditions: (1) the conditions must ensure the safety of the community; (2) the conditions must be tailored to fit the particular circumstances of the offender and offence, and the offender must be capable of abiding by them; (3) punitive conditions such as house arrest should be the norm, not the exception; (4) the conditions must be realistically enforceable. Neither party bears an onus of establishing that the offender should or should not receive a conditional sentence. However, as a practical matter it will generally be the offender who is best situated to convince the judge that a conditional sentence is appropriate.

[27] I have concluded that, in the circumstances of this case, a conditional sentence of imprisonment is appropriate and that it will not threaten the safety of the community. I have taken the following considerations into account:

1. The *Criminal Code* and cases from the Supreme Court of Canada such as *R. v. Gladue*, [1999] 1 S.C.R. 668; 133 C.C.C. (3d) 385, mandate that the court should impose the least interventionist disposition that meets the objectives of sentencing.
2. A thorough neuropsychological testing by Dr. Brodie showed Mr. Grant to be clinically impaired in a range of tasks, with defects ranging from mild to severe. The tests revealed the presence of an untreated Attention Deficit Hyperactivity Disorder. Treatment of ADHD would be an important factor in his long-range treatment and rehabilitation. Mr. Grant has expressed a willingness to pursue medical treatment of this condition.
3. Mr. Grant has abstained from the use of alcohol for the past year. This has contributed to a mild improvement in his overall neuro-cognitive functioning. Any community-based orders will require him to abstain absolutely from the possession and consumption of alcohol.
4. Mr. Grant's full scale IQ of 69 represents a mild mental handicap in general intellectual functioning. He is functionally illiterate and unable to comprehend any written materials sufficiently to derive any benefit from them.
5. The experienced probation officer identified that Mr. Grant was taken advantage of while at the Whitehorse Correctional Centre and that it is not a suitable placement for him. He recommended a community-based disposition.
6. Mr. Grant has spent some time in jail and some nine months in a structured setting at the YARC, not unlike a conditional sentence. Considering his cognitive handicaps, he has done reasonably well in a

structured setting. In my view, it has been a positive and learning experience for him.

7. The probation officer is working with Social Services to obtain an independent living home placement for Mr. Grant. This would be consistent with his needs.
8. Mr. Grant's criminal record is a limited one with two entries only.
9. With the proper structure and supervision, I am satisfied that community safety would not be compromised by allowing Mr. Grant to serve his sentence of imprisonment in the community.

[28] The terms of the conditional sentence will be as follows:

1. The statutory terms will apply, and that includes reporting to a conditional sentence supervisor as and when directed;
2. Preside at the YARC or such other place as approved and directed by your conditional sentence supervisor in advance, and abide by the rules of said residence;
3. Have no contact directly or indirectly with Joseph Blanchard;
4. Abstain absolutely from the possession of alcohol or non-prescription drugs and provide a sample of your breath or bodily fluids for analyzing to a member of the YARC staff or a Peace Officer who has reason to believe you are in breach of this condition. In addition, submit to such random breath or bodily fluids testing as directed by the conditional sentence supervisor;
5. Until further order of the court, abide by a curfew by remaining in your residence between the hours of 7:00 p.m. and 7:00 a.m. except:
 - With prior written permission of the conditional sentence supervisor for any reason.
 - If in the direct company of a responsible adult person approved by the conditional sentence supervisor.

- For the purpose of attending work, counseling or other treatment with the prior approval of the conditional sentence supervisor or your residence supervisor.

You will answer the telephone or door during reasonable hours for the purpose of curfew checks. Should you fail to do so, you will be presumed to be in breach of this condition;

6. Seek and participate in any counseling and programming as directed by a probation officer, with the emphasis on job skills training, life skills training, and any other programming the probation officer may deem appropriate;
7. Seek treatment for ADHD from a qualified medical practitioner and abide by the recommendation of that medical practitioner to treat this disorder. You will provide your conditional sentence supervisor with a release of medical information to enable him to report fully on your compliance with this condition;
8. Not attend at any licensed bar or tavern or any other premises where the primary purpose is the selling or distribution of alcoholic beverages;
and
9. Not attend at the City of Dawson except with the prior written permission of the conditional sentence supervisor.

[29] The probation order of 18 months will include the statutory terms, the standard report to a probation officer as and when directed and all of the non-statutory conditional sentence terms with the exception of the curfew.

[30] There will be a DNA Order in the standard form.

[31] There will also be a ten-year firearm/ammunition/explosive substance order in the standard form beginning immediately.

LILLES C.J.T.C.