Citation: *R.* v. *LeBlanc*, 2007 YKTC 52 Date: 20070627
Docket: T.C. 06-00506
Registry: Whitehorse

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

REGINA

v.

MITCHELL STEWART LEBLANC

Publication of information that could disclose the identity of the complainant or witness has been prohibited by Court Order pursuant to s. 486(3) of the *Criminal Code*.

Appearances:
David McWhinnie Counsel for Crown
Gordon Coffin Counsel for Defence

REASONS FOR SENTENCING
(WITH CORRIGENDUM)

[1] RUDDY T.C.J. (Oral): In October of 2006, T.L. was young woman who viewed her life as one full of promise. She had recently completed the Office Administration Program at Yukon College and obtained employment in her chosen field. In September of 2006, she purchased her very first home. She described herself, as she then was, to be a confident, vibrant and outgoing personality. The circumstances of her life would change drastically and irrevocably as a result of events which can only be

described as horrific, made even the more so as she was subjected to those events at the hands of someone she believed to be a friend.

[2] Mitchell LeBlanc is now before me for sentencing with respect to guilty pleas that he has entered to four offences committed against Ms. L., kidnapping, sexual assault with a weapon, sexual assault, and possession of a weapon for a purpose dangerous.

[3] The facts of Ms. L.'s ordeal spanned almost three days in late October and early November of 2006. Not surprisingly, it took the Crown more than 30 minutes to read in all of the circumstances of the offences. For the purposes of this decision, I have tried to more briefly summarize the circumstances. In doing so, it is not my intention in any way to minimize what Ms. L. has suffered.

[4] On Halloween 2006, Mitchell LeBlanc attended at Ms. L.'s residence with the intention of kidnapping her and forcing her to kill him. He brought with him a backpack full of items necessary to achieve his ends but otherwise acted completely normal. The two watched television for some time, but when Ms. L. indicated that it was time for Mr. LeBlanc to leave, he grabbed her by the hair, pushed her face down on the couch and tied her hands behind her back, ignoring her pleas to stop. He initially told her that he did not intend to sexually assault her but shortly thereafter, he took her into the bedroom, bound her elbows and feet to the bed, cut of her clothing with scissors and proceeded to have sexual intercourse with her against her will over an extended period of time.

[5] Upon completion, he hog-tied her, placing rope around her neck, which he joined to the ropes binding her hands and feet. He wrapped her in a housecoat and duvet, took her to his vehicle and tied her to the passenger seat of the vehicle. He ultimately drove her to the Liard Hot Springs, a journey interrupted by periodic naps and Mr. LeBlanc's ongoing consumption of marihuana. Once in the hot springs, Mr. LeBlanc produced a mixture of milk and alcohol, which he consumed, sharing with Ms. L. He then advised her that if she wanted to go home she had to slit his wrists. If she did not, then she would not be going home.

[6] The two got out of the hot springs, whereupon Ms. L., clearly overcome by the circumstances, began to gag and to dry heave. Notwithstanding her obvious distress, Mr. LeBlanc asked if he could have his way with her again. Ms. L. asked if she had any choice, to which he replied no. He proceeded to again have intercourse with her against her will while she continued to gag and dry heave. Once finished, he told her it was time for her to kill him. She indicated that she did not want to, but was told she had no choice. If she did not do as he asked she would regret it. She made several attempts at his insistence, but was unable to bring herself to wound him sufficiently to satisfy his desire to end.

[7] When others arrived at the hot springs, Mr. LeBlanc and Ms. L. returned to his vehicle and began driving back towards Whitehorse, stopping briefly at Jake's Corner. Fortunately for Ms. L., she had been able to take her cell phone with her and turn it on. This allowed the RMCP, who had been alerted to her disappearance by her mother, to pick up her signal at Jake's Corner. The police plane was dispatched and Mr. LeBlanc's

vehicle was spotted stopped at a vehicle pullout on the outskirts of Whitehorse. Mr. LeBlanc had again stopped the vehicle with the intention of having Ms. L. slit his wrists.

[8] When the police arrived, Mr. LeBlanc pulled out the Exact-o knife, another knife, and advised Ms. L. that he had a gun. He held the two knives to her chest and throat and forced her to sit close to him so that the police could not shoot him as, despite his professed desire to end his life, he did not want to die in that way. He then provided her with one of the knives and told her to cut him. Her initial cut was insufficient so she was told to cut him again. At that point, fearing for her own life, Ms. L. cut Mr. LeBlanc's wrist as hard as she could. The resulting blood loss caused Mr. LeBlanc to faint, providing Ms. L. with the opportunity to escape, and allowing the police to take Mr. LeBlanc into custody without further incident.

[9] Over the course of these harrowing events, Mr. LeBlanc displayed periodic humane gestures, including offering to wear a condom during the first sexual assault, providing food and drink to Ms. L., loosening bindings which were too tight, signing his truck over to Ms. L., giving her a ring and telling her he loved her. Not surprisingly, these rare glimpses of humanity have done little to lessen the overall impact of the ordeal on Ms. L.

[10] I have before me victim impact statements filed by both Ms. L. and by her mother, S.N. Both statements were read into the record on their behalf by Crown witness coordinator Pamela Shaw as neither felt up to the task. One cannot overstate the traumatic impact of these offences on Ms. L. and her family. They have been nothing short of life-altering.

[11] Ms. N. in her statement, speaks of the helplessness of being faced with a missing child and fearing the worst, of her profound relief of finding her daughter alive and of the pain of watching her daughter struggle to come to terms with what has happened.

[12] Ms. L. speaks of enduring nightmares and constant fear of the financial burdens occasioned by her recovery and of being unable to return to her beloved new home. Perhaps Ms. L. summarized it best when she summoned the strength to address the Court and to face Mr. LeBlanc at the end of the sentencing proceedings and said that her life has been ruined for something that did not have to happen. She will never be the same again. I commend her for her courage.

[13] I am now faced with the difficult task of determining an appropriate sentence for Mr. LeBlanc. In doing so, I must consider not just the circumstances of the offence but also the circumstances of the offender. I have before me a thorough pre-sentence report setting out Mr. LeBlanc's background and circumstances, as well as the psychological assessment performed by Dr. Boer.

[14] Mr. LeBlanc is 38 years old. He was raised in highly dysfunctional and abusive circumstances. He has a fairly solid educational background, including a degree in electronic communications, but in recent years has not been employed in his chosen field. Instead, by his own admission, he has supported himself largely through trafficking marihuana. He himself has a significant substances abuse problem, using marihuana on an almost continual basis and abusing alcohol to the point of trying to drink himself to death.

[15] Some 12 years ago Mr. LeBlanc was involved in a serious motor vehicle accident resulting in significant head trauma, placing him in the hospital in a coma for a significant period of time. By all accounts, Mr. LeBlanc is now a very different man than he was before the accident. In addition, Mr. LeBlanc has suffered from some past mental health issues, including depression and has attempted suicide in the past. The psychological assessment confirms this history, but indicates that Mr. LeBlanc was not suffering from a mental disorder beyond his longstanding problem with depression at the time of these offences which could in any way help to explain his aberrant behaviour.

[16] Perhaps the most astonishing factor before me, when one considers the circumstances of these offences and Mr. LeBlanc's age, is that he comes before the Court with no prior criminal record. One cannot say that he is entirely of previous good character as, by his own admission, he was previously involved in drug trafficking, but there is absolutely no history before me indicative of a propensity for violence. Indeed, those closest describe the offences before me as totally out of character for Mr. LeBlanc.

[17] To assist in determining an appropriate sentence in light of the circumstances of both offence and offender, I have had regard to a number of cases, those filed by counsel and others. The cases before me suggest a broad range of sentences for cases of this nature from a high of 13 years in *R*. v. *Schira,* [2004] A.J. No. 1302 (QL), to a low of six years and nine months in *R*. v. *Chand*, both cases from Alberta. The cases I find most instructive, as did counsel in their submissions, are those arising in the

Yukon. In *R*. v. *M.N.J*, [2002] Y.J. No. 49 the 21-year-old accused broke into a private residence and subjected the victim to repeated degrading acts of physical and sexual violence over a protracted period of time, resulting in serious physical injuries and emotional trauma. He received an effective sentence of eight years. The accused did have a prior criminal record but no offences of a sexual nature.

[18] In addition to those cases filed by the Crown, I have reviewed the Yukon cases of *R*. v. *Miller*, [1993] Y.J. No. 127 (QL), and *R*. v. *McLeod*, [1996] Y.J. No. 150 (QL), both kidnapping cases. In *Miller,* the 18-year-old accused and his 17-year-old accomplice kidnapped a local woman from her home at gunpoint, cuffed her hands and feet and left her in a car in a secluded area as they attempted to extort a ransom from her husband. The woman suffered from a serious heart condition. The accused had no prior criminal record and received a sentence of eight years.

[19] In *McLeod*, three young men, including two 19-year-old accused, broke into an RV while armed, assaulted their occupants, bound and gagged them and transported them against their will, ultimately leaving them in an isolated area. Both accused had prior records and were sentenced to seven and a half years.

[20] In the case at bar, Crown has suggested a sentence of eight to ten years, less credit for remand. Defence suggests a sentence of five to seven years, less credit for remand.

[21] In terms of remand, Mr. LeBlanc has been in custody since November 2nd, approximately eight months. I am advised that he has spent the majority of that time in

segregation out of the general population and has not been able to access programming. In such circumstances, I am satisfied that two to one credit would be appropriate in this particular case. I see no reason to go beyond that, as was suggested by defence counsel. Accordingly, I will credit Mr. LeBlanc with 16 months for time spent in remand and his ultimate sentence will be reduced accordingly.

[22] In determining the appropriate length of that sentence, I note that each of the three Yukon cases referred to earlier resulted in sentences in roughly the eight year range. Defence counsel urges me to consider a somewhat lower sentence on the basis that Mr. LeBlanc has no prior criminal record and therefore greater prospects of rehabilitation that were present in the *M.N.J.* case. With respect, I disagree.

[23] Firstly, I would note that the *M.N.J* case, while involving more egregious physical and sexual violence, did not involve a kidnapping. Similarly, the *Miller* and *McLeod* cases, while involving kidnappings, did not involve sexual violence. The case at bar involved both elements with the added aggravating factor of Mr. LeBlanc forcing Ms. L. into an attempt to take the life of another human being against her will, something Mr. LeBlanc quite bizarrely believed that she would find empowering. Clearly she did not.

[24] In addition, I would note that each of the three Yukon cases cited involved youthful offenders. As noted by His Honour Judge Stuart in the *M.N.J* case:

> In sentencing young, immature offenders, the paramount consideration must be their immediate rehabilitation. However, when the offence is as serious as in this case, rehabilitation of youthful offenders cannot be paramount, but remains important.

He went on to say:

> While M's crime demands a clear denunciatory sentence, his youth and immaturity warrant according some consideration to rehabilitation and to what the future may be for him and for his community. These conflicting considerations - rehabilitation and punishment - can be achieved by imposing a penitentiary sentence but reducing its length to preserve both his hope and his capacity for a fruitful life.

[25] In the case before me, Mr. LeBlanc cannot be described as an immature or youthful offender. As such, it would not be appropriate, in my view, to similarly mitigate his sentence based on his rehabilitative prospects, as was done in each of the three Yukon cases cited. The facts of this case demand that the paramount sentencing considerations be denunciation and deterrence. Rehabilitation, while still a factor to be considered, simply cannot be a central consideration.

[26] When I consider the facts of this case and Mr. LeBlanc's age and circumstances in relation to the Yukon authorities, I am satisfied that the range of eight to ten years as proposed by the Crown is appropriate in this case. In determining where the sentence should fall within that range, I am mindful of the fact that while Mr. LeBlanc does not have the mitigating factor of youth in his favour, there are nonetheless mitigating factors which must be considered. Firstly, he has entered guilty pleas, thereby saving Ms. L. from having to undergo a trial with respect to her ordeal. In addition, he has indicated remorse. He has expressed a desire for treatment. He has no prior criminal record, and he is assessed at being at low to moderate risk to re-offend.

[27] When I consider all of the circumstances before me, both in terms of offence and offender, I am satisfied that the appropriate global sentence in this case is one of nine years, which I would break down as follows. On the sexual assault with a weapon,

three years. On the sexual assault simplicitor, two years consecutive. On the possession of a weapon for a purpose dangerous, one year consecutive. On the kidnapping charge, a sentence of nine years concurrent. This global sentence of nine years will be reduced by the 16 months credit for remand. By my calculations, that leaves a sentence of seven years and eight months to be served.

[28] I will also ask that the warrant of committal be endorsed with the recommendation that Mr. LeBlanc receive sex offender treatment while in custody, and, if at all possible, that he be entitled to serve his sentence in either the Lower Mainland of British Columbia or on Vancouver Island so that he may receive what support he can from family members.

[29] In addition, I will make the order that Mr. LeBlanc provide such samples of his blood as are necessary for DNA testing and banking. Pursuant to s. 109 of *the Criminal Code*, Mr. LeBlanc will be prohibited from having any firearm, crossbow, restricted weapon, ammunition or explosive substances in his possession for a period of ten years.

[30] Lastly, the kidnapping charge carries a maximum life sentence. Mr. LeBlanc will be required to submit to the provisions of the *Sex Offender Information Registration Act* for the remainder of his life.

[31] Mr. LeBlanc, is it my sincerest hope that you find the help that you need while in the federal system.

[32] In closing, I want to say a final word to Ms. L. I recognize that the sentence that I have passed today can little repair the damage that you have suffered. I can only hope that having some finality to these proceedings will give you and your family some small measure of comfort as you continue in your recovery. You have my best wishes. Thank you.

[33] Anything further?

[34] MR. MCWHINNIE: Nothing further, Your Honour. The outstanding charges should be stayed.

[35] THE COURT: Thank you.

[36] THE CLERK: Surcharges?

[37] THE COURT: Waived. Thank you.

CORRIGENDUM

[38] Following disposition with respect to this matter, it was brought to my attention that I had misapprehended one of the charges upon which Mr. Leblanc had entered a plea of guilty. With respect to the charge of sexual assault with a weapon alleged to have occurred within the Yukon Territory (count 1 of Information number 06-00506), I am advised that Mr. Leblanc had, at a prior appearance, and with the consent of the Crown, entered a plea to the lesser included offence of sexual assault simpliciter.

[39] While I am satisfied that knowledge of this would not have changed my view of the overall length of the global sentence, it would certainly have changed my view with respect to the appropriate sentence for that particular offence. To ensure that Mr. Leblanc's criminal record accurately reflects sentences for which he has entered pleas and been convicted, it is important that this matter be corrected.

[40] This raises the question of whether this error can be corrected by me at this stage, or whether I am now functus, requiring Mr. Leblanc to pursue an appeal to have this matter addressed.

[41] It is my understanding, through discussions with counsel, that both Crown and defence are of the view that I can and ought to resolve this matter by way of a written corrigendum to my earlier decision. Crown counsel was kind enough to provide copies of two decisions, *R.* v. *Grover,* [1967] 3 C.C.C. 387, and *R.* v. *Bourque,* [1976] N.B.J. No. 215, both of which provide some support for the proposition that where a sentence passed is an illegal sentence or one which amounts to a nullity, there may well be scope for the matter to be addressed by the trial judge. In *Grover*, Laskin J.A. noted the following, in response to a Crown application seeking leave to extend the time for appeal:

> Two questions thus arise. First, is the proper way to have the illegal sentence expunged an appeal to a court that can so declare and remit the case for lawful disposition? Second, if so, do or should the ordinary rules limiting the time to appeal apply? As to the first question, it may be thought that if the sentence is a nullity it can be ignored and that proceedings can be taken to compel the reattendance of the respondent for the purpose of imposing a sentence according to law. I need not pursue this point because, even if it be so, it does not preclude invocation of appellate jurisdiction to have the illegality declared and the proceedings put right (p. 2).

[42] It would be unfair, in my view, to require Mr. Leblanc to launch an appeal solely to set this matter to rights. In pursuing Laskin J.A.'s line of reasoning in *Grover* further and in applying it to the circumstances of this case, I am satisfied that the sentence with respect to the offence of sexual assault with a weapon is clearly a nullity as Mr. Leblanc did not at any time enter a guilty plea with respect to that offence. Further, it can be said that Mr. Leblanc has not yet been sentenced for the offence to which he did enter a plea of guilty, the lesser included offence of sexual assault. With the agreement of counsel, I will do so at this time, by way of this corrigendum.

[43] In considering the facts placed before me with respect to the sexual assault which occurred in the Yukon Territory and the facts with respect to the sexual assault which occurred in British Columbia, I find that there is nothing therein which would suggest that the two offences should be treated any differently. Accordingly, the sentence of three years on the offence of sexual assault with a weapon, which I have found to be a nullity, will be replaced with a sentence of two years on the offence of sexual assault. The warrant of committal and Mr. Leblanc's record should both be amended to reflect the proper offence for which he has entered a plea and the sentence for that offence.

_____

RUDDY T.C.J.