

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

In the matter between:

HER MAJESTY THE QUEEN

Respondent

- and -

BEN CHARLIE

Appellant

REASONS FOR JUDGMENT OF
The Honourable Mr. Justice
W.G. Morrow, given at Fort
McPherson, N.W.T., on the
15th day of May AD 1974

Orval J.T. Troy Esq. Q.C. for the Respondent

John Bailey Esq. for the Appellant

Northwest Territories,
29 NOV 1973

TO: The Court of Appeal for
the Northwest Territories.

On the 28th day of NOV 1973
at Fort McPherson, Northwest Territories, I was
convicted on a charge of Common Assault
under Section 245(1) of the Criminal Code
before POLICE MAGISTRATE D. DAVIS & E. DEWITT and was
Justice of the Peace
sentenced to SEVEN (60) DAYS IMPRISONMENT.

I wish to appeal against the conviction (or
sentence) on the following grounds: -

- (a) I feel that the sentence was too severe for the crime committed.

- (b) I was unable to obtain the services of a Lawyer

- (c) If I can obtain my release I want to go to work to support my family before our case.

I am (am not) desirous of being present in
person upon the hearing of this appeal.

Sgd. Ben Charles
(Appellant)

This form to be prepared in six copies.
Original and duplicate for the Court of Appeal, Yellowknife, NWT.
Copies to Informant, Convicting Court, Crown Counsel and
Appellant.

(Mr. Troy and Mr. McConnell having addressed the court,
Mr. Justice Morrow gave judgment as follows)

Well, what I am going to do is this, Mr. Troy, do you agree that I can allow the appeal to the extent of time served, plus a fine?

Mr. Troy: I would just like to check the section.

The Court: Then again, I don't like fines on these people when they are not working. Almost putting them in jail would be an advantage.

Mr. Troy: Sir, Section 722 of the Criminal Code says that the general penalty for summary conviction offences such as common assault is that everyone who is convicted of an offence punishable on summary conviction is liable to a fine of not more than five hundred dollars or for imprisonment to six months, or to both, and where the imposition of a fine, or the making of an order for the payment of money is authorized by law, but the law does not provide that imprisonment may be imposed in default of payment of a fine or compliance with the order, the court may order that in default of payment of the fine or compliance with the order, as the case may be, the defendant shall be imprisoned for a period of

six months, and you can fine and imprison sir, or both.

The Court:

Well, what I am going to do is, you have here gentlemen, an indication - I am not giving my judgment - this is the type of appeal that always gives the court great difficulty, but I don't see how I can avoid it, and it is my duty to make the best out of it that I can.

Looking at this man's record and his behavior, I see no reason why the original sentence of sixty days was not proper.

However, at the time that it comes before me today I would not be living up to my oath to see justice done if I did not look at the accumulative effect of what would happen today if I dismissed the appeal, that the man would continue doing what he has been doing, will end up in effect doing an extra month, so I propose allowing the appeal in part, but I want to make it clear in doing this it is not a criticism of the Justices of the Peace in their sense, because I think they applied the right principle here in their original sentence.

I hope that they appreciate in varying the sentence it is because of the peculiar circumstances that have now emerged.

The appeal will be allowed in part therefore, to the time served plus an additional fine of fifty dollars, which is to be paid in three months after the two hundred dollar fine has been paid, or the time has been served, and in default, an extra seven days.

Is that clear enough?

W.G. Morrow
J.S.C.