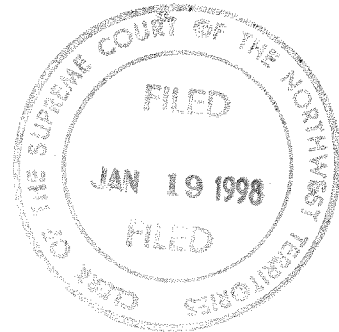


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES  
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

HUGH COLIN



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Transcript of Oral Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, sitting at Fort McPherson, in the Northwest Territories, on Wednesday, January 7, A.D. 1998.

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APPEARANCES:

Ms. L. Charbonneau:	On behalf of the Crown
Mr. J. Bayly, Q.C.:	On behalf of the Defence

(Charge under Section 255(3) of the Criminal Code)

1 THE COURT: I will now sentence Mr. Colin in  
2 this tragic case.

3 Mr. Colin has pleaded guilty to a charge of  
4 impaired driving causing the death of his grandmother,  
5 Mary Vittrekwa. The facts have been read out in court  
6 and I will summarize them only briefly for purposes of  
7 my reasons for sentence.

8 On the date this happened, Mr. Colin was camping  
9 with family members and others by the Peel River  
10 crossing near Fort McPherson. He had been drinking for  
11 a number of hours, and while he was sleeping, someone  
12 got Mr. Colin's truck stuck in the water. Mr. Colin  
13 woke up and got another truck, and as he was backing it  
14 down the river bank to get his own vehicle out of the  
15 water, he struck his 89-year-old grandmother, a  
16 respected elder in this community.

17 There is no evidence that Mr. Colin saw her or  
18 realized that she was there. On realizing what had  
19 happened, Mr. Colin stopped the vehicle and got help  
20 from others. Tragically, and despite the efforts of  
21 those who helped, Mr. Colin's grandmother died after  
22 arrival at the Fort McPherson medical centre.

23 Mr. Colin acknowledge to the police officer who  
24 came to the scene that he was the driver of the  
25 vehicle. He gave breath samples of 160 and 170  
26 milligrams of alcohol in 100 millilitres of blood;  
27 twice the legal limit. The pre-sentence report that

1 has been filed with the Court provides information that  
2 Mr. Colin was cooperative with the investigation.

3 Mr. Colin has been on release on a recognizance  
4 since this happened, and he has abided by its  
5 conditions for the last approximately 19 months in  
6 difficult and stressful conditions because of the shame  
7 he feels and the understandably negative emotions on  
8 the part of others in the community. This is noted in  
9 Exhibit 4, as well, the letter from the Fort McPherson  
10 justice committee.

11 He has participated with his mother and the other  
12 children and grandchildren of the victim in a healing  
13 workshop in an attempt to deal with his grandmother's  
14 death. He has the support of many in his family,  
15 although, again, understandably, there are different  
16 views among family members about what punishment would  
17 best suit the crime.

18 The offence for which Mr. Colin has been convicted  
19 is a very serious one. It is one for which the law  
20 provides that a person can receive up to 14 years in  
21 jail. However, the law provides no minimum punishment  
22 and does not make a jail sentence mandatory. So there  
23 are several options open to the Court.

24 Clearly Mr. Colin did not intend to harm or kill  
25 his grandmother. He did commit a crime; the crime of  
26 driving while impaired. The result of that crime was  
27 the accidental death of his grandmother.

1           I take into account that Mr. Colin has a criminal  
2 record. Between 1982 and 1990, he accumulated a number  
3 of convictions for both assault and property offences  
4 as well as breaches of court orders. In 1988 he was  
5 twice convicted of driving with more than the legal  
6 limit of alcohol in his blood. In 1989 he was  
7 convicted of the same offence and driving while  
8 disqualified. He received jail sentences. So he has  
9 been made aware of the consequences of drinking and  
10 driving.

11           The last entry on Mr. Colin's record is dated  
12 1990. So at the time of this offence in May of 1996,  
13 he had not been convicted of anything for approximately  
14 six years, and I take that into account, as well as the  
15 record itself.

16           In mitigation is Mr. Colin's guilty plea. It  
17 indicates to me both remorse and that Mr. Colin is  
18 taking responsibility for what he did. He has also  
19 expressed remorse by apologizing to his family and his  
20 community, and it is apparent to me from observing him  
21 here in Court and listening to him speak that he is  
22 very sorry for what happened, that he is emotional  
23 about it and is thinking about it. The fact that he  
24 attended the healing program shows on his part a  
25 willingness to face up to his crime and, also, to face  
26 his community and those who have suffered as a result  
27 of his crime.

1           The guilty plea is therefore very significant for  
2           the reasons I have referred to. Although it did not  
3           come very soon after the offence occurred, there were  
4           the other early indications of remorse that I have also  
5           mentioned. That it has taken this long to deal with  
6           the case is not due to fault on anyone's part. As the  
7           lawyers have said, there were legal issues to be dealt  
8           with and preparations to be made to bring the case to  
9           this point.

10           Crown counsel, Miss Charbonneau, has been very  
11           fair in her submissions, saying that a sentence in the  
12           range of two years less a day would be appropriate in  
13           this particular case. In my view, and based on other  
14           cases, that is a reasonable position. The only real  
15           issue is whether there should be a community-based  
16           sentence as suggested by Mr. Bayly. Miss Charbonneau  
17           argues that there should not be, that the principles of  
18           general deterrence and denunciation are best served by  
19           time in jail.

20           General deterrence is the principle that the  
21           sentence the Court imposes should be one that will  
22           discourage other people from committing crimes like  
23           this. Denunciation is the principle that the sentence  
24           should reflect society's disapproval and rejection of  
25           this behaviour. These principles are especially  
26           important in this case because of the devastation  
27           generally in terms of injury and loss of life caused by

1           drinking and driving.

2           The material filed with the Court, all of which I  
3           have reviewed, includes Exhibit 4, a letter from the  
4           Fort McPherson justice committee. The committee  
5           recommends, and I note from what is said in the case  
6           that it is a unanimous expression of support for  
7           Mr. Colin, a community-based sentence. I have given  
8           that letter serious consideration because the community  
9           is involved in and aware of justice issues and has  
10          obviously taken an interest in this case, and it is  
11          also aware of the problems in this community and how  
12          the justice system deals with those problems and how  
13          effective various punishments are or are not with  
14          respect to those problems.

15          There are really two types of sentence that could  
16          be called community-based. One is probation, which may  
17          be imposed to come after a jail term or on its own as  
18          part of a suspended sentence. The probation itself is  
19          not a sentence of imprisonment. I do not feel that a  
20          suspended sentence and probation would adequately  
21          reflect the seriousness of this case.

22          The other type of community-based sentence is a  
23          conditional sentence. This is a relatively recent  
24          option which is available to the Court. With the  
25          conditional sentence option, the lawmakers, the  
26          Parliament of Canada, has essentially said to the  
27          courts that a form of imprisonment which does not

1           involve jail is something that should be considered in  
2           appropriate cases.

3                   A conditional sentence is a sentence of  
4           imprisonment for a specified length of time; but so  
5           long as the offender complies with the conditions of  
6           the sentence, it is served in the community instead of  
7           in a jail. If the conditions are not complied with,  
8           the offender can be ordered to spend the rest or some  
9           of the rest of the sentence in jail.

10                   Conditional sentences are not restricted to  
11           certain types of offences or to first offenders. They  
12           are available where the Court imposes a sentence of  
13           less than two years. The Court must also be satisfied  
14           that serving the sentence in the community would not  
15           endanger the safety of the community. From all that I  
16           have heard here in court and read in the materials  
17           filed about Mr. Colin, I am satisfied that if I were to  
18           allow him to serve his sentence in the community, the  
19           safety of the community would not be in danger.

20                   Finally, I cannot impose a conditional sentence  
21           unless I am satisfied that allowing Mr. Colin to serve  
22           his sentence in the community would be consistent with  
23           the fundamental purpose and principles of sentencing  
24           set out in the Criminal Code. These include the  
25           principles of general deterrence and denunciation to  
26           which I have already referred. They also include the  
27           requirement that a sentence be proportionate to the

1 gravity of the offence and the degree of responsibility  
2 of the offender and that it promote a sense of  
3 responsibility in offenders and acknowledgment of the  
4 harm done to victims and to the community.

5 In the three Court of Appeal decisions referred to  
6 by counsel, the Hagel decision from the Alberta Court  
7 of Appeal, the McDonald decision of the Saskatchewan  
8 Court of Appeal, and the Biancofiore decision of the  
9 Ontario Court of Appeal, there is acknowledgment that a  
10 conditional sentence can be appropriate in a case of  
11 drinking and driving where serious injury or death  
12 results. This must therefore also be an acknowledgment  
13 that the principles of general deterrence and  
14 denunciation can be served by a conditional sentence  
15 and are not served only by sending an offender to serve  
16 time in jail.

17 In my view, the circumstances in the McDonald and  
18 Biancofiore cases were more aggravating than this  
19 case. In the McDonald case, the intoxicated accused  
20 deliberately drove a vehicle into a crowd of people.  
21 In Biancofiore, the accused drove a vehicle that he had  
22 taken without consent at a high rate of speed, weaving  
23 in and out of traffic along major city streets.  
24 Obviously, however, the consequences in this case - the  
25 death of Mary Vittrekwa - are just as serious as in  
26 those other cases.

27 I have carefully considered since yesterday



1           whether the only way of serving the principles I have  
2           referred to is to send Mr. Colin to jail for a term of  
3           imprisonment or whether a conditional sentence can be  
4           effective. I recall that Mr. Charlie, when he  
5           testified here in court, referred to the problems  
6           caused by alcohol in this community. I do have a  
7           concern that if I simply send Mr. Colin away to jail  
8           for a number of months or years, it will not do  
9           anything to change the problems in this community, to  
10          change the attitudes of people towards alcohol. I have  
11          a concern that he will be just another of the many,  
12          many young people, particularly young men, from this  
13          community and other communities in the North who go  
14          away and do their time and then come back to their  
15          community and nothing really changes as far as others  
16          are concerned.

17                 Having considered everything that I have been told  
18          about this case, everything that has been presented to  
19          me in court and in the materials, I am not convinced  
20          that that is the best way to deter others from drinking  
21          and driving in this case.

22                 I also have regard to Mr. Colin's personal  
23          circumstances at this time and the fact that his wife  
24          is due to give birth to their child and that they have  
25          two other children to support. I also take note of  
26          what has been said in the materials, the pre-sentence  
27          report, the letter from the justice committee and the

1 letter from Mr. Smith about Mr. Colin's emotional state  
2 in dealing with this matter.

3 Among the letters in Exhibit 5 in this case is one  
4 dated May 24, 1996, from members of Mary Vittrekwa's  
5 family. One of the things said in the letter is as  
6 follows, and I quote: "We feel that Hugh will also  
7 always be reminded of the fact that he is the  
8 'grandchild who accidentally killed his grandmother.'" I  
9 think that that sad comment is a very true one. As  
10 the Justice Committee points out in its letter,  
11 Mr. Colin lives the consequences of what he has done  
12 every day and will continue to do so. That is, as  
13 Miss Charbonneau said, in effect, his life sentence.

14 I am of the view that this community, and  
15 particularly the young people of this community, need  
16 to be reminded and taught about what happened in this  
17 case and what caused Mrs. Vittrekwa's death, that being  
18 drinking and driving and Mr. Colin's decision to  
19 combine those activities, and they need to be taught  
20 that in a very direct way and also to understand in a  
21 very direct way how Mr. Colin, his family, and this  
22 community have suffered as a result of what happened.  
23 I acknowledge that in some ways this may be harder on  
24 both Mr. Colin and the community than if he were simply  
25 to be sent away to a jail.

26 Mr. Colin has said that he wants to work with  
27 children, and it is my intention, through the sentence

1 I am about to impose, that he participate in teaching  
2 others in the community about the consequences of this  
3 behaviour. At the same time, it is my hope that in  
4 doing that for his community, he may also be helped in  
5 terms of dealing with the tragedy that he has caused.

6 Please stand up, Mr. Colin.

7 Mr. Colin, the sentence I impose is one of two  
8 years less a day imprisonment, but I order that you  
9 serve the sentence in the community subject to your  
10 compliance with the following conditions. First, the  
11 mandatory condition that you:

- 12 (a) Keep the peace and be of good  
13 behaviour. That means stay out of trouble;
- 14 (b) Appear before the Court when required to  
15 do so by the Court;
- 16 (c) Report to the conditional sentence  
17 supervisor designated for this community  
18 within two working days after this order  
19 is made. In other words, after today;
- 20 (d) Remain within the Northwest Territories  
21 unless written permission to go outside  
22 the Northwest Territories is obtained  
23 from the Court or the supervisor;
- 24 (e) Notify the Court or the supervisor in  
25 advance of any change of name or address  
26 and promptly notify the court or the  
27 supervisor of any change of employment  
or occupation.

23 As well as the following additional conditions:

- 24 (f) Provide for the support of your  
25 dependents;
- 26 (g) That you perform 240 hours of community  
27 service over the next 18 months  
including speaking to school classes and  
other youth organizations and as part of  
any drinking and driving awareness

1 campaign or healing program that may be  
2 recommended by the Fort McPherson  
3 justice committee. You are to speak  
4 about your experience and the tragic  
5 effect it has had on your family and  
6 your grandmother's family and what you  
7 have learned from it, and you are also  
8 to perform any other community service  
9 to a maximum of the 240 hours directed  
10 by your supervisor;

(h) You are to attend any treatment or  
counseling programs as directed by the  
supervisor; and

(i) Under the supervisor's direction, you  
are to meet with the Justice Committee  
for their advice and counseling.

11 Now, Mr. Colin, do you understand all of those  
12 conditions?

13 THE ACCUSED: Yes, ma'am.

14 THE COURT: All right. I want to make it  
15 clear that my intention is, and I realize that this  
16 probably will be very difficult for you, but in  
17 speaking to school classes, to young people, that you  
18 talk about what happened so that they understand what  
19 it is like to go through the experience you went  
20 through in a very real way, so that they understand  
21 exactly what can happen if they combine alcohol and  
22 driving, and exactly what you must have felt and must  
23 have seen as a consequence of what you did. In other  
24 words, I want you to make it very, very clear to these  
25 people what devastation is caused by that behaviour.

26 Now, in the circumstances, I think that an order  
27 prohibiting you from driving is appropriate, and I make

1 an order that you be prohibited from operating a motor  
2 vehicle for a period of four years commencing today.

3 I direct that the clerk provide you with a copy of  
4 the conditional sentence order and that she explain to  
5 you the substance of Section 742.4 and 742.6 of the  
6 Criminal Code so that you understand what may happen if  
7 you violate any of the conditions of the order and,  
8 also, how to apply to have the additional conditions  
9 that I referred to changed. I direct her to endorse,  
10 as well, on the order that those explanations have been  
11 given to you and that you acknowledge your  
12 understanding of them.

13 You can sit down, Mr. Colin.

14 As I said just earlier, this sentence may be more  
15 difficult for you, in fact, than serving time in jail  
16 because this experience is not something that is easy  
17 to talk about, and that is already clear to me from  
18 having heard from you in court. But it is my hope that  
19 with the help of the conditional sentence supervisor  
20 and with input from the justice committee and possibly  
21 the R.C.M.P., that you can in a very real way help  
22 others understand how their use of alcohol ruins  
23 lives.


24 There will be no victim of crime surcharge.

25 Counsel, I want to thank you for your very fair  
26 and helpful submissions in this very difficult case.

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Certified pursuant to Practice  
Direction #20 dated December 28, 1987

  
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Jane Romanowich  
Court Reporter