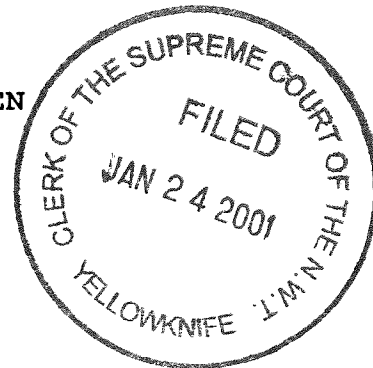


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- v -

TONY CHOCOLATE aka TONY BLACKDUCK

Transcript of the Oral Reasons for Sentence of The Honourable Justice V.A. Schuler, sitting in Yellowknife, in the Northwest Territories, on the 12th day of December, A.D. 2000.

APPEARANCES:

Ms. S. Kendall:

Counsel for the Crown

Mr. A. Mahar:

Counsel for the Defence

1 THE COURT: All right, thank you Mr. Chocolate.

2 All right, well I can deliver the sentence now.

3 I won't go over the facts in any detail, I think
4 it's -- suffice it to say that there is no evidence
5 that there was any great deal of planning that went
6 into this event. Mr. Chocolate was walking around
7 town looking for something to drink, encountered
8 various people, eventually encountered Mr. Drybone
9 and Mr. Naedzo. They went to Jack Webb's trailer
10 apparently looking for a party because they had been
11 told there might be one going on there, but also
12 looking for Gilbert, and I can't recall his last name
13 whether it was Boucher or Bouvier, but in any event,
14 look for this Gilbert individual.

15 Mr. Chocolate, by his own admission, was the one
16 that kicked in the door to the trailer, whether at
17 that point there was some thought about seeing what
18 was in there that they might be able to use or to
19 take I think seems reasonable on the evidence.

20 They went in, and I'm satisfied that at least in
21 the course of looking in the trailer, Mr. Chocolate
22 formed the idea of going to FC Services and seeing
23 what he could get from there.

24 The evidence, as I found, indicates that Mr.
25 Chocolate had the knife that's been made an exhibit
26 with him, that he and Mr. Naedzo put on coveralls at
27 Mr. Chocolate's insistence, and covered their faces

1 and went to FC Services where Mr. Chocolate went in
2 and got the cashier to open the cash register and he
3 then took the money from the cash register and left.

4 For the record, I convict him. He's pleaded
5 guilty to robbery, I convict him and my finding was
6 that he was, in fact, the principle actor as I've
7 indicated.

8 So although I'm satisfied there wasn't a great
9 deal of planning that went into this, in the sense
10 that there is no evidence of any planning before they
11 went to Jack Webb's, certainly there was some thought
12 put into what was being done. There was enough
13 thought to put on coveralls and cover faces, and
14 enough thought to take the knife. So it's not -- it
15 wasn't completely an unplanned venture, perhaps it
16 wasn't so much sophisticated as opportunistic. There
17 were items there that Mr. Chocolate thought he could
18 make use of and so he did.

19 Mr. Chocolate is 34 years old. I have been told
20 that he had a very grim upbringing. That he had a
21 lot of difficulty in his family circumstances, that
22 he had no school, but did have some land skills as a
23 youngster.

24 He's had an alcohol problem for many many years,
25 an addiction to alcohol, and I have to take into
26 account that he has an extremely lengthy criminal
27 record which does involve prior instances of robbery

1 and also of assault which are related charges. It
2 also involves a great number of other offences going
3 back to 1984.

4 Now, I do take into account that Mr. Chocolate
5 has pleaded guilty. The guilty plea didn't
6 completely mean that -- didn't mean that no evidence
7 had to be called, obviously the time spent on
8 evidence has been shortened from what was expected.
9 There was no jury involved. Mr. Chocolate admitted
10 that he was involved in the offence so I do give him
11 some credit for the guilty plea in those
12 circumstances and notwithstanding that it didn't
13 completely obviate the need for any evidence.

14 He has also spent 13 months in custody and,
15 according to the formula that was approved by the
16 Supreme Court of Canada in the *Wust* case, I credit
17 him 26 months for that time spent in custody.

18 The question obviously is what sentence he
19 should receive at this time having taken into account
20 the time in custody.

21 Mr. Chocolate, as unfortunately so many other
22 people who come before the Court, obviously has had a
23 difficult time in life, but he's also been in court a
24 number of times and I'm sure he's heard over and over
25 again that he has to do something about his problems
26 and stop committing offences.

27 When I look at the transcript from when Mr.

1 Justice Vertes sentenced him in 1997, one of the
2 considerations at that time was certainly the fact
3 that Mr. Chocolate was under psychiatric care and
4 there was a concern that that not be interrupted.
5 I'm told that he still receives some help from the
6 psychiatrist, but it's difficult for me to assess at
7 this point where that's at, and I suppose the one
8 conclusion I have to come to is that -- and with all
9 due respect to the psychiatrist, it just doesn't seem
10 to be working and maybe it's a situation where Mr.
11 Chocolate needs more help than he's able to get here
12 in Yellowknife. Sometimes that happens. Sometimes,
13 in fact, there are better services or facilities that
14 are available elsewhere. Maybe this is an indication
15 that that's what Mr. Chocolate needs is some more
16 intensive help, even if it means taking him out of
17 the Northwest Territories for some time.

18 So I think that that's one thing I have to
19 consider, this isn't a case where, in my view, there
20 is a compelling reason to simply keep him in the
21 Northwest Territories. Now, that still leaves for
22 consideration what the appropriate sentence should
23 be.

24 I think some of what Mr. Mahar has said is
25 valid, but I don't see Mr. Chocolate as being someone
26 who is simply committing spontaneous and stupid
27 offences, someone who is really a nuisance. The

1 problem is that Mr. Chocolate, by his last few
2 offences, has shown that he's actually a danger to
3 his community. What he did in this particular
4 instance was very dangerous. The knife that's been
5 put into evidence is, as any knife would be, but
6 particularly this particular knife could have caused
7 an awful lot of damage to someone and to take that
8 kind of weapon into a store and not knowing how
9 people in the store may react to it, not knowing what
10 may happen, the situation really could have led to
11 horrific consequences, and I'm sure it was terrifying
12 for Ms. Charlo being in the middle of it, and
13 thankfully she did some quick thinking and was able
14 to get out of there.

15 But I have to say that Mr. Chocolate, when I
16 look at this record and consider what's on it, seems
17 to be committing offences, if I look at the sentences
18 that have been imposed, that may be becoming more and
19 more dangerous.

20 One of the things the Court has to do is protect
21 society and that means obviously protecting the
22 community of Rae, protecting the people in the
23 Northwest Territories. I'm not sure how one does
24 that in a case like this other than by removing the
25 offender from society for some time, but at the same
26 time hoping that if there is a problem that can be
27 helped, that he get some help to deal with it.

1 I don't see this as a case where I should simply
2 rely on Mr. Chocolate getting older and eventually
3 running out of steam, and I say that because what
4 might happen in the interim while he runs out of
5 steam may simply be too dangerous to take that risk.

6 In all the circumstances, considering the
7 sentence he received in 1997, considering the
8 sentences he's received before that, considering that
9 he was out of jail after the 1997 sentence, was again
10 convicted and sentenced for assault, failure to
11 comply with a probation order, failure or refusal to
12 provide a breath sample, that was February of 1999,
13 he got eight months total, it must not have been very
14 long before he was out of jail and then committed
15 this offence in November of 1999.

16 In all the circumstances, taking everything into
17 account and including the remand time, Mr. Chocolate,
18 would you stand up please. Mr. Chocolate, I sentence
19 you to three years in the penitentiary. I sincerely
20 hope that you will get some help there because
21 obviously if you -- as the judge told you before, if
22 you commit more crimes, you're just looking at more
23 and more time and that's the problem, so to the
24 extent that there is some help available for you in
25 the penitentiary, you should take advantage of that
26 help. In other words, you should get yourself some
27 help.

1 Now, that's the sentence I impose, you can have
2 a seat, Mr. Chocolate. I also impose a firearm
3 prohibition ban in the usual terms commencing today
4 and expiring ten years from his release from
5 imprisonment. Is there a need to specify a period
6 within which to surrender items?

7 MR. MAHAR: He's been in custody for a year so I
8 can't imagine there would be any need. He's also on
9 a prohibition.

10 THE COURT: Well, for the record, any such items
11 are to be surrendered forthwith. In the
12 circumstances, the offence that he's been convicted
13 for, being a secondary designated offence,
14 considering Mr. Chocolate's record, considering the
15 impact that the authorization would have on his
16 privacy and security of the person, considering that
17 there have been no circumstances brought to my
18 attention which would make the making of the ordering
19 inappropriate and being satisfied that it is in the
20 best interests of the administration of justice to
21 make the order, I do make the order in the terms
22 submitted that a DNA sample be taken from Mr.
23 Chocolate.

24 All right, thank you very much. Is there
25 anything else I should deal with?

26 MS. KENDALL: Can the exhibits, Your Honour, I would
27 ask that they be returned to the police pending the

1 outcome of the appeal period. I don't think the
2 clerk would want that knife in the exhibit locker.

3 THE COURT: No, I don't think so. The exhibits,
4 other than the paper exhibits, are to be kept then in
5 the possession of the RCMP until the expiry of the
6 appeal period or the determination of any appeal that
7 may be taken.

8 MR. MAHAR: Thank you.

9 THE COURT: Is there anything further then?

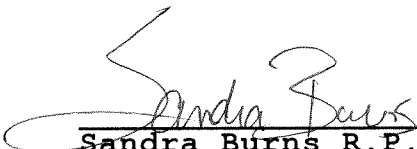
10 MS. KENDALL: No.

11 THE COURT: All right, thank you very much,
12 counsel, for all your efforts in resolving this case.

13 MR. MAHAR: Thank you, I thank my friend.

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

17 
18 Sandra Burns R.P.R., C.R.R.
19 Court Reporter

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