

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

CHARLES STANLEY FIRTH

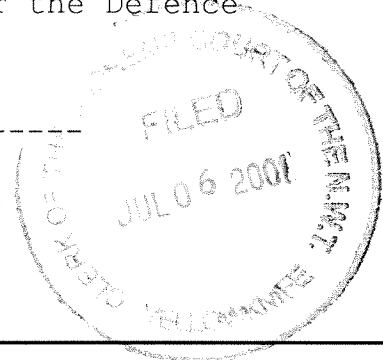
Transcript of the Reasons for Sentence (Oral) delivered
by The Honourable Justice V.A. Schuler, in Yellowknife,
in the Northwest Territories, on the 5th day of July,
A.D. 2001.

APPEARANCES:

Ms. S. Bond: Counsel for the Crown

Mr. R. Gorin: Counsel for the Defence

Charge under s. 236(b) C.C.



1 THE COURT: Charles Stanley Firth has pleaded
2 guilty to a charge of manslaughter.

3 Briefly stated, the facts are that he was
4 drinking with others at the home of a friend in the
5 Town of Inuvik. All parties were intoxicated. The
6 deceased John Kalinek became belligerent and was
7 threatening another person who was present. Mr. Firth
8 intervened and stopped Mr. Kalinek from hitting that
9 person. Mr. Kalinek subsequently assaulted Mr. Firth
10 by kicking him in the face, causing his head to snap
11 back. He tried to assault him again but Mr. Firth
12 threw him to the floor. Mr. Firth, who was not
13 wearing shoes at the time, then kicked and stomped on
14 Mr. Kalinek until subsequently a third party
15 intervened. Apparently all of this happened quickly.
16 Mr. Kalinek was left on the floor and several hours
17 later was noted to be dead. The autopsy indicated
18 that the cause of death was blunt force trauma to the
19 head which caused subdural bleeding and swelling of
20 the brain.

21 Counsel have made a joint submission for a
22 sentence of 32 months, which they have calculated by
23 starting with a three-year sentence and then giving
24 credit on a two-for-one basis for the almost two
25 months that Mr. Firth has spent in remand on this
26 charge. In assessing that joint submission, I have to
27 consider whether the 32 months proposed is a fit and

1 proper sentence in all the circumstances in the sense
2 of being within the appropriate range for an offence
3 of this nature.

4 I take into account that, based on the facts I
5 have been presented with, the deceased was the
6 aggressor. He started things off by assaulting
7 another person and then by assaulting Mr. Firth.
8 There is an element of self-defence, but clearly what
9 Mr. Firth did far exceeded lawful self-defence.

10 I take into account that there was alcohol
11 involved. That does not excuse what Mr. Firth did,
12 but it may help explain why or how he could overreact
13 so extremely to the situation.

14 Mr. Firth waived his preliminary hearing and has
15 pleaded guilty at an early opportunity, so I take that
16 into account. It not only saves the time and expense
17 of a trial, but I am sure has saved the family of the
18 deceased the trauma of a trial and of having the
19 matter unresolved for some time.

20 I take into account as well, as alluded to by
21 counsel, the potential difficulty of a trial where
22 some of the main witnesses are friends of the accused
23 and were also intoxicated at the time of the event.

24 I also accept that the guilty plea is an
25 expression of remorse and that it indicates that
26 Mr. Firth is taking responsibility for what he did.

27 There is nothing remarkable about Mr. Firth's

1 personal circumstances. He is 34 years old. He is
2 from Inuvik. He is single and has a five-year old
3 daughter from a common-law relationship. He has
4 worked mainly as a carpenter.

5 He does have a lengthy criminal record and,
6 although much of it is unrelated to the charge before
7 the court, I do have to take into account that he has
8 seven assault convictions, five of which occurred
9 within the last five years. I agree with defence
10 counsel that going by the sentences imposed for those
11 assaults, it is reasonable to conclude that they were
12 not at the most serious end of the scale, although I
13 do note that he did receive five months' jail on two
14 of those assaults, which is not exactly a negligible
15 sentence. I do not know of course if there was any
16 remand time involved in those sentences.

17 When I look at the record and I see all those
18 assaults over the last five years, and I now see that
19 Mr. Firth has committed what I think we would call the
20 ultimate assault really and killed someone, I have to
21 say that I really hope, Mr. Firth, that you will give
22 a lot of thought to this while you are in jail,
23 because I would say at this point that you have
24 crossed the line. I recognize how quickly you pleaded
25 guilty and I recognize that you are sorry, and that no
26 doubt you yourself are probably shocked and quite
27 horrified at what you have done. But now you know

1 what you are capable of doing. It seems to me that
2 you better take a good, hard look at your drinking and
3 what you are going to do to make sure that this never
4 happens again.

5 I do take into account the principles of
6 sentencing. I take into account the importance of a
7 deterrent sentence. Obviously the offence of
8 manslaughter is considered a very serious one. The
9 maximum punishment in the *Criminal Code* is life
10 imprisonment.

11 I have not been referred to any specific cases by
12 counsel, but I think it is correct to note that in the
13 range of manslaughter offences there are cases which
14 are at one end of the range or the scale, the lower
15 end where clearly there is no intent to kill. There
16 are then cases which are at the higher end and which
17 come very close to being second degree murder. Those
18 cases often involve a weapon in circumstances where
19 there is an intent to kill within the legal definition
20 of the term but manslaughter is appropriate because of
21 provocation or other factors. In every case the
22 specific facts and the degree of moral blameworthiness
23 of the offender will be important.

24 In this case, I accept that the deceased
25 Mr. Kalinek was assaulting Mr. Firth and that
26 Mr. Firth initially was defending himself, trying to
27 stop Mr. Kalinek, but clearly once he got him on the

1 ground he went too far.

2 In all the circumstances, in my view this case is
3 at the lower end of the wide range of manslaughter
4 circumstances that I am aware of that have come before
5 the court, and the sentence that is proposed, while
6 perhaps at the lower end of the range, is within the
7 range. So I am prepared to accept the joint
8 submission.

9 Stand, please, Mr. Firth.

10 Mr. Firth, after crediting the remand time, I
11 sentence you to 32 months in jail. There will be a
12 firearm prohibition order in the standard terms. It
13 will commence today and it will expire ten years after
14 your release from imprisonment on this charge.

15 Does your client have any such items?

16 MR. GORIN: I don't believe so.

17 THE ACCUSED: No.

18 THE COURT: No firearms? All right. Well then
19 the order will simply say that any such items are to
20 be surrendered forthwith to the RCMP.

21 The victim of crime surcharge is waived.

22 And with respect to the DNA order, do you have a
23 draft order?

24 MS. BOND: I do have a draft order, Your
25 Honour. I'll pass that up.

26 THE COURT: You can have a seat, Mr. Firth.

27 MS. BOND: If I can just make a comment with

1 respect to the firearms order. It's section 109(2) (a)
2 I believe that we're working under and there actually
3 are two aspects of the order; that is, that the
4 possession of firearm and a number of other items that
5 are enumerated there - crossbow, restricted weapon,
6 et cetera - the minimum duration of the order is ten
7 years. But then following that, paragraph (b) deals
8 with other items, that is, prohibited weapons,
9 restricted firearms, et cetera, and the minimum there
10 is life. So I just wanted to clarify that because it
11 has come up as an issue in the past. There are sort
12 of two aspects identifying various types of weapons
13 and firearms, and that aspect of it ought to be for
14 life.

15 THE COURT: Do you have anything you want to say
16 about that, Mr. Gorin?

17 MR. GORIN: Not really, no.

18 THE COURT: All right. Well then the order will
19 also include the term that the items listed in
20 subsection (2) (b) of section 109 be -- that Mr. Firth
21 be prohibited from possessing those items for life.

22 MS. BOND: Thank you, Your Honour. I'll draft
23 the order.

24 THE COURT: All right, that's fine.

25 MS. BOND: And the DNA order.

26 THE COURT: Do you have any concerns about the
27 order?

1 MR. GORIN: No.

2 THE COURT: All right. Well I'll take a look at
3 it in chambers.

4 Is there anything further then that I've missed?

5 MS. BOND: No, Your Honour.

6 MR. GORIN: There was one issue about the letter
7 that I referred to earlier but I think we can likely
8 speak to that in chambers. It's nothing important.

9 THE COURT: All right. I had the clerk take a
10 look for it but she wasn't able to find it.

11 MR. GORIN: Yes. And, frankly, I thought that
12 it had been sent. When my friend had told me of a
13 letter that had been sent, I don't know, it just shows
14 the fleeting nature of memory or the constructive
15 nature of memory. I thought that I had.

16 THE COURT: Maybe it's just your age, Mr. Gorin.
17 I hate to say that but...

18 Thank you very much, counsel, and thank you for
19 resolving the case so quickly.

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21 Certified pursuant to Rule 723 of
22 the Rules of Court

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Annette Wright, RPR, CSR(A)

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Court Reporter