

R. v. Chocolate, 2005 NWTSC 80

S-1-CR2005000041

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

FERNAND CHOCOLATE



---

Transcript of the Reasons for Sentence by The Honourable  
Deputy Justice R. P. Foisy, at Yellowknife in the  
Northwest Territories, on September 15th A.D., 2005.

---

APPEARANCES:

Mr. S. Hinkley: Counsel for the Crown  
Mr. J. Brydon: Counsel for the Accused

-----  
Charge under s. 268, s. 270(1) *Criminal Code of Canada*

1 THE COURT: There is no doubt that this is  
2 a serious charge and the circumstances involved  
3 in this charge are about as a serious as they can  
4 get without incurring a fatality; as the  
5 constable pointed out, either to the accused or  
6 both of them.

7 It is true that the community has to  
8 understand that you cannot treat the very people  
9 that are there to help you this way. They are  
10 there to protect you; that's their job, that's  
11 their life. In a small community when there is  
12 trouble, who is the first that you call? It's  
13 the police. They come out there to help,  
14 sometimes at their own peril. They are not to be  
15 made punching bags and they are not to be abused.  
16 And people who do that have to understand that  
17 there is a price to pay. And people who know  
18 you, Mr. Chocolate, have to know that what you  
19 did, they can't do. In other words, they have to  
20 be deterred from doing this.

21 You did plead guilty. That has to mean a  
22 real credit otherwise people would never plead  
23 guilty. I know in small communities jury trials  
24 are very divisive. They divide the community.  
25 The often divide some people from the community  
26 against the police. So the fact that you have  
27 seen fit to plead guilty and avoid that is to

1           your credit.

2                    You have been in custody for seven months  
3           and I am prepared to give you the two-for-one  
4           credit, two months for one served; in other  
5           words, 14 months.

6                    The penitentiary term that is being sought  
7           by the Crown, something in the area of three  
8           years, I think is extremely reasonable.  
9           Deducting from that approximately 14 months, it  
10          leaves the request made by the Crown and joined  
11          in by your counsel of two years less a day, I  
12          think, a reasonable one. The law is clear that a  
13          trial Judge is to accept the joint submission  
14          unless it is unreasonable. It is clearly within  
15          the spectrum of sentencing and I cannot say that  
16          it is unreasonable.

17                   Mr. Chocolate, you are 45 years old. You  
18          have been in and out of jail now since 1978. You  
19          must be getting tired of this. Your family and  
20          your wife must be getting awfully fed up with  
21          this, and your kids must be wondering what is  
22          going on with their father.

23                   You have to get to the position where you  
24          are fed up with this because sooner or later you  
25          are either going to quit drinking or it will kill  
26          you. Either the alcohol itself will kill you or  
27          else you will die in a fight or a brawl or not

1           wake up in a ditch some day. That's not a very  
2           good prospect, especially for a man who is  
3           described by Constable Fuhr's now wife as being  
4           very competent, caring and capable. You have got  
5           qualities but when you are drinking, that's all  
6           gone. You become less than human.

7                     For the next two years less one day, you are  
8           going to have time to think about it and that's  
9           the sentence that I am pronouncing now.

10                    I am giving some thought to probation. I  
11           know that when you get out, unless you have  
12           decided that you are going to quit drinking and  
13           you are going to change your life, perhaps  
14           probation will not help you very much. It might  
15           just set you up for some more breaches and more  
16           time in jail. And if you are determined to quit  
17           drinking, I assume that there are AA facilities  
18           available in Rae. There is other help available  
19           there too, the community has various services to  
20           help you. Turn to them instead of your drinking  
21           buddies. Look at your drinking buddies and see  
22           what alcohol has done to them and if that's what  
23           you want to go back to, then you will and then  
24           you know what will happen. So I won't impose a  
25           period of probation.

26                    I hope that some day you turn your life  
27           around and it is when you go to Constable Fuhr

1 and you say that you are sorry for what you did,  
2 and that you have already backed it up with  
3 actions and not just words.

4 Anything else, gentlemen?

5 MR. BRYDON: Yes, one other matter. The  
6 victims of crime surcharge I would ask that to be  
7 waived given the fact that he has been obviously  
8 incarcerated for seven months.

9 MR. HINKLEY: Yes, sir, seems prudent.

10 THE COURT: Yes, I will waive that.

11 MR. BRYDON: Thank you.

12 THE COURT: That's it?

13 MR. HINKLEY: Yes, sir.

14 THE COURT: Thank you, we will adjourn.

15 **(ADJOURNMENT)**

16

17 -----  
18 Certified to be a true and  
19 accurate transcript pursuant  
20 to Rules 723 and 724 of the  
21 Supreme Court Rules,

22

23

24

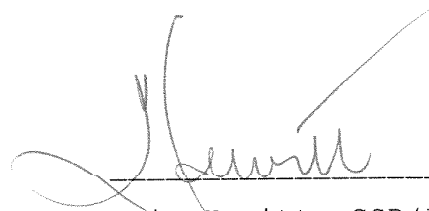
25

26

27

28

29



Lois Hewitt, CSR(A), RPR, CRR  
Court Reporter