

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

YELLOWKNIFE CRIMINAL SITTINGS

August 1st, 1985

	<u>COUNSEL</u>	<u>TRIAL JUDGE</u>	<u>COURT</u>
HER MAJESTY THE QUEEN Appellant	G. Bickert, Esq.	T.B. DAVIS,	LIEBERMAN, J.A. DeWEERDT, J.A. IRVING, J.A.
- v -			
CLAYTON PATRICK BENOIT Respondent	Ms. L. Tarras		

APPEAL NO. NWT. C.A.582

Commit aggravated assault, s. 245.2 C.C.

MEMORANDUM OF JUDGMENT  
DELIVERED FROM THE BENCH

LIEBERMAN J.A. (for the Court):

The Crown seeks leave to appeal a sentence of twelve months' imprisonment imposed upon the respondent after a plea of guilty to a charge of aggravated assault contrary to s. 245.2 of the Criminal Code.

The complainant is a person of borderline intelligence who had been drinking at the home of the respondent's mother. He was a friend of the respondent's mother. The respondent arrived at his mother's home and found the complainant, who was known to him, occupying his (the respondent's) bed. He immediately attacked this defenceless sleeping person. The complainant received a broken nose, broken jaw, and a four-inch cut over his right eye. He was hospitalized for approximately three weeks and underwent minor surgery to have his nose and jaw repaired.

The respondent is only 18 years of age. He has an extensive record including two instances of assault. In August 1982 he was convicted of assault occasioning bodily harm and in February 1985 he was convicted of common assault. At the time of the assault upon the complainant the respondent had been out of gaol for only two weeks. He has an alcohol problem.

This was an unprovoked, brutal assault upon a defenceless person with a mental disability. The respondent has exhibited an uncontrollable temper. Notwithstanding his youthful age, he has compiled an unenviable record of assaults, property offences, and failure to comply with orders of the Court. On the same day as the assault upon the complainant took place, the respondent committed an offence under s. 84(2) of the Criminal Code (careless handling of a firearm) for which he received a sentence of three months consecutive to the sentence under appeal. This latter sentence is not under appeal.

In our respectful view the sentence imposed by the learned Territorial Judge is inadequate, having in mind the brutality of this unprovoked assault. We allow the Crown leave to appeal, we allow the appeal, and for the sentence imposed we substitute a sentence of 18 months imprisonment. This term combined with the three months for the firearms offence will result in a total of 21 months imprisonment. Had not the respondent been only 18 years of age we would have imposed penitentiary time.

We recommend that the correctional authorities arrange to have a psychiatric examination of the respondent who has displayed instances of uncontrolled violence. We further recommend that alcohol counselling be made available to the respondent.