

CR 02447

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- v -

JAMES MASUZUMI

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Transcript of the Reasons for Sentence of The Honourable  
Mr. Justice M.M. de Weerd, in Norman Wells, in the  
Northwest Territories, on the 29th day of March, A.D.,  
1994.

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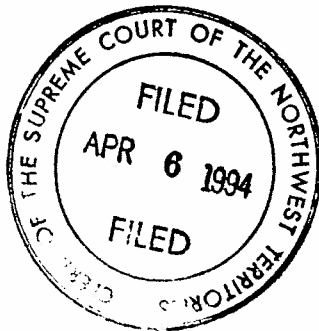
APPEARANCES:

Mr. L. Rose:

For the Crown

Mr. V. Foldats:

For the Defense



1 THE COURT: Sentencing of offenders is one of the  
2 heaviest burdens borne by the judiciary and by counsel  
3 in counselling the Court since we are dealing with the  
4 life and well-being not only of the accused, but  
5 others who may be affected by his or her conduct. And  
6 we take that responsibility seriously approaching the  
7 matter with, I hope, all due humility because the  
8 powers invested in the Court are enormous and they  
9 must be used responsibly if they are to be effective  
10 and continue to help to minimize the instance of crime  
11 because, of course, nothing the Courts can do can  
12 prevent a crime occurring. Crime will continue to be  
13 with us as long as human beings are less than perfect.

14 Here we have a charge of breaking and entry of a  
15 dwelling and an assault committed in that dwelling on  
16 its occupant in her bed while she was asleep,  
17 believing herself to be safe, entry having been gained  
18 it would appear through the use of an implement in  
19 order to accomplish what occurred.

20 The facts, which are admitted, include those which  
21 indicate that the offender was highly intoxicated at  
22 the time. That does not excuse this offence although  
23 it may help us to understand why and how it may have  
24 occurred.

25 Intoxication of the degree that would appear to  
26 have existed in this case suggests that the accused  
27 was not acting rationally or with a great deal of

1 premeditation. Whatever his motive may have been, it  
2 does appear that he intended to terrify the  
3 complainant and succeeded in doing so. That is an  
4 aggravating factor which the Court cannot ignore even  
5 though there is the absence of the additional  
6 potential aggravating factor of physical injury.

7 And so I look first at the Criminal Code which  
8 defines the offence in question. Section 348 states  
9 in part, so far as is pertinent here, that

10 "Everyone who breaks and enters a  
11 place and commits an indictable offence  
12 therein is guilty of an indictable  
13 offence and liable to imprisonment for  
14 life if the offence is committed in  
15 relation to a dwelling house."

16 So Parliament, and I stress that, Parliament has  
17 provided that a Court may impose a term of  
18 imprisonment for life in a case of this kind. Within  
19 that maximum the Courts have been given the liberty,  
20 the discretion to impose a lesser degree of punishment  
21 and when that is done, as it is usually done, a heavy  
22 responsibility falls on the sentencing judge to ensure  
23 that whatever lesser penalty is imposed, it will  
24 nevertheless accomplish the ends defined by law for  
25 the sentencing process.

26 It's important also that no greater punishment be  
27 imposed than is required because, amongst other  
things, restraint on the part of the Courts will  
encourage restraint on the part of offenders. If the

1 Courts are unrestrained, we can expect offenders to be  
2 also and that would encourage crime and make crimes  
3 more serious than otherwise they might be. In the old  
4 days of sheep stealing, the saying was, "You might as  
5 well be hung for a sheep as for a lamb" and so, rather  
6 than do anything which might promote crime, the Courts  
7 act with due restraint in sentencing so far as they  
8 can.

9 When the facts were read out and Mr. Masuzumi  
10 informed the Court that he accepted them, it became  
11 clear to me from his demeanor before the Court and  
12 what he said in answer to the Court's questions, that  
13 he understood what he was charged with. That he was  
14 aware of the nature of the offence and of the  
15 penalties that might be imposed upon him. He appears  
16 to the Court to be intelligent, to be able to  
17 understand these things and to be acting rationally  
18 and intelligently here today in entering his plea of  
19 guilty to the charge before the Court; that is to say,  
20 the reduced charge of breaking, entry, and assault.  
21 He will know that had the trial proceeded and had he  
22 been found guilty by the jury of the more serious  
23 offences mentioned in the Indictment, he would have  
24 been looking at a very long period of imprisonment in  
25 a penitentiary in southern Canada.

26 From the representations made by the Crown and the  
27 defence, I am left with a choice as to whether a

1 period of imprisonment should be imposed or not today.  
2 I am not bound, however, by what either the Crown or  
3 the defence have said much though I value their  
4 submissions which are based on a much fuller  
5 familiarity with the case than I possess at this point  
6 in time.

7 I note, in particular, that Mr. Masuzumi has spent  
8 approximately six months in gaol, perhaps a little  
9 more than that, and I have mentioned that I propose to  
10 reduce the amount of the penalty which the Court would  
11 otherwise have imposed in this case by one year in  
12 order to take that into account although I have not  
13 overlooked the fact that he was on a recognizance at  
14 the time that the offence was committed. And I take  
15 it, Mr. Rose, that it is not the Crown's intention to  
16 proceed separately for breach of recognizance in this  
17 case?

18 MR. ROSE: That's correct, Sir.

19 THE COURT: That is an aggravating factor which I  
20 shall take into account in imposing sentence.

21 I also take the previous criminal record into  
22 account with a previous conviction in 1991 for  
23 breaking, entry, with intent for which a sentence of  
24 six months imprisonment was imposed. Two years before  
25 that the accused was before the Court on two assault  
26 charges amongst other offences that were dealt with at  
27 that time including failure to comply with a

1 recognizance and with a probation order. Those  
2 convictions, as has been mentioned, suggest that Mr.  
3 Masuzumi has not been able to control his behavior and  
4 I infer that alcohol had a part in all of that and  
5 that he may, therefore, be a poor candidate for  
6 probation. I do not have a pre-sentence report before  
7 me here today and so I do not have the benefit of any  
8 assessment by a probation officer as to Mr. Masuzumi's  
9 likelihood of being a good candidate for probation.  
10 The indications are that in the past he has not been  
11 and unless he is going to change and control his  
12 alcohol abuse, he'll probably be back in court again.

13 It is primarily important that the general public  
14 and that, of course, includes the victim of this  
15 offence Ms. Brooks, should be able to go to bed at  
16 night knowing that they are safe from harm, safe from  
17 attack, and safe from threats of serious injury.

18 Here we have a case where the accused admits the  
19 facts including that he woke this woman in her bed,  
20 put his hand on her throat and another around her  
21 mouth telling her that he had come to kill her and  
22 that he had to kill her and that he was supposed to  
23 put two bullets in her head. Notwithstanding her  
24 attempts to escape, he restrained her. I'm told that  
25 he subsequently drank from a beer bottle while there,  
26 presumably before she escaped, and then passed out.  
27 I'm also told that the complainant and victim were

1 acquainted by which I take it they had seen each other  
2 in this small community and perhaps had had a few  
3 words from time to time, but that they were not  
4 particularly familiar, apart from that, with one  
5 another.

6 The Court is very concerned by the allegation not  
7 only of breaking and entry into a home at night but  
8 the allegation of choking or at least placing a hand  
9 on the throat in a position where the victim could  
10 have been choked. And that, as Mr. Foldats will have  
11 advised his client, is something which he should never  
12 do because there is a particular offence in the  
13 Criminal Code that deals with that and very heavy  
14 penalties are imposed where a person is convicted of  
15 choking another person. It's potentially  
16 life-threatening. If choking is, in fact, carried out  
17 and a person were to die as a result of that, whether  
18 from a heart attack or from the loss of ability to  
19 breathe, the individual could face a murder charge, or  
20 a manslaughter charge with very very serious  
21 consequences. So quite apart from anything else that --  
22 quite apart from the heartless and cruel nature of the  
23 assault, it's an extremely foolish thing for a person  
24 to do simply in an attempt for one reason or another  
25 to frighten somebody else.

26 The overall purpose of the Court in a sentencing  
27 exercise is to achieve, as far as possible and of

1 course there are limits to that, the protection of  
2 society from any repetition of this offence by the  
3 offender. We call that specific deterrence and we  
4 also call it incapacitation to the extent that the  
5 offender will be kept in custody in a case of this  
6 kind where he cannot do that sort of thing at all.  
7 There is also general deterrence which the Courts  
8 consider helps to deter other people from doing this  
9 sort of thing. Furthermore, the Courts must denounce  
10 this kind of behavior. They must act, in other words,  
11 so as to show the public that the law is upheld and  
12 respected and that severe measures will be taken if  
13 necessary to ensure that it is respected.

14 I must take into account the possibility of  
15 rehabilitation and reform on the part of Mr. Masuzumi.  
16 He is still relatively young. His criminal record,  
17 although it's beginning to become quite significant  
18 and extensive, nevertheless is, I'm glad to say, not  
19 as extensive as some we have seen in this court over  
20 the years.

21 I have no doubt that Mr. Foldats has counselled  
22 you Mr. Masuzumi, or will, that all these offences can  
23 be removed from your record if you succeed in turning  
24 your life around and decide, in due course, to obtain  
25 a pardon. That can be done and I commend that to you  
26 and suggest you ask Mr. Foldats about it if you  
27 haven't already had his advice on it.



1           The best protection of the public from a  
2           repetition of the offence by the offender is, of  
3           course, if the offender can be made to change his  
4           ways. And really that means if he can be persuaded to  
5           make himself change his ways, because ultimately you  
6           are the only person who can do that, Mr. Masuzumi.  
7           You're an adult person, you should be very proud of  
8           yourself. You have a very special heritage as a  
9           Masuzumi in the Northwest Territories. Your family  
10          should be proud of you instead of thinking of you as  
11          just another failure. You should give some thought to  
12          that. Eventually you may have a family with children  
13          who will want to look up to you, who will want to  
14          model themselves on you. What sort of example will  
15          you give to them? What sort of example will you give  
16          to other young persons in your extended family? You  
17          can't be very proud of yourself but you can be if you  
18          make the effort. Only you can do that.

19          I could send you away to jail for life. I could  
20          send you away to jail for ten years. I'm not going to  
21          do that today because, in part, I'm not going to do it  
22          because I haven't been asked to do that, but I will  
23          tell you that you are looking in this case at what  
24          could have been a penitentiary sentence. And a  
25          penitentiary, if you were to be sent outside, is not a  
26          place that I would recommend to any young person.  
27          Apart from anything else it's a school for crime, it's

1           also a place where violence is not unknown and where  
2           all sorts of conduct that is reprehensible to normal  
3           people is not unknown.

4           May I strongly suggest to you, Mr. Masuzumi, that  
5           when you are serving your sentence, because I do not  
6           propose to suspend sentence in this case, eloquent and  
7           persuasive as Mr. Foldats may be, I do not feel that  
8           this is an appropriate case and in that connection I  
9           have consulted Section 737 of the Criminal Code which  
10          tells me that the Courts should have regard to the  
11          age, 25 years of age; your character, it appears that  
12          when sober and at work you're able to get and keep  
13          work and be a good citizen; the nature of the offence,  
14          and that's principally what's involved in my decision  
15          here. This is just not the kind of offence for which  
16          the Court can suspend your sentence. And the  
17          circumstances surrounding its commission, and that I  
18          take into account include not only the breach of  
19          probation but -- or better the breach of recognizance,  
20          but also the intoxication.

21          So taking all these factors together, I come to  
22          the conclusion that I should not suspend your  
23          sentence. You're not a first offender. You're no  
24          longer as youthful as a first offender should be to be  
25          considered for that type of sentencing disposition.

26          I'm taking into account your guilty plea. It's  
27          true it has been made very much at the last possible

1 moment but you did spare Ms. Brook from having to  
2 testify and that could mean her having to re-live the  
3 experience which obviously was extremely unpleasant  
4 for her in this case. And so, I'm going to give you  
5 some credit for having entered that guilty plea but I  
6 can only go so far. As I've mentioned, it's not for  
7 the Court to do what counsel tell them. The Court  
8 takes advantage of their submissions as far as it can,  
9 so I'm not bound by the limits on sentence put forward  
10 by the Crown here today and consequently I've been  
11 thinking very seriously of imposing a two year  
12 sentence less a day in this case with a period of  
13 probation. In addition, I've been thinking that I  
14 might make the period of probation shorter than I  
15 otherwise would if, for example, I were to impose a  
16 one-year sentence because you're not, on the record  
17 Mr. Masuzumi, a good candidate for probation.

18 So I have to weigh these things and I'm being very  
19 open with you as I am thinking aloud, of course, in  
20 what I'm saying here. I notice that you have an  
21 extended family, four brothers and a sister. That  
22 you've had difficulties growing up because of the  
23 surroundings in which you grew up which made you  
24 perhaps more likely to become an alcohol abuser than  
25 otherwise you would have been and, for that matter,  
26 more likely to become a violent offender than you  
27 otherwise might have been. So I have to take that

1 into account in two ways: 1) Do you present a greater  
2 danger because of that background? And 2) How far  
3 should you be held personally responsible for what  
4 moulded you when you were a child and now as an adult  
5 person?

6 The Court does its best to avoid scapegoating and  
7 yet, we cannot ignore that everyone must take  
8 responsibility for their lives no matter what has  
9 happened in the past and only you can make that change  
10 that is necessary in your life.

11 I notice that you say that you have not been  
12 allowed to take an A.A. program while you were in  
13 jail. I note what Mr. Foldats said about you managing  
14 to stay out of jail for the last two years and that  
15 your offences of breaking and entry and assault on the  
16 record are now over four years in the past. I note  
17 also what Mr. Foldats said about you studying to  
18 improve your educational qualifications and you  
19 deserve credit for that.

20 On the Crown's side, I've noticed that they are  
21 asking for a "no contact" condition in any probation  
22 order. I haven't heard from Mr. Foldats on that and I  
23 assume that that could be a term of probation?

24 MR. FOLDATS: That's correct, My Lord. As well, Mr.  
25 Masuzumi does wish to address the Court, Sir.

26 THE COURT: Yes, thank you. I was going to allow  
27 him that opportunity because I haven't made up my mind

1 on the sentence yet, I'm just thinking out loud at  
2 this point and I notice that the Crown has asked that  
3 the probation order; if any, should include  
4 counselling for your alcohol difficulties and that Mr.  
5 Foldats also mentioned that as something that you  
6 could do. I notice also that Mr. Foldats suggested  
7 that you might be required to do community service  
8 work as a term of your probation. And finally, I  
9 notice that both counsel agree that a Section 100  
10 order prohibiting you from possessing firearms,  
11 ammunition, or explosives should be made for a minimum  
12 period of ten years.

13 Mr. Masuzumi, I'm now going to give you an  
14 opportunity if you wish to address the Court. Is  
15 there anything that you want to say before the Court  
16 determines what sentence should be imposed in this  
17 case?

18 **THE ACCUSED:** Your Lordship, having spent the last  
19 six and a half months in remand, it has given me more  
20 than enough time to evaluate my life and the direction  
21 that it's heading which is down. I believe that this  
22 is my bottom and that I can't get any lower. It took  
23 me many years to get to this courtroom today. I've  
24 been an alcoholic for about the last seven years or  
25 so.

26 In last April of 1993 I went to an alcohol  
27 treatment center located outside of Yellowknife but I

1 lasted only three weeks of the 28-day program. After  
2 failing to complete the program, I immediately went  
3 back to abusing alcohol and prescription drugs.  
4 Attempting to stop an alcohol abuse has been awful  
5 tough. I would like to go back to that alcohol  
6 treatment center some time in the future. Jail has  
7 been a very dehumanizing experience and it is not one  
8 that I would like to pursue, going in and out of jail  
9 the rest of my life.

10 I'm very sorry what I put Ms. Brooks through, it  
11 must have been an awful scare. Once again, I'm very  
12 sorry. I know that I can lead a positive progressive  
13 life should I choose so.

14 Your Lordship, I'm making a plea for leniency in  
15 the hopes that I don't get a long sentence so that I  
16 can find some employment during the summer or fall so  
17 that I can go back to school some time in the late  
18 fall. Thank you, Your Lordship.

19 **THE COURT:** All right, Mr. Masuzumi, your  
20 expression of remorse certainly weighs with the Court  
21 and I take it to be sincere. Your apology to the  
22 victim is noted in that connection and these things  
23 are consistent with your guilty plea today.

24 Having heard that, and having heard what both  
25 counsel have said and particularly what Mr. Foldats  
26 has said in mitigation and believing that there is  
27 still hope for you, Mr. Masuzumi, because you do



1 appear here to be well motivated and to be young  
2 enough and perhaps strong enough to turn your life  
3 around.

4 Would you stand? The sentence of the Court is  
5 first that you shall be subject to an order pursuant  
6 to Section 100 of the Criminal Code for a period of  
7 ten years prohibiting you from possessing any firearm,  
8 ammunition, or explosive during that period following  
9 any period of imprisonment included in your sentence.  
10 I'm told that you do not require time to surrender any  
11 firearms so that the order will simply state that any  
12 firearms in your possession or under your control  
13 shall be surrendered forthwith. I direct Crown  
14 counsel to draw that order in the form in which such  
15 orders are entered in this court, to present it to  
16 your counsel for approval as to form, have it entered  
17 and see that a copy is served upon you personally.

18 Secondly, the Court is going to impose a term of  
19 imprisonment in this case but since there is some  
20 prospect that you will benefit from probation and that  
21 the public will benefit from your being under  
22 probation, the Court will not make the sentence longer  
23 than two years in this case because if it did, you  
24 would not be able to have the benefit of probation.

25 A probation order shall then be made for a period  
26 of 18 months. During that period you will, of course,  
27 keep the peace and be of good behavior which means

1 that you will not do anything which might bring you  
2 before the Court to be punished under the criminal  
3 law. Do you understand?

4 THE ACCUSED: Yes, I do.

5 THE COURT: Furthermore, during that entire period  
6 of 18 months you shall not contact Ms. Brook, Shirley  
7 Brook in this case, and you shall remain away from her  
8 so that should you find yourself coming towards her on  
9 the street, you'll cross over to the other side and  
10 simply avoid any possible contact with her. Do you  
11 understand?

12 THE ACCUSED: Yes, I do.

13 THE COURT: That means that you will not telephone  
14 her or write her letters but I will make an exception  
15 that you might be in touch with her through a member  
16 of the Law Society of the Northwest Territories should  
17 that ever be necessary. Do you understand?

18 THE ACCUSED: Yes, I do.

19 THE COURT: You will, during the first year of  
20 your probation, take any program of counselling or  
21 treatment for any alcohol or substance abuse problem  
22 that you may have as directed by your probation  
23 officer and I will say, and I should have said, that  
24 you will on your release from imprisonment immediately  
25 contact the senior probation officer in the place  
26 where you then are. Do you understand?

27 THE ACCUSED: Yes, I do.

1 THE COURT: You will, during the entire period of  
2 your probation, report to your probation officer at  
3 such times and places as your probation officer shall  
4 designate. Do you understand?

5 THE ACCUSED: Yes, I do.

6 THE COURT: You shall, during that period, remain  
7 within the Northwest Territories unless you are first  
8 given written permission to leave by your probation  
9 officer or in the event of a medical emergency, if a  
10 dually-qualified medical person authorizes your  
11 leaving the Northwest Territories. Do you understand?

12 THE ACCUSED: Yes, I do.

13 THE COURT: You will, during that first year,  
14 perform 200 hours of community service work under the  
15 direction and to the satisfaction and under the  
16 supervision of your probation officer. Do you  
17 understand?

18 THE ACCUSED: Yes, I do.

19 THE COURT: You will, during that period, abstain  
20 absolutely from the possession or consumption of any  
21 alcoholic beverage other than as prescribed by a  
22 medical practitioner or as may be part of a regular  
23 church service. Do you understand?

24 THE ACCUSED: Yes, I do.

25 THE COURT: You will during that period of a year,  
26 remain outside any place where alcoholic beverages are  
27 sold or distributed or consumed. That means that you

1 will leave any place where there is a party even if  
2 it's in the home that you are occupying. Do you  
3 understand?

4 THE ACCUSED: Yes, I do.

5 THE COURT: You will, during that period of a  
6 year, provide samples of your breath to a peace  
7 officer on demand. Do you understand?

8 THE ACCUSED: Yes, I do.

9 THE COURT: The Court recognizes that this is a  
10 heavy probation order even though I have reduced it to  
11 a period of 18 months from the three-year period  
12 suggested by the Crown. And so the Court recognizes  
13 that this is, amongst other things, a form of  
14 punishment as is the Section 100 order that I was  
15 obliged to make earlier.

16 Taking that into account along with the rest of  
17 what I have had to say, the Court imposes a sentence  
18 of imprisonment on you, Mr. Masuzumi, for a period of  
19 one year consecutive to any other term which you may  
20 now be serving. Do you understand?

21 THE ACCUSED: Yes, I do.

22 THE COURT: Have you any questions?

23 THE ACCUSED: No, I don't. It seems pretty clear.

24 THE COURT: All right. Mr. Masuzumi, the Court is  
25 being lenient with you. In my respectful view, as  
26 lenient as it can possibly be. You will be aware, I'm  
27 sure, that should you slip on the terms of your

1 probation, there are steps that can be taken and I  
2 direct the clerk to read to you those sections of the  
3 Criminal Code which are to be read in that connection,  
4 and I ask Mr. Foldats to advise you as to what they  
5 mean and if you have any question about them to clear  
6 that up for you. Do you understand?

7 THE ACCUSED: Yes, I do.

8 THE COURT: Mr. Masuzumi, everyone in this  
9 courtroom and in this community would want to see you  
10 make a success of your life. Nobody wants to see you  
11 or anybody suffer more than is necessary but it lies  
12 in your hands to turn this situation around. It will  
13 take a great deal of effort and you'll need alot of  
14 help and you won't be too proud to accept help from  
15 those who can give it to you because the primary  
16 objective is to stay away from future trouble of this  
17 kind. Do you understand?

18 THE ACCUSED: Yes, I do.

19 THE COURT: Then the Court will wish you success  
20 in that endeavor. Is there anything further? You may  
21 be seated.

22 MR. ROSE: Nothing from the Crown, My Lord.

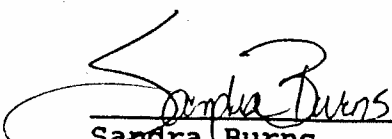
23 MR. FOLDATS: No, My Lord.

24 THE COURT: I thank counsel for their able  
25 submissions and for dealing with this matter in a way  
26 which enabled us, I hope, to achieve justice  
27 notwithstanding the many difficulties. We'll rise and

1 I thank everyone.

2 -----

3  
4 Certified Pursuant to Practice Direction #20  
5 dated December 28, 1987.

6  
7   
8 Sandra Burns  
9 Court Reporter