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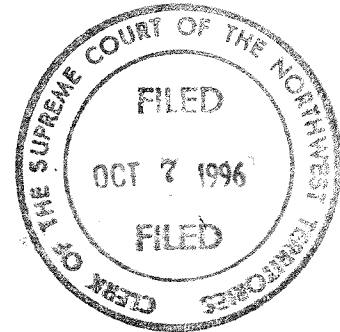
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

YVES USSAK



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Transcript of the Reasons for Sentence held before The Honourable Mr. Justice J.Z. Vertes, sitting at Rankin Inlet in the Northwest Territories, on September 27, A.D., 1996.

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APPEARANCES:

MS. M. NIGHTINGALE:	On behalf of The Crown
MR. C. REHN:	On behalf of The Accused

1 THE COURT: It is now my responsibility to  
2 impose what I consider to be an appropriate sentence on  
3 this offender.

4 Yves Ussak was charged in a six-count indictment  
5 with serious offences all arising from one incident  
6 committed on October 12th, 1995, here in Rankin Inlet.  
7 After two days of trial and two hours of jury  
8 deliberations, it became apparent that, for reasons  
9 which I need not explain here, the jury would have to  
10 be discharged and a mistrial declared. Prior to doing  
11 so, however, the accused changed his plea to guilty on  
12 three of the counts. By consent of the Crown, the  
13 other three counts were dismissed.

14 The three charges to which the accused pleaded  
15 guilty are: First, that he had his face masked with  
16 intent to commit an indictable offence, contrary to  
17 Section 351(2) of the Criminal Code, an offence  
18 carrying a potential maximum penalty of ten years in  
19 jail; second, that he knowingly uttered a threat to  
20 cause death, contrary to Section 264.1(1)(a) of the  
21 Criminal Code, an offence carrying a potential maximum  
22 penalty of five years in jail; and third, that he used  
23 a knife in the commission of an assault, contrary to  
24 Section 267(a) of the Criminal Code, an offence also  
25 carrying a potential maximum penalty of ten years in  
26 jail.

27 The evidence revealed that on October 12th, 1995,

1 the accused wanted to beat up one Rick Thatcher over  
2 some past grievances. He and another man, Peter Kadlak  
3 Jr., covered their faces and armed themselves with  
4 knives and then went into Thatcher's residence.  
5 Thatcher was not there but Simon Aglak, who also lived  
6 there, was. These two held the knives to Aglak's  
7 throat and cheek, threatened him, and, at one point,  
8 the accused took a rifle and pointed it at Aglak's head  
9 while threatening to kill him if he told the police.  
10 They then left, fortunately without causing further  
11 harm to Aglak. There is no doubt that, at the time,  
12 the victim was truly fearful for his safety.

13 The accused took the stand during the trial and  
14 denied his involvement in this incident. He lied to me  
15 and to the jury. I will, however, overlook this  
16 particular flaw in his character since he ultimately  
17 and freely acknowledged the truth of the allegations  
18 against him. In my opinion, the Crown's evidence was  
19 overwhelming against him.

20 The other perpetrator, Kadlak, pleaded guilty to  
21 one charge of assault with a weapon and was sentenced  
22 some time ago to a term of nine months imprisonment.  
23 He testified for the prosecution at this trial. His  
24 situation, however, is radically different from that of  
25 the accused so his sentence is irrelevant to the  
26 sentencing of this accused.

27 The accused is 29 years old. There is no doubt

1 that he had a troubled childhood. His father died when  
2 he was young. He early on developed a pattern of drug,  
3 alcohol, and solvent abuse. He was passed around  
4 between older members of the family while he was  
5 growing up. Almost inevitably, he fell into a pattern  
6 of criminal behaviour.

7 His record reveals 27 convictions of which ten are  
8 for offences of personal violence. Several of them  
9 involve the use of weapons including firearms. The  
10 most relevant conviction is one from November of 1991  
11 when I sentenced him to a term of three years for a  
12 break and enter and commit robbery offence and for  
13 uttering death threats. The circumstances are quite  
14 similar. The accused and another person broke into the  
15 victim's home and, brandishing a knife at the victim,  
16 demanded money. They stole approximately \$2000 on that  
17 occasion.

18 At his sentencing hearing in 1991, after pleading  
19 guilty to the charges, extensive submissions were made  
20 about the accused's problems and his plans to  
21 straighten himself out. Several reports were submitted  
22 that showed how the accused should be in a controlled  
23 environment with long-term therapy to overcome a  
24 chronic addiction to drugs and alcohol and a history of  
25 violent behaviour. Those reports identified a complete  
26 lack of self-control on the part of the accused when he  
27 was under the influence of drugs or alcohol.

1           At that time, the accused spoke very sincerely, I  
2           thought, about his recognition of his problems, his  
3           desire to deal with them and to try to become a good  
4           father to his young children and a good member of this  
5           community. I took him at face value at that time.  
6           Obviously, these were just meaningless sentiments to  
7           him.

8           After his release from that sentence, the accused  
9           was convicted of five more offences and sent back to  
10          jail for several months. In early 1995, he was  
11          convicted of possession of a narcotic, careless use of  
12          a firearm, possession of a prohibited weapon,  
13          possession of a firearm while prohibited from doing so,  
14          and assault. Obviously, whatever efforts at  
15          rehabilitation that were tried were unsuccessful.

16          Crown counsel submits that protection of the  
17          public must be the paramount consideration. I agree.  
18          The personal history of this accused as an offender  
19          shows a very disturbing trend to ever more serious  
20          crimes.

21          Crown counsel submits that there is no hope of  
22          rehabilitation. I cannot agree with that. There  
23          should always be a hope, at least. Otherwise, our  
24          jails will be nothing but holding pens for people  
25          society gives up on totally. I am not prepared to  
26          foreclose the possibility of rehabilitation for this  
27          man just yet. He does need to be controlled for a long

1 period of time, however, so as to give the prospect of  
2 rehabilitation, and the factor of deterrence, time to  
3 work.

4 I will repeat what I said at this man's sentencing  
5 in 1991, and these are my exact words from then: This  
6 history, the history of this man, shows clearly that  
7 the community at large must be protected from  
8 Mr. Ussak. While it may be readily apparent that his  
9 past behaviour can be attributed to his habitual use of  
10 drugs and alcohol, this does not mean that his fellow  
11 citizens, who are the victims of his uncontrolled  
12 habits, need to be protected from the accused any  
13 less.

14 Crown counsel submits that an appropriate global  
15 sentence would be one of seven to eight years. I have  
16 no hesitation in saying that if he had been convicted  
17 of all six counts by the jury, the sentence would  
18 likely have been that or more, even taking into account  
19 time served. I believe, however, that I can impose a  
20 sentence somewhat lower than that, and still satisfy  
21 the requirements of justice, on the basis of three key  
22 factors.

23 First, the accused has been in pretrial custody  
24 since October 13th, 1995. This must be taken into  
25 account so that it results in a reduction of the  
26 sentence I would have imposed in these circumstances.

27 Second, the decision by the accused to change his

1           pleas, even though it came after the jury started  
2           deliberating his fate, is nevertheless worthy of some  
3           recognition. A guilty plea, no matter how late or what  
4           the circumstances, deserves some reward. In this case,  
5           there was a trial and witnesses had to testify; but, it  
6           was also obvious that had the accused not changed his  
7           pleas, all that would happen would be a mistrial. Then  
8           there would have been a need for a new trial. His  
9           guilty pleas avoid the costs, effort, and uncertainties  
10          of that undertaking.

11                 Finally, while the experience was no doubt truly  
12           frightening for Mr. Aglak, there was no actual physical  
13           harm inflicted by this accused.

14                 Crown counsel also submits that this is an  
15           appropriate case for the imposition of an order  
16           pursuant to Section 741.2 of the Criminal Code. That  
17           section empowers the Court, where an offender receives  
18           a sentence in excess of two years for one of a number  
19           of specified offences, including assault with a weapon,  
20           to order that one half of the sentence be served before  
21           the offender may be released on parole if the Court is  
22           satisfied that society's denunciation of the offence or  
23           the objectives of specific or general deterrence so  
24           require.

25                 The increase in parole eligibility is tantamount  
26           to an increase in the punishment. It is an exceptional  
27           measure that should be imposed only where the Court is

1 satisfied that an additional form of denunciation,  
2 deterrence, or incapacitation is required. I say it is  
3 an exceptional measure, but it is not necessarily  
4 limited to unusual circumstances or particularly  
5 aggravating circumstances.

6 In this case, I am satisfied that such an order is  
7 required for the added safety and protection of the  
8 public. Previous good intentions have not worked.  
9 Therefore, at a minimum, the public of Rankin Inlet  
10 need to know that they are safe from Mr. Ussak at least  
11 for a specified period, and Mr. Ussak must learn that  
12 his behaviour must change.

13 Stand up. Mr. Ussak, you and I exchanged words  
14 back in 1991 and at that time I thought that there was  
15 some hope that you would learn to change your  
16 behaviour. Now, at this point in time, I am sure you  
17 understand that this is probably your last real chance  
18 to change your life because no matter when you will be  
19 released, it is going to be up to you to see if you can  
20 do the things necessary to finally become an upstanding  
21 member of the community and a good family man. Only  
22 you can do that because if you do not do it over the  
23 next few years now, if you do not change the way you  
24 think and the way you act and the way you control  
25 yourself, I can pretty well guarantee you that you are  
26 going to waste the rest of your life behind bars.

27 With respect to the charge of assault with a



1           weapon, Count 4 of the indictment, I sentence you to  
2           serve a term of imprisonment of five years. In  
3           addition, I order, pursuant to Section 741.2 of the  
4           Criminal Code, that you are to serve no less than one  
5           half of that sentence before you may be paroled.

6           With respect to the charge of being masked, Count  
7           2 of the indictment, I sentence you to serve a term of  
8           imprisonment of four years to be served concurrently.

9           With respect to the charge of uttering a threat,  
10          Count 3 of the indictment, I sentence you to serve a  
11          term of imprisonment of three years also to be served  
12          concurrently. You may sit down.

13          The total sentence is five years, subject of  
14          course to the Section 741.2 order made with respect to  
15          Count 4.

16          I will not make a recommendation as to where  
17          Mr. Ussak is to serve his sentence. While I have  
18          disregarded the specific allegations contained in the  
19          report from the correctional officials submitted by  
20          Crown counsel, I cannot overlook the fact that the  
21          correctional officials regard Mr. Ussak as a serious  
22          risk to both staff and other inmates. I will therefore  
23          leave it to the discretion of the penal authorities to  
24          decide the most appropriate facility considering that  
25          Mr. Ussak requires control and treatment.

26          I have also given thought to the Crown's request  
27          for a lifetime prohibition order with respect to

1 firearms. Considering Mr. Ussak's background, and  
2 community, I am not convinced that there may not be a  
3 time in the future when he will have a need to use  
4 firearms for a totally legitimate purpose. I therefore  
5 decline to impose a lifetime ban.

6 It is obvious, however, that he has exhibited a  
7 careless disregard for the dangers of firearms and  
8 weapons generally, so some form of prohibition is  
9 warranted. I therefore order that Yves Ussak be  
10 prohibited from possessing firearms for a period of ten  
11 years from the date of his release. Any firearms  
12 currently in his possession must be immediately turned  
13 over to the police.

14 In the circumstances, I decline to impose a  
15 victim's fine surcharge.

16 Is there anything else we need to deal with,  
17 Counsel, in this matter?

18 MR. REHN: There are exhibit matters I  
19 believe, My Lord.

20 THE COURT: With respect to the rifle and the  
21 headset that were marked as exhibits, I think I made a  
22 direction yesterday. I will simply repeat it, that  
23 there will be an order that those items be retained by  
24 the RCMP here in Rankin Inlet pending the expiry of the  
25 appeal period. If no appeal is taken, then they may be  
26 returned to their rightful owner.

27 With respect to the other exhibits, I believe they

1           are all documents that can stay on the file.

2       MS. NIGHTINGALE:           With respect to the items already  
3           seized by the police, there was some mention as well to  
4           the police having authority to return those to the  
5           rightful owner.

6       THE COURT:                 Are there other items that are  
7           still under seizure?

8       MS. NIGHTINGALE:           Yes, there are.

9       THE COURT:                 All right. Then those items may  
10          be returned as well.

11      MS. NIGHTINGALE:           There are some which I believe  
12          police wish to destroy, a couple of knives. The order  
13          then can extend to being return or destroy as  
14          appropriate.

15      THE COURT:                 All right. Then all other items  
16          that are currently under seizure may be returned or  
17          destroyed as deemed appropriate by the police to the  
18          expiry of the appeal period.

19      MS. NIGHTINGALE:           Thank you.

20      THE COURT:                 I want to thank both of you,  
21          Counsel, for your handling and resolution of a  
22          difficult case. Obviously the prospect of having to  
23          conduct another trial on these charges was not a  
24          welcome one for either the Court or the community, I am  
25          sure. I want to thank our interpreters for their  
26          assistance, our staff as usual for their good work. We  
27          can close court.

1 THE CLERK: Thank you, My Lord. All rise.  
2 Court is now adjourned sine die.

3

4 **ADJOURNED SINE DIE**

5

6 Certified Pursuant to Practice Direction  
7 #20 dated December 28, 1987.

8

9 *Tara McCrae* .....

10 Tara McCrae, CSR(A), Court Reporter

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