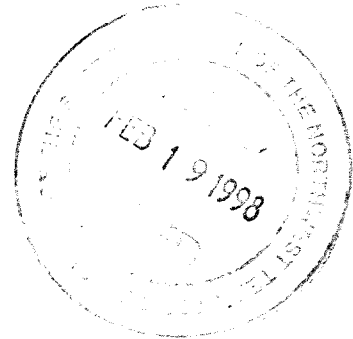


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ANDREW MICHAEL DIVEKY



Transcript of the Reasons for Sentence delivered by
Justice V.A. Schuler, in Yellowknife, in the Northwest
Territories, on the 29th day of January, A.D. 1998.

APPEARANCES:

MR. S. COUPER:	On behalf of the Crown
MR. S. EICHLER:	On behalf of the Defence

Charges under s. 267(1)(a) C.C. x 2



1 THE COURT: Mr. Diveky has pleaded guilty and
2 been convicted of two counts of assault with a weapon.
3 The weapon in each case was what I will refer to as a
4 two-by-four.

5 The facts have been read into the record, so I
6 won't repeat all of them. I will just summarize them
7 by saying that it appears that this incident started
8 off as a verbal altercation which then became a
9 physical altercation. Although the physical part of it
10 initially did not involve the accused, he was there and
11 part of the group and, as he just said, he probably
12 should have walked away, but he didn't walk away. He
13 chose not to walk away.

14 While others were hitting the victim named in
15 Count 1 of the Indictment, Mr. Diveky grabbed a
16 two-by-four and hit him once in the chest. That victim
17 then fell to the ground and the other individuals
18 involved in this continued punching and kicking him.

19 When the victim named in Count 2 tried to
20 intervene to help the first victim, he, too, was hit in
21 the chest with the two-by-four by Mr. Diveky and fell
22 to the ground and then was subjected to kicking and
23 punching by the other three individuals.

24 Someone who saw what was happening apparently
25 called the police and the group of four, which included
26 Mr. Diveky, left the victims on the ground and took off
27 from the scene.

1 The agreed statement of facts indicates that there
2 were serious injuries to the victims, especially the
3 victim in Count 1.

4 Mr. Diveky was arrested approximately two months
5 later. I was not told what the reason for that was so
6 I don't make anything in particular of that. It is
7 noted in the agreed statement of facts that he was
8 cooperative on arrest.

9 Looking at the facts, Mr. Diveky's direct
10 involvement was limited in terms of the number of
11 actions that he actually took but he was the one who
12 introduced the two-by-four (the weapon) in what was
13 already by then a three-on-two-fight. There is no
14 doubt in my mind that introducing a weapon of any kind
15 in an incident like that couldn't help but escalate the
16 incident. It is also noteworthy that he prevented one
17 of the two victims from helping the other.

18 The facts themselves are very serious,
19 Mr. Diveky's involvement is very serious. Clearly he
20 was a party to what Mr. Couper accurately described as
21 a vicious and gratuitous attack.

22 It may well be and I think it probably is, based
23 on the letters that have been submitted by various
24 individuals and which I have read, that but for the
25 group mentality that was obviously at work that
26 Mr. Diveky may never have done anything like this. But
27 he was part of the group and he chose to get involved

1 in it. That is very sad, Mr. Diveky, that you would do
2 that because obviously the letters indicate that people
3 have some respect for you and think you have some
4 potential. I have to take into account what did happen
5 in this case.

6 I take into account Mr. Diveky's personal
7 background, the fact that he is only 19 years old. He
8 is what we would refer to as a youthful offender.

9 I take into account that he has a record.
10 Although it is made up of unrelated property offences,
11 it is a relatively recent record and Mr. Diveky was no
12 doubt warned when he was before the Youth Court about
13 the consequences of coming into conflict with the law.
14 That hasn't deterred him and the record obviously is a
15 reflection on his character in that he does not come
16 before the court as someone who hasn't previously come
17 into conflict with the law.

18 I take into account the difficulties that he has
19 had in terms of school and particularly the tragedy
20 that he was involved in with respect to his friend's
21 suicide when he was still very young. I also take into
22 account that he has sought help for his problems and
23 has sought counselling, so obviously there is some
24 recognition on his part that he has to do something
25 about the problems that he has.

26 I take into account that his family is supportive
27 of him and that the many letters that were filed on his

1 behalf are supportive as well. Obviously this young
2 man has a good side to him. He has to convince himself
3 to let that side conquer the side that has led him into
4 activity like the situation that brings him before the
5 court today.

6 In the end, Mr. Diveky, you will find it's really
7 a matter of choice. People have all kinds of
8 difficulties in their lives and you have to find out
9 how to deal with it other than by taking a two-by-four
10 to other people. I don't know whether you read the
11 letters that people submitted, but I'm sure if you do
12 you will see that people have a lot of very good things
13 to say about you.

14 I have referred to the aggravating factors with
15 respect to the assault itself. I have referred to the
16 record. The mitigating factors include the fact that
17 there has been a guilty plea, that Mr. Diveky waived
18 the preliminary inquiry and has waived his right to a
19 trial, indicating that he is taking responsibility and
20 is remorseful for his actions, and he has said that
21 himself here today.

22 I take into account that he has spent two months
23 in pre-trial custody and that in the normal course
24 something more than two months would be credited as a
25 result of that.

26 The principles of sentencing are very clear in a
27 case like this, the case of an assault with a weapon.

1 In my view the principles that are the most important -
2 not to the exclusion of others but the ones that are
3 the most important - are that the sentence imposed
4 shows that society frowns on this conduct, that it
5 denounces this conduct and that the sentence act as a
6 deterrent to other people who get involved in this sort
7 of street violence.

8 The law is also very clear that any sentence
9 should be proportionate to the gravity of the offence
10 and the degree of responsibility of the offender. The
11 offence in this case is a very grave one and
12 Mr. Diveky's responsibility is very clear.

13 It is an offence that requires a jail term, I
14 don't think there is any question about that. The
15 question is simply the length of the term. I am told
16 that the one co-accused who has been sentenced received
17 a sentence of 16 months imprisonment. He, unlike
18 Mr. Diveky, had a record for violence.

19 One can say a number of different things in
20 comparing offenders who are involved in the same
21 offence. Mr. Diveky was the one who introduced the
22 weapon that changed the complexion of the assault that
23 was taking place, so I have to consider that as well.
24 Generally speaking, sentences should be not disparate
25 as between offenders involved in the same offence.

26 Considering all of these matters and giving credit
27 as I think appropriate for the remand time as well as

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the guilty plea, the sentence I impose is as follows.

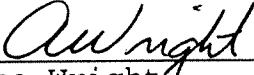
I sentence you to a term of imprisonment of one year. There will be no victim of crime surcharge and there will be a firearm prohibition order which will commence today and will expire ten years from the date of your release from imprisonment. The order will include the provision that any firearms are to be surrendered forthwith.

I will ask that the clerk endorse on the warrant the Court's recommendation that you be allowed to continue counselling, both alcohol counselling and anger management counselling, and any other counselling that the officials at the correctional centre may think is of benefit to you.

I hope, Mr. Diveky, that you will have learned your lesson from this. This is not a light sentence that I'm giving you. If you continue in this way you can only expect harsher sentences. At your age you still have lots of time to turn your life around.

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Certified pursuant to Practice
Direction #20 dated December 28,
1987.



Annette Wright
Court Reporter