

*pled guilty 2 yrs less 1 day  
2 yrs probation*

**CR 03437**

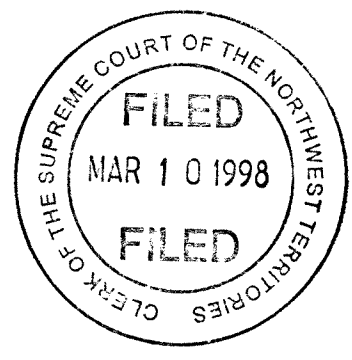
**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**JASPER TOWTONGIE**



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**Transcript of the Oral Sentencing by The Honourable Justice  
J. Z. Vertes, sitting in Rankin Inlet, in the Northwest  
Territories, on the 17th day of February, A.D., 1998.**

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**APPEARANCES:**

**Mr. D. Garson: Counsel for the Crown**

**Mr. P. Fuglsang: Counsel for the Defence**

1 THE COURT: Jasper Towtongie has entered a  
2 plea of guilty to a charge of aggravated assault. The  
3 offence occurred here in Rankin Inlet on February 23rd,  
4 1997. I am told that the accused was at a party where  
5 there were a number of people drinking. The victim of  
6 the assault and a couple of others came to the party,  
7 they were uninvited; but at that point they stayed, and  
8 others at the party, including the victim and these  
9 others, continued drinking.

10 At one point the victim became physically  
11 aggressive toward the hostess who then left the part of  
12 the house where the party was going on. I am told that  
13 shortly after that an argument and a fight ensued  
14 between the accused and the victim with the result that  
15 the accused stabbed the victim three times, and the  
16 victim suffered a punctured lung and a deep wound to  
17 his lower back. He lost a great deal of blood, and  
18 obviously his life would have been endangered had he  
19 not received help very quickly. The accused was taken  
20 to hospital in Winnipeg, and I am told that he has made  
21 a complete recovery with no lasting ill effects.

22 I was also told that right after the stabbing  
23 the accused went to a number of other residences in an  
24 effort to seek help. In fact, I am told that the  
25 accused broke into another residence and took a parka,  
26 and then went to another building from which the police  
27 were phoned. The accused apparently told the police

1 over the telephone what happened, and he was  
2 subsequently arrested.

3 The accused has made a number of admissions, I  
4 am told, respecting his responsibility for this crime,  
5 and I am also told by his defence counsel that although  
6 this guilty plea did not come until shortly before the  
7 scheduled start of his trial, the delay in resolving  
8 this matter was due more to the efforts made in  
9 investigating the background of the offence and the  
10 offender as opposed to any lack of acknowledgment of  
11 guilt on the part of the accused.

12 I take the guilty plea to be a highly mitigating  
13 factor, as I always do, because that is the most  
14 obvious and direct sign of an offender's acknowledgment  
15 of responsibility. And since the role of sentencing to  
16 a great extent is to make the offender accountable for  
17 his actions, that acknowledgment of responsibility, of  
18 course, is a positive sign in his favour. The road to  
19 rehabilitation starts with that acknowledgment of  
20 responsibility.

21 The offence obviously is very serious. The  
22 potential maximum penalty for aggravated assault is 14  
23 years imprisonment. To determine an appropriate  
24 sentence in any specific case is of course not easy to  
25 describe and not easy to do, and it depends on numerous  
26 variables; but the primary factors are of course the  
27 seriousness of the offence and the circumstances of the

1 offender.

2 The offence, as I said, is obviously very  
3 serious. So serious that the Crown suggests that  
4 nothing less than a penitentiary term is warranted in  
5 this case. The offender unfortunately has an  
6 unenviable background. Between 1992 and 1995 he was  
7 convicted of five offences, including most recently the  
8 offence of aggravated assault. That was in October of  
9 1995 for which he was sentenced to 20 months and  
10 probation for two years.

11 He was released from that sentence in December  
12 of 1996, hence it was only a matter of a couple of  
13 months before he committed this offence. Ordinarily  
14 the fact that someone has a previous record of violent  
15 offences, a highly-related record such as this one,  
16 would be considered a serious aggravating  
17 circumstance. The reason for that is because we  
18 sentence according to the evident blameworthiness of  
19 the offender. If someone has committed the same crime  
20 before, if someone has been punished for that crime and  
21 then commits the same type of crime again, then  
22 obviously the blameworthiness of that offender is quite  
23 high. What it shows is that the offender has learned  
24 nothing from his previous penalties. Any effort at  
25 rehabilitation and reformation obviously went for  
26 naught.

27 But I am also told, and I find it interesting,

1           that this offender who is 35 years of age has a very  
2           good record of working and being self-supportive,  
3           self-reliant. He is obviously a very competent and  
4           capable individual. I am told, for example, that  
5           immediately after his release from his last term of  
6           imprisonment he had no difficulty obtaining full-time  
7           employment. So that says quite a bit of good things  
8           about the accused.

9                     I am also struck by the fact that he is 35 years  
10           old now. His first record on a criminal conviction  
11           came in 1992, which would have made him about 28, 29  
12           years of age. So it seems that he is able to control  
13           himself for lengthy periods of time, and he can be a  
14           productive member of his community, and a responsible  
15           one for his community.

16                    I am told, however, that his problems relate to  
17           his difficulties in controlling himself when he  
18           drinks. It appears evident that he was intoxicated on  
19           this occasion. I am told that he was highly  
20           intoxicated on this previous occasion when he was  
21           convicted, and I am told that even though there were  
22           recommendations for counselling for this man in the  
23           past he has received very little, if any, direct  
24           counselling to try to come to grips with his problems  
25           with alcohol and self-control.

26                    Now, we all recognize that the fact that someone  
27           is intoxicated is no excuse for behaving like this. It

1           may go to some ways to explain why people behave like  
2           this, but it is of course not an excuse for this type  
3           of behavior; and therefore it seems evident to me that  
4           the primary focus for this accused should be coming to  
5           grips with his life, and coming to grips with his lack  
6           of self-control when he drinks, and coming to grips  
7           with his problems with alcohol. He is old enough and  
8           obviously intelligent enough to understand this, so he  
9           should be old enough and intelligent enough to finally  
10          get control of his life. If he knows that he cannot  
11          control himself when he drinks then the obvious answer  
12          is he should not drink. He should not have someone  
13          standing over him to remind him of that constantly.

14                 The primary goal of sentencing is the protection  
15          of society. Obviously the community needs some  
16          protection from this man because of his uncontrollable  
17          behavior in the past. But I put this incident into  
18          perspective. No one can tell me why the argument and  
19          the fight started. These things happen, I know, when  
20          people drink and get out of control. But what this  
21          also shows is that some very serious consequences can  
22          happen when people drink and get out of control. One  
23          man could have died; this man could be going away to  
24          the penitentiary for a very lengthy period of time.

25                 If I were to sentence on these facts with this  
26          offender's background of criminal convictions after a  
27          trial, I think without a doubt a sentence that would

1           likely be imposed would be somewhere in the range of  
2           five years; potentially higher, potentially lower.

3                   I take into account the fact of the guilty  
4           plea. That to me is a significant mitigating factor in  
5           these circumstances even though it comes at a late  
6           date. I give significant account to that because of  
7           what I heard about the accused's readiness to  
8           acknowledge his responsibility earlier during these  
9           entire proceedings.

10                   So if I take that into account we are down to, I  
11           would say, somewhere in the neighbourhood of four  
12           years, probably; maybe lower, maybe somewhat higher, it  
13           is hard to say. As counsel has said before this is not  
14           a numbers game, but I have to try and rationalize the  
15           sentence in some meaningful manner.

16                   Now, I take into account the fact that this  
17           accused has been in custody since the time of the  
18           offence. It is almost 12 full months since the time of  
19           the offence. Now, part of that time could have been  
20           finishing the rest of his 20-month sentence. The fact  
21           that he hadn't yet finished his 20-month sentence is an  
22           aggravating factor. The fact that if not that then  
23           supposedly on probation at the time is an aggravating  
24           factor. But he has spent 12 months in pretrial  
25           custody.

26                   There is no set formula for having to calculate  
27           the credit for that. You can pick one and a half

1 times, two times, it varies depending on the  
2 circumstances. But in any event, whatever credit I  
3 give I am down in the neighbourhood of two, two and a  
4 half, maybe as high as three years as Crown counsel  
5 suggests. But then I say to myself, What is the  
6 broader picture here? If I impose a sentence of two  
7 years, two and a half years, maybe even three, what is  
8 the end result? The accused gets sent to a Southern  
9 penitentiary. Is that going to accomplish that much  
10 more in the long run than if I keep him in a Northern  
11 institution with perhaps some other controls on his  
12 future behavior? Because I for one do not see what we  
13 gain in the end result if a man like this who at least  
14 shows some understanding of his situation is merely  
15 sent to a Southern penitentiary to sit and then comes  
16 back without any controls on him. And even though this  
17 crime must be denounced, and even though general  
18 deterrence is a significant factor in sentencing for  
19 crimes of violence such as this, what I have to  
20 consider here considering the guilty plea and the time  
21 in custody is really a very small margin between a  
22 penitentiary term and nonpenitentiary term.

23 In my view, the fact that this man has  
24 acknowledged his guilt, that he will be sentenced to a  
25 significant term of imprisonment, that he has already  
26 spent 12 months in custody as a result of this offence,  
27 should be a significant deterrence to others.



1                   I am optimistic, Mr. Towtongie, that at your age  
2                   you are going to be able to change your life around.  
3                   So for that reason I am opting on the side of leniency,  
4                   and it is only because of your guilty plea and only  
5                   because of the fact that you have already spent 12  
6                   months in jail.

7                   So the sentence I am about to impose is taking  
8                   into account those factors. If you had not been in  
9                   custody already for the past 12 months you can be  
10                  assured that you would be going to the penitentiary for  
11                  three and a half, four years, maybe longer. If you had  
12                  not pleaded guilty you can be sure that you would have  
13                  been going to the penitentiary for four and a half or  
14                  five years, maybe longer. Do you understand what I am  
15                  saying?

16                THE ACCUSED:                   Yes.

17                THE COURT:                   So all this is going to your  
18                  credit, and I hope you make the best use of it. Stand  
19                  up.

20                  I sentence you to serve a period of custody of  
21                  two years less one day. It is going to be my  
22                  recommendation to the correctional authorities that you  
23                  be assessed and considered for whatever appropriate  
24                  counselling and therapy programs there are to deal with  
25                  your difficulties with alcohol abuse and also to deal  
26                  with your difficulties in controlling your behavior.  
27                  Whether they call it anger management or whatever,

1           whatever the terminology is.

2                       In addition, I will put you on probation for a  
3           period of two years from the date of your release. The  
4           terms of your probation are as follows: You are to  
5           keep the peace and be of good behavior. You are to be  
6           under the supervision of a probation officer and report  
7           when directed to do so by your probation officer.

8                       Now, let me make it clear, Mr. Towntongie, when  
9           you come back to Rankin Inlet, it is going to be your  
10          responsibility to go see the probation officer right  
11          away. Don't wait for them to get in touch with you.  
12          It is going to be your responsibility; do you  
13          understand me?

14       THE ACCUSED:                       Yes.

15       THE COURT:                        You are to participate in any and  
16          all counselling programs as directed by your probation  
17          officer. You are to abstain absolutely from the  
18          consumption or possession of intoxicants; do I make  
19          myself clear?

20       THE ACCUSED:                       Yes.

21       THE COURT:                        Now, you are not to have anything  
22          in your possession to get you intoxicated, you are not  
23          to consume anything that is to get you intoxicated. I  
24          do not care whether it is whiskey, beer, wine, home  
25          brew, anything. Do I make myself clear?

26       THE ACCUSED:                       Yes.

27       THE COURT:                        Now, you are obviously as I said

1 before, you are obviously intelligent enough to  
2 understand the problems that alcohol causes you. So if  
3 you are having trouble staying away from it, maybe this  
4 order will give you a little more incentive to stay  
5 away from it when you come back; do you understand?

6 THE ACCUSED: Yes, I understand.

7 THE COURT: You are to submit to supply a  
8 sample of your breath upon the demand of a peace  
9 officer. So if some police officer sees you and wants  
10 you to give a sample of your breath to test if you have  
11 been drinking you have to give the sample; do you  
12 understand me?

13 THE ACCUSED: Yes, I understand.

14 THE COURT: All right. Now, I want to make it  
15 clear, Mr. Towtongie, that if you breach any of these  
16 conditions, that if you commit any other offence while  
17 you are on probation, that you can be brought back to  
18 court, you can be charged for that, and you can be  
19 sentenced for that; do you understand.

20 THE ACCUSED: Yes, I understand.

21 THE COURT: And believe me, with your record,  
22 if you commit any further offences, it does not matter  
23 what the circumstances are, you are going to be going  
24 to the penitentiary; do you understand that?

25 THE ACCUSED: Yes, I understand.

26 THE COURT: Under the circumstances I am not  
27 going to impose a victim of crime surcharge, and I am

1 not going to impose any prohibition order since he is  
2 already subject to a ten-year prohibition ban, which  
3 continues. Anything else, counsel?

4 MR. GARSON: No, My Lord.

5 THE COURT: Mr. Fuglsang?

6 MR. FUGLSANG: No, My Lord.

7 THE COURT: All right. I am going to ask that  
8 Mr. Towtongie be perhaps brought back at 5:00 this  
9 afternoon here because he will have to sign the  
10 probation order.

11 So madam clerk, if you can prepare it by then,  
12 and then Mr. Towtongie can be brought back to sign it,  
13 at least that paper work will be out of the way.

14 All right. Thank you, gentlemen.

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**Certified Pursuant to Practice Direction #20  
dated December 28, 1987**

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**Joel Bowker**  
**Court Reporter**

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