

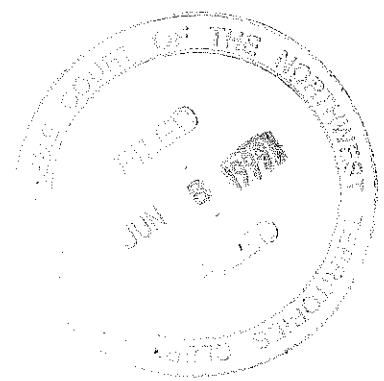
CR 03745

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -



ART THOR SIMILA GONZALES

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Transcript of the Oral Reasons for Sentence by The Honourable Justice V.A. Schuler, at Yellowknife in the Northwest Territories, on Friday, June 4th A.D., 1999.

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APPEARANCES:

Ms. L. Charbonneau: Counsel for the Crown  
Mr. R. Gorin: Counsel for the Accused

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Charge under s. 268 Criminal Code of Canada

1 THE COURT: I will now deliver judgment in the  
2 sentencing of Art Thor Simila Gonzales who has pleaded  
3 guilty to and been convicted of a charge of aggravated  
4 assault by wounding Dave Timothy Forbes.

5 It is often said that sentencing is perhaps the  
6 most difficult task that faces a Judge. Each case is  
7 different, each offender is different, and the law  
8 permits a wide range of sentences for most offences.  
9 The task for any Judge on a sentencing is to weigh all  
10 the factors that must be taken into account and come up  
11 with an appropriate sentence.

12 I will summarize the facts that are set out in the  
13 Agreed Statement of Facts by saying that on February 7  
14 of this year at about 2 o'clock in the morning, the  
15 accused Art Gonzales, his younger brother Archie, and  
16 two friends drove to the apartment building where the  
17 accused lived to pick up another friend. They had all  
18 been drinking at a bar. Archie went into the building  
19 while the others waited in the vehicle.

20 Mr. Zaragoza, who was driving the vehicle, started  
21 revving the engine and while he was doing that, the  
22 victim, Dave Forbes, and another individual, Corey  
23 Stead, made the gesture that is usually described as  
24 "giving the finger" to the people in the vehicle.

25 Mr. Zaragoza got out of the vehicle with a crowbar  
26 and tapped it on the roof. He then put the crowbar  
27 under his jacket and went to the door of the building

1           where there was an altercation between him and  
2           Mr. Stead in which Mr. Stead knocked him to the ground  
3           and then both Mr. Stead and Mr. Forbes assaulted  
4           Mr. Zaragoza.

5           Inside the vehicle, the accused got out his swiss  
6           army knife and showed it to the friend still in there  
7           with him. He put the knife into his pocket and the two  
8           of them got out of the vehicle and went to help Mr.  
9           Zaragoza.

10           The accused and Mr. Forbes started fighting and  
11           the accused ended up on the ground. He saw that  
12           Mr. Zaragoza was bleeding from the face. The accused  
13           got out the knife and opened the blade. He got up and  
14           waved it at Mr. Forbes to keep him away. In doing so,  
15           he hit Forbes on the arm with the knife and stabbed him  
16           in the chest apparently twice from the description of  
17           the injuries to the chest.

18           While this was happening, Archie Gonzales, the  
19           brother, came out of the building with the friend he  
20           had gone to get. Mr. Forbes, who had just been stabbed  
21           in the chest, turned away from the accused and was  
22           heading towards Archie. At that point, the accused  
23           stabbed him in the back.

24           When the police arrived on the scene, which I take  
25           it was shortly after this, having received a complaint  
26           that there was fighting, it was noted that the knife  
27           was sticking out of Mr. Forbes' back and the blade was

1 completely embedded in the back.

2 Mr. Forbes was taken to the hospital where he was  
3 in intensive care for four days and then remained in  
4 the hospital for another four days.

5 He had two stab wounds to the side of his chest  
6 and one to his lower back near his spine, as well as a  
7 slash wound to his forearm which punctured a vein and  
8 required stitches. The wounds to the side of the chest  
9 resulted in a punctured lung, punctured diaphragm, and  
10 puncture to the top of his liver. A tube had to be  
11 surgically inserted to drain blood from between his  
12 lungs and the wall of his chest.

13 Crown counsel advised that Mr. Forbes still has  
14 scars on his skin from the injuries and that this event  
15 has continued to have an impact on him and his  
16 parents. He has not provided a Victim Impact Statement  
17 which of course he is not obliged to do.

18 Counsel for Mr. Gonzales stated that the accused  
19 was not drunk when this event happened but was feeling  
20 the effects of the alcohol he had consumed.  
21 Mr. Gonzales is said to have been afraid for himself  
22 and his friend Zaragoza and also afraid that Mr. Forbes  
23 was going to attack his brother Archie when Mr. Forbes  
24 went toward Archie just before Mr. Gonzales stabbed him  
25 in the back.

26 Mr. Gonzales was arrested on the date in question  
27 and held in custody for nine days before he was

1 released on conditions. For most of that time, he has  
2 been subject to a condition that he not leave his  
3 residence.

4 As to Mr. Gonzales' personal circumstances, he is  
5 22 years old. He has a high school education and has  
6 completed a restaurant management course. He came to  
7 Canada from the Philippines in 1997 with his family.  
8 He has no criminal record.

9 Seventeen letters were submitted on his behalf at  
10 the sentencing hearing. It appears from those letters  
11 that Mr. Gonzales comes from a family that is well  
12 respected, especially in the Philippine community in  
13 Yellowknife.

14 Mr. Gonzales has taken part in community and  
15 cultural events, in particular, chorographing and  
16 taking part in dance performances. He was described by  
17 the manager at the cafe he worked at for three years as  
18 an "exemplary employee".

19 Many of the letters express shock that  
20 Mr. Gonzales could have done what he has now pleaded  
21 guilty to and they speak of his good character and say  
22 that he is quiet and well mannered. I accept that this  
23 incident is out of character for him.

24 Mr. Gonzales' family is also supportive of him.

25 When asked in court whether he wished to say  
26 anything, Mr. Gonzales apologized to the victim and  
27 stated that he is deeply sorry.

1           He waived the preliminary hearing and, as I have  
2           said, he has pleaded guilty. That means that he is  
3           taking responsibility for what he did and I take that  
4           into account.

5           During counsel's submissions yesterday, there was  
6           some discussion as to whether this incident was a  
7           consensual fight or a confrontation, and they had  
8           different views on how it should be characterized.  
9           Having reflected upon that, I don't think anything  
10          turns on it. I have to sentence Mr. Gonzales on the  
11          facts that were placed before me.

12          It is clear that it was Mr. Zaragoza who first  
13          introduced a potential weapon, the crowbar, into what  
14          at that point seems to have been nothing more than  
15          crude gesturing by Mr. Forbes and his friend. It was  
16          then Mr. Gonzales who introduced the knife into the mix  
17          when he went to help Mr. Zaragoza.

18          Notwithstanding that Mr. Gonzales initially had  
19          the knife with him to use in his work, which I accept,  
20          I infer from the fact that he showed it to his friend  
21          in the vehicle that he must have had at least some  
22          thought about using it in the fight.

23          It's not clear to me exactly how the fight between  
24          Mr. Gonzales and Mr. Forbes started. Other than the  
25          reference in the Agreed Statement of Facts to  
26          Mr. Gonzales being on the ground at one point and the  
27          fact that his counsel stated that he is a slighter man

1 than Mr. Forbes physically, there is no evidence that  
2 he was being badly beaten or that he sustained any  
3 injuries. He pulled out the knife however and he used  
4 it, not just once but three or four times.

5 This is not a case of self-defence. Mr. Gonzales  
6 was not being attacked or assaulted when he first  
7 decided to get involved in the fighting. He had other  
8 options. He could have gone for the police.

9 His brother was not being attacked when  
10 Mr. Gonzales stabbed Mr. Forbes in the back. I do  
11 accept that Mr. Gonzales was afraid for his brother and  
12 himself but he badly overreacted to those fears.

13 The street fighting, or brawling, that was going  
14 on in this case unfortunately happens all too often.  
15 When someone decides to get involved and introduces a  
16 weapon into the scene, especially when there is liquor  
17 involved, matters are bound to escalate with serious  
18 and sometimes fatal consequences.

19 The crime for which Mr. Gonzales has been  
20 convicted is a very serious offence. The Criminal Code  
21 provides that a person convicted of the offence of  
22 aggravated assault can receive up to 14 years in jail.

23 In my view, there is no question that for an  
24 offence involving the use of a knife and serious  
25 injury, a jail sentence is usually considered  
26 appropriate, in particular, to show how the community  
27 condemns this type of conduct and to deter others, as

1 well as the accused, from committing this type of  
2 crime.

3 The Crown has submitted a sentence of two years  
4 less a day to be served in jail is appropriate.  
5 Ms. Charbonneau has indicated that the Crown would be  
6 seeking a lengthier term if it were not for the guilty  
7 plea and the fact that the victim has not had to  
8 testify.

9 Defence counsel, Mr. Gorin, has submitted that the  
10 Court should consider a suspended sentence with  
11 probation or, if a jail sentence is deemed appropriate,  
12 then one that can be served in the community subject to  
13 conditions rather than in jail. That is what is called  
14 a conditional sentence.

15 First, in my view, a suspended sentence would not  
16 be appropriate in this case.

17 The Chivers case decided by Mr. Justice de Weerd  
18 in this court in 1988, and relied on by Mr. Gorin, was  
19 a case with radically different facts from this one,  
20 and a suspended sentence is not usually imposed in  
21 cases of violence.

22 I do think a sentence of less than two years is  
23 justified in this case. That means that I can consider  
24 whether it should be a conditional sentence.

25 The law does not restrict conditional sentences to  
26 non-violent offences. Many cases have been submitted  
27 to me by counsel where courts across this country have



1 imposed conditional sentences for a variety of offences  
2 including those involving violence.

3 I have reviewed the cases submitted. Each case is  
4 different and turns very much on its own facts.

5 The use of conditional sentences has been much  
6 debated and different courts have expressed different  
7 views. It is hoped that the Supreme Court of Canada  
8 will provide some guidelines when it hands down a  
9 judgment in the cases now pending before it.

10 Until then, in the Northwest Territories, the  
11 Brady case from the Alberta Court of Appeal, whose  
12 members make up the majority of the Northwest  
13 Territories Court of Appeal, must be considered the  
14 most persuasive.

15 In Brady, the majority of the Court concluded that  
16 a conditional sentence would not ordinarily be  
17 available for those offences where the paramount  
18 consideration is denunciation and deterrence. I do not  
19 understand that to be restricted to offences such as  
20 sexual assault and spousal assault where the Court has  
21 specifically said that the considerations that I have  
22 just mentioned will be paramount. In my view, it  
23 applies to all cases where denunciation and deterrence  
24 are the primary concerns.

25 In Brady, the Court also stated the view that a  
26 sentence served in jail is likely to be more of a  
27 deterrent than one served in the community even when

1           one considers that offenders are paroled before the end  
2           of their sentences in jail, something that the Court  
3           has no control of in most cases. I think that is a  
4           realistic view. When I say the Court has no control  
5           over in most cases, I am simply referring to certain  
6           provisions that in certain cases that permit the Court  
7           to delay consideration of parole.

8           As pointed out by Mr. Gorin, the Criminal Code  
9           does require that all available sanctions other than  
10          imprisonment that are reasonable in the circumstances  
11          must be considered for all offenders.

12          In the recent case of Gladue, the Supreme Court of  
13          Canada said that those words do not alter the  
14          fundamental duty of a sentencing Judge to impose a  
15          sentence that is fit for the offence and the offender.

16          Sentencing has to contribute to respect for the  
17          law and the maintenance of a just, peaceful, and safe  
18          society. The fundamental principle of sentencing is  
19          that the sentence must be proportionate to the gravity  
20          of the sentence and the degree of responsibility of the  
21          offender.

22          I have already said that this was a very serious  
23          offence. Mr. Gonzales' responsibility for it is clear  
24          notwithstanding that others were fighting too.

25          I have given this case a great deal of thought  
26          since yesterday's hearing. While I have no doubt that  
27          Mr. Gonzales, with his past good character, his lack of

1 a criminal record, and his remorse, is the type of  
2 person for whom a conditional sentence should be  
3 considered, I am troubled by the facts of the case, the  
4 way and the number of times the knife was used. To  
5 permit a conditional sentence, I would have to be  
6 satisfied that the safety of the community would not be  
7 endangered and that requirement has caused me some  
8 hesitation for the reasons that I have just mentioned.

9 On the whole, there is nothing really unusual  
10 about the circumstances of this case. Above all,  
11 however, I am not persuaded that a conditional sentence  
12 would be proportional to the gravity of the offence or  
13 that it would be effective to discourage others who  
14 would take up weapons.

15 This case does remind me somewhat of a case that I  
16 dealt with early last year, The Queen and Andrew  
17 Michael Diveky CR 03521. There are differences between  
18 the two cases but the essential facts are similar -  
19 groups of young men out on the street here in  
20 Yellowknife start off with words and then fists and  
21 then someone brings a weapon into the fight.

22 In Mr. Diveky's case it was a two-by-four and two  
23 people were injured. I sentenced him to a year in jail  
24 which was in addition to some remand time that he had  
25 already served.

26 The sentence I impose must take into account the  
27 guilty plea, the remorse shown by Mr. Gonzales, and his

1 personal circumstances and I do take all of those  
2 things into account.

3 Stand up please, Mr. Gonzales.

4 Mr. Gonzales, I have no doubt that this terrible  
5 incident has been very upsetting for Mr. Forbes and his  
6 family and also for you and your family. The  
7 responsibility for that is yours. It's not this  
8 Court's task to forgive those who commit crimes. My  
9 task is simply to decide what the appropriate sentence  
10 is. It's really only good luck that the injuries that  
11 you inflicted with the knife were not even more serious  
12 or lasting. I sincerely hope and I expect that you  
13 will be able to turn things around and live up to the  
14 good character that so many people spoke about in the  
15 letters that were filed.

16 First of all, the knife that was used will be  
17 destroyed by the RCMP at the expiry of the appeal  
18 period if there is no appeal.

19 There will be a firearm prohibition order in the  
20 usual terms pursuant to Section 100 of the Criminal  
21 Code beginning today and expiring ten years from your  
22 release from imprisonment. As I haven't heard anything  
23 about any firearms, I will make the order that any such  
24 items that would be covered by the order be surrendered  
25 forthwith.

26 There will be no Victim of Crimes surcharge in the  
27 circumstances, and the sentence that I impose on you is

1           20 months in jail.

2           You may sit down.

3           Is there anything further, counsel?

4   MS. CHARBONNEAU:           Not from the Crown, My Lady.

5   MR. GORIN:                   No, My Lady.

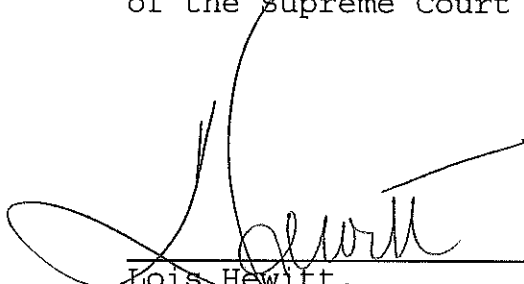
6   THE COURT:                  Thank you very much. We will close  
7           court.

8   **(ADJOURNMENT)**

9   **(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)**

10                               Certified pursuant to Rule 723  
11                               of the Supreme Court Rules.

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Lois Hewitt,  
Court Reporter