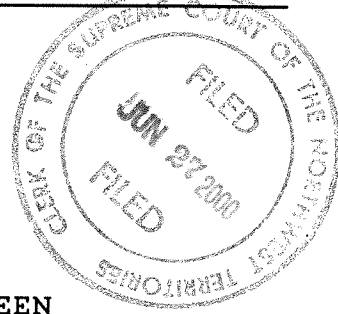


R. v. Smith, 2000 NWTSC 44

CR 03866

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

- and -

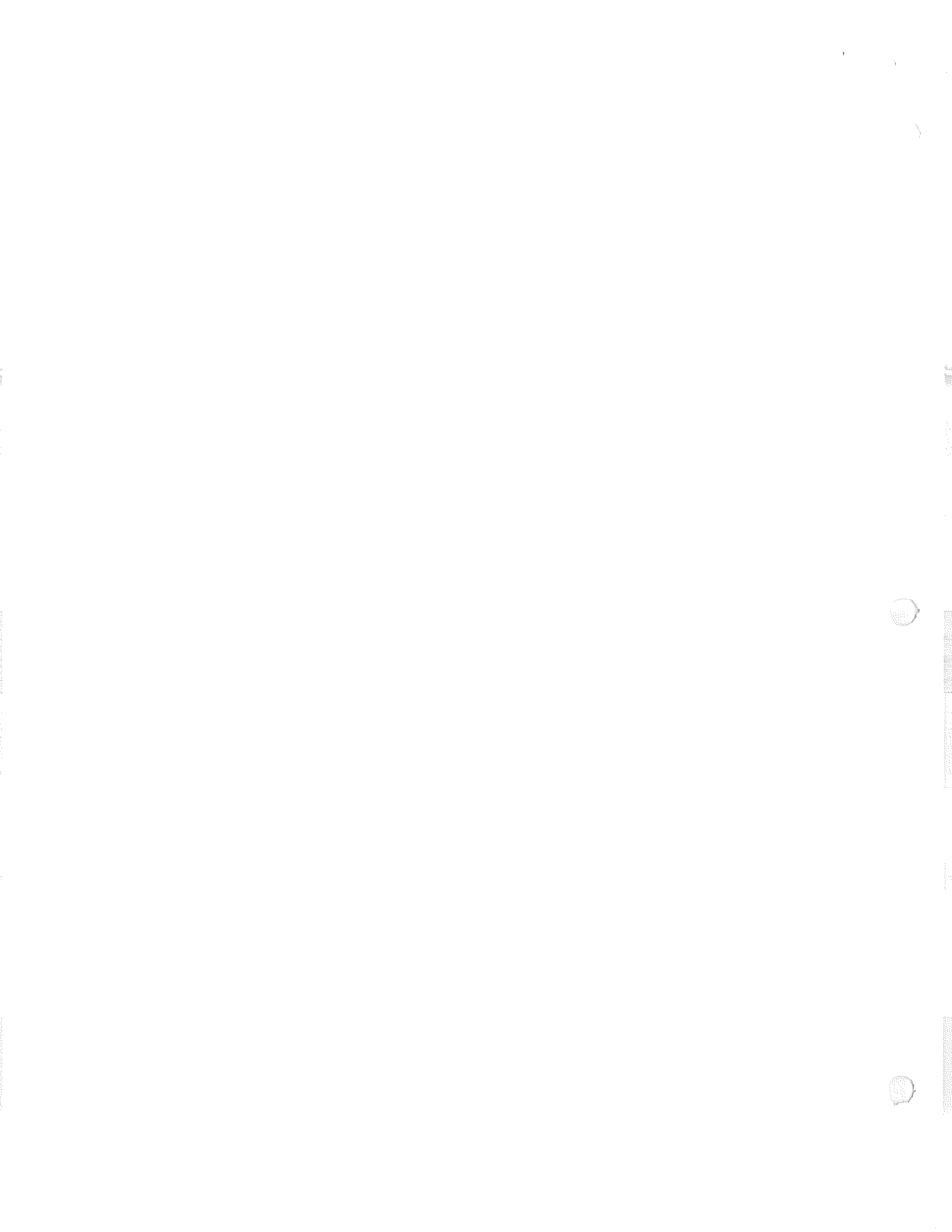
FRANKIE JAMES SMITH

Transcript of Reasons for Sentence (Oral) delivered by
Justice J. E. Richard, in Yellowknife, in the Northwest
Territories, on the 23rd day of June, A.D. 2000.

APPEARANCES:

MR. M. SCRIVENS:	On behalf of the Crown
MR. J. BRYDON:	On behalf of the Defence

Charges under ss. 239(b) C.C. and 267(a) C.C.



1 THE COURT: Frankie James Smith has entered an
2 early guilty plea to very serious criminal charges
3 arising out of his violent acts on March 7th, 2000,
4 here in the city. Mr. Smith is an aboriginal person
5 from the community of Fort McPherson. I am told that
6 he was raised in a dysfunctional family environment
7 characterized by domestic violence and alcoholism. He
8 lost his mother when he was nine years of age. He has
9 a grade nine formal education and a sporadic
10 employment record. Although he is just a few days shy
11 of his 28th birthday, he has accumulated a lengthy
12 record of more than 20 Criminal Code convictions. A
13 lot of those convictions are for damage to property
14 and breach of court orders, but included in his past
15 are two assault convictions, two convictions for
16 unlawful possession of weapons, and a robbery
17 conviction. He has been sent to jail on ten separate
18 occasions in the past seven years, with the longest
19 sentence being ten months.

20 On February 25th of this year, Mr. Smith was
21 released from custody after serving a portion of his
22 sentence for the robbery conviction. Ten days later,
23 he was intoxicated and committed the serious acts of
24 violence which bring him to court today.

25 On the evening in question, Mr. Smith was in
26 attendance at a drinking party at a private residence
27 with others, including the victim Wayne Mitchell, aged

1 18. During some sort of brawl, the offender Frankie
2 James Smith challenged Mitchell to a fight and then
3 hit Mitchell on the head and face three or four times
4 with a liquor bottle causing a cut on Mitchell's head
5 which did not require sutures. Mitchell went into the
6 bathroom to clean up, and when he came out of the
7 bathroom the offender Frankie James Smith assaulted
8 him again with a knife in the chest area. The cut in
9 the chest was one centimeter long and required one
10 suture to close. The assault on Mitchell apparently
11 occurred at one or two o'clock in the morning.

12 Later at approximately 3 a.m., the intoxicated
13 Mr. Smith returned to the homeless shelter here in
14 Yellowknife where he had been staying. At this
15 shelter, there was a rule or policy that clientele are
16 not allowed entry if they are intoxicated. The night
17 attendant at the time, one Christopher Ernest Green,
18 heard the drunken Frankie James Smith outside the
19 building, talked to him through a window and refused
20 to let him in due to his intoxication. It being early
21 March in Yellowknife, it was cold outside,
22 approximately minus 30.

23 Shortly after Mr. Green had refused entry to
24 Mr. Smith, he heard a noise in the basement, and when
25 he went to investigate he saw the offender there who
26 had gained entry through a basement window and who had
27 a knife. Although Mr. Green tried to calm down

1 Mr. Smith, Mr. Smith stated he was going to kill
2 Mr. Green for having refused him entry. Mr. Smith
3 kept Mr. Green confined there in the basement for the
4 next two hours continually telling him he was going to
5 kill him. Mr. Smith also challenged or baited or
6 invited Mr. Green to pick up a knife that was there
7 and defend himself or to stab him, that is, Mr. Smith.
8 At times Mr. Smith nicked Mr. Green with the knife.
9 After about two hours, it came to a head when the
10 offender heard someone moving around upstairs in the
11 shelter and he said, "That's it, I'm going to kill
12 you." At that point the victim Mr. Green tried to
13 defend himself and to extricate himself from the
14 situation and tried to run upstairs. As he did, the
15 offender stabbed his victim in the back. Both the
16 offender and victim got upstairs where other people
17 came to the assistance of the victim and the police
18 were called.

19 The offender was apparently cooperative on arrest
20 and all witnesses agree that he was drunk.

21 The victim Mr. Green received minor stab wounds
22 to the chest, arm and back areas of his body. These
23 were of two centimeters to five centimeters in length
24 and each required two to five sutures to close. The
25 victim Mr. Green is a diabetic and this condition
26 exacerbated his recovery from these injuries.

27 The offender Mr. Smith waived his right to a

1 preliminary inquiry and when arraigned in this court
2 pleaded guilty to these two charges: Firstly,
3 assaulting the victim Wayne Mitchell with a weapon
4 contrary to section 267 Criminal Code; and, secondly,
5 attempting to murder the victim Christopher Ernest
6 Green contrary to section 239 Criminal Code.

7 Neither of the victims offered a victim impact
8 statement to the court although given an opportunity
9 to do so.

10 It goes without saying that these are serious
11 crimes, particularly the attempt murder, and that
12 seriousness must be reflected in the sentence imposed.

13 Although denunciation and deterrence are
14 important sentencing principles in this case, what is
15 foremost in my mind is the need to protect the public
16 from Mr. Smith's violence. During the past three
17 years in particular, Mr. Smith has shown himself to be
18 a violent person. Mr. Smith, as a violent offender,
19 needs to be separated from society for a meaningful
20 period of time in order to assist him to rehabilitate.

21 I agree with counsel that any actual motivation
22 that the offender had for self-harm or
23 self-destruction at the time of the incident with
24 Mr. Green is not relevant.

25 There are a number of aggravating circumstances
26 here. Firstly, the offender was still serving a
27 six-month sentence for robbery when he committed these

1 crimes. Next, there was additional and gratuitous
2 violence visited upon the first victim, Mr. Mitchell
3 (I'm here referring to the additional assault with a
4 knife). And, finally, there is the fact that the
5 violence perpetrated upon the second victim,
6 Mr. Green, was drawn out over a two-hour period, which
7 must have been a terrifying and traumatic experience
8 for Mr. Green.

9 On the mitigating side, it is to Mr. Smith's
10 credit that he has from the outset acknowledged his
11 responsibility for these crimes and offered an early
12 guilty plea. I must also give him credit for the
13 three and a half months he has spent in pre-trial
14 custody.

15 Taking into account all of these factors and the
16 other circumstances of this offence and this offender,
17 in my view a global sentence of five years
18 imprisonment is fit and appropriate and necessary.

19 Before concluding, I want to say to you,
20 Mr. Smith, that I was singularly impressed with the
21 words you spoke in court before the imposition of
22 sentence. From what you said and the way you said it,
23 you strike me as a person with more than a grade nine
24 education. I understood you to say that the
25 seriousness of these charges and the prospect of a
26 lengthy penitentiary term has led you to open your
27 eyes to the kind of life that you have been leading

1 and the kind of life that you want for yourself in the
2 future. I heard you say that you want to spend your
3 incarceration time focussing on education and
4 spirituality. I heard you say that when you are
5 eventually released, you want to be a contributing
6 member of society in your home community and to teach
7 the young people there not to make the choices that
8 you made in your early adult life.

9 Mr. Smith, those words you spoke are perhaps the
10 most important aspect of this court case, in my view.
11 I am taking your words as unprompted and genuine.
12 Your words show that your rehabilitation has already
13 started.

14 I am going to direct the clerk to send a
15 transcript of your statement here in court to your
16 lawyer, Mr. Brydon, and I am going to ask Mr. Brydon
17 to forward it on to you. And I suggest, Mr. Smith,
18 that from time to time while you are serving your
19 sentence, and even after you are released, that you
20 read over your own words that you said here in court.
21 Your own words that you spoke should have more impact
22 on you than anything that I or anyone else could say
23 to you.

24 Also before concluding, I want to acknowledge the
25 Crown's request that the Court invoke the delayed
26 parole provisions of Section 743.6 Criminal Code.
27 Upon a careful consideration of that request and the

1 Crown's submissions in that regard, I find that I am
2 not satisfied that denunciation and deterrence
3 necessitate such an order in this case. I find no
4 articulable reason for making such an order. The
5 usual parole eligibility rules should apply for this
6 offender.

7 Please stand now, Mr. Smith.

8 Frankie James Smith, on Count 1, assault with a
9 weapon, I sentence you to a term of imprisonment of
10 one year. On Count 3, attempted murder, I sentence
11 you to four years imprisonment consecutive. That's a
12 global sentence of five years. In addition, there
13 will be the usual firearms prohibition order for a
14 period of ten years pursuant to Section 109 Criminal
15 Code, and in the circumstances there will be no victim
16 fine surcharge.

17 You may sit down.

18 Anything else on this case, counsel?

19 MR. SCRIVENS: No, My Lord.

20 MR. BRYDON: No, My Lord.

21 THE COURT: Fine, we'll adjourn until three.

22

23 Certified pursuant to Practice
24 Direction #20 dated December 18,
1987.

25
26 
27 Annette Wright, RPR, CSR(A)
Court Reporter

