

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

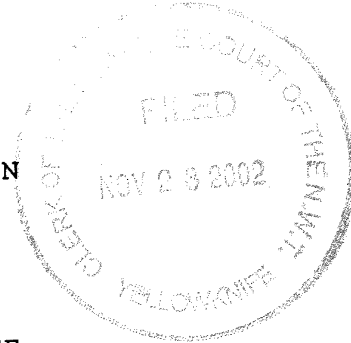
HER MAJESTY THE QUEEN

- v -

DAVID NORMAN BROWNLEE

- and -

DARREN DOMKOWSKY



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Transcript of Reasons for Sentence (Oral) delivered by  
The Honourable Justice J.E. Richard, in Yellowknife, in  
the Northwest Territories, on the 16th day of November,  
A.D. 2002.

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APPEARANCES:

Mr. S. Niblock: Counsel for the Crown  
Mr. G. Watt: Counsel for the Accused Brownlee  
Ms. K. Payne: Counsel for the Accused Domkowsky

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Charges under ss. 344 (b) C.C.

1 THE COURT: I want to first of all thank all  
2 counsel for their submissions this afternoon on the  
3 difficult issue of the appropriate sentence.

4 The two offenders before the court, David Norman  
5 Brownlee and Darren Domkowsky, are to be sentenced now  
6 for the crime of robbery contrary to section 344 of  
7 the *Criminal Code*, an offence which carries a maximum  
8 sentence of life imprisonment.

9 The robbery occurred on December 5th, 2001, in  
10 the early morning hours outside The Gallery bar here  
11 in Yellowknife. The victim was a 44 year old man from  
12 British Columbia who had just arrived in Yellowknife a  
13 matter of hours earlier. He was drinking in The  
14 Gallery bar and befriended these two young men. One  
15 or both of these young men noticed that the victim had  
16 a large amount of cash on him during the evening.

17 At the end of the evening when the victim was  
18 leaving in an intoxicated state, these two young men  
19 and a third person engaged the victim in a  
20 conversation. When his attention was diverted, they  
21 kicked him in the face and administered a severe  
22 beating on him and took his wallet and fled. It is  
23 the victim's estimation that he had in excess of \$700  
24 or \$850 in his wallet. The victim was left with  
25 blackened and swollen eyes, his face and nose were  
26 swollen, bruised ribs, and scrapes on his back. Two  
27 days later his eyes were swollen shut and he couldn't

1 see. To this day he says he has blurred vision  
2 because of the damage to his eyes.

3 This type of offence, rolling a drunken person  
4 outside a bar for easy money, is a fairly recent  
5 phenomenon in our city, that is, only in the last few  
6 years. This type of crime is despicable and cowardly.  
7 Cowardly offenders, such as David Brownlee and Darren  
8 Domkowsky, rarely act alone in committing this crime.  
9 They usually act in groups of two or three and they  
10 target a vulnerable victim. This type of crime is  
11 unacceptable to the people of Yellowknife and deserves  
12 the full sanction of the law.

13 Dealing first with David Brownlee. This offender  
14 is now 25 years of age. Although he has lived in  
15 various communities, he has spent most of his life  
16 here in Yellowknife or in St. John's, Newfoundland.  
17 He has a supportive family here in Yellowknife, being  
18 his parents and his sister. I am told that he has a  
19 basic adult education and that he has not maintained  
20 steady employment as an adult. At the time of the  
21 offence he was unemployed.

22 Mr. Brownlee has a significant criminal record  
23 for a young man, consisting of drinking and driving  
24 offences, property offences, common assault  
25 convictions, and breaches of court orders.

26 At the time of the commission of this robbery, he  
27 was on probation and he had just been released from

1 jail two weeks previously. Hence, he is for all  
2 Mr. Brownlee obtained his release on bail shortly  
3 after being arrested and charged with this robbery  
4 offence on December 5th. However, on January 7th he  
5 was again arrested because of a breach of his bail  
6 conditions and he's been on remand and in pre-trial  
7 custody awaiting his trial for the past approximately  
8 ten months. During that time he was also serving a  
9 global sentence of four months for breaches of his  
10 bail conditions and a breach of a probation order.

11 Notwithstanding that his lengthy pre-trial  
12 detention was because of his own failure to obey his  
13 bail conditions, he is entitled to some credit for his  
14 many months of pre-trial detention. There is no  
15 precise or specific mathematical formula to be used in  
16 calculating credit for pre-trial detention. It is,  
17 rather, a matter of judicial discretion for the  
18 sentencing judge in each individual case.

19 I turn now to the other offender, Darren  
20 Domkowsky. He is 21 years of age. I am told he has a  
21 grade ten education. Although he lives with his  
22 parents, I am told that he has been self-supporting  
23 and steadily employed since leaving school. Currently  
24 he is in an apprentice program with a local  
25 construction company.

26 At the time of committing this robbery in  
27 December 2001, Mr. Domkowsky did not have any previous

1 record of *Criminal Code* offences. He is for all  
2 intents and purposes a first offender.

3 On the trial evidence, I find that all three  
4 assailants participated equally in the robbery and  
5 there is nothing in the evidence or the circumstances  
6 of the crime that justifies a different penalty  
7 between one offender and the other. Because of that,  
8 the principle of parity is an important consideration  
9 in this case; however, I must take into account the  
10 fact that one offender has a criminal record of the  
11 kind he has, and the other offender has no criminal  
12 record.

13 It is an aggravating feature of this crime that  
14 these two offenders in committing this cowardly act of  
15 violence targeted an intoxicated and vulnerable  
16 individual. I also note that there was some planning  
17 or premeditation to this crime.

18 Mr. Brownlee's criminal record and status on  
19 probation at the time of the commission of the offence  
20 is an aggravating feature in his case.

21 There are no mitigating factors that serve to  
22 lessen or reduce the sentence that ought to be  
23 imposed. I detect no remorse in either individual, no  
24 recognition or acceptance or taking of personal  
25 responsibility for harm done.

26 It is obvious to the Court that these two young  
27 men have not matured into responsible adults as yet.

1 The sentence that is imposed must seek to promote a  
2 sense of responsibility in each of these offenders and  
3 must hopefully, hopefully encourage each of them to  
4 wake up, to grow up, and to acknowledge the harm that  
5 he has done to his victim and to the community and to  
6 his own family.

7 In determining the appropriate sentences to be  
8 imposed today, I take into account the recognized  
9 purpose and principles of sentencing without repeating  
10 them here. Counsel have referred to some of them in  
11 their submissions. I do repeat that the Court has a  
12 duty to protect society and the members of the  
13 community from random acts of violence and I must be  
14 mindful of that duty in imposing sentence today. The  
15 citizens of Yellowknife are entitled to expect they  
16 are safe when walking on its streets at one o'clock in  
17 the morning when leaving a drinking establishment,  
18 whether drunk or sober. The court sentence must act  
19 as a deterrent to those who are tempted to roll  
20 vulnerable citizens for some easy money.

21 One of my roles in sentencing these two offenders  
22 today is to promote respect for the law and a safe  
23 community, and in this case that means that both of  
24 these offenders will go to jail.

25 Taking into consideration all of the  
26 circumstances, in my view the appropriate sentence for  
27 this crime is a term of imprisonment of two and a half

1 years for Mr. Brownlee, and two years for  
2 Mr. Domkowsky. Mr. Brownlee will receive 12 months'  
3 credit for pre-trial detention.

4 Regarding the restitution order sought by the  
5 Crown, I accept Mr. Watt's submissions, that two of  
6 the categories of damages do not fit within the  
7 provisions of section 738 of the *Criminal Code*.

8 Would you please stand, Mr. Brownlee.

9 David Brownlee, for the crime that you have  
10 committed, the crime of robbery contrary to section  
11 344 of the *Criminal Code*, it is the sentence of this  
12 Court that you be imprisoned for a term of 18 months.

13 In addition, following your release you will be  
14 under the terms of a probation order for a period of  
15 12 months with conditions as follows: keep the peace  
16 and be of good behaviour; appear before this court  
17 when required; report to your probation officer within  
18 two days of your release from jail and thereafter as  
19 required; notify the probation officer of any changes  
20 in address or employment; and, finally, it is a  
21 condition that you shall not be present after 7 p.m.  
22 in any licenced premises where alcoholic beverages are  
23 sold.

24 There will be a restitution order under section  
25 738 of the *Criminal Code* in the amount of \$425.

26 There will be a section 109 firearms prohibition  
27 order for a period of ten years, and I assess a victim

1 fine surcharge in the amount of \$100.

2 You may sit down, sir.

3 THE COURT: Mr. Domkowsky, for the crime that  
4 you have committed, the crime of robbery contrary to  
5 section 344 of the *Criminal Code*, the sentence of the  
6 court is that you be imprisoned for a period of two  
7 years.

8 In addition, following your release from jail,  
9 you will be under the terms of a probation order for a  
10 period of 12 months with terms identical to what I  
11 have just mentioned for Mr. Brownlee.

12 There will also be a restitution order under  
13 section 738 of the *Criminal Code* in the amount of  
14 \$425.

15 There will be a section 109 firearms prohibition  
16 order for ten years, and I assess a victim fine  
17 surcharge in the amount of \$100.

18 You may sit down.

19 Now, counsel, is there anything further required  
20 in this case from the Crown?

21 MR. NIBLOCK: With respect to the DNA order,  
22 sir.

23 THE COURT: I'm sorry, I omitted it. There  
24 will be a DNA order in each case as requested by the  
25 Crown. And perhaps the exhibits, there will be the  
26 usual order for disposition of the exhibits upon the  
27 expiration of the appeal period.



1 MR. WATT: Just to clarify, sir, they would  
2 be returned to the rightful owners?

3 THE COURT: Yes, those exhibits, yes.  
4 Anything else?

5 MS. PAYNE: No, sir.

6 MR. WATT: No, sir.

7 THE COURT: Fine, we'll close court.

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10 Certified pursuant to Practice  
11 Direction #20 dated December 18,  
12 1987.

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*Annette Wright*  
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Annette Wright, RPR, CSR(A)  
Court Reporter

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