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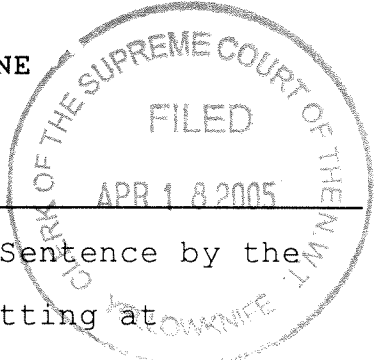
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MICHAEL ALEXANDER PAYNE



Transcript of the Oral Reasons for Sentence by the Honourable Justice J.E. Richard, sitting at Yellowknife, in the Northwest Territories, on April 12th, A.D. 2005.

THERE IS A TEMPORARY AND PARTIAL PUBLICATION BAN ON THESE REASONS. FOR DETAILS, PLEASE REFER TO THE COURT'S ORDER OF APRIL 11, 2005.

APPEARANCES:

Ms. S. Tkatch: Counsel for the Crown
Ms. K. Payne: Counsel for the Accused
(Charges under s. 348(1), 279(2), 351(2) *Criminal Code*)

1 THE COURT: It is now the responsibility
2 of the Court to impose sentence on Michael Payne
3 for a serious crime that he committed on January
4 8th, 2004. He and three other individuals broke
5 into an apartment residence here in Yellowknife
6 at 1 a.m. carrying knives and wearing masks and
7 tied up the two occupants and stole personal
8 property, including bank cards which they used to
9 steal cash.

10 This type of crime is sometimes called a
11 home invasion robbery. This type of crime has
12 become prevalent in certain centres in southern
13 Canada in the past 10 years or so and has led to
14 a number of court decisions indicating that the
15 range of sentence for this type of crime is
16 generally six to ten years in a federal
17 penitentiary.

18 The courts in many of the provinces thus
19 treat very seriously offences involving the
20 violation of the security of an individual in his
21 or her own home. These decisions simply reflect
22 the value that our society places on the sanctity
23 of a person's home.

24 Quite apart from these many court decisions
25 which illustrate the importance which the courts
26 attach to cases of home invasion robberies, the
27 citizens of our country as represented by

1 Parliament have confirmed that the courts are to
2 treat these cases with the utmost seriousness.

3 Just a few years ago Parliament enacted a
4 new provision in the *Criminal Code*, section
5 348.1, which essentially reads as follows:

6 If a person is convicted of an
7 offence under section 348 in
8 relation to a dwelling-house, the
9 court imposing the sentence on the
10 person shall consider as an
11 aggravating circumstance the fact
12 that the dwelling-house was occupied
13 at the time of the commission of the
14 offence and that the person, in
15 committing the offence,

16 (a) knew that or was reckless as to
17 whether the dwelling-house was
18 occupied; and

19 (b) used violence or threats of
20 violence to a person or property.

21 Thus, Parliament's view is that home invasion
22 robbery is a grave form of criminal conduct which
23 must be dealt with appropriately in the
24 sentencing process.

25 Michael Payne was charged with this offence
26 a few weeks after the date of the robbery in
27 January, 2004. He admitted to police his

1 involvement with this crime. He appears in this
2 court 15 months later and pleads guilty to the
3 offence. Three other individuals have also been
4 charged and they have not yet had their trial.

5 On this sentencing hearing Mr. Payne's
6 counsel and Crown counsel have put forward an
7 Agreed Statement of Facts with respect to the
8 circumstances of this crime for purposes of this
9 sentencing hearing. I will simply here summarize
10 these allegations that this offender admits as
11 having been proven against him.

12 The victims in this case were two foreign
13 men, both of whom had a limited ability in the
14 English language. They worked in Yellowknife and
15 shared an apartment in the Fort Gary Apartments.
16 At approximately 1 a.m. this offender, Michael
17 Payne, and three other individuals broke into the
18 apartment and woke up the two victims. All four
19 of the intruders were masked and all four carried
20 knives. They demanded cash from the victims and
21 cash was taken from the victims' wallets.

22 They then demanded the victims' bank cards
23 and these were provided. Then the victims were
24 told to give the PIN numbers, and they did, but
25 gave false PIN numbers. This offender, Michael
26 Payne, took the bank cards and went to a nearby
27 convenience store and tried to withdraw money

1 from an ATM machine but was unsuccessful because
2 of the incorrect PIN numbers. This offender
3 returned to the apartment and told the others
4 that he had been unsuccessful. One of the four
5 intruders then produced his knife to the victims
6 and stabbed a window-sill near the head of one of
7 the victims and threatened the victims that they
8 had better give the correct PIN numbers.

9 The victims then wrote down the correct PIN
10 numbers on a piece of paper and gave it to one of
11 the other three individuals who left the
12 apartment, went to the Royal Bank ATM where at
13 1:10 a.m. he withdraw \$1,000 cash from the bank
14 account of one of the victims. This other
15 individual came back to the apartment and then
16 the four intruders tied up the two victims and
17 then the four intruders left, after taking some
18 other personal property of the two victims. The
19 victims were able to untie themselves and they
20 called the police.

21 Some of the stolen property was found at the
22 home of this offender, Michael Payne.

23 Michael Payne was arrested by the police on
24 January 14th and gave the police a statement in
25 which he implicated some other people in the
26 robbery, but not himself. He was released, but
27 he was rearrested two days later. He gave

1 another statement to the police and this time he
2 admitted to his own involvement in the robbery.

3 Mr. Payne says that the four of them met at
4 his home, that is, Michael Payne's home, on the
5 evening of the robbery and discussed the robbery.
6 One of the others had a set of keys for the Fort
7 Gary Apartments. Mr. Payne says the knives used
8 in the robbery came from his home, as did the
9 material used as masks. After the robbery, the
10 four of them met again at Mr. Payne's home.

11 Mr. Payne says the four of them were smoking
12 crack cocaine that evening, both before and after
13 the robbery.

14 Mr. Payne denies participating in the tying
15 up of the two victims or personally threatening
16 them with a knife. Although he admits to pulling
17 out the telephone lines, he says he was directed
18 to do so by the others.

19 This offender is just 21 years of age and
20 lives at his mother's home here in Yellowknife.
21 He is of Inuvialuit descent and he and his mother
22 are originally from Tuktoyaktuk.

23 Michael Payne has been diagnosed as Fetal
24 Alcohol Spectrum Disorder (FASD) and also
25 Attention Deficit Hyperactivity Disorder (ADHD).
26 As a result of these disorders, he functions
27 intellectually and socially well below his

1 biological age. He has had behavioural problems
2 and has been the focus of significant Social
3 Services' attention since an early age. He is
4 impulsive, has poor judgment and is easily
5 influenced by his peers, according to Dr. Suzanne
6 Perkins, who has been his psychiatrist and his
7 prescribing physician for the past two years.

8 Mr. Payne has been on a prescribed drug,
9 Ritalin, which has proven to be very beneficial
10 to him when he takes it and when he is not taking
11 illegal drugs or alcohol. Ritalin apparently
12 increases his motivation, his concentration and
13 his awareness of the consequences of behaviours.
14 When he is not on his Ritalin, he invariably
15 finds himself involved in interpersonal conflicts
16 and unlawful activities.

17 Dr. Perkins reports that Michael's mother,
18 Judy Payne, has been very dedicated to assisting
19 her son deal with his problems and his deficits.
20 It is Dr. Perkins' view that Michael and his
21 mother have a very close relationship and that
22 this relationship is one of the positive aspects
23 of Michael's life.

24 Michael Payne has a criminal record, most of
25 it being a youth record. He has three
26 convictions for break and enter and seven other
27 property offences. As a youth he received a

1 custodial sentence on four separate occasions and
2 as an adult he was placed on probation on two
3 separate occasions. At the time of committing
4 this offence in January, 2004 he was in the
5 middle of a two-year probation period imposed in
6 November, '02.

7 In determining an appropriate sentence in
8 this type of case, the important principles are
9 denunciation, deterrence and the protection of
10 the public. Although home invasion robbery is
11 certainly not as prevalent in Yellowknife as it
12 appears to be in some southern centres, it is,
13 nonetheless, a crime that causes citizens of any
14 community to be alarmed and apprehensive about
15 their personal security in the sanctity of their
16 own home.

17 There are some aggravating features of this
18 crime: the fact that the four of them were acting
19 in concert; the fact that there was obviously
20 some planning involved; and the fact that they
21 were wearing masks. For this offender, Michael
22 Payne, it is an aggravating circumstance that he
23 has a criminal record of similar conduct, that he
24 was on probation at the time of this offence and
25 that it was he who supplied the knives and the
26 masks.

27 As I stated earlier, Parliament and reported

1 case law requires that home invasion robberies be
2 considered seriously and the principle of
3 proportionality requires that the sentence
4 imposed reflect the seriousness of the crime, the
5 degree of responsibility of each offender and the
6 harm done to the victims and to our community.
7 This was a serious crime committed by this
8 offender and the other three individuals. In my
9 view, apart from the personal circumstances of
10 any particular offender, the range of sentence to
11 be imposed in a case like this is five to seven
12 years' imprisonment.

13 There are some mitigating factors in Michael
14 Payne's favour. He is still a young person. He
15 has the strong support of his mother and he is
16 trying to upgrade his education to a high school
17 equivalent so that he can enroll in trades
18 training. He has pleaded guilty to this serious
19 crime. An early guilty plea is a strong
20 mitigating factor in sentencing. Indeed, it can
21 reduce the sentence sometimes by one-third.

22 Michael Payne's plea here cannot be
23 characterized as an early guilty plea, as it
24 comes 15 months after he was charged. No
25 explanation has been given to the Court as to why
26 this offender, although admitting to his
27 involvement within a matter of weeks, only now

1 comes to the Court with his plea of guilty. But,
2 in any event, and what is perhaps more important,
3 Mr. Payne takes full responsibility for his part
4 in this offence, and, I am told, has done so
5 since late January, 2004.

6 He waived the requirement for a Preliminary
7 Inquiry and consented to a committal for trial in
8 this court. He testified under subpoena at the
9 Preliminary Inquiry of the other three
10 individuals and in that testimony admitted to his
11 own involvement and accepted responsibility for
12 his own role in the robbery. When he spoke to
13 this Court yesterday afternoon, he apologized to
14 the victims and stated again that he takes full
15 responsibility for his actions. Taking
16 responsibility for one's criminal conduct is a
17 major mitigating factor.

18 Mr. Payne's counsel characterizes her client
19 as a follower, not a leader. Having heard the
20 testimony of Dr. Perkins, including her
21 description of the various traits and attributes
22 of those suffering from FASD disorder, I am
23 inclined to accept that characterization. Dr.
24 Perkins also stated that in her dealings with
25 Michael Payne he was unfailingly polite and
26 courteous, and that is the way he presents in
27 this courtroom, as a pleasant young man.

1 He is extremely fortunate to have such a
2 supportive parent in Judy Payne. My sense is
3 that he is very aware of that fact. When he is
4 released from jail, he will need her continuing
5 support and guidance as he strives to make a
6 better life for himself.

7 In all of the circumstances, I am going to
8 give a substantial reduction in sentence on
9 account of Mr. Payne's youth, his guilty plea,
10 his taking responsibility and the deficits
11 related to his disorder which were, no doubt, a
12 factor in him finding himself in the predicament
13 he did on January 8th, 2004.

14 I will impose a penitentiary term, and, as
15 is the Court's practice, a copy of the Court's
16 reasons for sentence will be forwarded to
17 Corrections Canada. They will thus be made aware
18 of Michael Payne's disorder and special
19 circumstances and the fact that he may be
20 particularly vulnerable in certain prison
21 populations.

22 It is my understanding that the present
23 agreement between Corrections Canada and the
24 Territorial Corrections Service is such as to
25 allow most northern offenders to serve their time
26 in a northern institution, whether it is federal
27 time or territorial time. I recommend to those

1 authorities that Michael Payne be allowed to
2 serve his sentence at the North Slave
3 Correctional Centre so that he might be near his
4 mother, but in the final analysis, it is, and
5 properly so, a decision for Corrections Canada.

6 Hopefully during Michael Payne's term of
7 imprisonment he will be able to access
8 educational upgrading and/or trades training
9 programs so that he, with the assistance of some
10 professionals, will be able to rehabilitate
11 himself towards the day that he is released and
12 participating in society as a law abiding
13 citizen.

14 Please stand, Mr. Payne. Michael Payne, for
15 the crime that you have committed, break and
16 enter and committing robbery, it is the sentence
17 of this Court that you be imprisoned for a period
18 of three years. In addition, there will be the
19 mandatory section 109 firearms prohibition order
20 for a period of 10 years. In the circumstances,
21 there will be no victim fine surcharge. You may
22 sit down, sir.

23 Is there anything further on this case,
24 counsel?

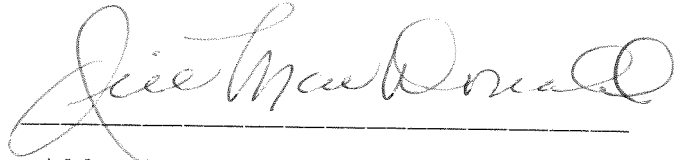
25 MS. TKATCH: No, Your Honour. Thank you.

26 MS. PAYNE: No, Your Honour.

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Certified to be a true and accurate transcript pursuant to Rules 723 and 724 of the Supreme Court Rules.



Jill MacDonald, CSR(A), RPR
Court Reporter