

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

JIM ELIAS

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Transcript of the Oral Reasons for Sentence delivered  
by the Honourable Deputy Justice V.O. Ouellette,  
sitting at Tuktoyaktuk, in the Northwest Territories,  
on July 11th, A.D. 2006.

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APPEARANCES:

Ms. L. Colton: Counsel for the Crown  
Mr. N. Sharkey, Q.C.: Counsel for the Accused  
Mr. J. Mahon:

(Charges under s. 236(a) and 267(a) Criminal Code)

1 THE COURT: Jim Elias has pled guilty to  
2 manslaughter and assault with a weapon. The  
3 Criminal Code sections 718 and 718.2 set out the  
4 sentencing principles and objectives and factors  
5 that I must consider.

6 In determining the appropriate sentence for  
7 Mr. Elias, I must apply those principles which  
8 require a balance between deterrence and  
9 denunciation, that is, general deterrence and  
10 also specific deterrence, and also  
11 rehabilitation, reparation for the harm that he  
12 has done, but also the responsibility to his  
13 community and to himself. In addition, I must  
14 consider any aggravating or mitigating  
15 circumstances which may apply to this case.

16 There has been an Agreed Statement of Facts,  
17 which was read in by the Crown and agreed to by  
18 Mr. Elias and his counsel, but I will summarize  
19 the facts as follows: On February 24th, 2003 Jim  
20 Elias, Brian Elias, Sammy Gruben and Gloria  
21 Gruben had all been drinking, that including the  
22 day before. On February 24th, 2003 they were at  
23 various levels of intoxication.

24 At some point an argument took place which  
25 was in relation to Kurt Elias, that is, Jim's  
26 son, who had committed suicide almost two years  
27 to the day. At some point, Jim Elias, Brian

1 Elias and Sammy Gruben went outside. A gun was  
2 used outside and Brian Elias was shot twice and  
3 Sammy Gruben once in the shoulder. Brian  
4 suffered massive internal injuries from the  
5 gunshots and died. Sammy Gruben suffered a  
6 shoulder injury.

7 I am satisfied that the facts are also clear  
8 that after the shooting Jim Elias knew that he  
9 had made a bad, bad mistake, as he stated; that  
10 he couldn't fix that mistake. It is also clear  
11 in the conversation with the RCMP that Jim Elias  
12 did not remember what had happened, but he knew  
13 that something had happened and it was bad and it  
14 was because of him and it was because of him that  
15 Brian was dead.

16 I wish to thank Crown counsel, Ms. Colton,  
17 and defence counsel, Mr. Sharkey and Mr. Mahon,  
18 for their very capable and very fair submissions.  
19 I am satisfied that the joint submission of a  
20 range of six to eight years' jail is appropriate.  
21 There is no doubt that the combination of alcohol  
22 and guns often and usually, and unfortunately,  
23 leads to tragedy. As a result, the joint range  
24 that has been proposed to me reflects the general  
25 deterrence factor. That is to say that where  
26 alcohol and weapons are mixed, the consequences  
27 will be severe and the jail consequences will be

1           severe.

2           The circumstances of this case are so sad.  
3           It is difficult to say with certainty, but I am  
4           sure that the influence of alcohol likely brought  
5           back the bad memory of Kurt's suicide, only to  
6           lead to more drinking and arguing over his loss.  
7           It is likely that it is the arguing over Kurt's  
8           death which, in fact, led to Brian's death. How  
9           ironic and stupid that the loss of one life, that  
10          is, Kurt's, of a loved one, would lead to the  
11          loss of another loved one, Brian.

12          The aggravating factors are as follows: The  
13          victims were not strangers. They were a brother  
14          and a friend. They were loved ones. They should  
15          have been able to expect not to be harmed by Jim  
16          Elias. I also find it aggravating that the  
17          actions taken by Jim Elias, although not entirely  
18          known, were not impulsive in the sense as we know  
19          impulsive to be, that is, more of a reaction as  
20          opposed to an action. Aggravating, but also, as  
21          I will say, mitigating is, in fact, the sorrow  
22          and the effect that Jim Elias' actions have had  
23          on the entire Tuk community.

24          However, there are many mitigating  
25          circumstances in this case. The guilty plea  
26          which Jim Elias has entered is very important.  
27          It is very important because it has avoided a

1 trial for the Tuk community and also has shown a  
2 clear sense of him accepting responsibility for  
3 the actions that he has done.

4 I am also satisfied and find as a mitigating  
5 circumstance the genuine remorse which Jim Elias  
6 has shown. He has accepted his actions have  
7 caused so much grief to his family and also to  
8 himself and the fact that he has killed his  
9 brother, the one he loved; also, that he must now  
10 live with those consequences for the rest of his  
11 life.

12 I also find as a mitigating circumstance,  
13 but not that important, that after the shootings  
14 there was a peaceful surrender. The RCMP should  
15 be commended for the way they approached the duty  
16 of ensuring nobody suffered further harm in their  
17 very capable approach in obtaining Jim Elias'  
18 surrender.

19 But I must also take into account Mr. Elias'  
20 personal circumstances. Although he has a  
21 criminal record, it is relatively minor in the  
22 big scheme of things. Further, it shows no  
23 entries until 1993 when Jim Elias would have been  
24 approximately 32. When Mr. Elias was  
25 approximately 30 or 31 - I have not figured out  
26 exactly the exact date - he had the one common  
27 assault, and then the next entry which is of

1 relevance is 1997, assault with a weapon, which  
2 has been explained by Mr. Sharkey.

3 But other than this criminal record, Mr.  
4 Elias' past shows him to be a family man and a  
5 hard worker. He, in fact, followed in his  
6 father's footsteps learning to live off the land  
7 at an early age, at 11 being a hunter and a  
8 trapper. Then, as he grew older and in his teens  
9 and in his 20s, in addition to continuing the  
10 family tradition of hunting and trapping, took on  
11 other labour employment in, I will call it, the  
12 off-season of hunting and trapping.

13 Then in 1998, to his credit, and probably  
14 the RCMP at the time, he was seen by them to be a  
15 good, honest, hard working individual, because he  
16 was approached to join the RCMP. In fact, he  
17 succeeded and became a full-fledged member of the  
18 RCMP. But that career was not for him, probably  
19 due to his nature, being a hunter and trapper,  
20 and the scheduling of the RCMP would not go along  
21 with that. He left that employment three or four  
22 years later.

23 Then, unfortunately, the abuse of alcohol  
24 changed his life and his family forever on  
25 February 24th, 2003. In the end, I am satisfied  
26 that Mr. Elias' past tells me he will not be  
27 involved in the future in the type of behaviour

1           that he did on February 24th, 2003. That is not  
2           Mr. Elias, other than that one incident with the  
3           unfortunate abuse of alcohol.

4           Mr. Elias, you are very lucky to have such a  
5           supportive and understanding family.

6           Please stand. For all the reasons I have  
7           stated, I sentence you to six years in jail for  
8           manslaughter and to six months in jail concurrent  
9           for assault with a weapon. You may be seated.

10          You will be given a credit of two-to-one for  
11          the time spent, which I understood to be eight  
12          and three-quarter months, which would have made  
13          it 17 and a half. I have rounded that off to 18  
14          months' credit for time served. So your net  
15          sentence is four and a half years left to serve.

16          I appreciate the Crown has not taken a  
17          position in relation to the endorsement that is  
18          being sought on the warrant of committal, but I  
19          am satisfied that it is warranted in this case,  
20          and I will endorse the warrant to have you serve  
21          your sentence in a facility in the Northwest  
22          Territories. I do that for several reasons. The  
23          main one is because you are from this area, you  
24          were raised here, you have lived off the land,  
25          and, in fact, your entire life up to now, age 42,  
26          has been lived in this area. But I also believe  
27          it is very important for the rehabilitation and

1 the support that you will need in the upcoming  
2 years to have your family - your brothers,  
3 sisters, mother and father, but also your  
4 children - close enough that they can visit. I  
5 am satisfied that if you are sent to a southern  
6 facility, the likelihood of you getting any  
7 family visitors is probably nil. It is not going  
8 to happen. But I think society will be better  
9 served if you have the supports around you at all  
10 times, even while you are a serving prisoner.

11 Mr. Mahon, is there another endorsement that  
12 I can ask be placed that he does seek the  
13 psychological therapy that he has talked about  
14 and also the alcohol therapy that he has talked  
15 about?

16 MR. MAHON: Your Honour, my understanding  
17 is you can make that recommendation and they will  
18 take that very seriously when dealing with what  
19 plan of action they will assign to him.

20 THE COURT: Ms. Colton, I am talking  
21 specifically, first of all, with respect to the  
22 psychological therapy, because I believe that  
23 there are still issues that have to be dealt with  
24 regarding Kurt's death, which apparently is the  
25 stem of this entire unfortunate incident.

26 MS. COLTON: I have no objection to that  
27 endorsement being made.



1 THE COURT: All right.

2 MR. MAHON: Your Honour, one comment.

3 Pursuant to the provisions of the Code, my  
4 understanding is it requires Mr. Elias' consent,  
5 and he does so.

6 THE COURT: All right. Mr. Elias, I  
7 appreciate what you told me, and I do believe  
8 that you have recognized that you have to deal  
9 with that issue; or it may be more than just you,  
10 it may be an entire family issue. But you  
11 definitely have to deal with that issue so that  
12 you do not put yourself in that position of binge  
13 drinking or whatever it was that happened on that  
14 date. But I also think you have to learn how to  
15 deal with the alcohol, and that is why I am also  
16 making the recommendation with respect to alcohol  
17 therapy and treatment as recommended by your  
18 jailors. Do you have any questions, Mr. Elias?

19 THE ACCUSED: No.

20 THE COURT: All right. Ms. Colton, any  
21 questions?

22 MS. COLTON: No. Thank you.

23 THE COURT CLERK: Your Honour, charge number 2?  
24 THE COURT: Count number 2?  
25 MS. COLTON: I would ask that it be  
26 withdrawn.

27 THE COURT CLERK: Thank you.

1 MS. COLTON: There is also a second  
2 indictment that had been filed earlier, and I  
3 would ask that that other two-count indictment be  
4 withdrawn.

5 THE COURT: It is. Thank you.

6 MS. COLTON: And the only other thing we  
7 haven't addressed is forfeiture of the firearm.

8 THE COURT: There will be a forfeiture of  
9 the firearm.

10 MR. MAHON: And just to confirm, there's a  
11 finding of not guilty with respect to the offence  
12 charged?

13 THE COURT: A finding of not guilty in  
14 relation to second degree murder, but a finding  
15 of guilt with respect to manslaughter.

16 MR. MAHON: Thank you, sir.

17 THE COURT: Anything further, counsel?

18 MR. SHARKEY: No. Thank you.

19 THE COURT: All right. Thank you. We can  
20 adjourn, Madam Clerk.

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

25 \_\_\_\_\_  
26 Jill MacDonald, CSR(A), RPR  
27 Court Reporter