

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

TYLER SAMUEL GREEN

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Transcript of the Oral Reasons for Sentence delivered  
by the Honourable Justice L.A.M. Charbonneau, sitting  
at Tuktoyaktuk, in the Northwest Territories, on  
February 20th, A.D. 2007.

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APPEARANCES:

Mr. B. Lepage: Counsel for the Crown

Ms. K. Payne: Counsel for the Accused

(Charges under s. 249(1)(a), 268, 267(a) C.C.)

1 THE COURT: Tyler Green was convicted this  
2 afternoon after a trial of three criminal  
3 charges, all stemming from an incident that  
4 occurred on December 9th, 2005. Mr. Green was  
5 convicted of driving a motor vehicle in a manner  
6 dangerous to the public, he was convicted of an  
7 aggravated assault by wounding Diamond  
8 Klengenberg and of an assault with a knife,  
9 again, against Diamond Klengenberg.

10 I referred to the evidence of the trial a  
11 little bit earlier today in delivering my reasons  
12 for convicting Mr. Green, and I will not refer to  
13 everything in detail again, but, for the record,  
14 I will just briefly summarize the facts for which  
15 Mr. Green has now been convicted.

16 As I have said already, these events  
17 happened on the 9th of December, 2005, just over  
18 a year ago. Diamond Klengenberg, in the early  
19 morning hours of that date, went to the house of  
20 Gale Jacobson here in Tuktoyaktuk. A short time  
21 after he got there, Mr. Green came to the house  
22 for, really, an unknown reason, became rowdy and  
23 upset, got a pocket knife out and started waving  
24 it at Mr. Klengenberg. He eventually stabbed him  
25 on the side as well as on his wrist. The stab on  
26 the wrist happened as Mr. Klengenberg was trying  
27 to defend himself.

1           The evidence was also that Mr. Green made  
2           certain threats to Mr. Klengenberg as he was  
3           doing this. Mr. Klengenberg ran to another part  
4           of the house, hoping to be able to leap through a  
5           window, but he was not able to do that. He hid  
6           in the bathroom, and Mr. Green continued trying  
7           to attack him, stabbing at the door. Eventually,  
8           when another person came to the house,  
9           Mr. Klengenberg was able to leave, but that was  
10          not the end of the incident, because Mr. Green  
11          then got on a snow machine and chased  
12          Mr. Klengenberg trying to, essentially, run him  
13          over. Mr. Klengenberg had to hide behind a pole  
14          on the side of the road and was eventually able  
15          to run to another house where he was able to call  
16          the police.

17                 There is evidence before the Court that the  
18          cut to Mr. Klengenberg's wrist was about one  
19          centimetre long, although it did not damage any  
20          nerves. The cut to his side was about two  
21          centimetres long. The doctor measured it up to  
22          six or seven centimetres deep. It stopped there.  
23          The RCMP officer who testified at the trial said  
24          that at the nursing station the nursing staff  
25          observed that the cut was possibly as deep as  
26          nine centimetres.

27                 It does not really matter how many

1 centimetres the cut was at this point. It is  
2 clear that this was a serious injury. It is  
3 truly a matter of pure luck that the Court did  
4 not hear this matter dealing with a homicide.  
5 Mr. Lepage has referred to other cases from this  
6 region and, indeed, in this jurisdiction where  
7 this very type of incident has led,  
8 unfortunately, to the victim of the assault  
9 dying, and everybody in this case is very lucky  
10 that this was not what happened in this case.

11 Mr. Green has a record, which has been filed  
12 as an exhibit. It is a relatively lengthy  
13 record, although the entries on that record are  
14 not for crimes of violence. I do note that in  
15 2002 he received a significant jail term of 23  
16 months' imprisonment on an offence of break and  
17 enter and commit an indictable offence, but I do  
18 not know what indictable offence was committed at  
19 that time. I have been told that Mr. Green's  
20 prior convictions are all for property related  
21 matters, but certainly that was a significant  
22 sentence that he received in 2002, a sentence  
23 very close to the penitentiary range.

24 I am bound to consider all the principles of  
25 sentencing in deciding what a fit sentence would  
26 be for these offences, and I will not read them  
27 out loud, but I have considered the principles

1 set out in section 718, 718.1, 718.2 of the  
2 Criminal Code. I will say simply that - and I  
3 think both counsel agree on this - deterrence and  
4 denunciation are very important sentencing  
5 principles in a case like this where violence is  
6 used and serious injuries are inflicted on  
7 another person.

8 I have to recognize also, however, that  
9 Mr. Green is still a very young man, and I do not  
10 think anyone can or should lose sight of the  
11 principle of rehabilitation in trying to arrive  
12 at a fit sentence. It is up to Mr. Green to  
13 decide whether this will be a turning point in  
14 his life. I have heard from his lawyer, and I  
15 believe that he has taken certain positive steps  
16 recently.

17 The Court knows it is not always easy to  
18 turn things around, but it is my sincere hope  
19 that Mr. Green will use this, all these  
20 unfortunate events, as a turning point and that  
21 in the future he will pursue his goals and that  
22 he will become known for his skills as a trades  
23 person, his talents, anything good he might do  
24 for his family or his community, and that he will  
25 no longer be known because he appears before the  
26 courts.

27 There are specific issues that have been

1 raised that I must now address. The first is an  
2 issue that was raised by Mr. Green's counsel  
3 about whether the principle of double jeopardy,  
4 sometimes referred to as the Kienapple principle,  
5 applies in this case and, if so, what I should do  
6 as a result. My understanding of that legal  
7 principle is that a person should not be  
8 convicted for two separate offences if the legal  
9 elements of the two are the same and if the  
10 underlying facts that support the convictions are  
11 the same.

12 In this case, I accept defence's submission  
13 that the underlying facts or evidence alleged in  
14 support of the two offences are the same, but I  
15 do not agree that the legal principles are the  
16 same, because the assault with a weapon charge  
17 includes an element of use of a weapon; whereas  
18 the aggravated assault charge does not  
19 necessarily include the use of a weapon. It  
20 certainly does not necessarily include the use of  
21 a knife and is particularized in this case as an  
22 aggravated assault by wounding.

23 But, having said that, I am certainly in  
24 agreement that this whole incident was a  
25 continuing incident. I think it is appropriate,  
26 certainly, to take that into account in examining  
27 the totality principle and whether it is

1           appropriate to impose concurrent sentences. I  
2           find that it is appropriate for the sentences on  
3           the aggravated assault and the assault with a  
4           weapon certainly to be concurrent for that  
5           reason.

6           Defence counsel has raised the fact of how  
7           that might be interpreted in the future and the  
8           possibility that this might have been an example  
9           of overcharging. I do not really want to comment  
10          on the issue of overcharging. It is not the  
11          Court's role. I know that in some instances the  
12          addition of a charge is sometimes based on the  
13          fact that part of what is alleged to have  
14          happened is not an included offence in the main  
15          charge. So in this case assault with a knife  
16          would not have been an included offence on the  
17          aggravated assault charge, and that may be why  
18          that charge is there.

19          But, in any event, as I have already said, I  
20          agree with the submission that it is important to  
21          keep in mind that these were closely connected.  
22          I hope that by imposing a concurrent sentence it  
23          will clearly signal to future courts, although I  
24          really sincerely hope other no court will ever  
25          have to sentence Mr. Green again, but I hope that  
26          the imposition of concurrent sentences will  
27          signal that this all flowed from the same

1 incident.

2 The next issue I have to consider is the  
3 defence's request for the Court to consider the  
4 imposition of a conditional sentence. I think  
5 defence counsel presented that request in a  
6 fairly realistic way in the sense that she  
7 acknowledged that there were difficulties with  
8 that request. I have considered the request.  
9 Even apart from the question of what is the  
10 appropriate range for these offences, when I look  
11 at section 742.1 of the Criminal Code, it talks  
12 about when the Court can impose a conditional  
13 sentence. In order to do so, I would have to be  
14 satisfied that serving the sentence in the  
15 community would not endanger the safety of the  
16 community and would be consistent with the  
17 fundamental purpose and principles of sentencing.

18 In this case, I cannot ignore that  
19 Mr. Green's criminal record includes a number of  
20 convictions for failure to comply with court  
21 orders. I cannot ignore the fact that he has  
22 been before the courts many times, I am sure has  
23 heard many times from Judges that he should stop  
24 committing offences, and he has been before the  
25 courts several times. That, combined with the  
26 very serious nature of these offences and the  
27 importance of deterrence and denunciation in this



1 case, has led me to the conclusion that a  
2 conditional sentence would not be appropriate in  
3 the circumstances of this case, bearing in mind  
4 that this was an unprovoked, really unexplainable  
5 assault that appears to have been at least in  
6 part fuelled by alcohol, and that Mr. Green has  
7 acknowledged that he has an alcohol problem.

8 Any Court imposing sentence has to consider  
9 the circumstances of the offence, the  
10 circumstances of the offender. The aggravating  
11 factors with respect to this offence, apart from  
12 the record, to the extent that it is somewhat  
13 related to driving offences, but the main  
14 aggravating factors are that this was an  
15 unprovoked assault and that the conduct was  
16 persistent. It is very clear from the brief  
17 summary of the facts that I have just laid out  
18 that Mr. Klengenberg made various attempts to get  
19 away from the situation and that Mr. Green was  
20 quite persistent in his efforts to harm him.

21 The use of a potentially lethal weapon is  
22 also a serious factor for the Court to consider.  
23 Crimes of violence are often labelled as serious,  
24 but, obviously, any time a weapon is introduced  
25 it simply escalates the risk and it escalates, in  
26 my view, the blameworthiness of the offender.

27 I have considered whether there are

1 mitigating factors in this case, and I really do  
2 not think there are many, at least as far as the  
3 crime is concerned. Now, that does not mean that  
4 I do not think anything positive can be said  
5 about Mr. Green. As I have said, I do accept  
6 that he has made these recent efforts and that he  
7 sincerely wants to change the path that he is on.  
8 He cannot and should not be punished for having  
9 had a trial. It was his right to have a trial.  
10 All it means is that he cannot benefit from the  
11 mitigating effect of a guilty plea, but that is  
12 where it stops, in my view.

13 Assessing what the proper range is for any  
14 given offence is a bit of an elusive concept  
15 sometimes. An attack with a knife is always  
16 serious. Unfortunately, it is not a unique or  
17 rare occurrence in this jurisdiction. Crown  
18 counsel has referred to the case of R. v. Itsi  
19 and has asked me to take into consideration the  
20 range found to be applicable in that case.

21 I have to say that there are a few reasons  
22 why I must be very cautious about relying to any  
23 extent on the range advanced in that case. The  
24 first is that Mr. Itsi - and this is apparent  
25 from the decision at the trial level - had a  
26 number of prior convictions for crimes of  
27 violence, and that was obviously something that

1 was of concern to the Court. But, more  
2 importantly, the Court of Appeal of the Northwest  
3 Territories reversed the decision imposed at  
4 trial and reduced Mr. Itsi's sentence, I believe  
5 to a term of two years, largely because of his  
6 young age.

7 Now, there are also differences about the  
8 circumstances of the offences. Not all of those  
9 differences are favourable to Mr. Green, because  
10 in the Itsi case there had been two groups of  
11 people that basically engaged in a fight, so it  
12 was not an unprovoked assault. But overall,  
13 especially considering the sentence was  
14 ultimately reduced in a case that involved  
15 someone who had a record with entries for  
16 convictions for crimes of violence, I cannot  
17 really, in my respectful view, be guided by the  
18 range referred to in that case.

19 The paramount factors that I must consider,  
20 as I have already said, are deterrence and  
21 denunciation, but I must also take into account  
22 the importance of trying to support Mr. Green's  
23 rehabilitation. Given, however, the seriousness  
24 of the injuries and the persistence of the  
25 conduct, I am unable to agree with the range  
26 advanced by defence counsel, but I am persuaded  
27 by those submissions that I should exercise as

1 much restraint as I possibly can in sentencing  
2 Mr. Green and hope that he will take advantage of  
3 what I consider to be the Court's leniency.

4 Although he may not feel very lucky today  
5 and although whatever sentence I impose, I know,  
6 will feel like a long one to him and his family,  
7 I can only hope that it will make him realize  
8 just how serious this behaviour was. It has been  
9 said that he has difficulty accepting that he  
10 would behave in this way, but the fact that he  
11 did should really be the most compelling reason  
12 for him to change his ways, remind himself that  
13 Mr. Klengenberg could have died, and in that  
14 sense, as I have said already, everyone involved  
15 in this case was lucky.

16 Mr. Green, it really is up to you now. It  
17 is your decision from now on to decide whether  
18 these past years and this record that has been  
19 filed is going to end with today's date, February  
20 20th, 2007. Because I am sure that if you set  
21 your mind to it, you can actually use the rest of  
22 your life - and you have a lot of years ahead of  
23 you - you can use it in a productive way, and I  
24 am sure you will feel much better than you might  
25 have been in the last few years.

26 Please stand, Mr. Green. Mr. Green, I am  
27 going to impose the following sentence for the

1 various crimes that you have been convicted of:  
2 On the aggravated assault, I am going to sentence  
3 you to 30 months' imprisonment. On the assault  
4 with a knife, I am going to sentence you to 18  
5 months' concurrent. That means it is served at  
6 the same time. It does not get added. For the  
7 dangerous driving, I am going to sentence you to  
8 one year concurrent, as well. So that means a  
9 total sentence of 30 months. You can sit down.

10 It is not up to me, but I am going to ask  
11 the Clerk to endorse the warrant of committal  
12 with the strongest possible recommendation that  
13 you be allowed to serve your sentence here in the  
14 Northwest Territories so that you do not have to  
15 go somewhere else. That way, maybe you can be a  
16 little bit closer to your family.

17 I do not know what programs are available in  
18 jail, but, again, it is up to you. You do not  
19 have to sit there and just pass time. I am sure  
20 you can work towards your upgrading efforts. You  
21 might even be able to take some apprenticeship  
22 program. I do not know. But, really, once you  
23 are released from that sentence, it will really  
24 be up to you, and I hope, if I see you again, it  
25 will not be in a courtroom.

26 Now, I am also going to grant the  
27 application made by the Crown for a DNA order.

1           The defence has not attempted to argue otherwise.  
2           So that order will be issued.

3           I will also make an order prohibiting  
4           Mr. Green from having firearms pursuant to  
5           section 109 of the Criminal Code. That is  
6           mandatory. The order will be for 10 years.  
7           Mr. Lepage, I am going to include the provision  
8           referred to in section 113 of the Code permitting  
9           the Firearms Officer to issue a permit or an  
10          exemption. I know there is a standard wording  
11          for this that I will not attempt to reproduce  
12          right now, but the exemption will be included.

13          Finally, given the evidence that I heard  
14          about the manner in which the snowmobile was  
15          driven and given the record that you have,  
16          Mr. Green, I am going to issue a driving  
17          prohibition. Now, I am not going to give you the  
18          very maximum, which is three years, but I have to  
19          give you something fairly lengthy, given your  
20          history of having those types of convictions or  
21          related convictions. So that will be for two and  
22          a half years, but in addition to your jail term,  
23          obviously.

24          So that means that for a while after you are  
25          released you will not be able to drive motor  
26          vehicles. I know that this will be difficult and  
27          inconvenient and may cause you problems. You may

1 have to take a lot of cabs if you go back to  
2 school in Inuvik and you may have to get rides,  
3 but hopefully, again, that will be the last time  
4 that a Court will have to take the privilege of  
5 driving motor vehicles away from you.

6 In the circumstances, I am not going to  
7 impose a victim of crime surcharge, given the  
8 length of the jail term that I just imposed. I  
9 accept that that would cause hardship to  
10 Mr. Green, so I will not make that order.

11 Have I overlooked anything?

12 MR. LEPAGE: Not that I am aware of, Your  
13 Honour. Thank you.

14 MS. PAYNE: Not that I am aware of Your  
15 Honour. Thank you.

16 THE COURT: All right. Well, before we  
17 close court, counsel, I want to thank you both  
18 for your work and your professional handling of  
19 this case. Madam Clerk, you can close court.

20 .....

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

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