

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

STEVEN MORGAN NITSIZA

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Transcript of the Oral Reasons for Sentence delivered  
by the Honourable Justice J.Z. Vertes, sitting at  
Wha Ti, in the Northwest Territories, on February  
1st, A.D. 2008.

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APPEARANCES:

Ms. C. Gagnon:	Counsel for the Crown
Mr. T. Boyd:	Counsel for the Accused

(Charges under s. 348(1)(a), 348(1)(b) X 3, 354(1)(a),  
733.1(1) Criminal Code)

1           THE COURT:                   The Supreme Court is here in  
2           the community of Wha Ti today for the sentencing  
3           of Steven Morgan Nitsiza. Mr. Nitsiza has  
4           entered pleas of guilty to five criminal charges,  
5           all of them committed on the same day, January  
6           6th, 2007, here in this small community. The  
7           first charge is a break and enter into the  
8           community nursing station. The second is a break  
9           and enter into the hamlet building. The third is  
10          a break and enter into the band office. The  
11          fourth is a break and enter into the local  
12          general store. And the sixth is a charge of  
13          breach of probation.

14                 In some instances nothing was taken. In  
15          other instances various items were taken. But in  
16          all instances extensive damage was done to the  
17          premises.

18                 Obviously, these offences have a great  
19          impact on this small community. Wha Ti has  
20          approximately 460 people. The people who live  
21          here depend on these community facilities, and,  
22          indeed, the actions of the accused have only  
23          harmed the people of his own community. The  
24          community has been put to the expense of  
25          repairing the damages that he has caused, and, in  
26          fact, the community's health was jeopardized by  
27          his break-in to the nursing station where he

1           frightened the only nurse on duty. It was just  
2           fortunate that no one needed her services that  
3           evening.

4           The accused was readily apprehended. He was  
5           arrested later the same day. He cooperated with  
6           the police and gave a full confession as to his  
7           involvement in these offences. All of the items  
8           taken were recovered. Apparently, the reason for  
9           these break-ins was that the accused was looking  
10          for things to steal so that he could get some  
11          alcohol. This is particularly concerning,  
12          considering the fact that Wha Ti is a dry  
13          community.

14          The accused is 29 years old. He is a  
15          life-long resident of this community. I am told  
16          that he has a grade nine education and has only  
17          had sporadic employment. I am also told that he  
18          depends to a great extent on extended family and  
19          at times on social assistance to provide for  
20          himself.

21          The most disconcerting aspect of the  
22          accused's history is his criminal record. His  
23          record reveals 29 individual break and enters  
24          committed here in this community between 1993 and  
25          2001. The last ones in 2001 consisted of six  
26          charges relating to various break and enters,  
27          including, in some instances, on the same places

1 as these charges. He received at that time a  
2 sentence of 30 months on each charge concurrent.

3 His record also reveals other offences in  
4 some other communities. The most recent previous  
5 conviction was in Rae Edzo in 2005 for assault  
6 causing bodily harm. He received at that time 18  
7 months, a sentence of 18 months' imprisonment  
8 plus probation for two years. So at the time of  
9 these offences, the offences for which he has  
10 pled guilty, he was on that probation order.  
11 This, too, is a highly aggravating factor.

12 As I said, he was arrested on January 6th.  
13 He was released on an undertaking with  
14 conditions. He was rearrested, however, on  
15 February 23rd for breaching those conditions and  
16 detained in custody since then. In May he was  
17 convicted in Territorial Court for breaching his  
18 undertaking and breach of probation, and he  
19 received at that time an effective sentence of 45  
20 days. Therefore, the total time that he has  
21 spent in pre-trial custody for these offences is  
22 nine and a half months, and counsel agree that  
23 those nine and a half months should be credited  
24 on the standard two-for-one scale.

25 Crown counsel has recommended a sentence of  
26 three years' imprisonment as a global sentence  
27 less credit for pre-trial detention. She also

1 recommends a further period of probation. As  
2 Crown counsel stated during her submissions, the  
3 accused's criminal record reveals an ingrained  
4 alcohol abuse problem and there should be some  
5 incentive for him to deal with his addiction. I  
6 agree. I think now is the time for this accused  
7 to come to grips with whatever problems he has,  
8 because time is running out.

9 Defence counsel noted various steps taken by  
10 the accused to address his problems while on  
11 remand. He has attended meetings of Alcoholics  
12 Anonymous. He has taken counselling sessions for  
13 anger management, as well as for substance abuse.

14 Crown counsel has also suggested that I  
15 consider in any probation order a term that the  
16 accused reside in some other community for a  
17 period of time. In effect, she suggests  
18 banishment of this accused from this community.

19 I agree that in exceptional circumstances a  
20 Court may order what, in effect, amounts to  
21 banishment. Indeed, there have been cases from  
22 this jurisdiction where such orders have been  
23 made. But I do not think this case fits within  
24 the exceptional circumstances that those cases  
25 presented.

26 First of all, I am not convinced that such  
27 an order should be made in the absence of

1 evidence that the accused could function in some  
2 other community, could function productively, so  
3 that such an order would be an assistance in his  
4 rehabilitation as opposed to being  
5 counter-productive to his rehabilitation.

6 In my opinion, in this case, all that a  
7 banishment order would do would be to foist this  
8 accused on another community without any  
9 assurance that his problems would be addressed in  
10 a supportive environment. It may, indeed, be,  
11 since he has extended family in this community  
12 and since he has lived all his life in this  
13 community, that this community may provide the  
14 best opportunity for his rehabilitation if he is  
15 serious about doing so. In addition, as I heard,  
16 there are some resources here. There is a  
17 healing centre with access to counselling  
18 services.

19 I have taken into account, as I must, the  
20 accused's Aboriginal status, but I have heard  
21 nothing here to warrant some other or different  
22 disposition than what has been recommended. The  
23 effective principles of sentencing that apply in  
24 this case apply here in Wha Ti and to this  
25 accused as much as they would in any other  
26 community and to any other accused.

27 His history shows a repetitive pattern of

1           behaviour that has caused harm to his community.  
2           Therefore, personal deterrence must be  
3           emphasized. General deterrence, as well, must be  
4           emphasized so that people know that this type of  
5           behaviour will not be tolerated. But, as  
6           indicated by both counsel, efforts should be  
7           taken to facilitate and assist Mr. Nitsiza in his  
8           rehabilitative efforts.

9                         Stand up, Mr. Nitsiza. The sentence I am  
10           about to impose is one of three years'  
11           imprisonment in a global sense, but I will deduct  
12           from that the credit for the period of time in  
13           pre-trial custody, which, as I have said, I  
14           estimate at nine and a half months. The  
15           effective credit is 19 months. Therefore, I  
16           sentence you to serve a term of imprisonment of  
17           17 months. That will be on all charges  
18           concurrent. In coming to that total, I have  
19           taken into account what counsel have submitted to  
20           me about the need to keep in mind both the  
21           proportionality factor as well as the totality of  
22           the sentences.

23                         In addition, you will be on probation for a  
24           period of two years. The terms of that probation  
25           order will be that you are to keep the peace and  
26           be of good behaviour. You are to report to the  
27           Court if and when required to do so. You are to

1 report immediately upon your release to a  
2 probation officer in Yellowknife and to continue  
3 to report as and when directed and to whom  
4 directed by a probation officer. You are to  
5 participate in such counselling or treatment  
6 programs as directed by your probation officer,  
7 and you are to reside at such places as your  
8 probation officer directs. Do you understand  
9 those terms?

10 THE ACCUSED: Yes, I do.

11 THE COURT: Do you agree to those terms?

12 THE ACCUSED: Yeah.

13 THE COURT: Now, Mr. Nitsiza, you, I am  
14 sure, understand that if you breach those terms,  
15 you can be charged for that and the terms can be  
16 changed. Do you understand?

17 THE ACCUSED: Yeah.

18 THE COURT: Now, Mr. Nitsiza, in addition,  
19 I will, as requested by Crown counsel, make  
20 restitution orders under section 738 of the  
21 Criminal Code requiring you to make restitution  
22 to A/C Convenience Store in the amount of  
23 \$693.33, the Hamlet of Wha Ti in the sum of  
24 \$1,500, and the Band Council of Wha Ti in the sum  
25 of \$3,604.

26 In addition, there will be an order pursuant  
27 to section 487.051 of the Criminal Code requiring

1           you to provide a sample for submission to the DNA  
2           databank. Even though these offences are only  
3           secondary designated offences and they are  
4           discretionary, I am satisfied that the order is  
5           necessary in the best interests of the  
6           administration of justice.

7           Now, Mr. Nitsiza, I heard you say to me that  
8           you have made some bad choices in your life and  
9           that you are very sorry for what you have done.  
10          Yes, you have made some bad choices. I don't  
11          know why and what drove you to make those  
12          choices, but you are now 29 years of age. You  
13          have spent a lot of time going in and out of jail  
14          over the last several years, and it seems to me  
15          that the clock is ticking, that time is running  
16          out for you to do something about your life, and  
17          only you can do it in the end. Nobody can do it  
18          for you. You are the one that has to figure out  
19          what type of man you want to be and what type of  
20          life you want to lead.

21          Your counsel told me that you have a  
22          four-year-old son, that you hope to establish a  
23          relationship with your son. Well, think of it  
24          through his eyes. What type of a father does he  
25          want to have? What type of a man does he need to  
26          serve as a model for how to live his life? And  
27          if you think about it that way, then perhaps that

1 will give you the strength to address whatever  
2 problems it is that you have. It is not easy,  
3 but you are still at an age where you can do it,  
4 where it is not insurmountable. Do you  
5 understand?

6 THE ACCUSED: Yeah.

7 THE COURT: I am going to recommend one  
8 other thing to you, Mr. Nitsiza. I am not going  
9 to make this part of any order, so it will be up  
10 to you to do it, but it is a suggestion. I  
11 suggest when you come back to Wha Ti you ask the  
12 Hamlet and the Band Council if you can get up and  
13 speak to the people of Wha Ti and apologize to  
14 them for what you did, because these are the  
15 people you harmed by these break and enters into  
16 these public buildings. Tell them how you feel.  
17 Tell them that you understand that you made bad  
18 choices. Tell them what you are doing to  
19 overcome that and ask for their forgiveness and  
20 ask for their help and their support. And I am  
21 sure the people in this community will give you  
22 that help and support if you really ask for it  
23 and if you mean it. I am not going to order you  
24 to do that. That is up to you. That is your  
25 choice. But I think you may find that it will do  
26 a lot of help for both you and the community.  
27 You can sit down.

