

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

TERENCE ANTHONY APSIMIK

Transcript of the Reasons for Sentence delivered by The Honourable Judge J. E. Richard, in Yellowknife, in the Northwest Territories, on the 9th day of February, 2011

APPEARANCES:

Mr. A. Godfrey: Counsel on behalf of the Crown

Mr. J. Bran: Counsel on behalf of the Accused

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Charge under s. 266 C.C.

1 THE COURT: This 23-year-old offender,  
2 Terence Apsimik, has been convicted by a jury of  
3 assault, contrary to section 266 of the Criminal  
4 Code. This offence carries a maximum sentence of  
5 five years imprisonment.

6 Late in the evening of October 20th, 2009,  
7 the offender was likely in an intoxicated state,  
8 although there is no precise evidence on that  
9 point. He had been drinking alcohol and  
10 consuming marihuana with a 17-year-old friend  
11 throughout the day in the offender's apartment.  
12 The two of them took a taxi cab from the  
13 offender's apartment to the downtown area of  
14 Yellowknife. The taxi driver was directed to go  
15 to a parking area near Somba K'e Park. The  
16 17-year-old friend was sitting behind the driver,  
17 and this offender was sitting in the right rear  
18 seat. The 17-year-old put a knife to the throat  
19 of the driver and demanded money. The driver  
20 struggled to get the knife away from his throat  
21 and managed to do so, and in the process  
22 sustaining cuts to both his hands. The  
23 17-year-old got out of the car. This offender  
24 then punched the taxi driver in the face from his  
25 position in the right rear seat. This offender  
26 then got out of the car and both he and the  
27 17-year-old fled. The taxi driver called the

1 RCMP and they arrived on the scene within  
2 minutes. The RCMP apprehended the two amateur  
3 criminals not far from the scene within minutes.  
4 No money had been taken from the victim.

5 The victim suffered cuts to both hands and  
6 also minor swelling or puffiness to his lips or  
7 face from the one punch administered by this  
8 offender. He received minor medical treatment  
9 from ambulance personnel called to the scene and  
10 at the Stanton Hospital.

11 During his testimony at trial, the victim  
12 stated that as a result of this incident he was  
13 not able to work for a while, not because of  
14 physical injuries but rather for emotional  
15 reasons or traumatic stress. He states that he  
16 no longer works the late night shift and also  
17 said that he is more careful about which  
18 addresses he goes to in connection with his  
19 profession as a taxi driver in our city.

20 Following their arrest on October 20th, both  
21 this offender and the 17-year-old were charged  
22 with robbery. The 17-year-old appeared in Youth  
23 Court, pleaded guilty to robbery, and received a  
24 sentence of 12 months custody.

25 This offender, Terence Apsimik, was charged  
26 with robbery, elected trial by Supreme Court  
27 judge and jury, and requested a preliminary

1 inquiry in Territorial Court. The preliminary  
2 was held in February 2010 and he was committed to  
3 stand trial before a jury in this court. Having  
4 elected trial by jury, he then joined the long  
5 queue of accused persons wishing a jury trial.  
6 His jury trial was scheduled for this week, that  
7 is February of 2011, 16 months after the offence  
8 date.

9           Though charged with robbery, the jury  
10 properly found him not guilty of that offence but  
11 guilty of the included offence of assault. There  
12 was no evidence on which the jury could  
13 necessarily infer that at the time this offender  
14 administered the punch to the victim that he  
15 himself intended to steal from the taxi driver or  
16 that he intended to assist the 17-year-old to  
17 steal from the taxi driver.

18           My impression of the nature of this assault  
19 comes from the evidence of the victim, who I must  
20 say did not embellish his evidence and gave his  
21 evidence in a very fair and dispassionate manner  
22 in describing the circumstances of the assaults.  
23 The victim gave very credible evidence and it  
24 should come as no surprise to the offender that  
25 the jury accepted the victim's evidence about the  
26 assault. In any event, it is my impression that  
27 when administering the punch, this offender did

1           so in the heat of the moment, perhaps in a state  
2           of panic, perhaps in an effort to extricate  
3           himself from the situation, or perhaps it was  
4           simply gratuitous violence. Although the  
5           criminal conduct of these two immature young men  
6           could be described as amateurish, their  
7           respective crimes were nonetheless serious crimes  
8           of violence. Mr. Apsimik's crime in assaulting a  
9           vulnerable and terrified victim in the  
10          circumstances I have described is very serious,  
11          and the sentence must reflect the gravity of his  
12          crime and must be proportionate to the level of  
13          his responsibility.

14                 The main purpose of the sentencing process  
15          is to promote respect for the law and to maintain  
16          a safe and peaceful community. This kind of  
17          attack on a vulnerable taxi driver has to be  
18          denounced as unlawful conduct that is not  
19          acceptable to the members of our community. The  
20          sentence that is imposed must act as a deterrent  
21          to this offender and others, drunk or sober, from  
22          engaging in this kind of unlawful conduct. As  
23          has been stated in previous decisions of this  
24          court and other courts, taxi drivers are in a  
25          vulnerable position. They are people who provide  
26          a service to the public in circumstances that put  
27          them at risk. So the sentence imposed must

1 recognize that and must have as its objectives,  
2 to repeat, deterrence of others from engaging in  
3 this kind of unlawful conduct, and denunciation  
4 of this unlawful conduct.

5 This offender, Terence Apsimik, is now 23  
6 years old. I am told he has a grade 10 education  
7 plus additional upgrading. I am told he is  
8 presently employed, having obtained full-time  
9 employment just a few weeks ago. Mr. Apsimik has  
10 been in a common-law relationship for two years  
11 and the couple are expecting their first child in  
12 April of this year.

13 This is not the first time that Mr. Apsimik  
14 has been before the court for a crime of  
15 violence. His criminal record includes three  
16 separate assault convictions. For his first  
17 assault conviction in 2007, he received a  
18 suspended sentence and was placed on probation  
19 for 12 months. He was later in 2008 convicted of  
20 two other assaults and for those received  
21 custodial sentences of one month and two months  
22 respectively. When he appeared in court in May  
23 2008 and was sentenced on those two assaults and  
24 other matters, he received a total sentence of  
25 six months imprisonment, followed by 12 months  
26 probation. Thus, it would appear that he would  
27 have barely completed his probation period when

1 he committed his most recent crime of violence in  
2 October 2009.

3 Counsel are agreed that a custodial sentence  
4 is necessary in this case. However, the offender  
5 requests that he be allowed to serve his sentence  
6 in the community as a conditional sentence  
7 pursuant to the provisions of section 742.1 of  
8 the Criminal Code. I have considered this  
9 request and have determined that a conditional  
10 sentence is simply not on, in all of the  
11 circumstances of this offence and this offender.  
12 One of the factors in that determination is the  
13 offender's repeated pattern of crimes of violence  
14 in our community. I find that a conditional  
15 sentence in this case would fail to promote in  
16 Terence Apsimik a sense of responsibility for  
17 what he has done. Mr. Apsimik submits to the  
18 court through his counsel that he has in the past  
19 16 months while awaiting trial matured a lot or  
20 grown up. Part of growing up or maturing is  
21 taking responsibility for one's conduct. To  
22 impose a conditional sentence in the  
23 circumstances of this offence and this offender  
24 would be inconsistent with the fundamental  
25 purpose and principles of sentencing, in  
26 particular, promoting respect for the law,  
27 denunciation, deterrence, proportionality, and

1 parity.

2 There are no mitigating circumstances to  
3 take into consideration in the determination of  
4 an appropriate sentence in this case.

5 The offender's criminal record is an  
6 aggravating circumstance, as is the fact that the  
7 victim of his violent crime was a vulnerable taxi  
8 driver who had just been violently assaulted by  
9 the offender's friend.

10 The prosecutor suggests that a period of  
11 probation be added to any custodial term. I  
12 decline to impose a probation term. Probation  
13 has not worked for this offender and I see no  
14 reason to add another file to the case load of  
15 the office of Probation Services.

16 Please stand, Mr. Apsimik.

17 Terence Apsimik, for the crime that you have  
18 committed, assault contrary to section 266 of the  
19 Criminal Code, it is the sentence of the court  
20 that you be imprisoned for a period of six  
21 months.

22 In the circumstances, there will be no  
23 victim fine surcharge.

24 You can be seated.

25 Is there anything further in this case,  
26 counsel?

27 MR. GODFREY: None from the Crown, Your



1 Honour.

2 MR. BRAN: Your Honour, nothing in regard  
3 to the sentence but a very brief comment on the  
4 comments earlier today. I'd like to thank the  
5 court for that positive feedback and I certainly,  
6 upon reflection, agree with all of your comments  
7 and thank you for pointing those out. It can  
8 only make my practice in the court better in the  
9 future. So thank you for those comments.

10 THE COURT: Thank you. We will close  
11 court.

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

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Annette Wright, RPR  
19 Court Reporter

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