

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- V -

JONAS MODESTE

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Transcript of the Oral Reasons for Sentence by The  
Honourable Justice L. A. Charbonneau, sitting in Deline,  
in the Northwest Territories, on the 15th day of February,  
A.D., 2012.

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APPEARANCES:

Ms. A. Paquin: Counsel for the Crown

Ms. B. Rattan: Counsel for the Defence

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Charges under s. 267(b), 267(a) & 252(1) Criminal Code

1 THE COURT: This morning I found  
2 Mr. Modeste guilty of a count of assault causing  
3 bodily harm, assault with a weapon, and failure  
4 to remain at the scene of an accident, and now  
5 it is my responsibility to decide what sentence  
6 should be imposed for those offences.

7 Just to put my reasons for sentence in some  
8 context, I will repeat now some of the findings  
9 of fact that I made earlier this morning, setting  
10 out the factual basis upon which he should be  
11 sentenced. It is important that I do so to  
12 put my comments on sentencing in some context.

13 Before I turn to those issues though,  
14 I must address the issue that was raised  
15 this morning with respect to whether the rule  
16 against multiple convictions prevents, as a  
17 matter of law, convictions from being entered  
18 on both Counts 1 and 2. Because this had been  
19 alluded to in the submissions at the conclusion  
20 of the evidence, I probably should have asked  
21 counsel for their submissions on that before  
22 we embarked upon the actual sentencing hearing,  
23 because really that is a step that comes after  
24 the finding of facts but before convictions are  
25 entered.

26 I have now heard submissions on this  
27 issue and I have come to the conclusion that

1 convictions should be entered on both counts.

2 The rule against multiple convictions  
3 was discussed in the well-known case of R.  
4 v. Kienapple [1975] 1 S.C.R. 729, 15 C.C.C.  
5 (2d) 524, a decision from the Supreme Court  
6 of Canada. The basic foundation of the rule  
7 is that a person should not be convicted for  
8 two separate offences when there is an identical  
9 legal and factual nexus between the two charges.

10 Counsel made reference to some cases this  
11 morning dealing with that issue, and I think it  
12 is fair to say that there is some uncertainty  
13 in the law in this area when it comes to the  
14 interaction between charges of aggravated assault  
15 and assault with a weapon, and the same would  
16 be true for assault causing bodily harm and  
17 assault with a weapon. The legal elements of  
18 these two offences are different. It is possible  
19 to cause bodily harm to someone without using a  
20 weapon, and it is also possible to use a weapon  
21 in an assault without causing bodily harm. The  
22 legal elements of these offences are distinct.  
23 So it is certainly not as clearcut a situation  
24 as, for example, is the case when a person is  
25 charged with both impaired driving and driving  
26 with a concentration of alcohol that exceeds  
27 the legal limit provided for in the law.

1           The case law, as I said, shows that there  
2           are different views across the country on this.  
3           I was faced with a similar issue in the case of  
4           R. v. Green [2007] N.W.T.J. No. 22, but I was not  
5           presented with any case law on that issue in that  
6           case. The issue was raised during the sentencing  
7           hearing, and it was referred to in passing and  
8           not the subject of submissions as thorough as  
9           those made this morning.

10           But the case law that has been referred  
11           to shows that in Alberta the prevailing law is  
12           that the rule against multiple convictions does  
13           not prevent a conviction on aggravated assault  
14           and assault with a weapon arising from the same  
15           circumstances. In the case of Alkhatib [2007]  
16           N.S.J. No. 562, a similar conclusion appears  
17           to have been reached in Nova Scotia, whereas  
18           in Ontario the cases suggest a different result,  
19           more specifically the case of R. v. Basilio  
20           (2003) 175 C.C.C. (3d) 440 (Ont. C.A.).

21           In R. v. Green, I considered that issue  
22           in the context of aggravated assault and assault  
23           with a weapon following an incident where someone  
24           was stabbed and serious injuries were caused.  
25           It is very similar to this situation where the  
26           two charges are assault with a weapon and assault  
27           causing bodily harm. In Green I decided that

1 Kienapple did not apply and that the nexus  
2 between the two charges was something that  
3 went to sentencing, but not to the possibility  
4 of conviction.

5 Unless the Northwest Territories Court of  
6 Appeal looks at that issue and provides a binding  
7 decision suggesting otherwise, I am inclined  
8 to follow the law as it exists currently in  
9 Alberta, as well as my own decision in R. v.  
10 Green. It is for that reason that there will  
11 be convictions entered on both Counts 1 and 2.  
12 I am satisfied that although the factual nexus  
13 is clearly present, the legal nexus is not.  
14 Ultimately it is a legal issue that does not  
15 have an impact on sentencing because I would  
16 not impose separate consecutive sentences on  
17 these two counts, precisely because they arise  
18 from the same events. But I am satisfied that  
19 convictions ought to be entered on all three  
20 counts.

21 In any sentencing decision the Court must  
22 take into account the circumstances of the  
23 offence committed, the personal circumstances  
24 of the person who committed the offence, and  
25 the sentencing principles that are set out in  
26 the Criminal Code. The sentencing principles  
27 set out in the Criminal Code provide a framework

1 for sentencing judges, and sentencing judges  
2 must work within that framework. Although  
3 sentencing is a highly discretionary process  
4 that is driven by the individual specific facts  
5 of each case, and judges do have a lot of  
6 discretion in deciding what a sentence should  
7 be, the discretion is not without limits and  
8 certain basic principles have to be complied  
9 with.

10 To summarize my findings as to the  
11 circumstances of the offence, Mr. Modeste  
12 and the victim, Mr. Elemie Junior, are cousins  
13 who have known each other their whole lives,  
14 having both grown up in the community of Deline.  
15 This incident happened quite a while ago, almost  
16 two years ago, in March of 2010.

17 On that day they had been drinking alcohol  
18 and socializing at another relative's residence.  
19 Mr. Elemie Junior brought up things that  
20 Mr. Modeste had said in the past about his  
21 grandfather, things that Mr. Elemie Junior  
22 thought were disrespectful. Mr. Elemie Junior  
23 had been upset about this for some time and  
24 never said anything about it, but on this day,  
25 probably in part as a result of his consumption  
26 of alcohol, he did bring it up and this led  
27 to an argument. Mr. Elemie Junior punched

1 Mr. Modeste in the face and caused a black  
2 eye that was visible four days later when  
3 the police officer, who investigated this  
4 matter, saw Mr. Modeste.

5 After that happened the owner of the  
6 residence asked Mr. Elemie Junior to leave.  
7 Mr. Elemie Junior did, and started walking  
8 home. A short time later Mr. Modeste left  
9 the house too on his snowmobile, which was  
10 a Skandic 550, a relatively powerful machine.  
11 Mr. Elemie Junior was not far from his house  
12 when he heard the noise of the snowmobile  
13 behind him. At first he thought nothing of  
14 it, but then it sounded like the vehicle was  
15 accelerating. So this got Mr. Elemie Junior's  
16 attention and he turned around and looked back.  
17 He saw that it was Mr. Modeste on his snowmobile,  
18 several hundred feet away from him, but coming  
19 towards him.

20 At first Mr. Elemie Junior did not  
21 move, but there came a point when he realized  
22 that Mr. Modeste was going to run him over.  
23 Mr. Elemie Junior was concerned about getting  
24 off the road, getting stuck in deep snow, and  
25 be more of an easy target. He was also worried  
26 about trying to run on the slippery road and  
27 falling and being run over. So he decided to

1 try to jump over the snowmobile. He took a few  
2 steps and placed his foot on the hood of the  
3 snowmobile, and when the machine struck him its  
4 speed made Mr. Elemie Junior flip a few times  
5 in the air, and then he fell on the ground on  
6 his forehead.

7 Mr. Modeste kept driving some distance  
8 further, then turned the machine around and  
9 stopped. He looked at Mr. Elemie Junior for a  
10 few seconds, but then he drove away. Mr. Elemie  
11 Junior could not get up, he realized his leg was  
12 broken. Someone drove by in a truck and took him  
13 to the nursing station, and he was eventually  
14 medivaced to Yellowknife. His leg was placed in  
15 a cast, which he wore for several weeks, and he  
16 required a crutch to walk for a few weeks, even  
17 after the cast was removed. In his words, he had  
18 to re-learn how to walk. He also suffered some  
19 swelling and bruising to his forehead, all of  
20 which is described in the admissions about his  
21 injuries and visible in the photographs that  
22 were filed as trial exhibits.

23 Mr. Elemie Junior appears to have fully  
24 recovered from his injuries, and as I alluded  
25 to during submissions this morning he has made  
26 it clear that he considers Mr. Modeste is a  
27 good person. They have apologized to each other



1           for what has happened, and Mr. Elemie Junior  
2           basically seems to feel as though this incident  
3           was more his fault than anything else because  
4           he started the argument. Mr. Elemie Junior  
5           deserves credit for his willingness to accept  
6           his responsibility in what happened, but  
7           certainly the Court hopes that his words do  
8           not send to Mr. Modeste any kind of message  
9           that Mr. Modeste is not the one who is  
10          responsible for what happened that day,  
11          and I will get back to that in a moment.

12                 As far as the circumstances of Mr. Modeste  
13          himself, I am told he is 48 years old, a Dene  
14          man, and is single. He has a large family, an  
15          extended family, and many of its members live  
16          here in Deline. He has worked in the past as  
17          a heavy equipment operator and in construction.  
18          He has spent a fair bit of time engaged in  
19          hunting and trapping activities on the land,  
20          and I am told that at this time he has a project  
21          that he submitted to a governmental agency to  
22          build log cabins, but as of this day had not  
23          heard back if this was going to be accepted  
24          or not.

25                 He has a criminal record, which includes  
26          four convictions, three convictions for assault  
27          and one conviction for possession of a weapon.

1           These were entered in 1994, 1995, and the most  
2           recent one is from 1999, which led to the  
3           imposition of a total sentence of 14 months  
4           imprisonment. So those last two convictions  
5           were not for a minor offence, and gave rise  
6           to a fairly significant jail term. That being  
7           said, the record is quite dated. There is a  
8           considerable gap between the last conviction  
9           and the year 2010 when this incident happened.

10           Mr. Modeste's counsel has said that alcohol  
11           has been a problem for him in the past, but is  
12           not so much anymore. He had consumed alcohol  
13           on the day of this incident. It is unclear what  
14           part it played in the entirely inappropriate and  
15           criminal decision that he made in choosing the  
16           course of action that he chose in response to his  
17           altercation with Mr. Elemie Junior. It is not  
18           something that the Court can force Mr. Modeste to  
19           do, but the Court urges him to consider what part  
20           his consumption of alcohol played in this event  
21           and whether it might be preferable for him to  
22           stay away from alcohol altogether. It would also  
23           most certainly be of benefit to Mr. Modeste, in  
24           light of the fact that his record shows he has  
25           used violence in the past, to consider what work  
26           he needs to do to deal with how he addresses his  
27           anger, because the reality is that in life there

1 are things that happen to all of us that make us  
2 angry, and the response is the part that we have  
3 some control over.

4 I have heard that Mr. Modeste has been to  
5 residential school in the '70s. I did not hear  
6 any specific submissions about his experiences  
7 in residential school or how those experiences  
8 may have contributed to his getting into conflict  
9 with the law, so I will not speculate about that.  
10 But the fact that he is of aboriginal descent  
11 and has experienced the reality of residential  
12 schools as part of his background, in light of  
13 what the Criminal Code says I must consider it  
14 in arriving at a fit sentence for him as an  
15 aboriginal offender.

16 The principles of sentencing are set  
17 out in the Criminal Code, as well as what the  
18 sentencing objectives are. They are intended  
19 to guide a judge's discretion in deciding what  
20 a fit sentence is for any given offence.  
21 The fundamental sentencing principle is  
22 proportionality, which simply means that  
23 a sentence needs to be proportionate to the  
24 seriousness of the offence and the degree of  
25 responsibility of the person who committed the  
26 offence.

27 Another principle is that there should

1           be parity in sentencing, and that is a matter  
2           of fairness. Sentences imposed for similar  
3           offences committed in similar circumstances  
4           by similar offenders should be similar. I am  
5           glad to say that we do not have a lot of cases,  
6           to my knowledge at least in this jurisdiction,  
7           that involve people using snowmobiles or other  
8           motor vehicles as weapons. That is a fortunate  
9           thing, but it also means that this principle of  
10          parity is one that is more difficult to apply  
11          because it is not as though I have a lot of  
12          precedents that I can consider from this  
13          jurisdiction where this type of offence was  
14          committed.

15                 The Crown has submitted a number of cases,  
16                 which were very helpful in outlining some of  
17                 the principles that have been identified by  
18                 Courts in other jurisdictions in dealing  
19                 with these types of offences, and I thank  
20                 counsel for those cases. I also recognize,  
21                 as defence counsel pointed out, that each case  
22                 is different, and that ultimately decisions in  
23                 other circumstances are helpful to a point, but  
24                 ultimately the actual sentence in each case has  
25                 to be based on the specific circumstances of  
26                 that case and of that offender.

27                 An important sentencing principle is

1           that there should be restraint in the use of  
2           imprisonment. There is a provision in the  
3           Criminal Code that says that all available  
4           sanctions other than imprisonment that are  
5           reasonable in the circumstances should be  
6           considered for all offenders, with particular  
7           attention to the circumstances of aboriginal  
8           offenders. Another aspect of the restraint  
9           principle is that where a Court comes to the  
10          conclusion that jail is required the jail  
11          term should never be more lengthy than what  
12          is necessary to achieve the objectives and  
13          purposes of sentencing.

14                 I want to mention those objectives.  
15           They are set out at Section 718 of the  
16           Criminal Code and they are always important  
17           to remember. The first is that sentences  
18           should denounce unlawful conduct. This means  
19           the Court makes it clear through its sentences  
20           that the behavior is not accepted in our  
21           communities and it is serious.

22                 The second principle is deterrence, which  
23           means discouraging the offender who is before the  
24           Court and other people from behaving in a similar  
25           way. That is an important principle in this case  
26           because the Court knows that there are situations  
27           where people may be tempted to take the law into

1           their own hands and to exercise revenge over  
2           others by using various means, and it is very  
3           important, to maintain a peaceful society, that  
4           people do not do that.

5           The third objective is the separation of  
6           offenders from society when that is necessary.  
7           Sometimes the protection of the public, or  
8           the importance of making it clear that certain  
9           conduct is not acceptable, requires that a  
10          person be placed in custody for a period of  
11          time.

12          Another objective is rehabilitation, and  
13          that is a very important one. The most effective  
14          way to protect our communities really is to have  
15          offenders become rehabilitated, and not commit  
16          further crimes but instead be productive members  
17          of their community.

18          Another objective is to provide  
19          reparations for the harm done to victims  
20          and to the community. This is always an  
21          important one as well, and in this case  
22          it appears that Mr. Modeste and Mr. Elemie  
23          Junior have already taken some steps to restore  
24          their relationship; within limits, of course,  
25          with the upcoming trial. But the fact is that  
26          there will come a time where they will both  
27          live again in this community together, along

1 with their various relatives and friends and  
2 relations, and it is important that these  
3 relationships be repaired and restored to  
4 any extent possible.

5 Finally, the last sentencing objective  
6 is to promote a sense of responsibility in  
7 offenders and an acknowledgement of harm done  
8 to the victim and the community, which is  
9 somewhat connected to the earlier principle.  
10 Again, I say that it is the Court's hope that  
11 Mr. Elemie Junior's statements that he made in  
12 this courtroom about feeling he was responsible  
13 for what happened, which really showed his  
14 character, are taken for what they mean, which  
15 is his acknowledgment of his role in causing the  
16 argument. But he certainly has absolutely no  
17 responsibility for the choices that Mr. Modeste  
18 made after that, and it is Mr. Modeste that must  
19 accept responsibility for having chosen to use  
20 the snowmobile in the way that he did.

21 I will mention here that in a sense  
22 everybody involved in this case is very lucky  
23 because the consequences of this incident were  
24 serious, but very easily they could have been  
25 far more serious. Mr. Elemie fell on his head.  
26 People get head injuries and die from them over  
27 far less force than what happens from falling

1 on your head after flying off in the air.  
2 So there could have been far more serious  
3 consequences to this, which would have been  
4 serious for Mr. Elemie Junior, of course, but  
5 also would have been much more serious for  
6 Mr. Modeste, who could be facing sentencing  
7 for a far more serious crime. He must be  
8 sentenced for what he did, not for what he  
9 could have done, and for what happened, not  
10 what could have happened. But in taking  
11 responsibility for this and in accepting  
12 the seriousness of what he did he must bear  
13 in mind the potential consequences of conduct  
14 like this.

15 Violence is something that unfortunately  
16 is quite prevalent in our communities in the  
17 Northwest Territories. The use of weapons,  
18 whether they are conventional weapons like  
19 firearms or knives, or whether they are  
20 unconventional weapons like a motor vehicle,  
21 elevates the level of blameworthiness of the  
22 person who commits the offence.

23 Snowmobiles are everywhere in Northern  
24 communities. You see one or more practically  
25 near every house. Walking around this community  
26 and others in the winter, fall and spring, one  
27 sees snowmobiles everywhere on the roads, at the



1 stores, at people's houses. For a lot of people  
2 they are the main way of transportation within  
3 the community, and also an essential tool for  
4 those who go out and carry out activities on  
5 the land. It is extremely important, much as  
6 is the case with firearms, that they not be  
7 turned into weapons, that they not be used to  
8 harm or intimidate other people. So I agree  
9 with the Crown's submission that the use of a  
10 motor vehicle in this case, a snowmobile as a  
11 weapon, is a serious aggravating factor in this  
12 offence.

13 I do accept that Mr. Modeste was not going  
14 as fast as what Mr. Elemie Junior perceived for  
15 reasons I gave in my reasons for decision this  
16 morning, but I did find that he was driving fast  
17 enough to cause significant injury to him, and  
18 as I have just said, it is fortunate that there  
19 were not even more serious consequences to what  
20 happened.

21 So for those reasons deterrence and  
22 denunciation are important sentencing objectives  
23 in this case, but at the same time, given  
24 Mr. Modeste's background, his rehabilitation  
25 is also an important consideration. I am sure  
26 that there is much he can contribute to this  
27 community. He is obviously well liked by

1 Mr. Elemie Junior himself; he is probably  
2 well liked by others as well. Mr. Elemie  
3 testified that they have apologized to each  
4 other already, and as I have already mentioned  
5 a few times, Mr. Elemie Junior made a point  
6 of saying more than once that he thought that  
7 Mr. Modeste was a good person.

8 There are cases where I might be very  
9 suspicious about a victim trying to defend  
10 or protect an offender because there are all  
11 sorts of complicated reasons why that might  
12 happen, and the family dynamics are such that  
13 sometimes people want to be heard to say that  
14 the offender is a good person because the victim  
15 does not want to end up blamed for whatever  
16 consequences follow to the offender after the  
17 court process takes place.

18 In this case I do tend to think that this  
19 speaks to Mr. Elemie Junior's own character  
20 and his honest willingness to accept his  
21 responsibility for causing the argument. But  
22 as I said, I hope that Mr. Modeste is equally  
23 willing to accept his responsibility for what  
24 he did and how serious it was.

25 The point is this is a small community  
26 and these two individuals have attempted to  
27 restore things between them. The criminal

1 justice system has now taken its steps and we  
2 are now here two years after the fact dealing  
3 with sentencing on this matter. If I recall  
4 correctly from the court file, part of the  
5 delay is Mr. Modeste's responsibility because  
6 he failed to appear at earlier points on this  
7 case. But the passage of time remains a fact  
8 that should not be overlooked, and the continuing  
9 relationship between these people is also  
10 something that I should not overlook, especially  
11 in the context of a small community such as  
12 this one.

13 Assault with a weapon and assault causing  
14 bodily harm are punishable by a maximum of  
15 ten years imprisonment, and this shows how  
16 serious Parliament considers these offences  
17 to be. As for the charge for failure to remain  
18 at the scene of an accident, in the circumstances  
19 of this case it is punishable by five years  
20 imprisonment.

21 The Crown is asking me to impose a global  
22 jail term in the range of 18 to 22 months  
23 followed by probation. Defence counsel has  
24 realistically acknowledged that a jail term  
25 must be imposed for this type of offence, but  
26 argues that it could be somewhat shorter, in  
27 the range of 10 to 16 months. The defence also

1 argues that this is not a case where I should  
2 make a probation order because Mr. Modeste is  
3 in his 40s and does not require supervision.  
4 At this point in his life, if he wants to take  
5 counselling or take advantage of programs, he  
6 needs to do that on his own, as I understand  
7 the defence to be saying, not be ordered to  
8 do it by a probation officer.

9 I have reviewed the case law that was  
10 provided this morning, and I again thank counsel  
11 for submitting them. Each factual scenario is  
12 different, but these cases are useful to identify  
13 key principles and shed some light on what a  
14 proper range of sentence is for this type of  
15 offence.

16 The importance of deterrence and  
17 denunciation, when dealing with crimes of  
18 violence, is already a well-established  
19 principle in this jurisdiction. As far as  
20 principles more specific to this case, and  
21 including principles applicable to offences  
22 involving the use of a motor vehicle as a  
23 weapon, I agree and adopt the comments in  
24 the case of Abu Gosh [2006] A.J. No. 902.  
25 It talks about the increased blameworthiness  
26 and seriousness of an offender who uses a  
27 motor vehicle in this way. I also agree with

1 the comments made in the Supreme Court level  
2 decision in Balcha [2003] O.J. No. 4721,  
3 [2004] O.J. No. 1217, at paragraph 45, about  
4 the increased blameworthiness that comes with  
5 a person who decides to take the law into  
6 their own hands, essentially the vigilante  
7 approach to things.

8 I also agree with comments made in more  
9 than one of these cases about the seriousness,  
10 the inherent dangerousness and callousness  
11 in leaving the scene of an accident after having  
12 hit someone. So these are all principles that  
13 I think are useful and guide the exercise of  
14 my discretion today. But at the same time,  
15 I must balance this all with the need for  
16 restraint, consideration for Mr. Modeste's  
17 rehabilitation, and a recognition that some  
18 reparation and restoration has already occurred  
19 in this case.

20 The Crown could have sought a more lengthy  
21 jail term than what it did. After trial, and  
22 it is important that Mr. Modeste understands  
23 this, this type of conduct, this type of assault,  
24 the use of a weapon that causes serious injuries,  
25 combined with his decision to leave the scene,  
26 could have led to the imposition of a sentence  
27 in the federal range, that is a sentence over

1 two years, and some of the cases filed by the  
2 Crown shows that that sometimes is what happens.

3 But I have concluded that there are reasons  
4 to show restraint, including the gap in the  
5 criminal record, his personal circumstances,  
6 the fact that he is an aboriginal offender,  
7 and also because I do not want to make the  
8 mistake of losing sight of the importance  
9 of his own rehabilitation. His sentence must  
10 not be so long as to be counterproductive and  
11 simply be a blind expression of the Court's  
12 denunciation of his conduct.

13 I will deal first with the various ancillary  
14 orders that the Crown has sought. First of all,  
15 assault with a weapon and assault causing bodily  
16 harm are primary designated offences under the  
17 Criminal Code, and for those types of offences it  
18 is mandatory that I make a DNA order pursuant to  
19 Section 487.01 of the Criminal Code. So I make  
20 this order.

21 Secondly, pursuant to Section 259 of  
22 the Criminal Code, one of the sentencing  
23 tools available to me is a driving prohibition  
24 order. It is not mandatory in a case like  
25 this, it is discretionary, but the Crown  
26 is asking that I make such an order. The  
27 defence is not really taking issue that one

1 is appropriate, or with the length of time  
2 that the Crown is seeking for that order.  
3 I think it is important, although I know it  
4 will present some challenges to Mr. Modeste,  
5 as it would anyone, to not be permitted to  
6 drive a motor vehicle for a year, I think it  
7 is important that it be a part of the decision  
8 today because it is important to emphasis  
9 that using motor vehicles in our society is  
10 a privilege and that anyone who abuses that  
11 privilege in this type of way has to suffer  
12 consequences. So there will be a driving  
13 prohibition that will expire one year following  
14 Mr. Modeste's release from custody.

15 The Crown is also reminding me that a  
16 firearm prohibition order is mandatory for  
17 the assault causing bodily harm and assault  
18 with a weapon charges pursuant to Section 109  
19 of the Criminal Code. So there will be such  
20 an order. It will commence today and expire  
21 ten years following Mr. Modeste's release from  
22 custody.

23 Defence is asking that I make as part  
24 of the order today an authorization to the  
25 Chief Firearms Officer to authorize under  
26 certain conditions Mr. Modeste to have  
27 a firearm for sustenance and employment

1 activities. By giving this authorization  
2 I am not granting the exemption. I am simply  
3 saying that another authority, at some later  
4 time, has the power of granting an exemption  
5 on specific conditions.

6 In making that decision I have to consider  
7 the person's criminal record, the circumstances  
8 of the offence, and the need to protect the  
9 offender and other persons from harm, to protect  
10 their safety. I am concerned about the fact that  
11 there are three prior convictions for crimes  
12 of violence on the record, apart from the ones  
13 that Mr. Modeste has been convicted of today,  
14 but I note that the record is dated and that  
15 no firearm was involved in the commission of  
16 this particular offence.

17 So on balance, and bearing in mind the need  
18 to encourage Mr. Modeste to carry out productive  
19 activities, and because of what I have heard  
20 about his hunting and trapping activities, I am  
21 prepared to include an order pursuant to Section  
22 113 in my order today, which means that it will  
23 be up to him, when the time comes, to seek that  
24 exemption from the competent authorities, and his  
25 counsel can explain that to him in more detail  
26 when we are done.

27 Because I do intend on imposing a jail



1 term of some significance to Mr. Modeste,  
2 I am satisfied that there would be hardship  
3 in imposing a victim of crime surcharge in  
4 addition to my sentence. So I am not going  
5 to make an order for a surcharge.

6 Mr. Modeste, please stand. Mr. Modeste,  
7 I do not think I can add much to what I have  
8 said. I have to impose a jail term today.  
9 I do not like sending people to jail, I can  
10 assure you of that. I have decided to exercise  
11 as much restraint as I can. So on Count 1 the  
12 sentence will be 17 months imprisonment; on Count  
13 2 it will be 17 months also, but concurrent, so  
14 served at the same time; and on count number 3 it  
15 will be 15 months imprisonment also concurrent.  
16 So the total is 17 months in jail. You can sit  
17 down.

18 I know this is a long sentence, but I also  
19 know that you will be released, and I can only  
20 hope that you will put this incident behind  
21 you and you will use your skills and your  
22 abilities to help your community and do  
23 productive things, because it sounds like  
24 you have those skills.

25 I am not going to put you on probation  
26 after you are released. Perhaps when you are  
27 in custody you can benefit from some of the

1 programs they have there, but at your age you  
2 can make your own decisions about alcohol and  
3 alcohol counselling and anger management.  
4 I encourage you, while you are in custody,  
5 to take programs that might be available to  
6 you, but I think once you get released, you  
7 are a grown man, and I do not think you need  
8 a probation officer to tell you what to do.  
9 It is really up to you.

10 There will also be an order for the  
11 destruction of the exhibits or their return to  
12 their rightful owner, if that is appropriate.  
13 This, of course, only at the expiration of the  
14 appeal period.

15 Is there anything that I have overlooked  
16 or that is not clear?

17 MS. PAQUIN: No, not for me.

18 MS. RATTAN: I don't believe so.

19 THE COURT: Before we close court I want  
20 to thank the court staff for their work this  
21 week, and I also want to thank both counsel for  
22 their very professional handling of this matter  
23 and their submissions. Mr. Modeste, as I said,  
24 I do not enjoy sending people to jail at all, and  
25 when you are released I wish you the best of luck  
26 for the rest of your life. You have a long time  
27 ahead of you, and hopefully this is the last

1 time that I or any other judge will see you in  
2 a courtroom. Perhaps we will see you in a nicer  
3 setting.

4 -----

5  
6 Certified to be a true and  
7 accurate transcript, pursuant  
8 to Rules 723 and 724 of the  
9 Supreme Court Rules.

10 \_\_\_\_\_  
11 Joel Bowker  
12 Court Reporter