

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

SEAN QITSUALIK and BRENT MICHAEL

Transcript of the Reasons for Sentence delivered by The Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 19th day of September, A.D. 2012.

APPEARANCES:

Mr. M. Lecorre:	Counsel for the Crown
Mr. N. Homberg:	Counsel for the Accused, Sean Qitsualik
Mr. P. Fuglsang:	Counsel for the Accused, Brent Michael

(Charge under s. 344 x4 of the Criminal Code of Canada)

1 THE COURT: Brent Michael and Sean
2 Qitsualik are two young men with their whole
3 lives ahead of them, and this afternoon it is my
4 unfortunate and difficult task to sentence them
5 for a very serious offence that they committed
6 last year here in Yellowknife and to which they
7 have both entered pleas of guilty.

8 Sentencing is never an easy task for a judge
9 because it requires balancing a number of
10 factors, often competing factors. This sentence
11 has to be meaningful, it has to reflect the
12 seriousness of the crime committed, the harm that
13 it caused and the community's disapproval of it.
14 The sentence also has to protect the public. At
15 the same time, especially with younger
16 individuals, courts have to keep in mind the
17 objective of rehabilitation, and courts should
18 never impose sentences that are any more severe
19 or harsh than what is required to achieve the
20 overall objectives of sentencing.

21 The sentencing objectives and principles
22 that must guide any Court in the sentencing
23 process are set out in the Criminal Code. I am
24 not going to read out all the sections of the
25 Criminal Code that list these objectives and
26 these principles, but I have reviewed them and I
27 have considered them.

1 The fundamental principle of sentencing is
2 proportionality. A sentence should be
3 proportionate to the seriousness of the offence
4 and the degree of responsibility of the person
5 who committed it. Here, the offence for which I
6 must sentence these two young men, the crime of
7 robbery, is a very serious crime. It is a crime
8 that is punishable by life imprisonment, which
9 makes it one of the most serious offences under
10 our criminal law. It is much more serious than
11 any of the offences that these young men have
12 been in court for before. This crime is in a
13 different category altogether. The convictions
14 that appear on these young men's criminal records
15 are counted in days or in months. Sentences for
16 the crime they committed in December 2011 are
17 more often than not counted in years. They both
18 need to realize that.

19 As is the case with any offence, there are
20 ranges of seriousness within the crime of
21 robbery. Some robberies are more serious than
22 others. Some robberies involve a lot of violence
23 and result in injuries to the victims. Some are
24 committed with imitations of firearms or actual
25 firearms and, in some cases, they involve the
26 theft of property that has significant value. So
27 it is important to look not just at the objective

1 seriousness of the offence but also at the
2 specific circumstances of each case.

3 The facts of this particular robbery were
4 read out by the prosecutor yesterday and were
5 admitted by both Mr. Michael and Mr. Qitsualik.
6 On December 3rd, 2011, the victim of this offence
7 was at work. He is a cab driver. He was
8 dispatched to a convenience store in Yellowknife.
9 Mr. Michael and Mr. Qitsualik got into his cab,
10 Mr. Michael on the front seat and Mr. Qitsualik
11 on the back seat. Once inside, Mr. Michael
12 pulled out something that looked like a stick and
13 told the cab driver words to the effect they were
14 robbing him. Mr. Michael held the stick close to
15 the victim's ribs and told him to show his money.
16 Mr. Qitsualik also said words to the victim to
17 the effect that they were robbing him or to show
18 the money.

19 Mr. Michael then pulled on the centre
20 console of the vehicle, and the objects that had
21 been in it spilled over. Coffee, loose change,
22 and papers ended up scattered all over the
23 vehicle. This may seem like an innocuous fact,
24 but it is not difficult to imagine that from the
25 perspective of the victim, this would have made
26 the experience even more frightening because it
27 may have suggested to him that these individuals

1 meant business and may be out of control.

2 Eventually, the victim gave Mr. Michael
3 twenty or thirty dollars. Mr. Michael and
4 Mr. Qitsualik then got out of the cab. The
5 victim alerted the dispatch and the police were
6 called. Mr. Michael was arrested a short time
7 later after the police found him hiding in a yard
8 nearby. Mr. Qitsualik was arrested the next day.
9 Both provided statements to the police admitting
10 their involvement.

11 In addition to considering the circumstances
12 of the offence, I must of course consider the
13 circumstances of these two offenders. To this
14 end, I am assisted and have the benefit of two
15 very thorough pre-sentence reports that provide a
16 lot of information about these young men's
17 background, the circumstances of their
18 upbringing, and some of the challenges and
19 difficulties that they have faced. Those reports
20 were very helpful in understanding their personal
21 circumstances. They contain a lot of
22 information, and I do not intend to quote from
23 them because they are part of the record of these
24 proceedings and were filed as exhibits. I have
25 considered them very carefully.

26 There are some similarities between the
27 history of these two young men. There are also

1 some differences. Neither of them was raised by
2 his biological parents, but both were lucky to be
3 raised in supportive, healthy, and loving
4 environments.

5 Dealing with Mr. Michael, he was born in
6 Iqaluit in 1991. He is now 20 years old. He was
7 placed in the care of the Department of Social
8 Services at a young age, soon became a permanent
9 ward of the Department, and started living in
10 Yellowknife, in foster care, when he was still
11 very young. He spent a brief period of time in
12 one foster home, but things did not work out well
13 for him there. He was placed in another foster
14 home and grew up in that home until he was an
15 adult. It is clear from the report that despite
16 some of the challenges that they had with him,
17 his foster parents were loving and caring and did
18 everything that they could to provide for his
19 needs, and they remain supportive of him to this
20 day.

21 Mr. Michael moved out of the family home
22 when he was 18. He said it was by mutual
23 agreement. In the report, his foster mother is
24 reported as having put it somewhat differently.
25 But there had been difficulties with him, and the
26 time that he moved out of the family home,
27 looking at the criminal record, seems to coincide

1 somewhat with the start of his contact with the
2 criminal justice system.

3 Mr. Michael seems to be very bright and to
4 have a lot of skills, by all accounts. He has
5 also been diagnosed with Fetal Alcohol Spectrum
6 Disorder. This is something we hear a lot about
7 in the North. It is not always diagnosed, but
8 often when people appear before the criminal
9 courts, we suspect or wonder whether the
10 offenders suffer from this condition. In
11 Mr. Michael's case, it is actually diagnosed, and
12 I have no doubt at all that it has contributed
13 significantly to the behavioural problems he
14 displayed from a young age, to his repeated
15 contact with the criminal justice system over the
16 past few years, to his failure to comply with
17 probation and other court orders and,
18 essentially, his failure to learn from his
19 mistakes. Judging by what is included in the
20 report, this is part of a pattern that has
21 started a long time ago and is something that his
22 foster family had to deal with for many years;
23 his foster mother speaks eloquently about this in
24 the pre-sentence report.

25 From the point of view of sentencing, this
26 is a challenging condition as well because one of
27 the consequences of that condition is that the

1 person who suffers from it has difficulty with
2 foresight and with the integration of
3 consequences that flow from actions. In that
4 light, of course it is harder to see how certain
5 sentencing principles, like deterrence, for
6 example, can operate effectively.

7 The pattern of offences on Mr. Michael's
8 criminal record in recent years, his breach of
9 probation orders, and the overall failure of the
10 sentences that he received to change his
11 behaviour is consistent with the problem that I
12 am evoking. And, as his foster mother put it,
13 there is perhaps an added risk that sending a
14 person like him to jail where he will have
15 contact with other criminals could just make a
16 better criminal of him.

17 Mr. Michael is not responsible, of course,
18 for having this condition. It is the
19 consequences of choices that others made before
20 he was even born. It is extremely unfair that
21 some children start life with that kind of burden
22 and that kind of a challenge to overcome. It is
23 one of the many devastations, one perhaps we do
24 not talk about as much as others, that comes from
25 the effect of the abuse of alcohol in our
26 communities.

27 But all of that being said, at this point,

1 Mr. Michael has some choices to make. Abusing
2 alcohol and abusing drugs himself, will do
3 nothing to help him cope with his condition. He
4 has abused drugs for some time, he has sold drugs
5 to others to support his habit. He says he was
6 under the influence of drugs when he committed
7 this offence and that he was after money to get
8 more drugs. In this respect, he joins a long
9 list of young and sometimes not so young people
10 in our communities who have fallen into that
11 terrible cycle. When this court sentences people
12 for trafficking in drugs, it talks about those
13 consequences of the drug trade, and this case, to
14 me, will add itself to the unfortunate long list
15 of cases involving people who were sequestered,
16 robbed, assaulted, or harmed by individuals
17 looking for money to buy more drugs.

18 Ultimately, though, even understanding and
19 empathizing with Mr. Michael's condition and
20 recognizing that he is not responsible for it, he
21 does have to take responsibility and will have to
22 continue to take responsibility for his actions
23 and for the choices that he makes. Because the
24 reality is that now he is an adult and he will be
25 held to account for his conduct, especially if it
26 harms other people.

27 There is no doubt that he is smart and he

1 has the ability to make those choices
2 notwithstanding his condition. He can decide to
3 stay away from drugs. Over the last two years,
4 before he was taken into custody for this
5 offence, he had been heading down a very, very
6 destructive path, and he is the only one who can
7 change that direction and change the path that he
8 has been on for those few years. It is clear
9 that he is remorseful. His guilty plea confirms
10 that. He wants to take treatment and counselling
11 and he wants to better himself. He will have
12 access to some services while he serves his
13 sentence, and it will be up to him to decide what
14 he will make of what is available.

15 I now turn to Mr. Qitsualik's personal
16 circumstances. He is 27 years old. He was also
17 born in Nunavut. His parents separated when he
18 was young and he was raised in Pond Inlet by his
19 grandparents. Mr. Qitsualik was lucky to have a
20 good upbringing with them in a home where there
21 was no violence and no alcohol abuse. In that
22 respect, he did not face many of the challenges
23 and difficulties that, unfortunately, many young
24 people live through growing up in communities in
25 Nunavut and in the Northwest Territories.

26 Mr. Qitsualik moved to Yellowknife when he
27 was 14. Not surprisingly, that was a big

1 adjustment for him. I imagine that in many ways
2 the community of Pond Inlet and the City of
3 Yellowknife probably felt like two completely
4 different planets to him. In Yellowknife, he
5 lived with his mother, but he had to leave that
6 house when he was 17 because she wanted him to
7 continue to go to school if he was going to stay
8 with her and he decided he wanted to work
9 full-time instead.

10 There are references in the pre-sentence
11 report to Mr. Qitsualik having problems in school
12 even when he was still in Pond Inlet because of
13 his bad temper, and this seems to still be a
14 problem for him. And there is also reference to
15 him being involved in a fight while on remand
16 and, as a result of that, he was no longer able
17 to work in the kitchen. The report also says
18 that Mr. Qitsualik started drinking alcohol when
19 he was young and that his consumption increased
20 and became more problematic after his grandmother
21 passed away, something that understandably would
22 have been very difficult for him.

23 I heard from his counsel, and see from
24 documents that have been filed, that while on
25 remand he has attended several A.A. sessions and
26 he appears to now recognize that alcohol is a
27 problem for him. I heard he wants to live a life

1 free from alcohol, and he is one of the rare
2 offenders who, through his counsel and also
3 directly when he spoke to me, has asked the Court
4 to prohibit him from consuming alcohol because he
5 thinks that would help him stay the course.

6 The Criminal Code places certain
7 responsibilities on the Court when sentencing
8 aboriginal offenders. These responsibilities
9 were interpreted and explained by the Supreme
10 Court of Canada in the case of R. v. Gladue
11 [1999] 1 S.C.R. 688 several years ago and more
12 recently in the case of R. v. Ipeelee, 2012 S.C.C.
13 13. The Court has a responsibility to approach
14 the sentencing of aboriginal offenders in a way
15 that takes into account the disadvantages that
16 many aboriginal people have historically suffered
17 from, systemic factors that often contribute to
18 their coming into conflict with the law. The
19 obligation of the Court is, when it is possible,
20 to attempt to craft sentences that are best
21 suited to these offenders given their heritage.

22 It is not always possible to craft such a
23 sentence. Much as the Court would prefer to be
24 able to elaborate sentences that would have a
25 healing affect, achieve rehabilitation, make up
26 for some of the injustices of the past, and
27 ultimately protect the public through

1 rehabilitation, that is not always possible. For
2 example, it is clear that the condition that
3 Mr. Michael suffers from is something that is
4 prevalent in our northern communities, one of the
5 consequences of alcohol abuse, which, in turn, is
6 one of the consequences of some of the things
7 that have happened in the North that have damaged
8 people and communities. The same could be said
9 for the early involvement of the Department of
10 Social Service with his biological family. So
11 recognizing those things and the part they may
12 have played in Mr. Michael coming in conflict
13 with the law, the question remains: What should
14 the impact of this be on the sentence that I
15 impose today? In my view, given the seriousness
16 of this offence, it is difficult to see how it
17 can have a significant impact except to the
18 extent that it increases the need to exercise as
19 much restraint as possible.

20 Some of those things are also true for
21 Mr. Qitsualik, although I think to somewhat of a
22 lesser degree because he does not suffer from the
23 same condition Mr. Michael does. He was raised
24 in a happy environment by his grandparents, but
25 he was also separated from, and later reunited,
26 with his mother and he moved to different
27 communities. This kind of thing, combined with

1 his consumption of alcohol that started at a
2 young age and has escalated into a problem, his
3 issues with managing his anger, are also all
4 things that we frequently hear about in our
5 courts even when it is not necessarily easy to
6 pinpoint exactly what systemic factors played a
7 part in those things developing.

8 So there is no doubt both these young men,
9 despite some of the good fortune they have had to
10 have people who cared for them and looked after
11 them properly, have faced and continue to face
12 some challenges in their lives. I have taken
13 that, and their aboriginal descent, into
14 consideration. But even approaching their
15 sentencing taking into account all those
16 circumstances, I have difficulty finding how, in
17 this case, it can have a significant impact on my
18 decision beyond what I have already mentioned.

19 The two pre-sentence reports provide me with
20 a lot of information, as I have said, about these
21 two young men, including information about the
22 factors that the Gladue and Ipeelee cases talk
23 about. At the same time, their counsel
24 realistically, in my view, acknowledged that a
25 jail term of some significance is required in
26 this case. It is simply not a case where I can
27 consider a sentence other than imprisonment to

1 take into account these young men's aboriginal
2 heritage, and even looking at their case through
3 the different lens that I am mandated to use, I
4 consider that imprisonment is required to meet
5 the objectives of sentencing.

6 The Crown is saying that a fit sentence for
7 this offence, for both these offenders, would be
8 a sentence between two and three years having
9 regard to the mitigating factors that are
10 present. Counsel for the offenders acknowledge
11 that a jail sentence must be imposed given the
12 seriousness of the offence, but they are
13 suggesting that the objectives of sentencing
14 could be achieved through the imposition of a
15 sentence shorter than what the Crown is seeking.
16 They say a jail term in the range of 14 to 16
17 months would suffice. These ranges do not take
18 into account the adjustments that are to be made
19 to reflect the time that they have already spent
20 on remand. In other words, counsel agree that
21 whatever sentence I do decide to impose should
22 then be reduced to reflect the time that these
23 young men have spent in custody already.

24 The most significant aggravating factor in
25 this offence is that it was committed against a
26 taxi driver. A cab driver's job is to pick up
27 customers, usually total strangers, and drive

1 them somewhere. They work alone and their work
2 involves driving, which also puts them in a
3 vulnerable position. They are vulnerable and
4 easy targets also because they are expected to
5 have cash in their vehicles since most people pay
6 cash for their cab rides. Cab drivers work all
7 hours, including the night hours, and they often
8 have to deal with people who are in various
9 states of intoxication. In general, the law
10 considers more serious offences that are
11 committed against people who are in vulnerable
12 positions, and this is true with respect to
13 crimes committed against cab drivers. There are
14 a number of cases in this jurisdiction that
15 recognize that where a crime, whether it is a
16 robbery or a theft or an assault, is committed
17 against a cab driver, that is an aggravating
18 factor. As examples, there are the cases of R.
19 v. Snowshoe, 2007 NWTSC 41, R. v. Apsimik, 2011
20 NWTSC 4, R. v. Bilodeau, 2002 NWTSC 31. The
21 facts of those cases are completely different
22 from the facts in this case, but in all
23 instances, the victims were cab drivers and, in
24 all these cases, the Court made the point that
25 that was an aggravating factor.

26 The second aggravating factor in this
27 offence is that a weapon was used. It was not a

1 conventional weapon like a knife or a firearm.
2 In fact, if it had been a firearm, there would be
3 a minimum sentence of four years' imprisonment
4 today. It was a stick, but it was a stick that
5 was used as a weapon. It was held close to the
6 victim's rib. Any time anyone introduces any
7 kind of weapon in a situation like this, it is
8 aggravating and it increases the risk of harm.

9 With respect to Mr. Michael, there is a
10 third aggravating factor: He was on probation
11 when this happened. Looking at his criminal
12 record, he was in court in June 2011, sentenced
13 on a number of offences to a total of two and a
14 half months in custody followed by six months'
15 probation. So he was on probation when he did
16 this. In addition, he must have been on process
17 for the further offences that he was charged with
18 during the fall of 2011 and for which he was
19 ultimately sentenced in March 2012. This is
20 aggravating and it raises concerns from the point
21 of view of protection of the public. Court
22 orders so far have had no impact deterring him
23 from getting into trouble, and of course the
24 escalation and seriousness of this conduct is of
25 great concern.

26 As I have already said, and it bears
27 repeating, Mr. Michael's troubles with the law

1 since 2010 and his lack of responsiveness to the
2 various orders he has been on fit very well with
3 the information that is laid out in the
4 pre-sentence report about some of the
5 difficulties he has had integrating consequences
6 of his actions and with his FASD diagnosis. It
7 will probably be a long road ahead for him to
8 change his behaviours and stay out of trouble,
9 but it is clear that the consumption of drugs
10 and alcohol will not help him on that path. And
11 I said, also, the reality is that regardless of
12 the root causes of his condition, which he is not
13 responsible for, he will be held responsible for
14 actions that he commits that cause harm to others
15 in the community that he lives in.

16 I have talked about the aggravating factors.
17 I must also recognize the mitigating factors.
18 Both these offenders have pleaded guilty to this
19 charge. These were not early guilty pleas
20 because there was a preliminary hearing in this
21 matter, but, still, they acknowledged their
22 involvement after their arrest and they did
23 eventually plead guilty. Mr. Michael's
24 pre-sentence report says that he expressed
25 remorse for this offence. This is consistent
26 with his guilty plea and with what he said in
27 court earlier this week when he was given a

1 chance to speak directly to the Court.
2 Mr. Qitsualik's pre-sentence report is not to the
3 same effect. For whatever reason, after having
4 pleaded guilty to this, when he spoke to the
5 author of the report, he did not take
6 responsibility for this, and obviously this
7 raised significant concerns about his plea, which
8 is why I addressed it with both his counsel and
9 him earlier this week. Counsel advised that he
10 had had further discussions with Mr. Qitsualik
11 about this and that Mr. Qitsualik did wish to
12 maintain his plea, had signed the Agreed
13 Statement of Facts, and wanted to take
14 responsibility for his part in this. I also
15 questioned Mr. Qitsualik directly about the
16 voluntariness of his plea and whether he
17 understood the consequences. I told him that
18 this court does not want to sentence people who
19 have not been found guilty and who say they are
20 not guilty. But he remained firm, this week, in
21 addressing me and through his counsel, that he
22 did wish to maintain his plea, that he did accept
23 the facts alleged as true and he wanted to take
24 responsibility. So on that basis, and there
25 comes a point where I have to take his word for
26 it, I am satisfied that he does wish to take
27 responsibility for this, and, from that, I infer

1 that he is remorseful for his actions even though
2 I do not have the benefit of the kind of
3 discussion that he could have had with the author
4 of the pre-sentence report if she had been able
5 to ask him more about this.

6 The second factor that is mitigating or has
7 an impact on the sentence I impose today is the
8 time that has been spent on remand. Mr. Michael
9 has been in custody since his arrest in December,
10 which adds up to roughly nine months and three
11 weeks. He did receive a sentence of two and a
12 half months in the intervening period, in March
13 2012. So that leaves a period of remand of seven
14 months and one week to be considered.

15 Mr. Qitsualik has been in custody since January
16 11, 2012. He had originally been released on
17 process but he was remanded in custody after
18 having been charged with other offences, the ones
19 that he was sentenced for later, and he received
20 for those a sentence of 60 days. The time he's
21 spent on remand adds up to roughly eight months
22 and one week. So taking away from that the time
23 he was serving that other sentence, the remand
24 time that must be considered for him is six
25 months and a week.

26 How much credit should be given to an
27 offender for time spent on remand is something

1 that is to be decided on a case-by-case basis
2 based on the circumstances of each case as was
3 recognized in the case of R. v. Mannilaq, 2012
4 NWTSC 48, at paragraphs 52 to 61. The Court does
5 retain the discretion to give enhanced credit for
6 remand time. By this, I mean credit for more
7 than one day for each day spent on remand. There
8 are various reasons that might lead a court to do
9 this, usually connected to the notion that in
10 some cases remand time is "harder time" due to
11 lack of access to programs or detention
12 conditions and also to the fact that prisoners on
13 remand, unlike serving prisoners, do not earn
14 remission. But receiving enhanced credit for
15 remand time is not an automatic thing and it
16 should not be seen as an automatic thing. In
17 this case, I have not been provided with the type
18 of information that I would need to give enhanced
19 credit for the time spent on remand. There is
20 some information about certain programs being
21 less accessible to remand prisoner because
22 priority is given to serving prisoners, but there
23 is also indication that they have the benefit of
24 some programing while on remand. There is no
25 information from case management officers to the
26 effect that had these two been serving prisoners,
27 they would have necessarily earned remission. On

1 the contrary, there are indications in both
2 reports of behavioural problems while they were
3 on remand, at least for some of the time. So on
4 the whole, I am not satisfied that a basis has
5 been provided for me to give credit for the
6 remand time on a ratio higher than one for one.

7 In seeking a sentence in the range of two to
8 three years, Crown counsel is relying in part on
9 R. v. Johnas, 1982 ABCA 331, the case where the
10 Alberta Court of Appeal decided that for this
11 type of relatively unsophisticated robbery, the
12 starting point on sentencing should be three
13 years. The principles set out in that case were
14 later reiterated by the same court in the case of
15 R. v. Welsh [1991] A.J. No. 44 (Alta. C.A.). The
16 starting point in question has been used,
17 according to those cases, for robberies involving
18 victims who are in particularly vulnerable
19 situations such as night clerks who work in
20 stores and cab drivers.

21 The starting-point approach to sentencing
22 has given rise to some controversy, but it is an
23 approach that has, for certain types of cases,
24 been adopted by the Court of Appeal in this
25 jurisdiction. It is important to note, as the
26 Court did in Welsh, that a starting point is not
27 a predetermined tariff-based sentence, nor is it

1 a minimum sentence. It simply sets the range
2 from which the sentencing court should begin its
3 analysis and then adjusting the sentence to
4 reflect mitigating and aggravating factors. My
5 respectful view is that properly understood,
6 starting points can be of assistance to the lower
7 courts and can foster parity in sentencing while
8 still allowing the courts to approach sentencing
9 on an individualized basis, the way it should be.
10 In that respect, they are very different from
11 minimum sentences because when there is a minimum
12 sentence, the Court's discretion is significantly
13 curtailed, in particular in making allowances for
14 mitigating factors that might be present.

15 To my knowledge, this starting point for
16 this particular type of offence has not been
17 adopted in this jurisdiction. I have reviewed
18 *R. v. Rolfe*, 2007 NWTSC 5, a relatively recent
19 case from the Northwest Territories, which
20 involved a robbery of a cab driver here in
21 Yellowknife. Although it is not referred in the
22 court decision in *Rolfe*, the *Johnas* case was
23 among the authorities filed by the Crown in that
24 case. That is apparent from the Court's file.
25 The circumstances in the *Rolfe* case were much
26 more serious than in this case and there was
27 little by way of mitigation. The Court

1 determined that a fit sentence in that case,
2 before taking the remand time into account, was
3 four years. When reading the decision, the Court
4 does talk about "a starting point of four years",
5 but in the context of the whole of the case, the
6 Court seems to have been referring not to the
7 starting point in the way the term was used in
8 Johnas but, rather, where the Court should start
9 before calculating the credit for the remand
10 time. And in the Rolfe case, really, the only
11 issue between Crown and defence was how much
12 credit should be given to the remand time.

13 But the sentence that was imposed in Rolfe,
14 considering that the circumstances were more
15 serious than in this case and this was a sentence
16 that was imposed after trial, supports the range
17 that is suggested by the Crown in this case
18 because the Crown is not seeking as high a range.
19 It also certainly supports the notion that
20 robbery of a cab driver must be treated very
21 seriously. At paragraph 13 of Rolfe, the Court
22 said this:

23 The fact that Mr. Rolfe attacked a
24 taxi driver alone at night in his
25 cab is an aggravating factor. As
26 has been said in the cases that
27 were referred to, taxi drivers are

1 in a vulnerable position. They
2 are people who provide a service
3 to the public in circumstances
4 that puts them at risk so the
5 sentence imposed must recognize
6 that and must have, as one of its
7 goals, deterrence of others from
8 engaging in this kind of behaviour
9 and also denouncing this
10 behaviour.

11 Having considered everything that I must
12 consider, I do conclude that the range that is
13 proposed by the Crown is reasonable under the
14 circumstances. I think, as I said, that it is
15 consistent with this court's approach in Rolfe.
16 Whether we arrive there by using a starting-point
17 approach or not does not really matter. What
18 matters is that the sentence imposed be in
19 accordance with the fundamental principle of
20 proportionality that I referred to at the
21 beginning of these reasons. With the greatest of
22 respect, I find that the lower range of sentence
23 that is advocated by defence counsel in this case
24 would not adequately address the need for general
25 deterrence and denunciation of this type of
26 conduct. The denunciatory message that must be
27 sent by this court requires more.

1 I noted that in Johnas, one of the things
2 the Court referred to was the prevalence of
3 robberies in that jurisdiction. Thankfully, we
4 cannot yet say that this type of crime is
5 prevalent in Yellowknife. But part of the reason
6 why a deterrent message and a denunciatory
7 message has to be sent is to try to make it clear
8 that this type of conduct will be met with a
9 stern response by the Court.

10 There should be parity in sentencing, which
11 means that similar offences committed by similar
12 offenders should lead to the imposition of
13 similar sentences. The difference between the
14 criminal records of these two individuals and the
15 fact that Mr. Michael was on probation and facing
16 other charges when he committed this offence, as
17 well as the fact that he was the one who was
18 carrying and using the stick, is a basis for
19 there to be some difference between the two
20 sentences. But both offenders are equally
21 blameworthy for their role and acting together to
22 commit this offence, and while some difference
23 may be justified, I do not think it should be a
24 significant one. The real question to my mind
25 today is whether the sentence I impose should
26 result, once the remand time is factored in, in a
27 sentence in a penitentiary range or whether it

1 should be a sentence that these offenders will be
2 able to serve here in the North.

3 A sentence in the penitentiary range would
4 certainly send the deterrence and denunciatory
5 message that I am concerned about sending and
6 that I have been talking about. But it would
7 preclude the possibility of adding probation to
8 the jail term and it may not make sufficient
9 allowance for the mitigating factors that are
10 present in this case, for these offenders' age,
11 and for their circumstances.

12 In the final analysis, this is where I find
13 the principle of restraint comes into full force
14 and is important. I have decided that I will not
15 today impose a sentence that will result in
16 either of these young men being sent to a federal
17 penitentiary. I only hope that they both
18 realize, and that others realize, that although I
19 am not doing that today, it is a very real
20 possibility any time someone commits this type of
21 crime.

22 The Crown has asked for ancillary orders, so
23 I will deal with those first.

24 Robbery is a primary designated offence, so
25 for both offenders, there will be a DNA order.
26 It is also mandatory on this type of offence that
27 there be a firearms prohibition order pursuant to

1 Section 109 of the Criminal Code. That order
2 will commence today and will expire ten years
3 after they are released from imprisonment. I do
4 not expect it is an issue, but if they are in
5 possession of any such items that they are
6 prohibited from possessing, those should be
7 surrendered forthwith. Given the jail term that
8 I am about to impose, there will not be an order
9 for payment of the victim of crime surcharge.
10 Because of the sentence I am about to impose and
11 the fact they have both been on remand for some
12 time, I am satisfied that it would result in some
13 hardship.

14 Mr. Michael, stand up, please. Mr. Michael,
15 for the offence of robbery that you have pleaded
16 guilty to, I have concluded that an appropriate
17 sentence would be imprisonment for 30 months and
18 a week. I am giving you credit for seven months
19 and a week for the time you have already spent in
20 custody. So there will be a further jail term of
21 23 months' imprisonment. That will be followed,
22 Mr. Michael, by probation of two years. This is
23 not, to my mind, to punish you. I am convinced,
24 based on everything I have read, that you would
25 benefit from some structure. You will have a lot
26 of structure in custody. But then when you are
27 released, I think it will be helpful for you to

1 have more structure. I know it will be hard, but
2 you really do have to take control of your life
3 when you are released and, hopefully, with some
4 help that will go better for you. It will be
5 supervised probation, which means you will have a
6 probation officer assigned to you whom you will
7 be meeting from time to time. So you will report
8 to Probation Services within 48 hours of your
9 release. You will take counselling as directed
10 by your probation officer. I am sure your
11 probation officer will not order you to go to
12 counselling for fun or for things that she or he
13 would not think are useful. So there will be
14 discussion about what would be helpful to you.
15 But that will be one of the condition. I am also
16 going to put a condition that you have no contact
17 with Mr. Qitsualik. If that turns out to not be
18 necessary anymore, you can make an application to
19 vary that condition of the order. It may be that
20 in the end it would not be such a bad thing for
21 you to have contact, but, at first, I think it is
22 preferable not. As I say, these conditions and
23 this probation period are intended to try to
24 assist you. I am sure the jail term does not
25 feel like it is going to assist you maybe right
26 now, but possibly if you can benefit from some of
27 the resources in the jail, you might change your

1 opinion. You can sit down.

2 Mr. Qitsualik, please stand. I have
3 decided, in your case, an appropriate jail term
4 would be 26 months and a week. Slightly less
5 than Mr. Michael's sentence. Because I am giving
6 you credit for the six months and a week you have
7 already spent in custody, in your case, the
8 further jail term will be 20 months. I am also
9 going to put you on probation but only for one
10 year. You are older than Mr. Michael. You have
11 a lot of skills. You have been able to work, you
12 have been able to look after yourself. I am not
13 convinced you need the same level of supervision
14 and assistance that he does, but it does sound
15 like you can benefit from help, too, with some of
16 the issues you identified: alcohol, anger, those
17 kinds of things. So the probation is intended to
18 help you, it is not intended to punish you.
19 After spending a long period of time in jail and
20 getting full freedom back with no supervision,
21 some people get into more trouble, and I hope
22 that will not happen to you. So you will, too,
23 have to report within 48 hours of your release to
24 Probation Services, take counselling as directed
25 by your probation officer. Again, I am sure
26 there will be a dialogue about what will be
27 helpful for you. Because you said you want me to

1 do this and that it will help you, there will be
2 a condition that you abstain absolutely from the
3 consumption of alcohol. This is not a condition
4 I ever put in in an order unless I know the
5 person says they want it and they think they can
6 comply with it and that it would help them. But
7 from today's day, it is no longer a choice, at
8 least for that period of probation. It is a
9 court order and it exposes you to more charges if
10 you do not comply. If you reach a point where
11 you think you cannot comply with that condition,
12 talk to your probation officer. Arrangements
13 could be made to ask this court to change that
14 condition, but you cannot unilaterally ignore it.
15 I am also going to put a condition that you not
16 have any contact with Mr. Michael. You have
17 heard what I said. There is no evidence before
18 me that the two of you have gotten into a lot of
19 trouble often together, but this is a big one.
20 So if there is a good reason to change that, a
21 request can be made. You can sit down.

22 There will be an order that any exhibits
23 seized as part of this matter will be returned to
24 their lawful owner if that is appropriate, or
25 otherwise they are to be destroyed at the
26 expiration of the appeal period.

27 Is there anything else that I have

1 overlooked, Mr. Lecorre?

2 MR. LECORRE: No. I think Your Honour has
3 covered it. Thank you very much, Your Honour.

4 THE COURT: Anything, Mr. Fuglsang?

5 MR. FUGLSANG: No.

6 THE COURT: Anything, Mr. Homberg?

7 MR. HOMBERG: No, Your Honour.

8 THE COURT: Mr. Michael, Mr. Qitsualik, I
9 said at the beginning you are both very young,
10 you both have your lives ahead of you. I really
11 do not enjoy sending people to jail, but I hope
12 you can use your time in custody to address your
13 issues and work on yourselves and continue on a
14 better path. I wish you success on that path and
15 I hope this is the last that we will ever see you
16 in court.

17 I want to thank counsel for their work on
18 this case and their submissions.

19

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21 Certified Pursuant to Rule 723
22 of the Rules of Court

23

24

25 Jane Romanowich, CSR(A)
26 Court Reporter

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