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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

HER MAJESTY THE QUEEN

VS

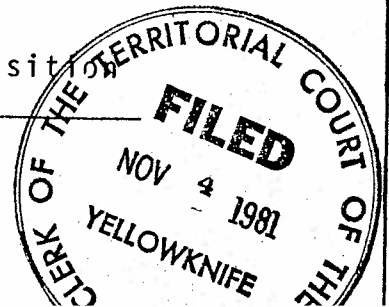
WILLIAM VANCE FRASER

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---Before THE HONOURABLE MR. JUSTICE C.F. TALLIS sitting as a  
Magistrate under Section 2 of the Criminal Code, at Yellow-  
knife, Northwest Territories, on October 30th, 1981.  
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APPEARANCES:

G. BICKERT                      Counsel for the Crown.  
A. E. RICHARD                  Counsel for the Accused.

His Lordship's remarks on imposition  
of sentence





1           The accused William Vance Fraser has pleaded guilty  
2 before me to a charge that he:

3           "On or about the thirty-first day of August, A.D.  
4 1981, at or near the City of Yellowknife, in the  
5 Northwest Territories, did steal money from the  
6 Explorer Hotel while armed with an offensive weapon,  
7 to wit: a vehicle wheel wrench, contrary to Section  
8 303 of the Criminal Code of Canada."

9           After hearing the submissions of Crown and Defence  
10 counsel in this case, Mr. Bickert and Mr. Richard respectively,  
11 as to the facts surrounding the commission of this offence, I  
12 directed that a conviction be recorded against the accused. In  
13 view of the seriousness of this particular offence, learned  
14 counsel have dealt at length with the principles of sentencing  
15 that must be considered in a case of this nature.

16           I have had the benefit of a report by Doctor O'Brien  
17 which has been entered in evidence as Exhibit S-2. Doctor Allan  
18 Seltzer, a practising psychiatrist, gave evidence in court in con-  
19 nection with the sentence to be imposed, and this is partic-  
20 ularly relevant because the accused has been a patient of  
21 Doctor Seltzer for some time.

22           I am not going to repeat the facts of this particular  
23 case other than to point out that on the early morning in ques-  
24 tion the accused went to the lobby area of the Explorer  
25 Hotel in Yellowknife with a vehicle wheel wrench,  
26 as it is called. He apparently was somewhat nervous and went  
27 to the men's washroom initially, and then came to the lobby  
where he spoke to the desk clerk Mr. Schlosser. He jumped over  
the counter and took the money that was available. He had then



1 the wrench in his right hand. He left the premises, and  
2 one of the employees of the hotel recognized him from an earlier  
3 meeting in the local hospital. The accused was apprehended a little  
4 later on, and it is common ground that he stole approximately  
5 \$237 or \$240.

6 The accused had been drinking at the time in question,  
7 but learned counsel for the Crown pointed out that no violence  
8 was actually threatened, so that is conceded to be a mitigating  
9 factor in this particular case.

10 In dealing with this case, both counsel have quite  
11 properly referred to the comprehensive survey of sentencing in  
12 robbery cases in the Ontario Court of Appeal, and this matter  
13 is fully canvassed in the August 31st, 1981, edition of the  
14 Crown News Letter.

15 The offence of robbery is a serious offence. Section  
16 303 of the Criminal Code provides:

17 "Every one who commits robbery is guilty of an indict-  
18 able offence and is liable to imprisonment for life."

19 However, Parliament has seen fit to vest a wide discretion in  
20 the presiding judge and, accordingly, no minimum sentence is  
21 prescribed for this offence. I must, however, in imposing a  
22 sentence for robbery exercise my discretion in accordance with  
23 established judicial principles.

24 In dealing with the principles of sentencing, I refer  
25 to the useful summary found in R. v Shaffer 50 CCC (2nd) 424  
26 at 429:

27 "The principles of sentence have been expressed a  
countless number of times in various ways. Generally.



1 they relate to the following:

- 2 1. the protection of the public;
- 3 2. the punishment of the offender;
- 4 3. the deterrent effect of the punishment not only
- 5 on the offender but others who might be tempted
- 6 to commit such an offence;
- 7 4. the reformation and rehabilitation of the offender.

8 How much emphasis will be placed on each of these

9 principles will depend on many circumstances and will,

10 obviously, vary from case to case. In some cases

11 the major, if not the only, concern will be the

12 protection of the public and little, if any, concern

13 will be given to the reformation and rehabilitation of

14 the accused. In other cases the emphasis will be

15 altered. How much weight will be attached to any of

16 these principles will depend on a number of things

17 including (a) the degree of premeditation involved;

18 (b) the circumstances surrounding the commission of

19 the offence; (c) the nature of the crime and the

20 gravity of it; (d) the attitude of the offender after

21 the commission of the crime; (e) the previous criminal

22 record, if any, of the offender; (f) the age, mode of

23 life; character and personality of the offender; (g)

24 any recommendation of a probation officer, and (h)

25 character references: see R. v. Hinch and Salanski,

26 (1968) 3 C.C.C. 39, 2 C.R.N.S. 350, 62 W.W.R.205."

17 In this particular case I am satisfied there was little

18 premeditation involved. It was a matter that arose under the

19 circumstances outlined by learned counsel for the Crown, and I

20 do not quarrel with the way it has been stated. Similarly,

21 the circumstances surrounding the commission of the offence are

22 not in dispute. There is no doubt that in the eyes of the law

23 robbery was committed, but in this particular case the accused

24 was not using a gun or other type of offensive weapon, and

25 the authorities quoted indicate that this is a mitigating

26 factor. The nature of the crime and the gravity of it is,

27 of course, obvious when you look at the Criminal Code. Robbery



1 is a serious offence, and it is so perceived by members of  
2 the community, whether they are in business or whether they are  
3 ordinary citizens minding their own business.

4 As to the attitude of the offender after the com-  
5 mission, I think that it is common ground that he did display  
6 a reasonable degree of remorse for what he had done. He was  
7 reasonably cooperative with the police in connection with their  
8 investigation, and I am inclined to accept the statement of  
9 Doctor O'Brien and the evidence of Doctor Seltzer on this aspect  
10 of it.

11 The previous criminal record of the accused in this  
12 particular case does give me some concern because in 1979 the  
13 accused was convicted of break, enter and theft in Burton,  
14 New Brunswick. He was sentenced to imprisonment for one month  
15 and placed on probation for two years. I am advised that he  
16 was under the influence of liquor at the time. It is often  
17 said that while the excessive use of liquor may be an explan-  
18 ation, it is not an excuse for misconduct. Unfortunately,  
19 the sentence imposed by the court at that time did not have the  
20 desired effect even though it would be viewed in some juris-  
21 dictions as a lenient sentence.

22 In dealing with the age, mode of life, character  
23 and personality of the offender, I find that the situation is  
24 somewhat more complicated. The accused is a young man of  
25 twenty-two years of age, coming from a good family. He is a  
26 very intelligent person, and this is confirmed by the  
27 psychological testing described in paragraph 5 on page two of



1 Doctor O'Brien's report. He does suffer from a disease or  
2 condition that is described as Bipolar Affective Disorder. In  
3 common parlance, he is a manic-depressive and is subject to  
4 cyclical moods which may partially explain his conduct on  
5 this occasion. He has been a patient of Doctor Seltzer, and  
6 in order to control his condition Doctor Seltzer has prescribed  
7 lithium. If this medication is taken in accordance with the  
8 medical directions given by the doctor it tends to  
9 stabilize his condition, and particularly his moods,  
10 at a reasonable level. If the medication is not taken,  
11 his mood will swing, either to a high point or to a low point,  
12 and, of course, the consequences of this type of mood change  
13 are illustrated and discussed in Doctor O'Brien's report. It is  
14 also significant that the use of liquor aggravates the con-  
15 dition that the accused suffers from. Similarly, the use of  
16 narcotic drugs, whether soft or hard, aggravates that condition.  
17 Doctor Seltzer advised and instructed his patient to refrain  
18 from the use of those drugs, whether alcohol or narcotics,  
19 as I have described them, because of their detrimental effect  
20 on the patient, i.e., the accused.

21 It is, therefore, of the utmost importance that the  
22 accused acquire the necessary discipline to follow his doctor's  
23 directions as to the taking of lithium as prescribed, and also  
24 to refrain from doing those things which aggravate his condition.  
25 Unfortunately, the accused has not followed those directions,  
26 and I believe that is one of the primary reasons for him being  
27 before the court today. However, in dealing with his





1 unfortunate condition, I must bear in mind that there are many  
2 other people affected with conditions that give rise to great  
3 difficulties, and he has a responsibility with his intellectual  
4 ability to acquire the discipline to deal with the matters that  
5 have been dealt with in a very fair and clear-cut way by  
6 Doctor Seltzer.

7 While the disease of epilepsy is not relevant in a direct  
8 sense to the crime that was committed here, one must feel sym-  
9 pathy for the accused in the sense that he does have that addit-  
10 tional condition, and that Doctor Seltzer indicated it can usually  
11 be controlled with the medication and, as I understood it, there  
12 was no problem in connection with epilepsy at this time.

13 In this particular case, I do not have to consider  
14 recommendations of a probation officer because the background  
15 of the accused has been fully canvassed by Doctor O'Brien and  
16 by Doctor Seltzer.

17 As I have said so often, the real problem that a  
18 sentencing judge faces is how to balance the various factors  
19 that must be dealt with in the sentencing process. I tend and,  
20 indeed, choose to ignore the principle of punishment of the  
21 offender as that term is used because I believe that an approp-  
22 riate sentence can be arrived at by balancing the other three  
23 principles that I have mentioned. The fitness of a sentence  
24 imposed is always a matter of great concern not only to the  
25 sentencing judge but also to society and members of the family  
26 of the accused and, indeed, to the potential victims although,  
27 in this particular case no harm came to the clerk at the hotel.



1 In the case of youthful first offenders the courts  
2 have said in most jurisdictions that the emphasis should be on  
3 the reformation and rehabilitation of an accused person. In the  
4 case of sixteen-and-seventeen-year-old youngsters who get into  
5 difficulty for the first time the sentences have tended to be  
6 in the neighbourhood of three months or a little longer, to-  
7 gether with probation for a period of a year or two. However,  
8 notwithstanding the special circumstances of the accused in  
9 a medical sense, I cannot view him as falling within the cat-  
10 egory of a youthful first offender. He is now twenty-two years  
11 of age, and on his first previous conviction for break, entry  
12 and theft he received a short, sharp sentence coupled with  
13 probation which I am sure was intended to remind him of his  
14 responsibilities and bring home to him without too much hard-  
15 ship the fact that he had an obligation to refrain from that  
16 type of conduct. Unfortunately, it did not have the desired  
17 result, and I now have to balance the factors of protection  
18 of the public and deterrence with reformation and rehabilitation  
19 of the offender. In the light of the medical evidence, I still  
20 feel that the factor of reformation and rehabilitation deserves  
21 careful consideration; the other two factors certainly do; but  
22 if the accused gets into further trouble, I have to say that I  
23 think the court will tend to disregard the element of reform-  
24 ation and rehabilitation and choose to place full emphasis  
25 on the protection of the public and deterrence.

26 Applying to the best of my ability the principles that  
27 I have discussed in sentencing and giving credit for the time





1 that has been spent in custody, I have concluded that a sentence  
2 of seven months' imprisonment, to be followed by probation with  
3 conditions for a period of two years after the expiration of his  
4 sentence, would be a fit and proper way of disposing of the  
5 matter today. I realize that I am erring on the side of  
6 leniency in imposing a sentence of seven months' imprisonment.  
7 I do that knowing that I am taking a calculated risk, as courts  
8 so often do, when there still appears to be hope that an accused  
9 person with the support of family, physicians, and  
10 other people of goodwill honestly feel that something can still  
11 be done. I view the period of two years' probation as being  
12 a very important part of this sentence, and so that there is no  
13 misunderstanding, I want to emphasize today to the accused that  
14 it should be regarded by him in that light.

15 The conditions of probation, which, of course, commence  
16 immediately upon the expiration of his sentence, are as follows:

17 That the accused keep the peace and be of good behaviour  
18 and appear before the court when required to do so by  
19 the court and, in addition, shall:

20 (A) report in person forthwith to the senior prob-  
21 ation officer at Yellowknife, and thereafter  
22 at such places and times as the said probation  
23 officer may require.

24 (B) remain within the jurisdiction of the court  
25 and immediately notify the probation officer of  
26 any change in his address, employment or occupa-  
27 tion.



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(C) abstain from the consumption of alcohol, or other intoxicants; and submit to a breathalyser test upon the demand of any peace officer or probation officer who has reasonable grounds to believe that there has been a failure to comply with this condition.

(D) take such counselling and attend such programs for alcohol addiction that his probation officer may recommend.

(E) refrain from possessing, using or trafficking in prohibited drugs.

(F) take such psychiatric or other counselling as his probation officer may recommend.

Is there anything else that counsel would like to deal with before I proceed to explain to the accused his responsibilities?

MR. BICKERT: Nothing with respect to probation. Might I have an order for the return of the money and the exhibits to the original owner?

THE COURT: With respect to the matter of the exhibits, including the money, that are held in connection with this case, there will be an order that the said exhibits, and particularly the money, be returned to the lawful owner thereof.

Is there anything else you have to say, Mr. Richard, before I ask the accused to stand and be addressed?

MR. RICHARD: No.

THE COURT: Would you stand up, please, Mr. Fraser. (accused



1 stands) You have heard the sentence and particularly the terms  
2 of the probation that I have imposed on you. Do you understand  
3 those terms?

4 THE ACCUSED: Yes, sir.

5 THE COURT: Under the provisions of Section 663(4) of the  
6 Criminal Code, I am required to inform you of certain things.  
7 First, I direct that immediately after the probation order  
8 has been prepared, the Clerk or Deputy Clerk of this court  
9 shall cause the probation order to be read to you or by you,  
10 and shall give you a copy of the probation order, and also give  
11 you copies of Section 664(4) and Section 666 of the Criminal  
12 Code. You are also required to sign an acknowledgment of  
13 compliance with the foregoing. Secondly, I tell you that the  
14 effect of Section 666 of the Criminal Code is that if you fail  
15 or refuse to comply with any of the conditions of the probation  
16 order, you may be prosecuted for that failure and, if found  
17 guilty, the court may impose a sentence for that failure.  
18 Thirdly, I inform you that the effect of Section 664(4) of  
19 the Criminal Code is that if while you are on probation you are  
20 convicted of an offence including a breach of the probation  
21 order, then in addition to any punishment that may be imposed  
22 upon you for that offence, the court may change or add to the  
23 conditions of the probation order. Do you understand that?

24 THE ACCUSED: Yes.

25 THE COURT: Are you prepared to sign the necessary acknowledg-  
26 ment in connection with those conditions?

27 THE ACCUSED: Yes.



1 THE COURT: Before I part from this case, I want to tell you  
2 as clearly as I can that I recognize that I have erred, if I  
3 erred, in favour of leniency. I have taken a calculated risk  
4 and, indeed, as I was reviewing some of the authorities, there  
5 is a very recent case of the Saskatchewan Court of Appeal which  
6 points out that a sentence of a year can be viewed as a very  
7 lenient sentence unless there are special circumstances. I have  
8 taken into account your situation as far as your health, but I  
9 must emphasize to you in the strongest terms that you must be  
10 prepared to accept the instructions which your doctor has given  
11 you. You must follow his instructions with respect to the  
12 taking of the prescribed drugs and, more important, you must  
13 refrain from the use of drugs such as alcohol and marijuana  
14 which clearly create problems for you. You have a previous  
15 conviction where liquor was a contributing factor, and on this  
16 particular occasion I am sure it was a contributing factor along  
17 with your failure to take medication. If you do not do it and  
18 get into further trouble after the care and attention that has  
19 been given to your case here today, not only by Mr. Richard  
20 but by Mr. Bickert who carefully canvassed all the factors to  
21 be taken into account and carefully stated the facts in a  
22 very dispassionate way and without any embellishment, you  
23 will not receive the kind of consideration that you got today.  
24 I say that to you because, in a nutshell, the rest is up to you,  
25 and I cannot emphasize that too strongly. I am happy to  
26 hear that your family is supportive of you, and the fact that  
27 they are here today in court tells me something. In many cases



1 the family do not bother to turn up, and I can only hope in  
2 all sincerity that you will take this matter seriously, and  
3 that you will treat it in the way in which we hope you will  
4 in taking the calculated risk. You perhaps do not realize it  
5 but it is very easy for me to say a year, or eighteen months or  
6 as has been pointed out, three years, in some jurisdictions.  
7 I have not done it, and I accept the responsibility for doing  
8 it in the way in which I have, and I hope that you accept the  
9 responsibility that I have placed on your shoulders, and I  
10 hope that you do not disappoint Mr. Richard, your parents and,  
11 indeed, Mr. Bickert who with characteristic fairness has stated  
12 the position of the Crown.

13 Does that conclude matters?

14 MR. BICKERT: Yes.

15 MR. RICHARD: Yes.

16 THE COURT: We can close court.

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20 Certified correct  
21 *G. Mitchell*  
(G. Mitchell - Court Reporter)  
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