*R v Curtis* [2005] NTSC 15

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| PARTIES: | THE QUEEN<br><br>v<br><br>BOB CURTIS |
| TITLE OF COURT: | SUPREME COURT OF THE NORTHERN TERRITORY at Alice Springs |
| JURISDICTION: | SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction |
| FILE NO: | JA 28/04 (20325187, 20415197, 20417628, 20417631) |
| DELIVERED: | 24 March 2005 |
| HEARING DATES: | 7 March 2005 |
| JUDGMENT OF: | MARTIN (BF) AJ |

**CATCHWORDS:**

**REPRESENTATION:**

*Counsel:*

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| Appellant: | R Noble |
| Respondent: | D Bamber |

*Solicitors:*

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|---|---|
| Appellant: | Office of the Director of Public Prosecutions |
| Respondent: | Central Australian Aboriginal Legal Aid Service |

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| Judgment category classification: | C |
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

*R v Curtis* [2005] NTSC 15
No. JA 28/04 (JA 28/04 (20325187, 20415197, 20417628, 20417631)

BETWEEN:

**ROBERT ROLAND BURGOYNE**
Appellant

AND:

**BOB CURTIS**
Respondent

CORAM: MARTIN (BF) AJ

REASONS FOR JUDGMENT

(Delivered 24 March 2005)

[1] The complainant in the Court of Summary Jurisdiction appeals against the sentence imposed on the respondent in that Court on 12 August 2004.

[2] The respondent pleaded guilty to one offence of assault female (his wife) on 3 January 2003 for which he was sentenced to two months imprisonment. That is not subject to appeal. At the same time he pleaded guilty to, and was dealt with, for four offences committed on 30 June 2004, six offences committed on 7 July 2004 and two further offences committed on 2 August 2004.

[3] Having sentenced the respondent for the various offences, some in aggregate, some concurrent and some cumulative, his Worship arrived at a

total sentence of nine months imprisonment is reflected in the warrant for imprisonment. However, a calculation of sentences upon hearing of the appeal shows that the total (including the two months for the assault upon a female) was 11 months. Whatever the case it is plain that the sentence was ordered to be suspended after the respondent had served four months. An operational period of two years was fixed upon condition that he be under the supervision of the Director of Correctional Services, that upon release from prison he go to CAAPU and undertake a residential alcohol rehabilitation course and that he not absent himself from CAAPU without permission.

[4] By the time the appeal came on for hearing, the respondent had served the four months imprisonment and attended CAAPU for the period as directed.

[5] One of the offences of 7 July 2004 (file 20417631) was for unlawful assault upon a police officer in the execution of his duty under s 189A of the Criminal Code. That charge was brought on information and was a violent offence within the meaning of s 3(1) and Schedule 2 of the Code. The first and second grounds of appeal must succeed they being directed to error in sentencing in passing an aggregate sentence in relation to a matter brought upon information and other matters brought on complaint. That is not permissible (see Sentencing Act s 52(1) and *R v Shields* (1997) NTSC 6). That the offence was a violence offence also precluded it being included in offences for which an aggregate sentence could be passed (s 52(3)). (I note that the second ground of appeal refers to a violent offence on file 20325187

but in the course of argument it became clear that the objection was to the assault upon police).

[6] His Worship imposed an aggregate sentence of three months imprisonment on the charges brought on information and the other offences committed on the same day. That the sentence must be set aside and a fresh sentence imposed for the charge on information alone and a fresh sentence or sentences imposed for the other offences. I will not might deal with that until after taking to account the other grounds of appeal.

[7] The third ground of appeal is that the sentence for the assault on police does not reflect the need for specific and general deterrence and the fourth is that the total sentence is manifestly inadequate.

[8] The details as to the first group of offences are as follows:

> "20415197
>
> - Count 1 – on 30 June 2004 at Yulara in the Northern Territory of Australia being a period who was disqualified from holding a drivers licence, drove a motor vehicle, namely Holden Commodore, on a public street, namely Uluru Ring Road, contrary to Section 31(1) of the Traffic Act; (maximum penalty imprisonment for 12 months)
> - Count 2 – on 30 June 2004 at Yulara in the Northern Territory of Australia drove a motor vehicle, namely Holden Commodore, on a public street, namely Uluru Ring Road, while having a concentration of alcohol in your blood equal to 80 milligrams or more of alcohol per 100 millilitres of blood, namely, 213 milligrams of alcohol, contrary to Section 19(2) of the Traffic Act; (12 months)
> - Count 3 – on 30 June 2004 at Yulara in the Northern Territory of Australia did resist a member of the police force in the execution of his duty, contrary to Section 158 of the Police Administration Act; (6 months)

- Count 4 – on 30 June 2004 at Yulara in the Northern Territory of Australia behaved in a disorderly manner in a police station, namely, the Yulara Police Station, contrary to Section 47(c) of the Summary Offences Act." (6 months)

[9] The admitted facts in relation to the first group:

> "... On 22 May 2003 the defendant was disqualified from driving a motor vehicle for a period of 5 years. During the evening of Wednesday, 30 June 2004 the defendant was drinking at Yulara. About 8:40 pm he got into the Holden Commodore. He then drove about 20 kilometres towards Mutitjulu. The defendant was stopped for the purpose of a roadside breath test, as a result of which he was arrested.
>
> He was then escorted to the rear of the police caged vehicle. Once at the rear of the vehicle the defendant refused to be searched and struggled with the two police officers by twisting his body and raising his arms in the air. He was subdued and placed into the rear of the police vehicle and taken to the Yulara Police Station where a breath analysis gave a reading of .213%.
>
> The defendant became agitated at the watch-house. He again refused to be searched. He removed his shirt, threw it down on to the ground. He then undid his – the buttons on his trousers. They fell to the ground. He then said, 'Look, it's my dick, is that what you want to see? Just look, it's my dick.' He was asked about driving whilst drinking and disqualified, however he continued to swear at the police and didn't give much of an answer.
>
> He was asked about the resisting police and he said he didn't know why he'd done that and also the disorderly behaviour, he didn't know why he had done that. ..."

[10] The explanations advanced by counsel for the respondent in respect of the first group of offences were that the respondent had been driven from Mutitjulu, where he had been residing, to a hotel at Yulara on the understanding that he would be returned to Mutitjulu in the same vehicle being driven by his brother. After consuming alcohol the brother refused to drive, other family members decided that the respondent was the most

suitable one to drive and put significant pressure on him. It was pointed out there was nothing about his driving that brought him to the attention of the police. With reference to the respondent's prior criminal record, his counsel said that what occurred subsequent to arrest appeared to be a sad trend as a consequence of his drinking and becoming angered at police in inappropriate ways. The respondent had a perception that police were being a little bit heavy handed in the arrest, he became agitated and remained so during his time at the Police Station which led to his resisting the police officers and then carrying on in a "very undignified way". It was said that it was something for which he was not proud, a man of 46 years of age would not expect to be in such a position.

[11] The second group of offences occurred on 7 July 2004 and were as follows:

> "20417631
>
> - Count 1 – on 7 July 2004 at Yulara in the Northern Territory of Australia did unlawfully assault a Police Officer, namely, Constable Michael Deutrom, whilst in the execution of his duty, contrary to Section 189A of the Criminal Code. (5 years)
> - Count 3 – on 7 July 2004 at Yulara in the Northern Territory of Australia did, without unlawful excuse, possess, carry and use a controlled weapon, namely a rock, in a public place, contrary to Section 7 of the Weapons Control Act. (12 months)
> - Count 4 – on 7 July 2004 at Yulara in the Northern Territory of Australia did resist a member of the police force in the execution of his duty, contrary to Section 158 of the Police Administration Act. (6 months)
> - Count 6 – on 7 July 2004 at Yulara in the Northern Territory of Australia behaved in a disorderly manner in a public place, namely, Mutitjulu Clinic, contrary to Section 47(a) of the Summary Offences Act. (6 months)

- Count 7 - on 7 July 2004 at Yulara in the Northern Territory of Australia being a person who was disqualified from holding a drivers licence, drove a motor vehicle, namely Holden Commodore, on a public street, namely dirt area in front of Mutitjulu garage, contrary to Section 31(1) of the Traffic Act. (12 months)
- Count 8 - on 7 July 2004 at Yulara in the Northern Territory of Australia drove a vehicle, namely Holden Commodore, on a public street, namely unsealed carpark outside Mutitjulu garage, in a manner dangerous to the public, contrary to Section 30(1) of the Traffic Act." (2 years)

[12] The admitted facts in relation to the second group of offences:

> "… On Wednesday, 7 July 2004 the defendant had been drinking at Mutitjulu. At about 12:30 pm he approached two uniformed police officers between the Mutitjulu Clinic and the council building. He clenched both fists and said, 'Arsehole, Nick, you're just an arsehole.' Police told him to cease the abuse and go away. He said, 'Nick, you're just a baby faced cunt. You're just an arsehole.'
>
> He stepped towards the policemen. He was advised that he would be arrested if he continued to speak in that manner, however he continued yelling – he continued the abuse in a loud voice. He said, 'I don't care, you're just a baby face cunt. Do you remember me? You locked me up.'
>
> The defendant was then arrested. He immediately twisted his body and stepped back, causing the police officer to let go of his grip of the defendant. The defendant then leant down and picked up a handful of small marble sized stones. He raised his right hand above his right shoulder and motioned as if he was going to throw the rocks at the policemen. He was only about 1 metre away from the police officer at that stage.
>
> The police officer then removed his capsicum spray out of concern that he was about to be assaulted. The defendant was sprayed with the spray. He then threw the rocks on the ground, covered his eyes with his right hand and raised his left palm in the air and walked towards the police officer.
>
> Both police officers have then attempted to restrain the defendant, however he continued to resist by twisting away, using his body weight and clenching his hands together and tensing the muscles in his arms. Once near the rear of the police vehicle the defendant refused to get in and was sitting on the ground.

At that time several other community members attended the scene and stood around the police officers. An unknown person gave the defendant a coffee mug of water which he used to wash the spray from his eyes. He then threw the empty mug onto the concrete, causing it to break. He then picked up a fist sized rock and raised it above his right shoulder, faced the police and motioned as if he was going to throw the rock in the general direction of them and the police vehicle.

He then threw the rock at the Perspex clinic window, however it did not break. The clinic staff were somewhat alarmed. They locked themselves inside the clinic. By this time there was a large crowd in attendance and the police were forced to leave the area.

They returned a short time later and they saw a large cloud of dust in front of the Mutitjulu garage. The defendant was observed by police driving the Holden Commodore on the dirt area in front of the Mutitjulu garage. He was observed performing donuts on the dirt. One community member was forced to shelter behind the tree to avoid being run over.

The defendant ceased the donuts. He saw the police. He then drove his vehicle at a speed of approximately 60 kilometres per hour at the police vehicle. He narrowly missed the passenger side of the police vehicle as the police officer took evasive action. The defendant then did a U-turn and again drove at the stationary police vehicle. The police vehicle then left the area, drove towards the garage with the flashing lights and siren on as the defendant chased the police vehicle.

At the garage the police turned – made a right-hand turn. The defendant continued his pursuit of the police vehicle. A short time later the defendant turned away from the police vehicle. The police then proceeded towards the Ayers Rock side of the clinic. The defendant then drove along the main street of the community towards where the police vehicle was parked. He was travelling at a speed estimated at around 80 kilometres per hour towards the police vehicle.

Police then decided to drive away from the area to take the defendant away from people in the area. The defendant continued to pursue the police at speed estimated at about 90 kilometres per hour. At that time he was extremely close to the rear bumper of the police vehicle. That was over a distance of about 50 metres.

The defendant than drove away from the police towards the Rangerville community. The defendant couldn't be located at that time. Further police had arrived by this stage. The defendant was not apprehended in relation to those matters until 2 August when he

> was apprehended in relation to the last file. He has – as on the previous file he was disqualified for 5 years in May 2003."

[13] In the course of submissions before this Court the facts going to the charge of unlawful assault on a police officer in the course of the execution of his duty was identified as contained in the passage commencing "The defendant was then arrested", that is the picking up of the handful of small stones and what followed.

[14] The part of the incident involving the carrying and using a controlled weapon, namely a rock, appears in the passage commencing "At that time several other community members attended the scene .....".

[15] As to this group of offences counsel for the respondent acknowledged that they comprised the most serious of the offences with which he was then charged. The respondent was said to have been drunk, full drunk, and said he had no particular "beef against the police". He said there was no excuse for what he did. His Worship was asked to accept that in picking up the smaller rocks and motioning to throw them and later picking up the larger rock, there was no intention of actually throwing those, such that they would strike either of the police or anyone else in the vicinity. As to the charges relating to the driving of the motor vehicle his Worship was asked to accept that the respondent did not intend to strike police vehicles with his car but he may clearly have given that perception. It was put that his intention was to scare the police away from the area.

[16] The third group of offences are as follows:

> "20417628
>
> - Count 1 – on 2 August 2004 at Alice Springs in the Northern Territory of Australia being a person who was disqualified from holding a licence, drove a motor vehicle, namely Holden Commodore, on a public street, namely unnamed dirt road south of Karnte Road, contrary to Section 31(1) of the Traffic Act; (12 months)
> - Count 2 – On 2 August 2004 at Alice Springs in the Northern Territory of Australia being the driver of a motor vehicle, namely Holden Commodore, on a road, namely unnamed dirt road south of Karnte Road, when requested by a member of the Police Force to provide your personal particulars, did give false information, contrary to Regulation 9(4) of the Traffic Regulations." (6 months)

[17] The admitted facts in relation to those matters:

> "... At approximately 10:20 am on Monday, 2 August 2004 the defendant was driving the Holden Commodore on an unnamed dirt road near the Karnte Road, Alice Springs. He was stopped by the police for a general check. At that time they asked his name and he said, 'Wayne Curtis.' He was then asked his real name and he told police his real name was Bob – Bob Curtis.
>
> He said that he had a warrant, that's why he gave the false name. Police confirmed the disqualification. The defendant was asked why he was driving whilst disqualified and the defendant said, 'I was just getting some water.'"

[18] Counsel for the respondent informed the Court that his client was in a bush camp with some old people and was asked to get water. There was no ready access to water at the camp and he drove the vehicle only for that purpose and was apprehended while he was doing so. It was put that the offence should be regarded as being at the lower end of the scale of offences of driving whilst disqualified being limited to a short distance, no alcohol was

involved. It was conceded that the driving involved a breach of the Court order.

[19] The respondent has a very bad record of prior convictions including for offences like those then before the Court of Summary Jurisdiction. The record starts in late 1976 and progresses through the intervening years with numerous convictions relating to the driving of motor vehicles, including driving whilst in excess of the alcohol blood limit and driving whilst unlicensed and whilst disqualified from holding a licence (as late as May 2003). As to acts of violence there are convictions for manslaughter in 1995, resist police 1997, assault police 1997, but thereafter prior to 30 June 2004 his offending had been limited to motor vehicle offences. However, on 30 June and 7 July (whilst on bail) he was twice involved in resisting police and once for assault. As might expected he was punished by way of the imposition of fines on many occasions and sentenced to terms of imprisonment on others, four and a half years for manslaughter, three months for resist police, 18 months for assaulting police and a month for driving a motor vehicle whilst disqualified from holding a licence as late as 23 May 2003.

[20] It was rightly acknowledged that the respondent had a significant history of offending. It was put by his counsel that there had been quite a significant gap in violent offending, the last being in April 1997 involving resisting police, assaulting police and being armed with an offensive weapon. That is so. The record is not altogether clear but it appears that on that occasion he

was sentenced to a substantial period of imprisonment, not less than 18 months.

[21] A further aggravating factor is that the respondent had been released on bail after the arrest on 30 June 2003, but he failed to appear as required and a warrant was issued for his arrest on 15 July 2003. He had absconded after the offending on 7 July and was not taken into custody until he committed the offences of 2 August.

[22] His Worship was informed that the respondent is a Pitjantjatjara man whose parents were deceased as were two of his five siblings. The giving of the name of the one of the deceased brothers led to one of the charges on 2 August, the respondent had attempted to deflect the possibility of being apprehended on warrants by giving that name. He did not maintain the subterfuge for long.

[23] It was said that the respondent had only "bush schooling", was illiterate but was a man who maintained his cultural identity and connections attending to "business" each year. He maintained an important relationship with his second wife and two sons and a daughter from a previous marriage. As to employment he had engaged in labouring and stock work but of recent times had been on unemployment benefits.

[24] The thrust of counsel's submission on behalf of the respondent before his Worship was that until that time he had never undergone any form of alcohol rehabilitation, and counsel had been instructed that his client was adamant

about wishing to plead guilty, and that he would like to attempt to rehabilitate himself for the long term. It was put that the respondent had insight to realise that he wanted to avoid the ongoing roller coaster for the rest of his life and that having gained some maturity he realised he had to deal with his alcohol problem. An assessment had been sought from CAAPU. The proceedings were adjourned to enable his Worship to obtain the assessments and consider the matter.

[25] In sentencing the respondent his Worship briefly reviewed the admitted facts, explanations, and the respondent's personal background, including his prior offending. There being no indication to the contrary, I take it that his Worship accepted what was put on behalf of the respondent in relation to the commission of the offences and by way of mitigation. His Worship made no express value judgment as to the seriousness or otherwise of any of the facts going to any of the charges or mitigatory circumstances.

[26] Hs Worship concluded his sentencing remarks:

> "Doing the best I can with all this material, it is obvious that the defendant is or wants to be rehabilitated. He is suitable for rehabilitation and supervision. While he has got a fairly substantial sentence of imprisonment I am disposed to suspend a large part of it so that he can have this shot of self rehabilitation at CAAPU."

[27] The following sentences were then passed:

(a) File 20415197 the penalties were aggregated and a sentence of two months imprisonment imposed (cumulative upon the sentence of two months imprisonment for the assault).

(b) File 20417631, on Counts 1, 3, 4 and 6 his Worship imposed an aggregate sentence of two months imprisonment, again cumulative on the others. He erred by including the charge brought on information. On Counts 7 and 8, again the penalties were aggregated and the respondent was sentenced to three months imprisonment concurrent with Counts 1, 3, 4 and 6 but cumulative on the other sentences.

(c) File 20417628, an aggregate sentence of two months imprisonment was imposed cumulative on the other sentences.

[28] A total period of disqualification from driving for 10 years was fixed.

[29] It appears from his Worship's remarks that the rehabilitation course to be undertaken at CAAPU would extend for two months. His Worship said that it was in the respondent's interest and the interests of everyone else that he do something about his alcohol problem "go to CAAPU and try and get off the grog".

[30] The error identified in the aggregate sentence imposed for the offences on information and complaint aside, the appeal is directed principally to what must be seen as an obvious inadequacy in the penalty for the offence of assaulting the policeman in the execution of his duty. The sentence for that

was buried somewhere in the aggregate sentence of two months, including other offences; even if the whole of that was attributable to the offence in question it is submitted that it was plainly not enough.

[31] The history of the increasing concern which the Parliament had displayed for the protection of police officers in the execution of their duty, is described in the reasons of Mildren J in *Bellis v Burgoyne* (2003) NTSC 103, commencing at page 10. With respect, his Honour rightly observed that at par 16 that s 189A "raised the bar considerably". The maximum penalty is now imprisonment for five years. With apparent approval his Honour referred to what I had say in *Clark v Trenerry* (unreported, 17 January 1996, BC9601976), where after referring to s 189A:

> "Given that the principle role of sentencing is the protection of the community, the Courts would be lacking in their responsibility in that regard if they failed to do as much as is in their legitimate power to protect the police, who have a more direct and vulnerable role in achieving that same objective. That protection can be given, in part, by consistently imposing condign punishment upon those who assault police in the execution of their duty. The Court of Summary Jurisdiction and this Court have indicated that assaulting a police officer in those circumstances invites a gaol sentence and the legislature has since these events also recognised that need as evidenced by the amendments to which reference has been made. It is to be expected, in the light of those amendments, that penalties imposed by way of prison sentences upon conviction for offences such as these will increase substantially, taking into account the much higher maximum penalties."

[32] His Honour went on to point out, with reference to reported cases, that each case requires individual assessment, there is no presumption that there must be a gaol term but an immediate gaol sentence can generally be expected where there has been a deliberate assault in order to impede police from

performing their work, there was some other aggravating features, for example, prior convictions for same or similar offence, or where the offender has used or threatened to use a weapon and where the offence took place in circumstances where the police were outnumbered, or in a remote location away from assistance (this case). Mitigating circumstances may persuade the sentencer to suspend the sentence or impose a another type of penalty.

[33] The whole of the circumstances surrounding the assault upon police with the small stones, must be taken into account and in particular, that the assault was constituted by the threatened application of force where the offender had the ability to effect his purpose and his purpose was evidenced by bodily movement or threatening words. The respondent desisted when the police used capsicum spray on him. I would place the circumstances of the offence, taken in isolation, at the lower of the scale of offending of this sort but it was aggravated by the fact that the appellant had convictions for similar offences in1997. The period between the offending reduces the degree of aggravation but he can not be treated as a first offender in that regard.

[34] The prior convictions for driving exceeding .08 and whilst disqualified however are more frequent and recent. Offending of that type in this case was not an uncharacteristic aberration, it manifested a continuing attitude of disobedience of the law. As the High Court said *Veen v R No. 2* (1987) 164 CLR 465 at 477, in those circumstances, retribution, deterrence and

protection of society may all indicate that a more severe penalty is warranted. I note that whilst disqualified he engaged in the dangerous driving which obviously posed a threat to the people of the community and the police even though he may not have intended to run into any of them.

[35] In my opinion, the aggregate sentences were manifestly inadequate taking into account the seriousness of some the offences included. Although aggregate sentences may be a convenient way of dealing with some offences, for example, for those that might usually be seen as attracting concurrent sentences, they are not appropriate where there is a significant disparity between the nature of the offences and the penalties which could be attracted to each. Transparency is called for in sentencing, not opacity.

[36] I must approach this appeal bearing in mind that it is brought by the prosecution. The principals according to which an appellate court may interfere with a discretionary judgment are well established in their application to Crown appeals. I do not consider that an appeal by a prosecutor or complainant in a Court of Summary Jurisdiction to the Supreme Court should be regarded any differently.

[37] I cannot substitute my own opinion for that of the learned Magistrate just because I would have exercised the discretion in a manner different from that in which he exercises his discretions – *Lowndes v R* (1999) 195 CLR 665 at 671-672, however, I am of the opinion that the sentences imposed reveal such a manifest inadequacy as to constitute error in principal -

*Everett v R* (1994) 181 CLR 295 at 299. Where a Court resentences an offender consequent upon the successful prosecution or Crown appeal, it recognises the element of double jeopardy and thus ordinarily imposes a sentence that is somewhat less than that it considers should have been imposed at first instance. (See David Ross "Crime" par 1.3430).

[38] His Worship was clearly satisfied as to the desirability of encouraging the respondent's apparent desire to avail himself of alcohol rehabilitation. The suspension of the sentence after a period, to be followed immediately by the alcohol rehabilitation course at CAAPU has been carried into effect and the respondent is now at large subject to the restraint which will hopefully be imposed by the operational period. I am not disposed to now impose a sentence which would lead to the respondent to being immediately incarcerated again, but bearing in mind his history of offending and the lapse of time since he apparently successfully completed the CAAPU rehabilitation course I consider the operational period should be substantially extended.

[39] By way of punishment and deterrence:

**File 20415197:**

**Count 1** - three months imprisonment to be served cumulatively on a sentence of two months for the assault female committed on 3 January 2003.

**Count 2** – three months imprisonment to be served as to two months concurrently with sentence on Count 1.

**Count 3** – one month imprisonment.

**Count 4** – one month imprisonment. The sentence on Counts 3 and 4 to be served concurrently but cumulatively on the prior sentences.

The total sentence on the offences on this file is five months imprisonment.

**File 20417631**

**Count 1** – four months imprisonment.

**Count 4** – one month imprisonment to be served concurrently with Count 1.

**Count 3** – one month imprisonment to be served cumulatively on Counts 1 and 4.

**Counts 6, 7 & 8** – an aggregate sentence of four months imprisonment to be served cumulatively upon the other sentences.

The total sentence to imprisonment on this file is nine months imprisonment cumulative upon that imposed on File 20415197.

**File 20417628**

**Count 1** – three months imprisonment.

**Count 2** – one month imprisonment to be served concurrently with the sentence of Count 3.

The total term of imprisonment on this file is three months imprisonment.

[40] Taken together with the two months imprisonment for the assault on his wife, the sentences now imposed amount to 20 months imprisonment.

[41] I note the total of the sentences imposed. Individual sentences have been fixed bearing in mind the guilty pleas and the double jeopardy principle. Nevertheless, I consider the total should be reduced to 15 months imprisonment in accordance with the principle of totality. The sentence on File 20415197 is to be served concurrently with all other sentences.

[42] The sentences are to be taken to have had affect from 12 August 2004. I confirm the order suspending the sentence after four months and the conditions upon which the original sentence was suspended I fix an operational period of three years to commence from the date on which the respondent was released from prison.

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