The Queen v Madrill (No 2) [2013] NTSC 42

PARTIES:	**THE QUEEN**
	v
	MADRILL, Phillip
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	21237889
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JUDGMENT OF:	BARR J

CATCHWORDS:

CRIMINAL LAW – Mental impairment – supervision orders – nature of supervision order – considerations – community protection – no alternative to custody in prison – order for custodial supervision

SENTENCING – Mental impairment – supervision order – relevant considerations – order for custodial supervision

Criminal Code Part IIA
Evidence Act (NT) s 57(1)(b)

The Queen v Madrill [2013] NTSC 23, referred to.

R v Morton [2010] NTSC 26, followed; *R v Verdins* (2007) 16 VR 269, followed.

REPRESENTATION:

Counsel:

Plaintiff:	S Robson
Defendant:	G Betts

Solicitors:

Plaintiff:	Office of the Director of Public Prosecutions
Defendant:	Central Australian Aboriginal Legal Aid Service

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Madrill (No 2) [2013] NTSC 42
No. 21237889

BETWEEN:

THE QUEEN

AND:

PHILLIP MADRILL

CORAM: BARR J

REASONS FOR JUDGMENT

(Delivered 31 July 2013)

Introduction

[1] On 22 April 2013, Phillip Madrill entered a plea of "not guilty because of mental impairment" to the charge of unlawfully causing serious harm to Cameron Blue on 10 October 2012.

[2] With the agreement of both prosecution and defence I accepted the plea and recorded a finding of not guilty of the offence because of mental impairment. I did so pursuant to s 43H *Criminal Code*, for reasons explained in my ruling in *The Queen v Madrill* [2013] NTSC 23.

[3] The finding that Mr Madrill was not guilty because of mental impairment triggered the operation of s 43I(2) *Criminal Code*, which requires that the

Court either declare the accused person liable to supervision under Division 5 or order that the accused person be released unconditionally.

[4] After the agreed facts were tendered and read on to the court record, I declared under s 43I(2)(a) *Criminal Code* that Mr Madrill was liable to supervision under Division 5 of the *Criminal Code* and made an interim order that he be remanded in custody in a prison.

[5] Having made the declaration that Mr Madrill was liable to supervision, I am required by s 43Z(a) to make a supervision order under Division 5. The order may be a custodial supervision order or a non-custodial supervision order. Under a custodial supervision order, the supervised person is committed to custody in a prison or in another place which the Court considers appropriate.[1]

[6] In the circumstances, I propose to make a custodial supervision order under s 43ZA(1)(a)(i) committing Mr Madrill to custody in a prison, namely the Alice Springs Correctional Centre. I am satisfied that there is no practicable alternative given his circumstances (s 43ZA(2)). Moreover, there is no available 'appropriate place' to which he might be committed and in respect of which a certificate has been provided by the CEO (Health) pursuant to s 43ZA(4) *Criminal Code*.

[1] Section 43ZA *Criminal Code*.

[7] It is necessary to review the events which gave rise to the charge against Mr Madrill in respect of which I recorded a finding of not guilty because of mental impairment.

[8] The agreed facts are as follows:

> Phillip Madrill was born on 1 July 1993 and so was 19 at the time he caused serious harm to Cameron Blue. He is now 20. He is ordinarily resident at Bonya Community, near Harts Range, Northern Territory.
>
> The victim Cameron Blue was also ordinarily resident at Bonya Community. He was 10 years old at the time.
>
> Mr Madrill is the cousin brother of Cameron Blue.
>
> On the night of Thursday 10 October 2012, Cameron was at a house in Bonya Community playing games on an "X-Box" in the lounge room. Sometime between 9.00 pm and 10.00 pm he was told by an adult occupant of the house that it was time to go home to bed. However, he wanted to continue playing games on the X-Box.
>
> A short while later Mr Madrill arrived at the house and told Cameron to go home. Cameron ignored this direction. Mr Madrill was angered by the boy's obstinacy and sniffed some petrol from a jerry can located in the house, which had the effect of heightening his anger.
>
> Mr Madrill then approached the boy and struck him repeatedly about the body and face with a shoe. He then picked up the jerry can and struck Cameron to the head and body approximately eight times, causing the boy to fall to the ground. Mr Madrill, who was wearing steel capped boots, then proceeded to kick Cameron repeatedly to the body.
>
> Cameron then attempted run away. He ran outside of the house but was chased by Mr Madrill who caught up with him and pushed him to the ground. Mr Madrill repeatedly lifted and forced the boy's head onto the roadway in a smashing motion, before proceeding to kick and punch him repeatedly. He then brought his foot down on the boy

in a ‘stomping’ motion. Cameron Blue was rendered unconscious at this point.

Mr Madrill dragged the boy to a nearby vehicle and placed him into the front passenger seat. He started the vehicle and moved it slightly before stopping the vehicle. He then approached a nearby house and shouted words to the effect “Anyone got an axe, where’s an axe, I am going to chop the little prick’s head off”. He continued shouting as he walked back towards the vehicle, holding a large knife.

Mr Madrill returned to the vehicle and pulled the boy from the passenger seat and laid him on the roadway in front of the vehicle. He then got back into the driver’s seat of the vehicle and attempted to put the vehicle in drive, but fortunately could not do so as the vehicle was stuck in reverse.

Mr Madrill then got out of the vehicle and approached the boy, who was lying unconscious on the roadway.

He dragged the boy back into the front passenger seat of the vehicle, and then stood at the open passenger door holding a knife to the boy’s throat.

A female occupant of the house which Mr Madrill had approached earlier intervened by grabbing him by his shoulders and pulling him out of the vehicle. He then walked to the rear of the vehicle as the female attended to the injured boy, who was unconscious and bleeding heavily from his face and head, with no signs of breathing.

The community nurse attended on the boy, who was then taken to Alice Springs Hospital.

Upon arrival at Alice Springs Hospital on 11 October 2012, Cameron Blue was intubated and ventilated (ie. a breathing tube was placed in his airway and breathing was mechanically assisted). His Glasgow Coma Score was at 8-12 (with no spontaneous response and minimal stimulated response), a score of 15 being normal function. He had two forehead lacerations, one above the right eyebrow and the other above the left eyebrow with a de-roofed skin flap. Both lacerations measured approximately 6 cm in length and were down to the skull.

> Cameron Blue was transferred to the intracranial unit for further care. A CT scan of his head showed a haemorrhage of the corpus callosum and left lateral ventricle and diffuse axonal injury (or widespread traumatic injury to the brain). He was transferred to the Royal Adelaide Hospital on 15 October 2012, where he received extensive further neurological treatment and care.
>
> The young victim remained unconscious for approximately four weeks, after which he showed improvement in his neurological status. On 12 November 2012 he was transferred to the care of the rehabilitation team as he was able to follow simple commands. He suffered from post traumatic amnesia (a confused state where memory is interrupted) which caused difficulties with rehabilitation. At 55 days post-injury, he was assessed as having recovered from post traumatic amnesia and had a gradual increase in alertness and awareness of his surroundings but had a very limited ability to learn new information.
>
> As he improved he was able to walk short distances. However, with increased awareness of his surroundings, he became distressed and verbally and physically aggressive. These behavioural deficits were directly attributable to his head injury and he required medication to reduce agitation and aggression. His behaviour significantly improved prior to transfer back to Alice Springs Hospital, but it was noted that he required a 'stand-by assist' for walking short distances and a wheelchair for long distances, assistance in climbing stairs and behavioural supervision at all times as well as guidance during meals. He was unable to wash and toilet independently.
>
> It is likely that Cameron Blue's brain injury (the widespread traumatic axonal injury) will be permanent and that he will need to continue on medication in the long term. The extent of his permanent deficits will not be known until up to two years from the date of injury.

[9] The injuries sustained by Cameron Blue clearly constitute serious harm within the meaning of the *Criminal Code* of the Northern Territory.

Psychiatric evidence

[10] I propose to now summarize psychiatric evidence relating to the supervised person.

[11] Specialist consultant psychiatrist, Dr Lester Walton, was satisfied that at the time of offending Mr Madrill had succumbed to a psychotic illness. The most likely diagnosis was schizophrenia where so called 'passivity phenomena' are most prominent, that is, one has deluded beliefs that one has lost control of one's actions. In his supplementary report dated 17 April 2013, Dr Walton wrote as follows:

> "My opinion is that it is highly likely that because of Mr Madrill's psychotic illness at the material time he could not control his actions and it is also probable that he could not appreciate the wrongfulness of his conduct."

[12] Director of Northern Territory Forensic Psychiatry, Dr Kevin Smith, specialist psychiatrist, is of the opinion that Mr Madrill's behaviour was due to psychotic agitation resulting from undiagnosed and untreated schizophrenia. Dr Smith agrees with Dr Walton that Mr Madrill's mental illness rendered him unable to reason as a normal person with a moderate degree of composure that what he was doing was wrong, and that it prevented him from being able to control his actions. In Dr Smith's opinion, the offending behaviour was not merely a result of personality factors, psychological issues, or use of substances.

[13] Dr Smith has provided a very comprehensive and helpful report[2] to the Court, in which he set out Mr Madrill's psychiatric history. I draw on that report for my summary in [14] to [36] below.

[14] In October 2006 at the age of 13 Mr Madrill started to display a very low level of motivation and to restrict himself to a very limited social network after the suicide of a family friend. He refused to return to Yirara College in Alice Springs for Term 4 of 2006. His subsequent involvement in the Bonya CDEP program appeared to have a beneficial effect and by early 2008 it appeared that he was doing well.

[15] In March 2011 Mr Madrill lacerated his left arm with a pair of scissors, requiring multiple sutures. The case notes of the Bonya Clinic described him as socially isolated, with no other young men of his age and peer group and few male role models. He was regarded as a very good worker on the CDEP program but was the only male participating in the Clean Up Australia Day at Bonya. There was no obvious explanation for the self inflicted laceration, particularly since it occurred only some 15 minutes or so after the accused was laughing and posing for photographs in the Clean Up Australia activity.

[16] In June 2012, an RFDS mental health worker saw Mr Madrill in Bonya and reported that he had a low mood and restricted affect but was nonetheless attending work daily and had a good relationship with his employer. His

[2] Report Dr Kevin H Smith, FRANZCP, dated 31 May 2013.

mother reported that he was wandering off at night time saying "I'll go to hell". Sometimes he would take his 12 year old brother with him and this was a cause of concern. He was prescribed olanzapine, a mildly sedating anti-psychotic medication, to assist him to sleep.

[17] On 14 June 2012 the nurse at the Bonya Medical Centre and the CEO of the Shire Council both expressed concern about Mr Madrill. He was not sleeping and appeared to be delusional. On one occasion he had gone home for lunch and did not return to work. He later reported to another staff member that he had just been to New York, and made comments about how bad things were there. He said that he could see that half of his friend's face was missing due to the use of ice amphetamine. The particular friend in question had not been living in Bonya for several months. Mr Madrill was commenced on regular olanzapine at night and encouraged to maintain contact with the Bonya Clinic. He was offered an urgent assessment in Alice Springs, but he declined.

[18] On 9 July 2012 it was noted that Mr Madrill remained "very flat in affect". Although the Bonya Clinic was providing daily olanzapine, he was reluctant to take that medication regularly. The visiting medical officer suggested that he take sertraline, an anti-depressant, but the medication was not commenced because it was unclear whether the cause of his mental state was a depressive or a psychotic disorder. The picture was confused somewhat by a history of substance abuse which was thought to be an important causative factor for his social withdrawal and delusions.

Notwithstanding the difficulties noted, he still had a strong working relationship with his employer.

[19] Mr Madrill was seen by the Alice Springs Mental Health Service in Bonya on 16 July 2012. The features noted were low mood, occasional odd statements, apathy, cannabis use and behavioural changes in the previous few months. Concerns on the part of his family were noted. It is clear in hindsight that Mr Madrill was going downhill. The clinical notes indicate that he was thought to be in a "possible early stage of drug induced psychosis, or a psychotic depression". He had increased his use of cannabis, and was choosing not to work. He reported feeling bored and it was noted that he showed "a lack of initiative to do things or make plans for his future." His mother and grandmother said that he was angry a lot, and he was not doing anything, that he was sleeping too much at the wrong time and that he confined himself to the home too much. The Council Manager said he was not as dependable as he used to be and that he seemed to be "spaced out". He had not been at work for some weeks, whereas previously he was an enthusiastic young man who worked hard.
Mr Madrill admitted that he had used cocaine while on holiday in Alice Springs.

[20] Although Mr Madrill said that he was bored with his life and felt lost all the time, and that he felt trapped in Bonya, he did not give any indication of delusional or bizarre thoughts and he did not report any suicidal thoughts.

[21] Things deteriorated. On 28 July 2012, a family member reported to the Bonya Clinic nurse that Mr Madrill was behaving unusually, threatening family members with a knife. He was angry, he was isolating himself and he had low mood. As a result of a request by the medical officer on call, he was transferred to Alice Springs Hospital for psychotic assessment and was admitted for the period 28 July to 1 August 2012. While in hospital he was visited by friends and interacted well with them, although he was noted to be very quiet. It was noted that he acknowledged problems with low mood for a long while and that he felt so bad he had thought about dying. He was reluctant to discuss the events leading up to his hospitalisation but admitted that he had been using a lot of cannabis.

[22] While in hospital, Mr Madrill appeared to be significantly depressed with possible psychotic features.

[23] The accused was reviewed on 1 August 2012 at which time the diagnosis of depression was confirmed. He told the doctor that he was "thinking too much" and having "bad thoughts". He found it very difficult to articulate and describe the exact nature of his thinking but it was noted that he found it "distressing and preoccupying". His medication was changed to mirtazepine, an anti-depressant medication which also provides sedation and induces sleep.

[24] The accused's period of hospitalisation from 28 July to 1 August 2012 was as a voluntary patient. After the review on 1 August he was discharged from hospital.

[25] On 15 August 2012 the Bonya Clinic nurse informed that Mr Madrill had recently returned to the community and had resumed his behaviours of the recent past.

[26] On 3 September 2012 the nurse was informed that Mr Madrill was not taking his medications and that he did not wish to engage with clinic staff.

[27] On 19 September 2012 a psychiatric registrar visited Mr Madrill at Bonya, but he was in bed and refused to leave his room. He was staying up until 4.00 am in the early morning and had a television set in his room which he sat up watching late into the night. He said he was feeling low most days. He stated that a period of sustained drug use over many months in Alice Springs had brought about the deterioration referred to.

[28] The psychiatric registrar asked him to resume taking mirtazepine and gave him instructions as to the dosage.

[29] The events which led to the charge of unlawfully causing serious harm to Cameron Blue occurred on 10 October 2012.

[30] In the opinion of Dr Smith, the offending was a direct consequence of mental illness rather than the petrol sniffing or cannabis abuse which Mr Madrill admitted to at the time.

[31] Dr Smith is in a very good position to make an assessment of Mr Madrill. Not only did he take the opportunity to carefully study the medical history from the notes, but he met with Mr Madrill on 31 October 2012, 14 November 2012, 27 November 2012, 10 December 2012, 4 January 2013, 18 January 2013, 13 February 2013, 19 March 2013 and then on 24 April 2013. The opinions expressed in Dr Smith's report dated 31 May 2013 therefore had a solid evidentiary foundation.

[32] As mentioned in [12], Dr Smith is of the opinion that Mr Madrill's offending behaviour was due to psychotic agitation resulting from a mental illness, namely schizophrenia, which was undiagnosed and untreated at the time. Dr Smith points out that a cardinal feature of schizophrenia is the deterioration it causes in personality and social function from a previously high level. This feature is very evident in the case of Mr Madrill, someone who was previously regarded as a motivated and reliable worker, notwithstanding the premature end to his schooling in Alice Springs and his use of cannabis. He had no record of offending prior to the shocking events of 10 October 2012.

[33] Dr Smith writes as follows:

> "With the insidious onset of his mental illness the initial features were that Mr Madrill became increasingly dysphoric, "bored", unmotivated and apathetic, and he no longer showed any interest in work or social activities. Concerns were raised at the time about the cause of this deterioration, and odd features in his thinking were noted, for example when he began talking about having been in New York where bad things were happening.

> The subjective experiences which correlate with this type of deteriorating personality and social function in patients with schizophrenia can be profoundly threatening, perplexing and psychologically overwhelming. In particular the patient can have an experience which is psychotic in its intensity, that they have indeed lost their feelings and emotions, that they are devitalised, that they are no longer the same person, and that they are no longer even fully alive. Mr Madrill gives a very clear account of this experience in his statements about his life being a broken record, about having lost his feelings, about not being like he was, and about having to get back the person that he had been. He clearly indicates how distressing this became for him, and he constantly believed that he had to do something to be healed. …
>
> In conjunction with his experience of being no longer fully alive, Mr Madrill developed a bizarre belief that he had to "bang" someone in order to be made whole again. He experienced that impulses were being placed in his mind from some other source, and that what he had to do was of a sexual nature. … This constellation of psychotic experiences and impulses led him to become a significant risk to others, as when he became agitated and threatened his family with a knife. His agitation appeared to be due to a depressive disorder, and although he explained that he was constantly experiencing bad thoughts, these were interpreted as obsessive ruminations as part of his depression, rather than being psychotic in origin. In retrospect it is clear that they were passivity experiences of having "made impulses" placed in his cardinal manifestation of schizophrenia, but this was not apparent at the time. The same features continued well into Mr Madrill's incarceration, as when he reported feeling that he had to have anal sex with other prisoners in order to get better."[3]

[34] Significantly, Dr Smith is of the opinion that the accused's abnormal mental state was not a transient manifestation due to substance abuse, since it continued to be present to a severe degree for many weeks following his incarceration and did not resolve until anti-psychotic medication had been commenced and then increased in dose to a point where his psychotic experiences began to resolve. Dr Smith considers that these psychotic

[3] Extract from 'Summary' section of report dated 31 May 2013, pp 14-15.

experiences would recur in similar form if anti-psychotic medication were to be reduced in dose unduly, or ceased prematurely, or if he ceased to be compliant.

[35] Dr Smith believes that the accused is a good example of the unfortunate phenomenon that, in patients with schizophrenia, severe violence and homicide are most common during first episodes of psychosis. The reason for this is that patients experiencing a first episode of psychosis are perplexed and overwhelmed and do not have the insight that they are mentally ill. In that state, either they do not know that medication could be beneficial or they may be untrusting of therapy and unwilling to disclose their psychotic experiences. In such circumstances, patients can identify "solutions" which may involve very violent behaviour.

[36] Dr Smith sees both positive and negative features in Mr Madrill's case:

> "Positive features in Mr Madrill's case are that he has no prior history of serious offending, he does not have formal thought disorder, and his personality function and affect are not disorganised. He is not fatuous and unconcerned, he has residual motivation, he has felt better since he obtained a prison job, he is interested in socialising, he has a good work history, he acknowledges that he has a mental illness that needs to be medicated, and he is distressed at the actions he has carried out. Concerning features before he carried out his offending behaviour are the fact that he was reluctant to disclose his mental state when admitted to ASH, he left the ward prematurely, he minimised the significance of the threats he had made with a knife to his grandmother, he had shown an earlier pattern of not taking prescribed medication, he still took no medication after the admission, and he continued to smoke cannabis, consume alcohol and sniff petrol.

> Other concerning features that are evident now his psychotic mental state has been brought into remission include the fact that he minimises the significance of the offending behaviour for his victim and the community, he is irritable and wants to leave prison, he is defensive, he has not received adequate rehabilitation, he wishes to distance himself from reminders of his forensic situation, he wants to "go bush", and he minimises the difficulties he will face in trying to return to his community and establish a workable social identity. All of these issues will take many months to resolve, and Mr Madrill lives in an extremely remote area which can be cut off by flooding in the wet."

[37] Under s 43ZC, a supervision order is for an indefinite term. However, s 43ZC is subject to s 43ZG, subsection (1) of which requires that, when the Court makes a supervision order, it "fix a term in accordance with subsection (2), (3) or (4) which is appropriate for the offence concerned".

[38] Subsection (2) of s 43ZG is the relevant subsection. It requires that the term fixed under subsection (1) is to be "equivalent to the period of imprisonment or supervision (or aggregate period of imprisonment and supervision) that would, in the court's opinion, have been the appropriate sentence to impose on the supervised person if he or she had been found guilty of the offence charged."

'Sentencing' considerations

[39] The hypothetical sentencing exercise under s 43ZG *Criminal Code* requires me to assume that the supervised person has been found guilty of the offence charged, and thus by necessary implication that mental impairment was not such as to affect the making of that assumed finding by providing a defence under s 43C(1) *Criminal Code*. However, normal

sentencing principles require that Mr Madrill's schizophrenia and the psychotic agitation it produced should be taken into account.[4]

[40] The maximum penalty provided by law for the offence is 14 years' imprisonment.

[41] The objective seriousness of Mr Madrill's conduct was very high. I bear in mind the potentially fatal consequences of his actions, and the nature and extent of the harm actually caused, in particular brain damage to the young male victim.

[42] Balanced against those matters is the fact that Mr Madrill is a young man who had not previously offended against the criminal law. Moreover, he had and still has a mental illness which caused him to have a severely compromised understanding of his wrongdoing and a significantly reduced ability to control his aggression at the time of offending. This condition in my view lessens the moral culpability of the offending conduct.[5]

[43] Because of Mr Madrill's mental illness, I take the view that his sentencing would not be an appropriate vehicle for either general or specific deterrence.

[44] However, the same mental illness, and its behavioural consequences, raise a need for community protection in sentencing. Even though Mr Madrill

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[4] I agree, with respect, with the view of Mildren J as to the application of s 43ZG in *R v Morton* [2010] NTSC 26 at [46].

[5] See *R v Verdins* (2007) 16 VR 269, which contained a restatement, in somewhat revised form, of the guiding principles which the Court of Appeal of Victoria laid down in *R v Tsiaras* [1996] 1 VR 398.

will be under supervision for the foreseeable future, I still consider that community protection is a relevant consideration in the hypothetical sentencing exercise required by the *Criminal Code*.

[45] Under s 43ZG(2) *Criminal Code*, I am of the opinion that a term of imprisonment of three years and six months would have been the appropriate sentence to have imposed on Mr Madrill if he had been found guilty of the offence charged.

[46] Pursuant to s 43ZG(1), I therefore fix a term of three years and six months for the purposes of the supervision order. The term so fixed is to be backdated and deemed to have commenced on 10 October 2012, pursuant to s 43ZG(4B) *Criminal Code*.

Conclusion and orders

[47] The formal orders are as follows:

1. Phillip Madrill is subject to custodial supervision and committed to custody at the Alice Springs Correctional Centre pursuant to 43ZA(1)(a)(i) *Criminal Code*.

2. The custodial supervision order is subject to the following conditions:

    a. Mr Madrill is to comply with all treatments, investigations and counselling recommended by the Northern Territory Forensic Mental Health Service.

b. Mr Madrill is to engage in any employment opportunities offered to him by the Alice Springs Correctional Centre.

3. The term of 3 years and 6 months is fixed for the purposes of s 43ZG (1) of the *Criminal Code*.

4. The term is backdated and deemed to have commenced on 10 October 2012.

[48] I grant liberty to the parties to apply for such further orders as may be required.

[49] The only remaining matter for decision is whether I make an order prohibiting publication of the name of the supervised person. In this respect, I have had the benefit of very helpful written submissions from both counsel. I have decided that the there is no basis "for the furtherance of, or otherwise in the interests of, the administration of justice"[6] for me to prohibit publication in the circumstances of this unfortunate case. While I accept that the proceedings should focus on the rehabilitation of Mr Madrill, as well as on the protection of the community, I do not see that the publication of Mr Madrill's name is likely to adversely affect his ultimate rehabilitation and reintegration into his community or the wider community. Moreover, I am persuaded by Mr Robson's submission that the principle of open justice requires that the public know the identity of a

[6] *Evidence Act* (NT), s 57(1)(b).

person who has been found not guilty of a serious crime by reason of mental impairment.
