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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SC 20829152

THE QUEEN

and

SHANE ARABIE

(Sentence)

MARTIN, CJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON WEDNESDAY 7 OCTOBER 2009

Certified a true transcript of a record.

Transcribed by:
Merrill Legal Solutions

HIS HONOUR: You have pleaded guilty to unlawfully causing serious harm to the female victim with whom you had been in a traditional Aboriginal relationship for about two years. It was a relationship that was marked by heavy drinking. Both you and the victim were heavy users of alcohol and I accept that the use of alcohol caused problems within the relationship. I also accept that on the day that you committed this crime you were both full-drunk.

The offence occurred on Monday 29 September 2008. You had been drinking at various locations around Alice Springs and at about 6 pm you went to Anthepe Camp where you had words with the victim. You do not remember what the argument was about, but you suspect it was something to do with buying alcohol, because that was a common cause of problems between you. The victim does not remember what you were arguing about.

About 10 minutes after you had had words with the victim, you approached her carrying a rock that was approximately the size of a golf ball. Without warning you threw the rock at the victim with such force that it entered her mouth, dislodged and broke several teeth and broke her jaw. You must have thrown the rock very hard. You then walked away leaving the victim to walk to a nearby phone box and call the ambulance for herself. I accept that you were probably unaware of the damage you had done.

The victim was taken, eventually, to the Darwin Hospital where she underwent surgery to repair the broken jaw and the damaged teeth, and she required plastic surgery to reconstruct part of her lips and surrounding cheek area which had been badly damaged by the rock. The victim has told me in her victim impact statement, which she signed today, that sometimes when she drinks cold water the area is still a bit painful and she can only chew on her left side. She has told me that her lip was split and now it looks ugly. She says, 'I'm young but it has changed my face.' So not only did you cause a serious injury to the victim, but there is an ongoing visual effect which is embarrassing to the victim. I do not know whether that will ever be repaired. Nor do I know whether the victim will ever get over it.

You are a 27-year old Arrernte man and you were born in Alice Springs where, primarily, you grew up. Apparently, as you were growing up, you spent a lot of time with cousins, aunties and uncles and these are some of the people with whom you would commit offences. Your parents passed away when you were young and you were raised by extended family in and around Alice Springs. Your main carer was your grandfather who passed away in 2007. You told a probation officer who prepared a report for previous Court proceedings that you witnessed many family arguments and fights when family members were intoxicated.

As is so common in cases like yours, you first started drinking alcohol at a very young age of 11 and by the age of 14 you were drinking all the time. Your drinking habits have increased over the years to a level where you drink six days a week and you get full-drunk each time. You tried the CAAAPU program, but lasted only five days and you told the probation officer that you did not like it. Most of the time you live with family members who are also big drinkers and get into trouble.

The probation officer has reported that you now have some insight into your alcohol problems and the fact that it is the alcohol that leads you to commit offences. There seems to be some motivation for change and you hope, eventually, to live in a community where you have family members who will be able to help you. I accept that you have some insight into your problems, but it must be said, in view of your record or prior offending and your addiction to alcohol, that your prospects of rehabilitation are, at this time, not good. There is a glimmer of hope, but there is a long way to go before it can confidently be said that you are properly on your way to rehabilitation.

Alcohol has obviously played a large role in your life and in your previous offending. You have many offences relating to alcohol, but you also have offended against the criminal law by committing offences of dishonesty and offences of violence. Your first offence occurred in 1996 when you were aged 13 and you have been in constant trouble since that time. In 1997 you were convicted and imprisoned for assaulting police. Also in 1997 you were convicted of two offences of aggravated assault and for those offences and other offences, you were sentenced to imprisonment for 18 months. On the same occasion you were convicted of being armed with an offensive weapon at night and of a further offence of assault which involved a threat with a firearm.

In December 2004 you again committed the offence of assaulting a member of the police force and in September 2005 you committed the offence of assaulting a person who suffered bodily harm. That person was a female person and a sentence of five months imprisonment was imposed. The sentence of five months imprisonment was suspended when the Court dealt with you on 13 October 2005. At that time you were also in breach of previous Court orders. Over the years you have constantly breached Court orders.

Within a short time, however, you again committed an offence of assault and again it was an assault upon a female person. That offence was committed in February 2006 and you received a sentence of three months imprisonment. In January 2007 you committed two offences of assaulting a member of the police force and again you committed that offence in February 2008.

Mr Arabie, you have a problem with violence and anger and obviously that problem comes to the surface when you drink alcohol. You also have a problem with committing crimes of violence against women. What should be understood is that alcohol is not the cause of the violence. Somewhere deep inside you there is an anger which is unleashed by the alcohol, but the alcohol is not the cause. In you and others like you there is obviously something deep inside you which leads you to an attitude that you are entitled to be violent to women when they make you angry. It is the attitude that is the cause and that is the attitude which must change among Aboriginal men, particularly Aboriginal men in Aboriginal communities.

It is a cause of great disturbance to our wider community and to the Courts that the Courts are constantly dealing with these types of offences, and it almost prompts the Court to ask what is going on in the mind of Aboriginal men like you. No-one seems

to be able to provide the answer and so far no-one seems to have been able to bring about the change of attitude that is necessary. You should think about that while you are in gaol. These types of crimes, as the Court has repeatedly said, are far too common. Women in Aboriginal communities, and women generally in the community, are vulnerable to attacks by angry men like you. All women, regardless of their age and ethnic background, are entitled to the full protection of the law. General deterrence, that is imposing penalties that will hopefully act as a deterrent to others who are minded to behave like you, is an important part of the sentencing. It is also important that the Court impose a sentence which will both punish you and reflect the condemnation of the community.

When I look to the future, as I have said, the prospects are not good. There is a need to deter you personally from committing these types of crimes again. Previous efforts by the Court to deter you have been unsuccessful.

Having made those observations, I will repeat what I said previously in the sentencing matter late last year, that although penalties have increased it must be recognised and understood that many offenders are not deterred by the prospect of imprisonment, because they commit crimes when they are severely intoxicated and incapable of thinking rationally about the consequences of their actions. More than punishment through imprisonment is needed. The community spirit and wellbeing is diminished by every act of violence and there is an urgent need to address the underlying causes of violence, in order to prevent it occurring. There are many people who are trying to address these problems, but so far the success has been limited. As I have said, what is needed beneath all this is a fundamental change in attitude by men like you.

You are convicted. Had it not been for your plea of guilty I would have imposed a sentence of four years imprisonment. After allowing for your plea I impose a sentence of three years and three months imprisonment.

Then comes the difficult question of how much you should be required to serve. In arriving at this decision I need to take into account that on 1 May 2009 you were dealt with for a number of offences that were committed on 23 October 2008 and 30 September 2008. You received a total sentence of two years and eight months imprisonment, and a non-parole period of 16 months was fixed commencing on 23 October 2008.

I am required to determine how much of the current sentence should be served concurrently or cumulatively upon that previous sentence and to fix a new non-parole period in respect of the total sentence. In this exercise I must consider the gravity of your total criminal conduct, but I must also look to the total to ensure that it is proportionate to the gravity of your total criminal conduct but it is not crushing. It is an exercise that the Courts call an exercise of totality.

I have decided that 11 months of the sentence I impose should be served concurrently with the previous sentence. That is, two years and four months should be imposed cumulatively on the previous sentence, which makes a total of five years

imprisonment you are to serve commencing 23 October 2008. I fix a non-parole period of three years commencing 23 October 2008.

That means, Mr Arabie, that your sentence started on 23 October 2008. Your total sentence is five years imprisonment but you will be eligible to seek parole, that is to look to be released on probation, after you have served three years. Whether you will be granted parole is a matter for the Parole Board.

Now I just need Counsel to check that I have correctly arrived at the total of five years. Am I correct that the service of 11 months concurrent, that is - or two years four months cumulatively on the existing sentence results in a sentence of five years?

MR ROBERTS: Yes, your Honour, two eight plus two four makes five years.

HIS HONOUR: All right, thank you.

I will leave the Bench for a moment while the people set up for the continuation of the trial. Thank you.
