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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 20910234

THE QUEEN

and

DANE DWAYNE CAMPBELL

(Sentence)

KELLY J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON FRIDAY 23 OCTOBER 2009

Transcribed by:
Merrill Legal Solutions

HER HONOUR: Dane Dwayne Campbell, you have pleaded guilty to the offence of armed robbery causing harm to Peter Costello. The maximum sentence for this offence is life imprisonment.

Briefly, the facts are as follows:

On Monday 23 March 2009, you consumed a large quantity of alcohol. At about 3 am, you walked to the residence of Peter Costello, a man aged 65. You went alone to his residence. You asked him to let you in and he did. He opened the front door and allowed you to go in, and you said to him, "Give me money or gunja or I'll stab you."

You left and came back later and threatened him, saying, "Give me money or I'll kill you." The victim told you, "That's all I've got on the table" and pointed to the dining room table where he had about \$20 worth of coins.

He tried to run away, but he tripped and fell over on the front steps. You stood over him and stabbed him with a pair of scissors to the upper torso. You stabbed him a number of times while he lay on the ground unable to defend himself.

You continued to demand money from him, saying, "Where's the rest of the money?", and you forcefully kicked him in the upper left cheek bone area on his face with your boot. You collected about \$20 worth of coins from the dining room table and took a pouch of Champion Ruby Tobacco from him.

You were picked up by police and arrested later that day. You participated in a record of interview, during which you cooperated with police and made admissions to the offence.

When the police asked why you went to the victim's house, you said, "I wanted to do that armed robbery." They asked you what you thought would happen to the victim as a result of the assault and you said, "He would have been dead." They asked you how you felt when you assaulted the victim and you said, "Too drunk then, but no good now." They asked you if you knew what you were doing when you assaulted the victim and you said, "Yes."

The victim sought medical assessment and treatment for the injuries that you caused him. He suffered superficial stabs and slashes to the upper torso, and swelling and bruising to the left cheek bone area of his face.

He seeks restitution of the money that you stole from him which is a total value of \$20.

Now, Mr Campbell, this is a very serious offence. This robbery did not occur on the spur of the moment. You planned to go to his house and rob him. You went to his house twice. You threatened to kill him and you stabbed

him with a pair of scissors and kicked him when he was on the ground defenceless. You told police that you thought the victim "would be dead" as a result of your attack on him. All of those things make it a very serious offence.

I have had the benefit of a victim impact statement.

Your unprovoked, vicious and, I have to say, cowardly attack had serious consequences for the victim. He believed he was going to die when you stabbed him. He suffered stab wounds to the neck and back and an injury to his face. He is terrified to open the door when someone knocks. He has flashbacks and he has trouble sleeping. He has had to leave his job and change his residence.

Up until 2008 you did not have an extensive criminal history. In 2005, you were convicted of entering a dwelling at night with intent and stealing. But it seems that you then stayed out of trouble until 2008, at which time, I am told you returned to Katherine to live with your mother who, I am also told, is an alcoholic. That is when you began drinking heavily, taking drugs and getting into trouble.

In March 2008 you were convicted of assaulting a woman, and several offences of drink driving and driving while unlicensed. In June you were convicted of aggravated assault and also dealt with for a breach of a good behaviour bond from that previous offence. Then in November 2008 you were again convicted of aggravated assault and dealt with for breach of the order suspending your sentence for that previous assault.

This present offending was, in turn, a breach of the order suspending your sentence for the aggravated assault in November 2008 and I have been asked to restore the balance of your sentence for that offence.

Your counsel tendered an affidavit made by your sister, Ms Judy Plumber. In that affidavit she gives some details of your life and circumstances. It seems your mother was a heavy drinker when you were born and, as a result, she gave you to her sister to raise. When you were little your auntie took you to Elliott, and your sister says she was a good mother to you and looked after you well. You were well-dressed and well-spoken. You respected your elders. Your auntie was very religious and strict. She took you to church every Sunday and she put you through men's business.

After completing your primary school in Elliott, you went to Yirara College in Alice Springs. You left in Year 11, returned to Elliott and got work as a labourer on the CDEP program. It is there, your sister says, that you mixed with some family and friends who were drinkers and you began drinking. However, your uncle then took you to Robinson River, which is a dry community, and you stopped drinking and worked for CDEP.

You formed a relationship and you and your girlfriend had a son. For reasons unknown to your sister you left your girlfriend and son at Robinson

River and you moved to Elliott and then to Tennant Creek, where you again worked for CDEP.

In 2008, you moved to Katherine to live with your mother where you took up heavy drinking and smoking gunja. You did not try to find work and you did not try to see your girlfriend or your child.

Your sister says that you are a good person when you are sober, but when you mix grog and gunja, you go wild. When you were living with your mother and sister they would sometimes get scared and have to call the police.

You have been convicted of a number of crimes of violence directed against people who are weaker and more vulnerable than you are – women and an old man. Mr Campbell, that is the mark of a coward. Some of the people you have assaulted are people who need and deserve your protection – your mother and your ex-girlfriend – and that is not the way a proper man behaves.

Your sisters, Ms Plumber and Ms Allum, both travelled to Darwin to be in court to support you. Ms Plumber made an affidavit to assist the court in understanding your background. You are extremely lucky to have that sort of support from your family.

When questioned by police in relation to this matter, you made full admissions. You have fully cooperated with police and avoided the expense of an investigation and a committal and trial. You have also saved the victim and other witnesses from the inconvenience and stress of giving evidence. I am also told you gave yourself in to police.

Your counsel says this is an indication that you feel remorse, although given the circumstances that you and the victim were well-known to each other, and you had already told your mother what you had done, it might just be seen as an acknowledgment that you were bound to be caught. Nevertheless, I accept that handing yourself in is some indication of remorse.

You have not repaid the victim the money that you took from him, you have not apologised to him and you did not offer to apologise to him. Nevertheless, in light of your cooperation with police and early guilty plea, I intend to apply a discount of 25 percent to the sentence I would otherwise have handed down.

Your criminal record of violent crime does not bode well for your prospects of rehabilitation. Nor does your history of drunkenness and drug-taking.

However, it is clear to me that you have the support of family members who are in a position to help you if you are willing to accept their help. I note that it was your uncle that organised for you to go to Robinson River where you made a fresh start – but you took yourself away from that wholesome environment and back to the grog.

Very importantly, your sisters, who both have qualifications in different areas of helping people, took the trouble to come to Darwin to support you in court. They say you need help to get off the drugs and grog and stay off. They want you to go to a rehabilitation centre and are prepared to help and support you in this.

As I said, you are very lucky to have their support. If you accept their help and support and make efforts to get off the grog and drugs and stay off, I believe you have reasonably good prospects for rehabilitation. If you do not, then, objectively and realistically, there is very little hope for you. It is really up to you.

I have to say something about the principles to apply. Personal deterrence is an important consideration in this kind of case. In your case there have been previous convictions for stealing and you have been convicted a number of times for crimes of violence, which is the most serious aspect of this present offending. So far you have not learnt your lesson. I therefore place considerable emphasis on the need for personal deterrence, although not as I would have if you had not turned yourself in to police and fully cooperated and pleaded guilty at the earliest opportunity.

There is also a need for general deterrence. The courts have consistently emphasised the need for general deterrence in robbery cases. People minding their own business in their own homes need to feel safe. They need to be protected and general deterrence is a significant factor.

The prevalence of the offence is also a relevant matter to be taken into account. Acts of armed robbery are common in the community and this makes the need for general deterrence of greater importance.

I also take into account your relative youth and the fact that if you avail yourself of the help and support offered by your family, when you have served your sentence you have reasonably good prospects for rehabilitation.

So for the sentence, if it were not for your early guilty plea and cooperation with police, I would have considered an appropriate sentence to be imprisonment for six years. Applying a 25 percent discount to that, I consider an appropriate sentence to be a term of imprisonment for four years and six months.

I will come back to that, but I need to talk about the breach of bond.

In November 2008, you were convicted of aggravated assault on Gaileen Benson who, I am told, is your ex-girlfriend, and Agnes Campbell, your mother. You were sentenced to eight months imprisonment. You served two months and were released on conditions. The offending for which you are now being sentenced is a breach of the conditions of your release. There is, therefore: a period of six months left to serve on that sentence.

You have twice previously been released on conditions for an assault and twice breached those conditions by committing further aggravated assaults. You have shown no regard for court orders.

It seems to me that in the circumstances you should serve out the whole of the remainder of your sentence and do so cumulatively with the sentence for the present offending.

On the charge of aggravated robbery to which you have pleaded guilty, you will be convicted and sentence to imprisonment for four years and six months. This is to commence after the six month sentence for the aggravated assault committed in November 2008. But allowance must be made for the time that you have already spent in custody. So that six-month sentence will be deemed to have commenced on 23 March 2009. That is the date you were taken into custody in relation to the present offence.

My initial thoughts were that it would not be appropriate to suspend any part of your sentence because of the violent nature of the offence and your history of breaching court orders. However, the fact that your family are prepared to stand by you and help you to rehabilitate made me rethink that. Maybe you can turn your life around with the help of your family if you are placed under appropriate supervision orders.

For that reason, pursuant to section 40 of the *Sentencing Act*, I suspend the sentence, that is, the sentence for the offence of aggravated robbery, after you have served two years of that sentence on the following conditions:

- (1) That you be of good behaviour for a period of three years following the date of the release.
- (2) That for a period of three years following the date of your release:
 - (a) you are to be subject to the supervision of the Director of Community Corrections;
 - (b) you are to obey all reasonable directions of the Director of Community Corrections, including directions about your place of residence, your associates, training, employment and participation in voluntary community activities;
 - (c) you are not to purchase, possess or consume alcohol.
 - (d) you are to submit to random breath testing by a probation or parole officer, or police; and, importantly
 - (e) you are to participate in assessment, counselling and/or treatment as directed by a probation and parole officer, including a residential course or courses if required, in particular, to address alcohol misuse.

Pursuant to section 40(6), I fix a period of three years from the date of your release as the period during which you are not to commit another offence punishable by imprisonment if you are to avoid being dealt with under section 43.

Mr Campbell, it means that you have to stay out of trouble for three years and if you do not, if you breach your conditions of release or if you get in trouble again, you can be brought back to finish serving the rest of your sentence, which means another two and a half years in prison if you do not stay out of trouble for those three years.

I note that the victim has asked for a restitution order, is there any reason why I ought not direct, under section 88, that Mr Campbell make restitution to the victim for the \$20 that he took, and the \$15 which was the agreed price of the tobacco? I know it seems a small thing, but it may be very important to that man who has put in his victim impact statement that that is what he wanted.

MR GEARY: Your Honour, I'm instructed to seek restitution as you know from the facts. As I say, that history has suggested that even on small amounts of restitution, with regards to Aboriginal people, that it can set them up for failure if they don't pay it. But I mean it's a matter for your Honour, it is a small sum. But, certainly, if it was any larger, it may be beyond his means, but it is only a small sum.

HER HONOUR: Well, it is what, \$20 is all he's seeking really, but there's also the \$15 for the tobacco. Should I just make it the \$20 that he's asking for?

MR GEARY: Yes. Look, I'd seek that order, your Honour.

MS MUSK: The only other submission I want to make your Honour, is that whilst he's in the prison setting, that would be two years and six months, he is not in receipt of any effective income. He was receiving Centrelink payments when he was working for CDEP program, but he was not working, he was in receipt of unemployment benefits. But when he's in the prison setting, it's cut off.

HER HONOUR: He hasn't got \$20 are you saying?

MS MUSK: I'm unsure, but I might need to speak with him.

HER HONOUR: Could you, please.

MS MUSK: Sorry, your Honour, he doesn't have any savings and it's only in the prison setting, they accumulate a small wage which is owing – it's not proper money, it's money that's utilised within the prison setting to buy – it might be chocolates or cigarettes during their time in custody.

HER HONOUR: It can't be - - -

MS MUSK: It can't be sent out. So I'm concerned that if an order is made it might be that it has to be - it can only be effectively enforced after his release and has the capacity to be able to pay.

HER HONOUR: Mr Geary, realistically what should I do?

MR GEARY: Mm - - -

HER HONOUR: It just seems to me that it would be an appropriate thing to do for the sake of the victim that his wishes have been complied with in that respect. But, certainly, I don't want to put, for something as small as that, an obstacle in Mr Campbell's way that will set him up to fail, as you say.

MR GEARY: Your Honour, I'm instructed to seek restitution, there's not much I can say in the matter. All I would say is that I repeat that I would think if your Honour made that order, there's a good chance, in my experience, that we could then be back before the courts because of a failure to pay the restitution. I don't think that's in anyone's interest.

HER HONOUR: All right. Thank you for that guidance. I won't make any further orders.

Adjourn the court.
