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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SC 20916086

THE QUEEN

and

WESLEY JAMES CUTTA

(Sentence)

MARTIN, CJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON MONDAY 5 OCTOBER 2009

Certified a true transcript of a record.

Transcribed by:
Merrill Legal Solutions

HIS HONOUR: Mr Cutta, I am going to impose sentence now, but first I am going to say something about what you did and about you. So I am going to say quite a lot this morning and I would like you to listen as best you can to what I have to say.

Mr Cutta you have pleaded guilty to having sexual intercourse with the 36-year old female victim, without her consent. In other words, you have pleaded guilty to the crime of rape. The facts can be stated quite briefly, but the brevity of the statement of facts should not disguise the seriousness of your crime.

On Friday 13 March 2009 you consumed a large quantity of alcohol and became intoxicated. During the evening you had an altercation with your brother, which left you in an angry state of mind.

According to the Crown facts, in the early hours of Saturday 14 March 2009 you were walking through Crown land beside Mulga Camp when you saw the victim and approached her asking for a cigarette. You told a psychologist, who prepared a helpful report for the Court, that you were sitting down eating food when you saw the victim walking and that you walked up behind the victim and engaged her in conversation, by asking for a cigarette.

Regardless of the precise circumstances in which you came to see the victim, she told you she did not have a cigarette and walked on her way. According to the Crown facts, you followed the victim for a short period before grabbing her from behind. You told the psychologist that after the conversation ended you walked in opposite directions, but for reasons that you cannot recall, you turned around and ran toward the victim while her back was turned. Again, regardless of whether you initially walked in the opposite direction or immediately followed the victim, it is clear that you approached the victim from behind, placed your hand over her mouth and knocked her to the ground. Although you made a decision to attack the victim on the spur of the moment, I am satisfied that when you grabbed the victim from behind, you had decided to attack her for the purpose of forcing yourself upon her sexually.

After knocking the victim to the ground, you dragged her off the track and into the grass. You were trying to get her into an area where you could not be seen. With the victim on the ground, you punched and kicked her to the face a number of times, rendering her unconscious for a short period. While the victim was unconscious, you forcibly removed her shorts and underpants. You then pulled down your own shorts and underpants and laid on top of the victim. You inserted your penis into her vagina for a short time and ejaculated inside of her. After ejaculating, you stood up, pulled on your clothing and ran away, leaving the victim lying on the ground.

There is no mention in the Crown facts of the victim regaining consciousness during the attack, but you told the psychologist that although you kicked the victim twice in the head, she was not unconscious. You said she was half awake when you removed her shorts and that during sexual intercourse she was awake and crying.

In your consultation with the psychologist, you said that after you ran away you returned to the camp where you thought your clothes were dirty. You undressed and

washed the clothes and had a shower. You said that while in the shower, you began to think, 'I'm going to get caught by the police.' After showering, you went to bed. You claimed to the psychologist that in the morning you attempted to look for the victim and apologise but you were unable to find her. You said you wanted to take responsibility for your actions, but your family and your girlfriend's parents took you out bush instead. I view your version about wanting to apologise and own up with considerable scepticism.

Sometime after the sexual assault the victim walked to the police station and was later conveyed to the Tennant Creek Hospital for treatment. As a result of your assault upon the victim, she received a sore jaw, abrasions to her lip, a scratch to her left breast and numerous scratches to her knees and elbows from being dragged along the ground. The victim told me in her victim impact statement that after your attack, her face was swollen and painful. She lost skin from her arm and knees and it was painful for about a week until it healed.

The victim has also told me in her statement that your attack made her feel dirty and ashamed of herself. She now experiences nightmares. Not surprisingly, she is still angry with you.

It is, unfortunately, all too common for victims of sexual assaults to feel ashamed. I repeat what I have said previously. The victim should not feel ashamed. She did nothing wrong. She was the victim of a violent and unprovoked attack which she could not prevent. It is you, Mr Cutta, who should feel ashamed.

I accept that you understand that what you did was wrong and that, in a superficial way, you are sorry for what you did. You now experience feelings of low self-worth. However, you are an immature 17-year old and, not surprisingly, your first reaction was concern for yourself and concern that you had ruined your own life. When talking to the psychologist you demonstrated an understanding that the victim might be experiencing feelings of humiliation or shame, but I am of the view that by reason of your lack of education, immaturity, and general level of functioning, you do not properly appreciate the full impact of your crime upon the victim.

As to personal matters, you were 16 at the time of the offending. You are the youngest of eight children and you told the psychologist that although you witnessed domestic violence between your parents, seeing both physical and verbal arguments, your childhood and upbringing was moderately happy. However, there appears to have been minimal affection expressed within the family. Your mother died when you were about 12 and talking of her death is still a cause of sadness.

Having attended high school in Tennant Creek and completed year 8, you obtained employment in labouring positions. Later you undertook employment with Barkly Art, making and editing movies. Prior to being arrested for this offending, you were carrying out labouring and maintenance around the community and in Corella Creek. It appears that you have demonstrated a good work ethic and you describe yourself as hardworking and diligent. You spoke to the psychologist of ambitions to work as a station-hand.

Unfortunately, as is so common with young offenders like you, there is a history of excessive consumption of alcohol and use of cannabis. You told the psychologist that intoxication is associated with verbal and physical aggression. You said that you have used cannabis when you are feeling stressed out because it has the effect of making you quiet and relaxed. You claimed to have ceased using cannabis in 2008, when you moved to Corella Creek, because smoking cannabis made you lazy and interfered with your work performance.

Notwithstanding your problem with alcohol and cannabis, your only previous offending against the criminal law occurred in February 2007 when you entered a building at night, committed the offence of theft and damaged property when you were preparing to escape. You were dealt with in September 2007 by way of a community work order. This means, that until the present offending, you had kept out of trouble for two years after your first group of offences.

As to your attitude to women, you told the psychologist that you follow traditional values and have participated in traditional ceremonies. You explained to the psychologist that after participating in ceremonies, it is expected that men will treat women with respect and that not doing so incurs punishment. You said that your law does not allow men to assault women. Obviously your beliefs in that law did not prevail over your anger and your lack of control, by reason of your intoxication.

In addition, there may be another factor involved. You told the psychologist that at a young age you were sexually assaulted by a female and you recall experiencing feelings of shame and a desire to kill yourself. Although you have a history of short-term relationships, which you say ended as previous girlfriends were cheating on you, and notwithstanding a relationship with a young female at the time of the offending, it appears that the offence with which I am concerned was your first sexual experience after the occasion of the assault to which I have referred. Apparently sexual intercourse has not occurred in the recent relationship because your girlfriend wanted to wait until the pair of you were old enough.

As I have said, you are immature for your age. A report from your caseworker in Don Dale, where you have been held in detention since mid-May 2009, indicates that you are currently working in the Don Dale education program at year 5 level in respect of both literacy and numeracy. I am satisfied that your social and cognitive development is well below that of an average 17-year old male.

Generally speaking, you have responded well within the structured confines of Don Dale, but there are areas that have caused concern to those supervising you in Don Dale. First, on more than one occasion while in Don Dale, you have engaged in self-asphyxiation. You told the caseworker that you get a high out of choking yourself and that you had no intention of going too far and killing yourself. However, you told the psychologist that while in detention you attempted self-harm in response to feelings of loneliness and stress. You also described to the psychologist a prior suicide attempt and attempted self-harm in respect of stressors associated with your girlfriend.

In addition, while in Don Dale, you have displayed significant interest in a particular female detainee. You told the case worker that you liked sitting and talking to that detainee and, through your Counsel, you have told me that she was one of the few in Don Dale of your language group and you enjoyed sitting and talking to her in language. You have also been heard to make, on occasions, inappropriate sexual comments or slurs. I am satisfied that these matters are signs of your immaturity with respect to sexual matters and of your lack of social development.

As to the future, the psychologist has expressed the view that you have good prospects of rehabilitation and that you do not present as a high risk of re-offending. However, that view was qualified with recognition that consumption of alcohol would be likely to increase the risk of general re-offending and that it is possible that you may be prone to violent re-offending if your substance misuse is not addressed. I am of the view that although there are positive signs for rehabilitation, there is a long way to go because you are at a high risk of continuing with misuse of alcohol, which in turn will greatly increase the risk of re-offending. Rehabilitation is also dependent on successful resolution of issues arising from the sexual assault upon you. Personal deterrence remains a significant factor.

In considering sentence, I am acutely aware of your youth and immaturity and of the importance of rehabilitating young offenders. However, these matters, and the other matters of mitigation, must be weighed against the seriousness of your crime and the need to impose a penalty which will properly reflect the factors of punishment, community disapproval and general deterrence.

Crimes of sexual violence are far too common in our community, and particularly in Aboriginal communities, and the community as a whole is very disturbed by these crimes and their effects on victims. Women are vulnerable to attacks by male persons, including young male persons like you. And all women, regardless of their age and ethnic background, are entitled to the full protection of the law. General deterrence, punishment and marking the condemnation by the community are particularly important features of sentences in your case. Your crime is so serious that your rehabilitation must take second place to these factors.

Every crime of rape is a very serious crime but, as with all other crimes, there is a scale of seriousness. Your violent sexual attack is a serious example of crimes of this type. While committed on the spur of the moment without the use of a weapon, you attacked from behind a woman who was minding her own business in a public place and dragged her to a locality where you could sexually assault her, unseen by passers by. In order to subdue and dominate the victim, you punched and kicked her to the face with sufficient force to knock her out. Then you forced yourself upon her with a completed act of penile intercourse. You were intoxicated, but you knew what you were doing was wrong. This is demonstrated by your dragging the victim off the track and by your running away.

You are convicted. In fixing the head sentence I exercise my powers under the Sentencing Act. Had it not been for your plea of guilty, I would have imposed a sentence of eight years imprisonment. After allowance for your plea, I impose a

sentence of six years, commencing 11 May 2009, which will begin as detention and become imprisonment when you turn 18. If you had been an older, more mature person, the sentence would have been longer, as would the non-parole period.

Exercising my powers under the Youth Justice Act, I fix a non-parole period of three years and nine months.

Is there anything further?

MS COLLINS: No, your Honour.

MR JONES: Nothing arising.

HIS HONOUR: All right, thank you.

Now, Mr Cutta, you have a total sentence of six years imprisonment, but after three years and nine months you can apply for parole. After three years and nine months you can apply for parole, that is, you can apply to be released on probation. So you must serve a minimum three years and nine months. Whether you will be released on parole is a matter for the Parole Board.

Thank you, would you adjourn the Court please.
