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THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SCC 20904928

THE QUEEN

and

BRENDAN GREEN-ROBINSON

(Sentence)

MARTIN CJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON MONDAY 12 OCTOBER 2009

Transcribed by:  
Merrill Legal Solutions

HIS HONOUR: Mr Green-Robinson, I am going to impose sentence now, but before I fix the sentence I am going to say something about you and about what you did.

You have pleaded guilty to having sexual intercourse with the 24-year old female victim without her consent. In other words, you have pleaded guilty to the crime of rape. The maximum penalty is life imprisonment.

During the evening of 7 February 2009, you and the victim were drinking together as part of a group. You were also smoking marijuana. I accept that you became very drunk. The victim was also intoxicated. Later in the evening, the group was drinking near Adelaide House and, at about 11 pm, the group decided to leave the area.

You told a psychologist, who prepared a helpful report for the Court, that you got bored with the group and suggested to the victim that you go for a walk. You told the psychologist that you walked with the victim to the park where the offence took place.

According to the Crown facts, after both of you had consumed a few more cans of beer, the victim told you that she wanted to go back. You said, "Let me have a quick one.", and the victim said, "No." As the victim went to stand up, you grabbed her by the collar choking her as you pulled her back down and making it difficult for her to breath.

In order to subdue the victim you punched her in the head, causing a laceration to the left side of her forehead. That laceration bled and caused significant blood loss. Later when you were asked by the psychologist why you had physically assaulted the victim, that is, why you had punched her, you were unable to explain why you did so.

Other information, to which the psychologist referred, indicates that you had also said you were horny and became angry when your sexual advances were denied. I am satisfied that you knew the victim was not going to consent to having intercourse and you punched her in order to overcome her resistance.

After punching the victim, you laid on top of her and removed her shorts and underwear. You also pulled down your own clothing and you and the victim were both naked from the waist down. You opened the victim's legs and inserted your penis into her vagina. In order to achieve the act of intercourse you laid on the victim using your body weight to pin her to the ground and you held her wrists down with your hands.

You then had penile intercourse in a rough manner causing pain to the victim. She began yelling out for help. After ejaculating you stood up, put your clothing back on and ran away. The victim put her clothing on and staggered to a fence where she was met by passing police who had been alerted to the disturbance.

As a result of the sexual attack, including your punch, the victim sustained swelling and bruising to her facial area and the laceration to the side of her head required stitches. I am told that the victim has declined to give a victim impact statement. It would be very surprising if your sexual attack had not had an impact upon the victim. Frequently in these types of circumstances the victims feel dirty and ashamed. I do not know whether there will be ongoing effects for the victim.

I have stated the Crown facts quite briefly, but the brevity of that statement should not hide or detract from the seriousness of your crime. You sexually violated a woman who was going about her business in the middle of the night drinking with people who she presumably regarded as friends. You violated her trust and you used physical violence to achieve your ends.

You committed a very serious crime. Women in the position of this victim are vulnerable to attacks by men like you, and these women and all women in our community are entitled to the full protection of the law regardless of their age or ethnic background. This Court must do what it can through the imposition of penalties to discourage men like you who are tempted to violently attack women. These types of crimes, as the Court keeps saying, are far too prevalent in our community and particularly within Aboriginal communities, and general deterrence, that is, deterring others from committing these types of crimes, is a particularly important factor in the exercise of the sentencing discretion.

As to personal matters, you were born in 1992 and you were aged 16 at the time of the offending. Unfortunately, you had what is often referred to as a dysfunctional life as a child moving between various members of your wider family. As a young child you were exposed to violence within the family and excessive consumption of alcohol. You told the psychologist that you learnt about sex when you were six or seven years of age and you spoke of your uncles watching pornography, which you also watched. You told the psychologist you enjoyed watching, but you now believe that you were too young to do so. It is very apparent that you were de-sensitised to violence, including sexual violence, as a young child and that you had not had the advantage of appropriate role models.

The neglect which you suffered invariably led to you associating with the wrong type of people and to abuse of both alcohol and cannabis from a very young age. Although you attended high school to Year 9 and told the psychologist that you enjoyed school and the classes, you were only somewhere between the ages of 10 and 12 when you started using cannabis, having learnt about the use of it from watching the family smoking the drug. By the age of 13, you were smoking seven days a week and consuming two bags of marijuana each day by the age of 15. You told the psychologist that smoking relaxed you, but this is in contradiction to the information provided by your auntie who said that you become both physically and verbally abusive when you are under the influence of drugs and alcohol.

You started drinking at the age of 14 and, as I said, you grew up watching older family members consume alcohol to excess. At the start you were drinking two or three days a week, but you rapidly increased your consumption. You told the

psychologist that at about the time of the offence you drank once a week with the family and said that you frequently hid cans from other family members so that you would be able to drink them by yourself. You also were drinking spirits by yourself.

Yours is a history that evokes considerable sympathy and it is a history which is distressingly familiar to Judges and Magistrates who hear criminal matters. Sometimes when the offending is not serious, these types of history can lead to sentences which give priority and emphasis to rehabilitation. Unfortunately, when the offending is as serious as your crime, matters personal to you, including your youth and rehabilitation must take second place to the other factors of general deterrence, punishment and marking the condemnation of the community. As I have said previously, the wider community is very disturbed by these types of crimes.

I note that you have for your age of 16 committed a large number of previous offences. Although it can be said that in the main there were two periods of offending, and those offences include the breaking and entering and dishonesty type offences as well as offences of assault, none of the offences of assault involve women and they generally relate to you trying to avoid apprehension. Unfortunately, previous efforts by the Court to assist you have been unsuccessful. What is disturbing is that you have graduated from those types of offences to this particularly serious offence of rape.

As to the future, I accept that you have a degree of insight into your problem with alcohol and cannabis and a degree of understanding of the effects of your crime upon the victim. However, you are an immature young person and although you feel shame and understand that the victim is probably feeling shame, I doubt that you fully appreciate the full impacts of this type of crime upon the victim.

There is some hope for your future. Personal deterrence, that is, deterring you from offending again, remains significant. It must be said that on the information available to me at the moment, your prospects of full rehabilitation in the near future are not good. When I speak of full rehabilitation, I mean rehabilitation to the point where you can be released into society without being a risk of future offending. You are doing reasonably well in Don Dale, but as is so common with young people like you, the structured and controlled environment of Don Dale seems to assist, but the risk persists when you are released from that structured and controlled environment of returning to old ways.

You are convicted.

Had it not been for your plea of guilty, I would have imposed a sentence of six years and nine months imprisonment. Exercising my powers under the *Sentencing Act* and after allowance for your plea of guilty, I impose a sentence of five years, which will begin as detention and then will be converted into imprisonment once you turn the appropriate age. That sentence is to commence on 6 July 2009.

In exercising my powers under the *Youth Justice Act*, I impose a non-parole period of three years and six months.

I point out to you and those who will become aware of these sentencing remarks that both the sentence and the non-parole period are shorter than the periods I would have fixed if you had been an older and more mature person.

These additional remarks are added after reflection on the sentence and non-parole period and on my statement that in fixing the non-parole period I exercised my powers under the *Youth Justice Act*. My sentencing remarks were extempore and followed immediately upon the conclusion of submissions. In fixing the non-parole period, I fixed the period I considered appropriate without regard to the minimum period specified by the *Sentencing Act*. Hence my reference to the powers contained in the *Youth Justice Act*. At the time of sentencing I did not do the percentage evaluation and it is a coincidence only that the non-parole period is 70 percent of the head sentence.

Is there anything further from Counsel?

MR ROBERTS: No, your Honour.

MS COLLINS: No, your Honour.

HIS HONOUR: Thank you.

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