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THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SC 20719827

THE QUEEN

and

ERNEST HAYNES

(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 Haynes, you have pleaded guilty to unlawful assault, in the circumstances of aggravation that the victim suffered harm, that the victim was a female and you are a male and that the victim was threatened with an offensive weapon, namely, an iron bar.

On 8 October 2006 you attended at Ali Curung for the annual sports weekend. In the middle of the day there was a large disturbance involving a number of families between whom there have been significant issues of conflict for many years. In effect, there has been an ongoing feud and you became part of that feud that day when, in the words of your Counsel, you targeted the female victim of a particular family. You took up an iron bar approximately one metre long and approached the victim in a front yard, where you lifted the iron bar above your head with both hands and swung it down, striking the victim on the back of the head. You then walked off.

The blow that you struck to the back of the victim's head caused a 10-centimetre scalp laceration to the left side of the top of her head. After you had assaulted the victim, a number of other persons also assaulted her, causing more serious injuries. You are not responsible for the later assaults and you are not to be sentenced for the harm that was caused by other people assaulting the same victim. You are to be sentenced only for your assault with the bar which caused the laceration to the top of the victim's head.

In her victim impact statement, the victim has told me that she still gets pain in her head, but it is difficult to separate the impact on the victim from the impact of later assaults, which were more severe than your assault.

You were born in 1981 and raised at Ti Tree. You now speak and read English quite well, having attended boarding school in Alice Springs and in Darwin. I am told that you have, over the years, been a worker and that you have signed onto the new work program which replaces the old CDEP program.

You have a record of prior offending dating back to 1998, mainly involving road traffic offences. Those offences include offences involving alcohol. Apart from a couple of minor social-type offences and the offences against the road traffic laws, the only other type of offending involves two offences of aggravated assault, the first of which occurred on 8 November 2005 during an argument with your wife. Apparently your wife had used a degree of physical violence towards you which resulted in a laceration, but you responded by striking your wife with a 20-centimetre steel pipe. You hit her about the head and legs and she was hospitalised.

You were dealt with for that offence on 5 June 2006 when a sentence of one-month imprisonment was imposed, but suspended. The operational period of suspension was 12 months and the offence, with which I am concerned, which was committed on 8 October 2006, is a breach of that suspended sentence. I find the breach proved and I restore the sentence of one-month imprisonment. That sentence is to be served concurrently with the sentence that I will impose for this offence.

The second offence of aggravated assault occurred on 22 August 2008 when you pushed your mother into the side of a car during an argument. At the time of that offence you were on bail for the offence with which I am concerned. You were dealt with on 22 January 2009 at a time when your bail had been revoked. A sentence of imprisonment for one month was imposed and it seems likely that you were given a sentence of imprisonment to serve because you were in custody anyway on this matter.

Over the years alcohol has obviously been a problem and your Counsel has told me that alcohol was the major cause of the violence that occurred between you and your wife in 2005. As a consequence of that occasion, you and your wife stopped drinking alcohol, although you admit that you lapsed in August 2008 on the occasion when you pushed your mother.

You and your wife have been together for about 11 years and there are three children of that marriage, aged 11, 10 and 7. In connection with this matter, you have spent considerable periods in custody, totalling one year and 15 days. You and your family found those periods stressful because it involved lengthy separation from the family. In effect, you have already served one year and 15 days for this offence.

I accept that you got caught up in the feud and that you now realise the serious consequences for you. I also accept that you have decided not to become involved in the future, but I do not detect in you any true remorse for what you did. This is likely to be the product of the long-standing dispute, but personal deterrence remains a significant factor because you need to be persuaded that you should stay clear of this type of trouble and not get involved.

I must also bear in mind the need to impose a penalty which, hopefully, will act as a deterrent to others who are tempted to use this type of violence. In particular, hopefully, to deter others who might be tempted to use violence in the course of this ongoing dispute. The Criminal Court is well aware from previous cases of the dispute, and also well aware that very significant violence has occurred in the past, with serious injuries. Those who are tempted to use violence must understand that gaol sentences will follow. They must also understand that the wider community strongly disapproves of that sort of violence.

The maximum penalty for your offending is five years imprisonment. Although you did not cause a serious injury, nevertheless, you lacerated the scalp of the victim and you used a weapon, namely an iron bar. So your offending is not at the lowest end of the scale of seriousness.

Had it not been for your plea of guilty I would have imposed a sentence of two years and three months imprisonment. After allowance for your plea, I impose a sentence of one year and nine months imprisonment, commencing 20 September 2008. As I said, the restored sentence is to be served concurrently with this sentence. The sentence of one year and nine months will be suspended today.

The operational period of the suspension is three years. During the period of three years from today, that is, the operational period is three years from today, you are to be under the supervision of the Director of Correctional Services and you are to obey the reasonable directions of the Director, including directions as to your residence, employment, counselling, treatment and undertaking rehabilitation programs, and this includes counselling treatment and undertaking rehabilitation programs in relation to the consumption of alcohol, family violence and anger issues.

So, Mr Haynes, the sentence is actually one year and nine months imprisonment, but because you have already served one year and 15 days, you will be released immediately. Now that leaves about eight and a half months hanging over your head. So when you walk out of here today, there is still about eight and a half months imprisonment hanging over your head, not yet served. If you get into trouble in the next three years from today, you will be brought back here and you will be liable to serve that eight and a half months; you will be liable to go to gaol for eight and a half months.

You are to obey the probation people. In effect, you are on probation. You have got to obey the reasonable directions of the Director or a probation officer. I am not sure if I used those words; I should have. You are on probation; you will do what you are told about where you live, where you work and about getting counselling and treatment. So if they tell you to go off and get counselling, go off and treatment, you go. If you disobey the instructions of the probation people, then you will be brought back here and you will be liable to go to gaol for eight and a half months. So it is over to you. You do what you are told and stay out of trouble, you will be okay. But it is there for the next three years. I have deliberately made it quite long.

In addition, I am going to add a condition about this suspension and it is a condition that for 12 months from today, you are not to consume alcohol; so no grog for the next year. And if you drink grog you will be in breach and you will be brought back here and you will go to gaol. So you have told me you are staying off the grog, I am now going to make you, give you an incentive. No grog for one year and your wife is here. She can hear what I am saying. Otherwise you come back here, you go to gaol.

Further, it is a condition that you submit to breath analysis, for the presence of alcohol, forthwith upon request by a probation officer or a police officer. So if a probation officer or a police officer says to you, 'Blow in the bag' you have got to blow and if you do not blow, again, you will come back here and you will be at risk of going to gaol for eight months. The probation people are there to help you. Stay out of trouble and no grog for a year. Remember that or you will go to gaol.

Is there anything further?

MR NOBLE: Nothing else arising, your Honour.

HIS HONOUR: All right, thank you.

Thank you, we will adjourn until 2.

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