

N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Northern Territory, proceedings for infringement will be taken.

---

THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SCC 20908085

THE QUEEN

and

LIONEL DENNIS JERRY

(Sentence)

MILDREN J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON THURSDAY 15 OCTOBER 2009

Transcribed by:  
Merrill Legal Solutions

HIS HONOUR: Lionel Dennis Jerry, you have pleaded guilty to one count, that between 1 October and 14 November 2008, at Innesvale Station - - -

THE INTERPRETER: I'm sorry, Sir, I haven't got the date?

HIS HONOUR: 1 October and 14 November.

THE ACCUSED: Yeah.

HIS HONOUR: Via Katherine, you indecently dealt with a child under the age of 16 years and that the indecent assault involved a circumstance of aggravation, namely, that the child was under the age of 10 years, namely, 6 years. The maximum penalty for this offence is imprisonment for 14 years.

At the time of the offence you were residing in the red house at Innesvale Station, approximately 140 kilometres south of Katherine. The complainant also resided at the station with her family. On the occasion in question the child was playing outside the red house on the lawn in your vicinity. You approached her and then you manoeuvred one of your fingers under her shirt and underpants and placed it on the complainant's vagina while she was sitting on your lap.

Following a complaint made at the police, you were arrested on 4 March 2009 at Hodgson Downs in Minyerri and conveyed to the Katherine Police Station where you participated in an electronically recorded record of interview and made full admissions. You were then charged with the present offence and remanded in custody. You have been in custody ever since on remand.

The proceedings come before this court by way of an ex officio indictment to which you have pleaded guilty. You have no relevant prior convictions and your only priors are now very old. So far as your prior convictions are concerned, I do not take them into account.

No victim impact statement has been provided to the court, as the child's family have indicated to the prosecution that they do not wish to provide one. The Sentencing Act provides that, in those circumstances, the Court shall not draw an inference in your favour, nor an inference against the victim.

As to your personal circumstances, you are now 48 years of age, you having been born on 11 March 1960. You come from a very religious family. Your father was a lay preacher. Your mother was also very religious. Your father was an elder and was employed as a stockman. You attended church from an early age and came to know the Bible. You were also initiated as a young man in accordance with Aboriginal tradition.

You completed schooling until Year 10 and you became a stockman yourself. You were employed as a stockman for many years. At some stage, you turned away from your faith and your culture and became a heavy drinker. As a result of your drinking you now have Type 1 diabetes.

In around 2004, you became infected by gangrene in your right foot as a result of which your right leg was amputated from the knee down. You have also lost two toes on your left foot as a result of gangrene.

Because of your heavy drinking you are now estranged from your wife and children. You have not worked since the year 2005. Since then you have been in and out of hospital and have suffered from ill health. You are now in receipt of a disability pension and are unable to work any longer.

Since you have been incarcerated in relation to this matter, you have returned to your religion and started to read the Bible again. You have taken solace in attending church on Sundays. I notice also that during your period in custody your health has improved.

Your counsel has told me that whilst in custody you have had no visits from any members of your family. It was put to me during sentencing submissions that you cannot see too well and that you did not have your glasses with you. I do not know whether you simply do not have any glasses or whether you just did not bring them to Court at the time of your sentencing hearing.

I accept that you are deeply ashamed for what you have done and for the shame that you have brought upon your family. Your remorse is also indicated by the fact that you immediately owned up to the offence when interviewed by the police; that you have waived your right to a committal hearing and you have pleaded guilty at the first opportunity to an ex officio indictment.

In those circumstances, I am of the view that you are entitled to a discount of 30% of the head sentence, which otherwise I would have imposed.

It was put on your behalf that the offence was at the extreme low end of seriousness. I accept that this was not a case where you were in a position of trust with the child concerned, in the sense that you are not related to the child, nor did you have any responsibilities for looking after the child.

On the material before me, you were only at this particular station for a short time when the offence occurred. Nevertheless, I note that the child trusted you sufficiently to sit on your lap. You were also sober at the time and the only explanation for your conduct is that your act was a selfish one. I accept that the offence is out of character.

I have noted that you worked hard all of your life up until the time when through your disability you have been unable to work.

Your future plans, when you are released from prison, are to return to north Queensland where your family originally came from and you plan to stay there at Doomadgee with your sister and brothers.

The Crown submitted that this was objectively a serious offence and that the Court must impose a sentence of imprisonment in order to show people like you, who might be tempted to commit an offence of this kind, that offending of this sort will not be tolerated.

In this particular case, there is no evidence before me that there is any premeditation disclosed by any predatory conduct. It appears that the offending took place in a very short period of time. There is no evidence of any force used to overcome resistance by the victim. There is no evidence of any manipulation of the victim by suggesting to her that she ought not to say anything about it to other people. Further, it was an offence which occurred on its own and not accompanied by other offending.

THE INTERPRETER: Sorry, Sir?

HIS HONOUR: It was an offence which occurred on its own and not accompanied by any other offending.

On the other hand, the victim was very young, being only six years of age, and there is a very large disparity in age between you and the victim.

The Court of Criminal Appeal in the case of R v JO has emphasised that the question of general deterrence must assume particular significance in the exercise of discretion in sentencing cases of this nature. Offences against children of a sexual nature are far too common. The maximum penalty for this kind of offence was increased in 2004 from 10 to 14 years and the sentencing courts must respond accordingly.

The Court went on to say this and I quote:

Sexual assaults against children are abhorrent crimes which cause grave disquiet throughout the community. In recent years, the community has come to recognise that these offences are far more prevalent than previously was thought to be the situation. The community has reached a more enlightened understanding of the nature of sexual crimes and the personal violation involved in all such crimes.

THE INTERPRETER: I'm sorry, Sir?

HIS HONOUR: And the personal violation involved in all such crimes, including those previously regarded as relatively minor offences. The impacts of these types of crimes are now better recognised and understood, particularly the long-term effects upon victims who were children at the time of the offending.

Children are among the most vulnerable members of our community and are entitled to the full protection of the law.

And that is the end of the quote.

Nevertheless, taking into account all of the material facts, I consider that this particular crime does fit at the low end of the scale. As the Court of Criminal Appeal recognised in R v JO, there is no tariff for this kind of offence, although there is a range of appropriate sentences that can be said to comprise the sentencing standard, albeit it is a standard which does not have a fixed range or tariff.

In the present case there is no specific evidence directed to the question of whether or not you are likely to re-offend in the future. The only material which bears on that question is the fact this was an isolated offence; that there has been a very early plea of guilty; and remorse and contrition shown; and there are no prior convictions of a similar kind.

In fact, I note that there are no prior convictions at all since 1993, and the only prior convictions which you have are two convictions for consuming liquor in a restricted area; one for driving unlicensed; and one in 1991 for driving whilst having a concentration of alcohol of .063 percent when you were required not to have consumed any alcohol at all.

I think this evidence is sufficient for me to make a finding on the balance of probabilities, that you are unlikely to re-offend in the same way.

You have now been in custody for a total of 223 days or a little over seven months.

But for your remorse and pleas of guilty, I would have imposed a head sentence of imprisonment for 18 months. I reduce that to imprisonment for 12 months and 2 weeks taking into account those matters.

You are convicted. Your sentence is back-dated to 4 March 2009 to take into account time already spent in custody.

THE INTERPRETER: 2000 - March?

HIS HONOUR: 4 March.

I order that you be released forthwith, and the balance of your sentence be suspended.

I fix the period of 18 months as the period during which you must not commit another offence punishable by imprisonment, if you are to avoid the consequences of section 43 of the Sentencing Act.

Now, what that means is that you have got a head sentence of 12 months and 2 weeks, but I am going to let you go today on a suspended sentence.

That is right. If you breach - - -

THE INTERPRETER: Sorry, Sir.

HIS HONOUR: If you misbehave in the next 18 months, then you will be back before me and then I will have to decide whether you are going to go back to gaol to finish off that 12 months and 2 weeks.

Anything arising, Mr Usher?

MR USHER: No, your Honour.

HIS HONOUR: Ms Swift?

MS SWIFT: No, your Honour.

HIS HONOUR: Ms Swift, will you do your best to explain again?

I think he understands.

MS SWIFT: Yes.

HIS HONOUR: Explain again what - - -

THE INTERPRETER: (inaudible) all again?

HIS HONOUR: What the effect of the suspended sentence is.

MS SWIFT: Yes, thank you, your Honour.

HIS HONOUR: Yes, very well, thank you.

The court is adjourned.

---