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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SC 20835303

THE QUEEN

and

GRAHAM KUNOTH

(Sentence)

SOUTHWOOD, J

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON FRIDAY 23 OCTOBER 2009

Certified a true transcript of a record.

Transcribed by:
Merrill Legal Solutions

HIS HONOUR: Graham Kunoth, the offender, has pleaded guilty to a single count on an indictment dated 2 July 2009. The count pleads that contrary to s 181 of the Criminal Code, on 24 November 2008 at Alice Springs, the offender unlawfully caused serious harm to Darren Lockwood. The maximum penalty for this offence is imprisonment for 14 years.

The offender is an Aboriginal man. He was born on 14 June 1976. He is 33 years of age. He left school at the age of 16 years. He does not recall what year he was in when he left school. He has done very little work since leaving school.

The offender has an extensive criminal record. It extends for 20 pages. He has 13 prior convictions for crimes of violence. He was last convicted of a crime of violence on 10 May 2006. He last offended on 23 December 2007 when he entered an occupied dwelling at night and committed the crime of stealing.

The facts of the offending are

On Monday 24 November 2008, the offender was in Cell 51 at the Alice Springs Correctional Centre, when he was ordered by a senior corrections officer to stand at the rear of the cell. The offender ignored the order and filled a foam cup with water and sat down. The offender was again told to stand at the rear of his cell and he again refused to comply.

Officers then entered the cell and took hold of the offender by each arm and placed him on his stomach on the floor due to the offender being aggressive towards them. Darren Lockwood, the victim, then took hold of the offenders legs to stop him from kicking out at the officers. The offenders cell was then cleaned out by the other supporting prison officers.

The offender yelled out, 'I'm going to get one of you white cunts soon.' The offender was stood up onto his feet and assisted to the rear of his prison cell and placed back onto his stomach. The victim was holding the offenders legs and again the offender yelled out to the officers, 'I'm going to get one of you white cunts soon.'

The offenders handcuffs were removed and as the victim was leaving the cell, the offender got to his feet and ran at the victim, punching out and kicking at the victim. The offender rushed at the victim three times. All the time the victim was telling the offender to move back. The third time the offender rushed at the victim, he made contact with the victim, forcing the victim backwards and causing him to fall to the ground and his left knee to pop. The victim suffered a tear of the medial meniscus, a rupture of the interior cruciate ligament and some chondral damage of the patella.

On 16 December 2008, police attended at the gaol where the offender participated in a taped conversation with them. During the conversation the offender made admissions to his offending.

If the injury had been left untreated, the victim would have sustained significant degenerative change to his left knee. Without surgery he would have been unable to continue normal work duties.

Counsel who appeared on behalf of the offender admitted the truth and accuracy of the facts to which I have referred. I find the facts proven and I convict the offender of the crime of cause serious harm to Darren Lockwood.

A Victim Impact Statement was tendered in evidence. In his Victim Impact Statement, Darren Lockwood stated that the injuries he sustained required him to undergo two surgical procedures to his knee. His recovery has been long and painful. For a period of time he was emotionally disturbed by the incident. He could not perform his normal domestic duties around the house and this caused him to suffer further stress and anxiety.

While all such offences are serious and the offending is aggravated by the fact that it involved an assault upon a prison officer by an inmate during the course of the prison officers performance of his duties, the offending is towards the lower end of such offences. The assault did not involve the use of a weapon and the serious harm suffered by the victim was indirectly caused by the conduct of the offender. The attack was of limited duration.

As to the context in which the offending occurred, I have taken into account the following factors: at the time of the offending, the offender was serving a sentence of three years and three months imprisonment for entering an occupied dwelling at night and stealing. At the time of his offending, the offender was constantly being abusive. He was talking on the intercom system to Correctional Services Officers swearing at them and baiting them. Because of such behaviour he was regularly being stripped of his privileges and placed in isolation. Just before he committed the offence, the offender had been assaulted by another prisoner who had accused him of looking at him when he was exercising.

I note that since the offender committed the offence for which he is to be sentenced today, there has been a marked improvement in his behaviour. The prison officers involved in the management of the offender believe that the offender can be effectively managed, although management is difficult.

A report from a psychiatrist was obtained under s 106(2) of the Sentencing Act. The report reveals that the offender has a history of anger management problems. He has a history of unpredictable and aggressive behaviour. He suffers from poor impulse control and has difficulty in regulating his emotions. He has poor insight into social cues and a poor capacity to process and attribute meaning to the actions of others. While in prison he has regularly been difficult to manage and he has failed on occasion to respond to direction.

In the psychiatrist's opinion, the offenders intellectual capacity is in the low average range. He is well orientated to his situation as a prisoner. He has caused significant management problems. He is not a logical or thought disordered. He has a rigid

cognitive style such that he finds it difficult to examine himself, shift his position, and consider alternative frames of reference. He even appears to see prison officers as a logical target for his expressions of frustration and anger and he can become ready to attack unless he is reassured and dealt with in a very deliberate and clear fashion.

However, there is fortunately a more sympathetic aspect of his nature such that he is not a malicious or callous individual. He has a sense of decency. He feels responsible for his aggressive behaviour. He has harmed only a few people in prison and he is trying to improve himself. With some assistance, he is trying to show that he has the capacity to respect appropriate forms of authority.

His behaviour has made it difficult for the psychiatrist to conduct a full and complete interview. The psychiatrist was unable to learn anything about his developmental circumstances. The psychiatrist has an impression that there has been lifelong impairment of the offenders cognitive function which may have been exacerbated by heavy alcohol intake and the numerous minor head injuries he has suffered over the years as a result of numerous violent altercations with other people. However, the impairment of the cognitive function is not severe.

The psychiatrist who examined the offender was unable to come to a definitive diagnosis. He stated the main diagnostic issue was to establish whether all of the offenders behaviours can be explained as being due to a combination of his cognitive limitations and a personality disorder of antisocial and explosive type or whether the very dysphoric, persecutory, ruminative and obsessive features observed amounted to an additional diagnosis of chronic low grade depression, a dysthymic disorder. Either of those mental states would be exacerbated by any form of cognitive impairment resulting from head injury and his additional diagnosis of chronic alcohol abuse is also relevant to the unmasking of his aggressive behaviour. The offender has grossly impaired social skills and he exacerbates this problem by preferring to isolate himself from others.

The psychiatrist stated that the offender appears to fully acknowledge what has happened and he takes responsibility for his behaviour. There appears to be some extenuating factors given that the offender was himself subject to inappropriate violence from another prisoner just before he offended on this occasion. As a result he would have been experiencing an added degree of anxiety and arousal. These are negatives effects which he can usually be expected to cope very poorly with. The offenders destructive outbursts are aimed at expressing his feelings of tension and frustration. The harm suffered by the victim was indirect. It occurred when the offender rushed at him and he fell.

In summary, the psychiatrist stated that the indications are that the offender has congenitally low average intelligence, very rigid patterns of thinking and his behavioural responses are probably best seen as ingrained personality characteristics. There are some positive aspects including the fact that the offender expresses contrition for his offending. He feels sorry for what he did and he has convinced the prison officers of his desire for change by causing no further significant problems since he offended on 24 November 2008.

By way of mitigation, I accept that the offender feels genuinely sorry about his conduct and that he has taken steps to try and improve his behaviour while in prison. In the circumstances I find that while the offender's prospects of rehabilitation are very problematic, they are not completely without hope.

As a result of the offender's plea of guilty, I have reduced the sentence of imprisonment that I otherwise would have imposed on the offender, by 25 percent.

In all of the circumstances, I have given the greatest weight to punishment and deterrence. I have also given some weight to the offender's remorse and prospects of rehabilitation. The offender, and others, must be discouraged from committing the same or similar crimes in the future. Prison officers are entitled to go about their duty without being assaulted by prisoners and the Courts must do what they can to protect them.

I turn to sentence the offender.

I sentence the offender to 18 months imprisonment. Six months of the sentence of 18 months imprisonment that I have imposed on the offender is to be served concurrently with the sentence of imprisonment that the offender is currently serving of three years and three months. The sentence of imprisonment that I have imposed on the offender is to commence on 23 September 2010.

Under s 57(1) of the Sentencing Act I fix a new single non-parole period of three years in respect of all the sentences the offender is now to serve. The new single non-parole period is to commence on 23 December 2007. That means that the offender will become eligible for parole on or about 23 December 2010 and at the latest he will be released from prison on or about 23 March 2012.

When passing sentence on the offender, I have had regard to the principle of totality. In my opinion the total sentence which the offender is now required to serve is a just sentence which truly reflects the totality of his criminal conduct.

Mr Kunothe, as you heard, in passing sentence upon you, I have taken into account the fact that you are trying to improve your behaviour in prison. It is important that you continue to try and behave well while you are in prison. I strongly suggest that you give consideration to allowing yourself to be fully assessed by Dr Smith and to taking part in the Psychological Management Program provided at the prison by Mr Martin O'Grady. In my opinion, you will find, if you participate in such a program, it will be of considerable help to you in trying to manage your anger and frustration.

I also recommend that the Director of the Department of Corrections or his delegate obtain copies of all pre-sentence, psychiatric and psychological reports that have been provided to the Courts to date in relation to the offender and that copies of those reports be provided to Dr Smith and Mr O'Grady.

All of that means that you now become eligible for parole on 23 December 2010. That is 23 December next year and that if parole is not granted, the latest you will be released from prison is about 23 March 2012.
