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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SC 20919647

THE QUEEN

and

JAMIE NELSON

(Sentence)

MARTIN, CJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON TUESDAY 6 OCTOBER 2009

Certified a true transcript of a record.

Transcribed by:
Merrill Legal Solutions

HIS HONOUR: Mr Nelson, you have pleaded guilty to unlawfully causing serious harm to the female victim who had been your wife. The relationship commenced in 2006 and there are two children of that relationship, aged 3 and 1. Initially the relationship was happy but problems emerged in 2008.

On 18 November 2008 you were served with a domestic violence restraining order restraining you from causing harm or threatening to cause harm to your partner, and from intimidating, harassing, threatening or verbally abusing her. Your separation from your partner occurred at about this time. You breached that order on 5 December 2008 when you attended at premises at which your former partner was staying. At that time you were very upset because your father was ill. You began shouting at the victim and demanding that she come out and meet you. When she walked away from you, holding the baby, you picked up a rock about the size of a matchbox and from a distance of 10 metres, threw it at her. The rock missed and landed near the victim's right leg and she began to cry. As she was walking towards the house you approached her and slapped her once to the left side of her face with an open hand. Later you were asked why you committed the assault and you said you were angry because your father was sick. You acknowledge it was the wrong thing to do.

On 12 February 2009 a Magistrate dealt with you for the offence of assault by proceeding without a conviction and releasing you on a good behaviour bond for two years. The offence with which I am concerned occurred a few months after the Magistrate had dealt with you and it is a breach of that bond. I have found the breach proved, but in view of the sentence I am about to impose upon you I have decided not to make any order in respect of that previous offence.

A further domestic violence restraining order was served on you on 12 December 2008. It was in similar terms to the previous order and restrained you from assaulting the victim or from harassing, threatening or verbally abusing her. On the day of the offending your former partner told you that she was intending to relocate from Yuendumu to Lajamanu in order to be closer to her immediate family. You were fearful of losing contact with your children. Immediately prior to the offending you saw a bush bus in the community and you thought that the victim was taking the younger child to the bus with the intention of leaving. This provides the immediate background to your offending.

Concerned that your wife was about to leave the community, you saw her walking towards your residence. You called out to her and she walked to your residence. I am satisfied that by this time you had decided to take steps to prevent your wife from leaving the community. When she reached you, after grabbing her by the hair you pulled her into the residence with force while she was still holding the baby. You took the baby away from her and gave it to another member of your family who left the premises. It is a great pity that the other member of your family did not remain and at least try and stop you from attacking the victim.

After taking the child away you forced the victim into your bedroom and closed the door. You then picked up a two-foot long thick stick and hit the victim on numerous

occasions to her right and left ankles. You struck her with full force and I am satisfied that you were trying to injure the victim so that she would not be able to leave the community. While the victim was being struck, she was screaming for help. She was powerless to resist you. According to the Crown facts you tried to hit her to the head and you also struck her left wrist with full force as she raised her arm to protect her face. The victim fell to the floor. You picked her up and carried her to the bathroom where you gave her a shower, after which you carried her back to the bedroom where she fell asleep.

At some stage during this process, it appears that you came to a realisation of what you had done. The victim has told me in her victim impact statement that you helped her have a shower and that you were, in her words, 'crying for me.' And she has also told the Court that you said sorry to her before she went to hospital.

At about 7 pm the victim woke up and she asked you to take her to the health clinic because she was in too much pain. You carried the victim and placed her into your mother's vehicle and your mother drove the victim to the health clinic. In the early hours of Thursday 11 June 2009 the victim was flown to the Alice Springs Hospital for further treatment.

In the meantime you were arrested and you made full admissions to the offences. You admitted hitting the victim to the left and right ankles with force using the stick. When asked why you committed the assault, you replied that you were angry because the victim was going to Lajamanu with the two children and you said that you hit her to the ankles so she could not go. You admitted that you had done the wrong thing and said you were sorry.

The victim sustained multiple and serious injuries. They are summarised as follows:

- (1) A swollen left eyelid with subconjunctival haemorrhage; that is, bleeding.
- (2) Bruising and tenderness over the left upper abdomen.
- (3) A displaced fracture to the left fifth metacarpal. In other words, a broken finger.
- (4) A displaced fracture of the left ankle.
- (5) An undisplaced fracture to the lateral malleolus of the right ankle. In other words, you broke both your wife's ankles.

An operation was performed at the hospital to repair the fractures to both ankles and the hand. Both ankles were placed in a plaster splint and a plaster cast was applied to the left hand. Subsequently a weight-bearing cast was applied to the right ankle and a non-weight-bearing cast to the left ankle. The victim was discharged on 19 June 2009, which was nine days after you attacked her. She attended an outpatient clinic on 25 June 2009 when the fractures seemed to be healing well. She was given new casts for her ankles and left hand.

Mr Nelson you committed a particularly vicious attack upon your former wife. That is, it was a very vicious attack upon someone for whom you were supposed to care. You called her to your home intending to hurt her and intending to hurt her to the extent that she could not leave the community. You took her into your home where you could attack her without being seen by others. In striking her with the stick you were trying to cause sufficient harm to her ankles that she would not be able to walk away from the community.

There is no suggestion that you were intoxicated by alcohol or any other drug. The victim was totally defenceless and you sought to dominate and control her with extreme violence, and by causing injuries that would prevent her from walking. You specifically aimed at both ankles.

Viewed objectively, your crime is a serious example of unlawfully causing serious harm. You intended to cause serious harm and you did so in a deliberate and calculated fashion.

As to personal matters, you are a young man aged only 20 and it is to your credit that apart from a previous assault upon the same victim, you have not previously been in trouble with the criminal law. However, you do not come from the dysfunctional and violent background, about which the Criminal Court hears so frequently. Although your parents separated when you were aged 4 and you were raised in Yuendumu by your father, there is nothing in the material before me to suggest that you suffered as a child. You completed year 10 at college in Alice Springs and I am told you are able to read and write English well. You have a good work record since leaving school in 2006 and you have been an active sportsman.

The Court is always anxious to promote the rehabilitation of a young offender, particularly a young offender like you with positive prospects of rehabilitation, because of the lack of prior offending and a good education and work history. In addition I accept that you are sorry for what you have done.

However, these matters personal to you and the good prospects of rehabilitation, which might otherwise be called in aid of significant mitigation, must give way to other factors in view of the particularly serious crime that you committed. They must take second place to the requirements of general deterrence, punishment and marking the condemnation of the community.

The wishes of the victim must also take second place to these factors. I repeat what I said previously in another case. It is not uncommon for female victims of this type of violence to experience conflicting emotions. They want the violence to stop, but for family reasons, do not want the offender to go to gaol or do not want the offender to go to gaol for very long. Men like you must understand that you will go to gaol for violent attacks upon women causing serious injury, notwithstanding the wishes of the victim.

Mr Nelson, the Courts and the community are constantly disturbed and worried by crimes like yours. The Courts grapple with trying to understand why men, and that

includes young men like you, commit these types of crimes against women for whom they are supposed to care. Somewhere deep inside men like you, there must be an underlying feeling or belief that you are entitled to make your wife or partner do what you want them to do, and that you are entitled to use physical violence to dominate and control them. That attitude must change. No man is entitled to use violence against a woman as a way of controlling the woman.

Men in Yuendumu, other Aboriginal communities and throughout the wider community must get the message that they do not have any right to use violence against women for this reason or for any other reason, and when they do use violence they will go to gaol. All women, regardless of their age and ethnic background, are entitled to the full protection of the law and Courts will do what they can to protect women, by imposing penalties that will, hopefully, deter others minded to attack women. Unfortunately crimes of violence, including the type of violence that you have committed, are far too common within the Territory and particularly within Aboriginal communities. These crimes will not be tolerated.

Had it not been for your plea of guilty I would have imposed a sentence of six years and nine months imprisonment. After allowing for your plea of guilty I impose a sentence of five years imprisonment, commencing 10 June 2009. I point out that if you had been an older, more mature person, and if you had previously been in trouble with the law for significant violence, the sentence would have been longer.

That sentence will be suspended after you have served three years, commencing 10 June 2009. That is the date on which the sentence commences. Again, if you had not been a young offender with good prospects of rehabilitation, and if you had previously been in trouble with the law for significant violence, or if you had been an older, more mature man, I would have required that you serve a longer period.

The operational period of suspension is three years from the date of your release. During that period of three years from the date of your release you are to be under the supervision of the Director of Correctional Services and you are to obey the reasonable directions of the Director or a probation officer, including directions as to your residence, employment, associates and counselling or treatment, including counselling and treatment for the use of alcohol in relation to domestic relationships and anger management.

This requirement includes that you obey directions as to undertaking rehabilitation programs. Further, if you are required to undertake a rehabilitation program, it is a condition that you not do anything to cause you to be dismissed or barred from the program.

So Mr Nelson, the sentence is five years, but you will be released after you have served three years. When you are released you will be on probation and you will have to do what the probation people tell you. And you will have to do that for three years after you have been released. If you get into trouble again or if you do not do what the probation people tell you, then you have two years of the sentence still

hanging over your head and you will be brought back here and you will be liable to go back to gaol again.

Is there anything else from Counsel?

MR ROBERTS: No, your Honour.

MR BETTS: Thank you, your Honour, no.

HIS HONOUR: Thank you, would you adjourn the Court please.
