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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 20927586

THE QUEEN

and

PRESTON GILBERT SESAR

(Sentence)

RILEY J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON MONDAY 12 OCTOBER 2009

Transcribed by:
Merrill Legal Solutions

HIS HONOUR: I will proceed to deal with the matter now.

Mr Sesar, you have pleaded guilty to two offences under an ex officio indictment. The first is an offence of aggravated unlawful entry of a dwelling house at night with intent to steal. The maximum penalty for the offence is imprisonment for 20 years. The second offence is that you stole property and cash valued at a total of \$41.15. The maximum penalty for that offence is imprisonment for seven years.

The circumstances of the offending are not in dispute.

You are a man aged 59 years.

At about 4:30 am on 18 August 2009, you were at the Coolalinga Caravan Park for the specific purpose of unlawfully entering the premises and stealing money. At about 4:45 am, you walked to a block of dormitory rooms and you gained access to a room in which occupants were sleeping. You located and stole a men's wallet valued at approximately \$20 and cash in the sum of \$21.15. You then left the room.

You were subsequently approached by police and fled on foot. You were arrested after a brief chase. Whilst running away you threw the wallet away and police recovered it. The money stolen was found in your shorts pocket. You were arrested and taken to the Darwin police station where you declined to enter into a record of interview. You were charged and bail was refused. You have been in custody since 18 August 2009 and your sentence will be back-dated to that date to reflect the fact of time in custody.

The offending occurred in circumstances where you and your wife and young child had been living in a caravan park at the rear of the premises occupied by your daughter. There had been a dispute arise between yourself and your daughter and she evicted you from the premises. You were then in the difficult position of being without a place to park your van and being in difficult financial circumstances. That does not explain why you then went off and committed this offence, but it does place it in some context.

You are, as I have indicated, 59 years of age. You have a substantial criminal history, both in the Northern Territory and in Western Australia. In relation to the Northern Territory criminal history it extends to some 15 pages with a record count of some 78 offences. Most of them are for driving matters. The last time you were in court in the Northern Territory was in 2006.

Your most serious offending occurred firstly in the Northern Territory in the mid 1990's when you were dealt with for a series of offences of unlawful entry and stealing. Your first conviction for unlawful entry appears to have been in 1985 in the Northern Territory, but there was earlier offending of that kind in Western Australia going back to 1978.

The offences that you have previously committed are of the same kind as that for which you are now before the court and are relevant for sentencing

purposes because they show an ongoing pattern of conduct over a very long period of time. I bear in the mind that there have been substantial breaks in your offending. The last offence of this kind was one committed in Western Australia in mid 2003 which involved you being on premises without lawful excuse, possessing house-breaking implements and loitering.

In 1999, you had been convicted in Western Australia of a couple of offences of burglary with intent, as it is there described, and you were sentenced to imprisonment. Indeed, over the years you have been dealt with in various ways by the courts, including by way of caution, by way of a fine, by way of short terms of imprisonment and by longer terms of imprisonment. Notwithstanding those penalties and notwithstanding your increasing age, you have again offended in the same serious way.

I have been provided with some sentencing remarks from 1985 when Muirhead ACJ dealt with you for offences of this kind. On that occasion he imposed concurrent sentences totalling two years and six months. He directed that you be released forthwith under various conditions.

In the course of his sentencing remarks his Honour recorded some of your background as at that time. He noted that you were born in 1950 and that you grew up in Broome and Port Hedland. You described your childhood on that occasion as being reasonably happy. By the time you were sentenced in 1985 you had a relationship from which you produced four children and you were then in a second relationship.

It was noted by the sentencing judge that you had been in trouble with the police since you were very young, although you had not committed what he described as very serious offences. You were described as being a confused person who suffered from depression on occasions and that you had:

'difficulty to master the inner resources to enable you to do this (that is, become a responsible citizen) and thus you tend to re-offend probably after minor crises in your own life.'

That would seem to be the situation that existed at the time of the present offending and is one that I take into account when determining an appropriate sentence on this occasion.

The offending on the earlier occasions and again on this occasion indicates that you had little planning or preparation before committing the offences. There was no apparent cunning involved, you simply went to the caravan park and entered the building looking for an opportunity to steal.

I am told that you are now in another relationship and that you and your wife have a young child, a 2 year old girl. Your wife and your child are presently on Groote Eylandt and you propose to join them there when you are free to do so.

In more recent times you have had a part-time business as a DJ and you have taken some pride in the fact that you have managed to establish a reputation as a DJ and, thereby, obtain regular employment in that capacity. I gather from your financial circumstances that it has not been financially rewarding. Nevertheless, it is an achievement in itself.

You have had heart problems and in 2005 you underwent by-pass surgery. It seems that surgery was successful, although your condition is still managed by medication. You have also had liver trouble which is under control.

I am told that you feel remorse for what you have done and, of course, it is clear that you have accepted full responsibility for your actions. You have entered a plea of guilty at an early time and you are entitled to credit for so doing. Whilst the amount stolen on this occasion was small, the offending is, nevertheless, serious. Had you found more, there is little doubt that you would have stolen more. You stole what was readily available. You entered an occupied room looking for things to steal and you did steal.

Offending of this kind causes concern, not just to the immediate victims, but to the wider community. It is offending which is random in nature and quite invasive in that you have entered the bedroom of your victims whilst they were asleep. You had no idea whether the people in that room were young men, as turned out to be the case, or young children or a vulnerable aged woman; you simply had no idea.

People are entitled to feel comfortable in their chosen accommodation and not to be concerned by offenders such as yourself entering late at night to steal. Such offending has an unsettling effect on many people, not just those immediately involved. In my opinion, it is important that the sentence I impose reflect the need for general deterrence.

In light of your lengthy history, notwithstanding the fact that you have not offended in this way for some time now, I regard personal deterrence as being a significant matter as well.

I turn to sentence you. You will be convicted. But for your plea of guilty, I would have sentenced you to imprisonment for a period of 20 months. In light of your plea I sentence you to imprisonment for a period of 15 months. I direct that you be released after you have served a period of imprisonment of seven months.

You will be released on condition that you place yourself under the supervision of the Director of Correctional Services for a period of 12 months from the date of your release. I direct that the operational period for the purposes of the Sentencing Act shall be a period of 12 months from the date of your release. Your sentence will be deemed to have commenced on 18 August 2009, being the date upon which you were taken into custody.
