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THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SCC 9618414

THE QUEEN

and

JOHN CLAYTON SIMS

(Sentence)

RILEY J

TRANSCRIPT OF PROCEEDINGS  
AT DARWIN ON FRIDAY 2 OCTOBER 2009

Transcribed by:  
Merrill Legal Solutions

HIS HONOUR: Well, Mr Sims, you have pleaded guilty to two offences which occurred in August 1996, that is some 13 years ago.

Each of the offences is a count of unlawful sexual intercourse with a child under the age of 16 years. The maximum penalty for each of those offences is imprisonment for seven years. The penalties have in recent times increased, but I am to sentence you on the basis of the penalty that applied at the time of the offending which is, as I say, seven years.

The offences occurred in 1996. You were committed to stand trial at that time, but you left before the case came on. You left, I can only assume, to avoid the consequences of your actions. To your credit, you returned in 2009 and handed yourself into police. You did so with a view to clearing these matters up and your change of heart came following you becoming involved in your religion.

Before I describe the circumstances of the offending, I want to say something about how the courts approach delay in circumstances such as exist here. There has been a substantial delay between the time of the offending and the matter being dealt with by this Court. The explanation for the delay is simple and straightforward and you accept that it has been solely your responsibility and your fault.

It is necessary for me to take into account the fact of the delay and also to consider what has taken place in the intervening period between 1996 and today. I am to sentence you on the basis of your present circumstances, rather than your circumstances as at the time of the offending.

I am able to take into account any rehabilitation which may have occurred in the intervening period. However, in circumstances such as these where the delay has been brought about your failure to appear, matters of rehabilitation will be given less weight.

I adopt with respect the observations of Street CJ in Thompson (1988) 37 A Criminal R 97, where he said:

The balance against those considerations is undoubtedly the circumstance that the respondent has now made an effort to rehabilitate himself. An effort that has been attended by some success. He cannot, however, claim the full benefit of this in as much as the freedom he used in order to rehabilitate himself is freedom that flowed from his having absconded from bail.

It would be an undesirable precedent to encourage persons to abscond from bail and rehabilitate themselves, and then come forward and seek to have that taken into account significantly when they stand for sentence.

Rehabilitation already accomplished will, of course, always be taken into account, however it may have arisen, but when it has arisen through

self-taken liberty by a bail absconder, it will be given less significance than if it has taken place simply in the ordinary passage of time.

Those observations apply to your circumstances.

As I have indicated, the offending took place on 24 August 1996. At that time, your victim was aged 15 years. She was a person who resided in England, but visited Australia each year to see her father and sister.

On this occasion, she was with her older sister and another friend and they went to Beachcombers and then to the Victoria Hotel. You were at the Victoria Hotel and you met the complainant's sister.

At closing time you accompanied the sister and the complainant to the mini-bus stop and travelled with them to their home in the Palmerston region. You went to the house in which they were staying. You and the sister went off into the main bedroom and the complainant and another girl went into another bedroom to sleep.

At about 7 in the morning you left the main bedroom where you had been sleeping and went into the room where the complainant was sleeping on a single mattress on the floor. Her friend was also in the room and she was asleep. You stood over the complainant as she slept and she awoke to find you there. She believed that you may be sleepwalking and so she left the room and went to the bathroom. When she returned you had gone. She went back to her mattress and lay down.

Thereafter, you entered the room and stood next to the mattress, you then lay on top of the young girl and placed your knees between her legs. You then placed both hands on either side of her shoulders and proceeded to place your penis inside her vagina. You fondled her breasts, she resisted by pulling her shirt down and she rolled over onto her stomach and drew her legs under her into a what is described as a "slight crawling position".

At that time, your penis withdrew from her vagina. You then held her behind her knees and dragged her back towards you flipping her onto her back. You then once again placed your penis into her vagina. She managed to get out from under you and told you that she did not want sex. You told her that she should not bother "mentioning this to anybody". You then left the bedroom.

Your young victim then went to the bathroom. She felt pain and she was bleeding from her vagina. On returning to the bedroom, she told her friend what had happened. Soon after that the friend confronted you and ordered you to leave the premises. She took photographs of you so there could be no dispute about your identity. The sexual intercourse that took place on that occasion was the first time that the complainant had ever had sexual intercourse.

You were spoken with by police and you exercised your right to silence. On 3 February 1997, you were committed for trial and a trial date was set for 6 April 1998. However, you absconded in the manner that I have described. It was not until you voluntarily returned on 6 May 2009 that this matter was enlivened once more.

You presented yourself to the police in the company of a pastor from your church. You were arrested and placed in custody. You have been in custody ever since and the sentence I am about to impose will be back-dated to reflect that fact.

I have a victim impact statement from the complainant. She says that she was 15 at the time and had no sexual experience at all. She had not even had a boyfriend. After these events, she spoke with her mother who encouraged her to see a counsellor and she did that about once a week for about three or four months.

Unfortunately, it did not help her very much. She developed an eating complaint that lasted for about a year and continued on to a lesser extent for a couple of years. She said she started drinking heavily whenever possible. She described herself as being hell-bent on self-destruction. She contemplated suicide and how best to go about it.

Her life changed when she met another man who later became her fiancé and he taught her that she really was a worthy human being and she should look ahead rather than backwards. Up until that time she felt that she was not worthy of love or affection. She said that notwithstanding the passage of time she still thinks about these events even today and they still impact upon her life. She has tried very hard to bury the thoughts, but she continues to experience them. Clearly, your conduct has had a very dramatic effect on a young girl, a young and impressionable girl.

You have a criminal history, although it is a little complex for sentencing purposes. You had a conviction from May 1997 for a drink driving offence. That is not relevant for my purposes. In addition, since you have returned to Darwin on this occasion you have pleaded guilty to, and been dealt with for, a series of break, enter and steal offences. You were dealt with in the Court of Summary Jurisdiction. The offences all related back to the time before you departed the jurisdiction. I am told by your counsel that they related to attempts to obtain steroids for the purposes of body-building.

On 31 August 2009 in the Court of Summary Jurisdiction at Darwin, you were sentenced to imprisonment for 12 months in relation to that offending. The sentence of imprisonment was suspended forthwith and a condition was imposed that you should not re-offend for a period of 18 months from 31 August 2009, failing which you would be dealt with pursuant to the terms of section 43 of the Sentencing Act.

Those matters are not prior convictions for the purposes of the sentencing exercise that I now undertake.

You have pleaded guilty in the unusual circumstances to which I have referred. You are entitled to credit for your plea of guilty and I will give you that credit. It reflects an acceptance of responsibility for what you did all those years ago and it has obviously saved the community the cost and inconvenience of a trial.

I have been given some information about your personal circumstances. You were aged 24 at the time of the offending; that would make you about 37 now. You had an unhappy childhood. You were fostered out at a very young age and that was unsuccessful. As soon as you were able to leave the foster home, you did so and you joined the Army. You were in the Army at the time of this offending. However, after the offending you were discharged from the Army and you travelled to Queensland. You then travelled to South Australia where you presently reside.

Since the date of the offending you have had relationships, and I am told that there are two children from one of those relationships. However, you have no involvement in their upbringing.

You have, in the period between the date of the offending and today, been working as a security officer and you hope to become a truck driver when you return to South Australia.

Your life changed when you found an interest in the church of which you are now a member. It is a result of your involvement in that church that you felt compelled to come back to Darwin and face the music in relation to your offending from 1997.

Given that a long period of time had elapsed between the date of your offending and the present date, I think it can be said that it is unlikely that the law would have caught up with you had you not voluntarily returned and presented yourself to the police. It is, therefore, to your credit that you have done that and I take your conduct in that regard into account.

I am told that when you have completed your sentence you will return to South Australia. You will return to the church which now forms a major part of your life. I have read references from members of your church in which they indicate their continuing support for you even though you have offended in the way described.

In all the circumstances, I regard your prospects for rehabilitation as being positive. I do not see any need to place emphasis upon the personal deterrence aspect of the sentencing process in determining an appropriate sentence for you.

As your counsel has acknowledged, there is a need to place emphasis on the aspect of general deterrence in determining an appropriate sentence. Offending of this kind was prevalent when you offended and continues to be prevalent today. A message needs to be sent out that people who take advantage of young girls will be punished appropriately by the Courts. The

greater the age difference between the offender and the victim, the greater will be the sentence imposed.

Given the view I have formed about your prospects for rehabilitation, and given the fact that you wish to return to a supportive community in South Australia, I do not see any need for on-going supervision and I have, therefore, not called for a report pursuant to section 103 of the Sentencing Act.

I propose to impose an aggregate sentence. The two offences were part of the one episode, and the two acts of sexual intercourse occurred within a very short space of each other.

I turn to sentence you.

You will be convicted on each count. But for your plea of guilty I would have sentenced you to imprisonment for 20 months. In light of the plea of guilty, I sentence you to imprisonment for 15 months.

That sentence will be back-dated to commence on 6 May 2009 to take into account time spent in custody.

I direct that the sentence be suspended after you have served a period of imprisonment of six months. You will be released after serving that period, pursuant to s 40(6) of the Sentencing Act. I set a period of 18 months from the date of your release as being the operational period for the purposes of the Act.

What all that means, Mr Sims, is that you will be released in about one month from now. You will be free to return to South Australia. You will have hanging over your head the balance of your sentence. If you should commit another offence, either in South Australia or anywhere, you may be called up and brought back before this Court with a view to restoring the balance of the sentence which is not being served.

Do you understand that?

THE ACCUSED: Yes, Sir.

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