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THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SCC 20833421, 20833462,  
20912978, 20912976 and  
20912973

THE QUEEN

and

GEOFFREY NGADAKARR  
WANAMBI

(Sentence)

KELLY J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON THURSDAY 22 OCTOBER 2009

Transcribed by:  
Merrill Legal Solutions

HER HONOUR: Geoffrey Wanambi, you have pleaded guilty to seven counts of aggravated assault. The maximum penalty for each of these offences, other than count 3, is five years imprisonment. The maximum penalty for count 3 is seven years imprisonment.

These are serious offences, particularly the offence in count 1, which involved a serious and unprovoked assault with a weapon on your auntie, whom, I am told, is your traditional mother, in which the victim suffered harm. You locked your auntie in a room and repeatedly hit her on the head with a frying pan and then kicked her with steel-capped boots. Your auntie was 66 years old at the time and in poor health. It is fortunate that she did not suffer serious harm.

Count 2 involved a likewise unprovoked attack on your brother, in which your brother suffered harm.

Count 3 involved an assault on a police officer in the performance of his duties. When Acting Superintendent Wurst tried to search you, as was his duty, you kicked him in the chest bruising his chest. You also grabbed hold of his firearm but, fortunately, did not manage to remove it from its holster.

I am told by your counsel that you are upset about being tazered by police during this assault and wanted that fact drawn to the court's attention. Let me make it very clear that you have no cause whatsoever to feel aggrieved at the fact that a tazer was used on you in the circumstances.

Acting Superintendent Wurst was doing his duty and you attacked him. You had no right to attack him. There was no justification for the attack and no excuse. Acting Superintendent Wurst was obliged to subdue you. If he had not done so, you may have done more serious harm and might now be facing far more serious charges.

Count 4 involved another assault on a police officer, again, unprovoked in any way. You simply swung on a pole as you were being taken to court and kicked Senior Constable Marshal in the chest with steel-capped boots.

Count 5 is a charge of aggravated assault, in which you spat on a prison officer's face while he was performing his duties.

Count 6 is another charge of aggravated assault on a prison officer. You advanced towards two prison officers holding your fist as if to strike them. While you were being restrained, you punched one of the prison officers in the face. The trigger for this assault was that you quite inappropriately demanded to be taken to the exercise yard while the prisoner officer was conducting a review and your demand was refused.

Count 7 is an aggravated assault on a fellow prisoner. You punched him in the face with a right and left-hand combination because you thought he was teasing you. You were wrong. He was not teasing you, and even if he had been, that would be no excuse for punching him in the face.

I have had the benefit of victim impact statements from the victims of counts 1, 2, 3 and 6. The victim of count 4 suffered no harm and the victims of counts 5 and 7 declined to provide victim impact statements. By far, the worst impact was suffered by your auntie, the victim of count 1. She suffered pain and deep cuts to her head as a result of the attack. She is afraid and does not want you to come anywhere near her.

The victim of count 2 suffered bruising, pain and stress and concern for his heart. He sees you as a danger to the community and it is patently obvious that that is so.

You have a long and extensive criminal history involving crimes of violence going back to 1987. Your prior convictions include one for causing serious actual danger; seven for criminal damage; 15 for aggravated assault; nine for assaulting a prison officer; two for assaulting a police officer; five for resisting arrest; four for stealing; five for breach of bond; one for common assault; one threat to kill; two for being armed with an offensive weapon; one for disorderly behaviour; two for unlawful entry; one for escaping lawful custody; one for failing to quit licensed premises; and one for interference with a motor vehicle.

Although you have declined to take part in any further psychological assessments, I have been provided with copies of a pre-sentence report for an earlier offence prepared in October 2007, and a psychological assessment prepared in 2006.

It appears that you were born in Yirrkala and attended Yirrkala School to Year 4. You started sniffing petrol at age 10 in 1978. As a result of petrol-sniffing, alcohol and kava abuse, you have developed brain damage. The psychological reports states that as a combined result of a personality disorder and acquired brain injury due to substance abuse, you suffer from impulsive aggressive behaviours that you appear unable to control. This impulsiveness is exacerbated when you are under the influence of petrol or alcohol. You are unable to empathise with the impact of your violent behaviour on others and do not have much, if any, insight into your offending behaviour.

The psychologist also expressed the view that, "it can be predicted with a high degree of reliability that there will be ongoing relatively unprovoked outbursts of aggression for the foreseeable future".

He says there is no effective rehabilitation available to you and that your brain injury is permanent. Your continuing violent behaviour has led to you being rejected by family and friends. It is apparent that you pose a real danger to the community and present a serious risk of re-offending amounting almost to certainty.

The pre-sentence report prepared in 2007 states that you are not suitable for supervision by Community Corrections.

I was referred by your counsel to the sentencing remarks made by Bailey J when sentencing you on 7 December 2001 and by then Martin CJ when sentencing you on 28 February 2002. I gained particular assistance from the sentencing remarks of Martin CJ and I will quote those. He said:

Much as I may feel sympathetic to your position, the law does not permit me to overlook the seriousness of the offences which you committed involving Correctional Services officers.

You may well resent and be angered by the fact that you are under their control and discipline of Correctional Services officers. Steps must necessarily be taken in the course of their duties to protect themselves and other prisoners from the possibility of your aggressive conduct. They and the wider community are entitled to expect that the Court will do whatever it can do to protect them whilst they are acting properly when doing their job.

You present the Court with the most difficult sentencing task. You understand what you do and why you do it and thus there is a need to deter you from further conduct of this sort. On the other hand, your mental health is a trigger to your behaviour, and others that suffer from a similar problem are not likely to be deterred because you are punished for what you have done...

Recent experience has shown that the general public is in need of protection from you but the only way it appears that that can be provided at present is to confine you to jail. However, that is no real answer. The law imposes limits upon the power of a Court in sentencing people to imprisonment. You cannot be imprisoned indefinitely as punishment for these matters, not until you can be safely released. The sentence must be for a definite term proportioned to all the circumstances of the offences and your personal circumstances.

I note your convictions, for the crimes of violence committed prior to these offences. You are not punished again for them and by your conduct, you have shown yourself not to merit any reduction in penalty on account of your being a first offender or a person of good character, nor do you receive any benefit by reason of remorse or for willingness to facilitate the course of justice by your plea of guilty.

I adopt the majority of these remarks. However, in this case you have pleaded guilty and you are entitled to some reduction in penalty for your willingness to facilitate the course of justice. By your plea, you have avoided the expense of a trial and have saved the victims and other witnesses from the inconvenience and stress of giving evidence. I, therefore, propose applying a discount to the penalty that I would otherwise consider appropriate.

I do not allow a full discount of 25% as I do not consider that your early plea is any indication of remorse. The material tendered by your counsel

indicates that you are quite incapable of feeling remorse and have shown no apparent remorse.

It seems to me that personal deterrence must be a factor in sentencing in this case. It is quite clear that prison sentences have not deterred you in the past from further violent conduct and it seems that they are unlikely to do so in the future. However, as Martin CJ said and as the psychological report confirms, you do understand what you do and why you do it, so personal deterrence cannot be ignored as a sentencing principle. Because of your peculiar circumstances general deterrence is not a significant factor.

It seems to me that the really major factor in your sentencing must be community protection and I place a great deal of emphasis on that in determining the appropriate sentences. Having said that, I adopt the Chief Justice's remarks that the sentence must be for a definite term proportioned to all the circumstances of the offences and your personal circumstances.

Taking those matters into account, on count 1, I would have imposed a sentence of 18 months imprisonment. Allowing the appropriate discount for the early plea, I sentence you to 15 months imprisonment on that count.

On count 1, you will be convicted and sentenced to a term of imprisonment of 15 months.

On count 2, the starting point would have been 10 months allowing an appropriate reduction for an early plea. On count 2, you will be convicted and sentenced to a term of eight months imprisonment.

On count 3, my starting point would have been eight months allowing an appropriate discount for an early plea. On count 3, you will be convicted and sentenced to seven months imprisonment.

On count 4, the starting point would have been five months allowing an appropriate discount for an early plea. On count 4, you will be convicted and sentenced to four months imprisonment.

On count 5, the starting point would have been three months. On count 5, you will be convicted and sentenced to a term of imprisonment for two months. That is allowing an appropriate discount for an early plea.

On count 6, the starting point would have been five months allowing a discount for an early plea. On count 6, you will be convicted and sentenced to four months imprisonment.

On count 7, the starting point would, likewise, have been five months allowing a discount for an early plea. On count 7, you will be convicted and sentenced to imprisonment for a period of four months.

Adding those up that comes to a total of 44 months. Taking account of the totality principle, I will direct that four months of the term on count 2 will be

served concurrently with the term imposed on count 1, leaving four months to serve. And on count 3, I direct that four months will be served concurrently with the sentence on count 1, leaving three months to be served cumulatively. The balance of the terms are to be served cumulatively. That brings the total to 36 months and I impose a 24 month non-parole period.

Is there anything further?

MS Holland: Your Honour, will the sentences be back-dated?

HER HONOUR: Yes, of course. What is the date?

MS Holland: It should be back-dated, your Honour, to - just bear with me a moment - your Honour, count 1 occurred on 1 December and that is when he was taken into custody.

HER HONOUR: So the sentences are to commence on 1 December 2008.

Is there anything further?

MS Holland: Nothing further, your Honour.

HER HONOUR: Thank you.

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