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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SC 20903329

THE QUEEN

and

BRADEN WILLIAMS

(Sentence)

MARTIN, CJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON FRIDAY 16 OCTOBER 2009

Certified a true transcript of a record.

Transcribed by:
Merrill Legal Solutions

HIS HONOUR: You have pleaded guilty to unlawfully causing serious harm to the male victim, who you have described in evidence you gave before me today as 'an old man'. He is apparently the grandfather of your two little brothers.

Your offending occurred in the context of an ongoing feud between two families from Willowra. It is a feud with which the Criminal Court is, unfortunately, very familiar. There have been many incidents and numerous offenders have been brought before the Court and sentenced for offences of violence that have occurred – that have been committed during the course of this feud.

The Crown facts state that over the past twelve months or so there have been several incidents involving fighting between the families. One of those incidents occurred in September 2008 when apparently some sort of affray took place between the families, or members of the families, and you were charged with taking part in that episode and the offence with which you were charged was the offence of riot.

Approximately three months later while you were on bail for the earlier riot, you committed the offence with which I am concerned. Apparently on the day of the offending, which was Monday 22 December 2008, you had been drinking at home with family, and in the words of your Counsel, you were 'half-shot'. You and others decided to drive to the bottle shop, but you found it was closed. While you were away from your family home, according to what you have told your Counsel, a group from the opposing family drove into Hidden Valley and drove furiously up and down the street where you lived. They shouted abuse and threatened physical violence against members of your family.

Over the years, this sort of behaviour is not uncommon, but as has happened in the past, it caused a gathering of people and discussion and a decision to take some action. You became part of this, and I accept that in a sense you were swept up with the outrage, but you had already demonstrated by this time that you were not an unwilling participant in this sort of activity. You were not a first-timer who was dragged in by other members of the family.

You armed yourself with a samurai sword. I have been told that it was a bluntish object with a blade that was bent, but it was a solid object and a large object because the blade was about a metre long. You took it up intending to use it as a weapon, and others armed themselves with various weapons including nulla nulla's, wheel braces, sticks, a knife, and steel bars.

A group of you got into several cars and drove to a camp where you knew that the opposing group lived. The vehicles were parked on the verge of the highway and you congregated as a group inside the camp entrance where you were met by the other group. Words were exchanged.

Your Counsel has told me that some of those involved only wanted a verbal exchange, but I do not accept that. You all went armed and you obviously were ready for, and spoiling for, a fight.

Your Counsel has put to me that it was the leader of the other group who initiated the action that sparked a violent free for all. I do not know whether that is true, but it does not matter. As I said, you were all armed and spoiling for a fight.

During the course of the fight, people were severely injured. One of the members of the other group sustained serious injuries, but you are not charged with causing harm to that person and I cannot take it into account in arriving at your sentence, however, it is demonstrative of the violent nature of this fight.

As to your particular role, armed with the samurai sword you approached the victim who was protesting, 'We don't wanna fight.' Notwithstanding that he did not want a fight, you struck him a number of times about the head, shoulder and face, causing the victim to lose consciousness. Other members of your group then joined in the attack upon this victim and that attack occurred while he was on the ground and various weapons were used. The attack left the victim with a ten to twelve centimetre laceration across the left side of his face and neck involving the ear lobe and two lacerations to the back of his head. In the course of being attacked, the victim suffered a fractured finger and a laceration to his right thigh and right leg which was associated with a fractured leg. Nobody knows which particular blow caused these injuries, but you were all acting in concert, and you and the others are all equally responsible for the injuries. So in that way, Mr Williams, you broke the old man's finger and his leg.

In addition, during an operation to repair these injuries, it was discovered that the tendon supplying the anterior aspect of the right foot was divided. A neurovascular bundle was divided and it was necessary to repair the tendon and an anterior tibial nerve. There were further operations required. The finger was fixed with plates and screws on 29 December 2008.

The victim was discharged from hospital on 2 January 2009, but did not return for his follow-up examinations. The victim has declined to provide a Victim Impact Statement, so I do not know whether the victim will be left with any permanent disability. Even if the wounds heal well, it will be surprising if there are not some residual effects for a considerable period.

So, Mr Williams, you committed a particularly serious crime. In this particular instance, the victim had done nothing to provoke you. Quite the opposite. He was saying he did not want to fight. You were armed with a substantial weapon. You were part of a group which you knew would engage in violence against members of the other group.

As to matters personal, you are a young man who was aged only 20 at the time of the offending. Unusually for matters of this type of violence which come before the Criminal Court, before you got into trouble with the riot in September 2008, you had never been in trouble with the law.

Your parents are Warlpiri and you were raised in Willowra where you went to school. You also went to school in Yuendumu and to college in Alice Springs, reaching year

10 level. However you were not successful at school and I am told that you have very limited literacy and numeracy skills. At the age of 18 you left school and at about that time your family moved from Willowra to the Hidden Valley Camp in Alice Springs in order to distance themselves from this feud. You lived with your parents and you undertook a traineeship at the Granites Gold Mine as a wildlife ranger in the Tanami area. Unfortunately no full-time position became available.

In 2007 you moved back to Willowra with your parents, but you did not work there and you occupied yourself by playing sport. Your family has now resettled in Ti Tree, which is close enough to Willowra to be near country but, hopefully, has put some distance between the family and the immediate problems that this feud has caused.

It is very much to your credit that you have stayed out of trouble for so long and it is also to your credit that you have accepted responsibility for this crime. Having heard your evidence, I accept that you are sorry for what you did and you recognise that it was a bad thing. I remain unpersuaded that you truly accept that the feud is a bad thing, but you acknowledge that what you did was a bad thing because the victim is an old man who is the grandfather of your two little brothers. You have told me that your father and the victim have talked together and that things are patched up between you. When you get out you intend to speak to your father and go through him in order to speak to the victim and tell him that you are sorry. I accept that you do not feel good about what you have done.

These things give hope for the future and I assess your prospects for staying out of trouble in the future as reasonably good. As is so often the case, however, much of that will depend upon whether you are able to stay off the grog.

Mr Williams, during the course of Counsel submissions, there was a hint of an attitude that might exist within your wider family that in some way it is unfair that you are the only one who has come before the Supreme Court for an offence arising out of this affray. Apparently others have appeared on less serious offences in the Magistrate's Court. I hope, although it may be a forlorn hope, that you do not continue to think of what has happened to you as unfair. You committed this offence and you must do the time for it. There is nothing unfair about that. And I hope that your family will understand, because if they do not, the attitude will invariably lead to a continuation of the vicious circle that has happened in the past. Violence by one family toward another is met at a later time with a return of violence and so the circle continues and the violence continues. This has been going on for a long time and the Court is aware of a lot of efforts to try and bring it to a close. People have been sent to gaol and it seems to have no effect.

It is time for a little plain speaking. This feud is now being used as an excuse for violence. I doubt that many people can remember what it started over. It is now, as I said, just an excuse for people to arm themselves and go out and be violent. It is time for those who are involved to grow up. It is time for those involved to act with some maturity and to behave in a responsible way by accepting that it is time it ended. And everyone involved must realise that if the violence continues people will

be seriously hurt and someone, one day, will be killed. If it goes on, young men, like you, will continue to go to gaol and that does not help anybody. The violence does not serve any useful purpose whatsoever. It simply means that people are seriously injured and others go to gaol.

The serious aspects of your offending are not only the injuries that were caused, but the fact that you were part of an armed group who set about deliberately inflicting violence. The mitigating factors are primarily your youth and your good record and your prospects of rehabilitation. I need to balance these and all the factors as best I can.

Had it not been for your plea of guilty I would have imposed a sentence of four years imprisonment. After allowance for your plea of guilty, I impose a sentence of three years imprisonment commencing 25 February 2009.

That sentence will be suspended after you have served one year commencing 25 February 2009.

I point out to you that if you had been an older, more mature offender, or if you had previously been in trouble with the law, particularly if you had previously been in trouble for offences of violence, I would have made you serve a longer time and the sentence itself would have been longer.

The sentence will be suspended on condition – with an operative period of two years from the date of your release and on condition that during that period of two years, you be under the supervision of the Director of Correctional Services and that you obey the reasonable directions of the director or a probation officer as to your residence, employment, associates, education, counselling and treatment, including counselling and treatment for issues concerned with anger, social issues including the feud, and the use of alcohol and other drugs.

So, Mr Williams, your sentence is three years but you will be released on probation after one year. That is one year from 25 February 2009. So at about 25 February next year, you will be released. But you will be released on probation and, for a period of two years after you are released, you will have to stay out of trouble and you will have to do what a probation officer tells you. If you get into trouble or if you do not do what the probation officer tells you, then you will come back to the Court and you will have to go to gaol again.

Thank you. Is there anything further?

MR ROBERTS: Nothing arising, your Honour.

MR SINOCH: Nothing, thank you, your Honour.

HIS HONOUR: Thank you.
