

N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Northern Territory, proceedings for infringement will be taken.

THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21902875

THE QUEEN

and

KERRY BARA

(Sentence)

BLOKLAND J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON WEDNESDAY 4 SEPTEMBER 2019

Transcribed by:
EPIQ

HER HONOUR: I am sentencing ex tempore, having just heard detailed submissions from both the Crown and counsel for Ms Bara. I intend to sentence in a manner that would permit the balance of a term of imprisonment to be suspended as from tomorrow, that is 4 (sic) September 2019, to enable a rehabilitation program to commence, and for supervision to commence.

That said, I am mindful of the seriousness of this offending. Ms Bara has pleaded guilty today to one count of criminal damage, one count of aggravated robbery – both those counts were on indictment – and one count of trespass on complaint, which has been transmitted from the Local Court.

The maximum penalties are, respectively, 14 years imprisonment for count 1 on indictment, life imprisonment for count 2, which was an aggravated robbery, and 6 months imprisonment on count 3, a trespass.

The facts of the offending indicate that this was all one episode of offending. The elements particularly of count 1 and the matter on complaint are also part and parcel of the elements in the circumstances, the facts, that underlie the aggravated robbery count. The circumstance of aggravation with respect to the robbery was that Ms Bara was armed with an offensive weapon, namely, glass bottles and pens.

At the outset, I will just indicate, I am sentencing her on the basis of the facts that are set out in exhibit P1 before the Court. I will not detail all of them but I will refer to them from time to time throughout these remarks.

First, it must be noted that the victim was in a vulnerable position. He was working alone at night-time at the service station. The Court has commented many times that people working in those circumstances, providing services to the public and providing convenience to the public, must be protected, and the Court must pass sentences that acknowledge their vulnerability. Indeed, the victim impact statement from the victim indicates that he was extremely fearful at the time.

The particular robbery was constituted by multiple acts of violence. It involved Ms Bara throwing a number of bottles at the victim. She pointed pens at him, and that was after climbing through some security wire, and what would have been very frightening. I would say, fortunately, the victim managed to dodge those bottles, but what would have been very frightening was her saying in a threatening manner, "I'm coming back with a machete." She had initially broken the door when she went through and threatened him in the manner that I have mentioned.

I might say this offending occurred after she had something of an altercation with a taxi driver and she was angry. She was intoxicated, both through alcohol and, the Court was told and it is accepted, that she was given methamphetamine for the first time.

She has expressed various things; that she feels she lost her mind, she could not regulate her anger and other emotions that she was feeling at the time, she thought she was in a situation of not having anywhere to go, not have any way to get

to accommodation, and with the overlay of being intoxicated, took really drastic action. She kicked the glass door of the service station, and in fact, the glass did shatter. Those are the facts that underlie count 1 on the indictment.

But it would have been very frightening for the victim to have the bottles thrown at him. She asked him, in a rather threatening manner, to show her where the smokes are and she took seven packets of cigarettes. She demanded a bag and was given that. She grabbed a fundraiser charity box with some coins and also some chocolate snacks, onion chips and a lighter. But as she was leaving, she did threaten him in the manner that I have mentioned.

In terms of the actual value of the good stolen, it is at the lower end, being \$350. The damage was reasonably significant. The cost of repair was \$1721.50. It is understood she is prepared to make restitution for that. So although the amount of money involved, in terms of an aggravated robbery, was low, of course, the reason that this matter is a reasonably serious example of offending of this kind was because of the threatening nature of the robbery; throwing those bottle and terrifying the victim. Fortunately, unlike other cases, there was no bodily harm to the victim, it is certainly acknowledged this would have been very frightening.

It is accepted that the offending, having occurred in the circumstances that have been described to the Court, was unplanned and unsophisticated. I do not say that to minimise the feelings of the victim at the time, nor to minimise the need to pass sentences that will protect people in the position of the victim, but obviously, from the facts and from the submissions I have heard today, there was not any pre-planning of any significance.

The two stand-out matters that, in my view, do allow the Court to mitigate the penalty, in particular, in giving significant weight to rehabilitation and rehabilitation of a therapeutic kind, are firstly, the engagement in an intensive manner with rehabilitation that Ms Bara has illustrated. Secondly, her very full acceptance of responsibility, both making detailed admissions to police that incorporated expressions of remorse, and her acknowledgement of wrongdoing at various points, including to the people that are helping her at the prison, the Women of Worth people, the author of the s 103 report and, of course, the early indications of pleas of guilty to all of these charges.

So those matters really do speak to her acknowledgement of wrongdoing. But also her industriousness towards rehabilitation, and she has really engaged in a very positive way while she has been at the prison with the Women of Worth program and also other programs as well.

There will still need to be a reasonable head sentence. Ms Bara comes before the Court with a number of previous offences of violence; in particular, aggravated assault. Nothing that approaches the significance, from what I can see, of this offending. It would appear that all she has been dealt with for have been in the Local Court and she has received relatively short periods of imprisonment.

She is not, of course, to be sentenced simply on the basis of her record. However, obviously, she does not come before the Court as someone who does not have an unblemished record. She has, however, spent since 16 January in custody and that is a significant period of time.

Her whole history, and I include there the previous criminal history, but her whole personal history points to the need for rehabilitation to reduce the risk of re-offending, but rehabilitation that employs some sort of therapeutic process, which she does seem to have responded to in a very positive way.

I note both the certificates that have been tendered in the bundle; D2, and the detailed letter from Ms Metry, who is her case manager for the Women of Worth program, which outlines all of the sessions and programs that Ms Bara has participated in and completed. Those sessions include healthy relationships, assertive communication, conflict resolution, anger management, sexual and reproductive health, employment skills, housing and financial skills, self-care, strong mental health, resiliency, magic parenting course, health nutrition, domestic violence training and healthy cooking. Also, importantly, through the Batchelor Institute she has completed a Certificate II in Skills for Work and Vocational Pathways, Certificate I in Business, and she has achieved her NT White Card in the construction industry. Ms Bara has also commenced and started some of the Strong Steps and other counselling program in the correctional facility directed to alcohol and other substance abuse.

So she really has participated at a very high level. And that is something that should stand her in good stead, not only in terms of reducing the risk of future offending and therefore protecting the community from any risk of further offending, but importantly, going on the letter from Ms Metry, shows that she is addressing the very difficult personal social circumstances that are part of her background and part of her growing up, and it cannot be doubted, contribute to the lifestyle that she was living prior to this and other offending.

I will not go through all of the detail there, but Ms Bara grew up between Darwin and Groote Eylandt, with a very difficult relationship with her mother, father and then stepfather, in particular, who was violent towards her mother in very extreme ways, which have been outlined to the Court today. And Ms Bara has been subject to very significant childhood deprivation and, in my view, the principles that have been outlined in *Bugmy* and other cases do apply to her very clearly. For all of those reasons, in my view, the Court should and is justified in fashioning a sentence that would permit a partially suspended sentence and would permit her to commence at FORWAARD tomorrow as a part of that.

So all matters considered, the sentence is reduced by 25 per cent to allow for the early indications of plea, including remorse, but I take all that into account as well to permit her early release. And I do note the comments that she made to the author of the s 103 report that further underlines that conclusion about her remorse and willingness to engage in programs and indeed, gives confidence that she will engage successfully in programs and rehabilitation.

Count 2, the aggravated robbery, she is convicted and sentenced to 18 months imprisonment.

Count 1: convicted and sentenced to 6 months imprisonment.

The matter on complaint: convicted and sentenced to 1 month imprisonment.

Those periods will be served concurrently. They will all commence on 16 January 2019. The sentence will be suspended - - -

MS SCOUFIS: Your Honour, I do apologise for interrupting. Could it be 8 am from tomorrow 5 September? The reason being, Ms Metry would like to transport Ms Bara to FORWAARD, and she has some commitments. The prison can release people at 8 am but it just needs to be made plain.

HER HONOUR: All right.

MS SCOUFIS: Released at 8 am on 5 September to a Women of Worth case worker, if possible.

HER HONOUR: Do you have a problem with that?

MS HOPKINSON: Don't have a problem with the time, your Honour, but it's not necessary, I don't think, to direct that Ms Bara be released into the custody of somebody else.

MS SCOUFIS: The only reason for it is I've had this go awry, your Honour, where they drove the offender to a Palmerston bus stop, for reasons unknown, instead of into the care of the field officer who I had waiting for the client. So I just would prefer the specificity, if possible, for that reason.

HER HONOUR: All right, just excuse me. All right, I think that would cover all bases, and then I will just fix up that. And she will go with the Women of Worth?

MS SCOUFIS: Yes.

HER HONOUR: Okay, thank you.

MS SCOUFIS: Thank you, your Honour.

HER HONOUR: All right, the sentence will be suspended on 5 September at 8 am. Ms Bara is to be released into the custody of a Women of Worth case manager. And there will be the following conditions.

1. She must not, during the period of the order in force, namely, 15 months after release, commit another offence whether in or outside of the Territory, punishable on conviction by imprisonment. The operational period is

15 months after release.

2. She is under the ongoing supervision of a Probation and Parole officer and must obey all reasonable directions from a Probation and Parole officer and must report to a Probation and Parole officer when the order comes into force.
3. She must tell a Probation and Parole officer of any change of address or employment within two clear working days after the change.
4. She must not leave the Territory except with the permission of a Probation and Parole officer.
5. She shall travel from the Darwin Correctional Centre with her case manager and immediately enter into the FORWAARD residential rehabilitation program, participate fully and do nothing to cause her early discharge.
6. She shall not purchase, possess or consume alcohol for the duration of this order.
7. She shall submit to random breath-testing as directed by her Probation and Parole officer or a police officer.
8. She shall not consume and/or possess a dangerous drug or abuse a prescribed substance that is lawfully obtained for the duration of this order.
9. She shall submit to random testing for the purpose of detecting the presence of dangerous drugs, providing samples as directed.
10. She will participate in counselling and/or treatment as directed by a Probation and Parole officer.
11. While residing and participating in the residential rehabilitation facility, she shall wear or have attached an approved monitoring device and allow the placing or installation in and retrieval from a specified place for the effective operation of a monitoring device.
12. She shall comply with the electronic monitoring rules as stipulated in the rules for electronic monitoring document.

In terms of restitution, she is to pay restitution.

Should that be paid into court?

MS HOPKINSON: Yes, your Honour, I submit that the compensation should be payable to Woolworths Group Limited and paid by the Sheriff's Office.

HER HONOUR: To the Sheriff's Office or into court for payment out to?

MS HOPKINSON: Woolworths Group Limited.

HER HONOUR: In the sum of?

MS HOPKINSON: \$1721.50.

HER HONOUR: \$1729 - - -

MS HOPKINSON: Twenty-one.

HER HONOUR: Twenty-one, and 50 cents?

MS HOPKINSON: Yes, your Honour.

HER HONOUR: Payment to be made within 18 months of release. Payments may be made by instalment or else a notice to show cause will be issued.

Did I say the sentence is to commence on 16 January?

MS HOPKINSON: Yes, you did, your Honour. Can I just clarify; was count 1, that's the property damage charge, was the sentence on that 6 months?

HER HONOUR: Yes.

MS HOPKINSON: Thank you.

HER HONOUR: Six months; 18 months on the robbery, 1 month on complaint, but all concurrently.

MS HOPKINSON: Yes, thank you, your Honour.

HER HONOUR: Thanks very much.
