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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21845204

THE QUEEN

and

FA

(Sentence)

BARR J

TRANSCRIPT OF PROCEEDINGS
AT DARWIN ON MONDAY 2 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: FA, on 25 July you entered a plea of guilty to the single count on the indictment dated 24 July 2019.

By your plea of guilty you admit that on or about 27 October 2018 at a remote Aboriginal community you indecently dealt with a female child under the age of 16 years. That offence carries a maximum penalty of imprisonment of 10 years.

You were born on 12 May 1983, and so at the time of offending, you were 35 years old. The child was 13 years old. You are the child's uncle.

In the evening of 26 October 2018 the victim attended a disco with your daughter. When the disco finished, the victim and your daughter came back to your home. They went to sleep on neighbouring mattresses on the floor of one of the bedrooms in your home.

During the night, you went into that bedroom, where you used your fingers to apply pressure to and rub the victim's vaginal area under her clothing. After the victim yelled out, you stopped doing what you were doing and left the bedroom. The victim wanted to go home, and so your daughter walked her back home.

On 27 October the victim complained to her mother about what had happened. On 29 October she was flown to Darwin for a medical examination. She later participated in an interview with police. You admit that you did not have permission to touch the 13-year old victim.

Police arrested you on 29 October and you have been in custody since that time.

In her victim impact statement, the teenage girl said that she felt sad and bad over what you did to her, because you are her uncle and it was not right. She felt shame and that shame has not gone away. She does not want to see you again and she is worried that you might come back to her community.

I want to say something about your prior criminal record.

You first offended as a 19 year old in August 2002. You unlawfully damaged property and you were armed with an offensive weapon at night.

In February of 2005 you committed the offences of unlawful entry with intent to steal and stealing.

In September 2006 you unlawfully damaged property, and for that you were subsequently sentenced to carry out 120 hours of community work.

In June and in July 2007 you were found in possession of cannabis in a public place. For the first of those, you were fined; for the second, you received a 28-day suspended sentence of imprisonment.

In June 2008 you brought liquor into a prescribed area, for which you were convicted and fined.

In September 2009 you drove an unregistered motor vehicle with a medium-range blood-alcohol content; 0.144 per cent. You were given a 12-month good behaviour bond and licence disqualification.

You then managed to stay out of trouble for more than three years, but in May 2013, you committed a male-on-female aggravated assault, causing harm. You also damaged property. For the assault, you were fined, and for the property damage, you were sentenced to 10 days' imprisonment and ordered to pay restitution.

In summary, although you have convictions for quite a wide range of offending, you have no prior convictions for sexual offences.

I will say something now about your background and personal circumstances.

You and your wife have two children; a teenage daughter, who I mentioned earlier, and a young son. You are said to have a long history of employment. Prior to your arrest, you had been working as a tour guide for some seven years.

After your arrest on 29 October 2018, you remained in custody. You have been in security for your protection for the whole of that time.

You have been assessed for your suitability to be under supervision on a partially suspended sentence on the basis that you would be living in another community to avoid contact with the victim, which would be inevitable if you returned to the same community where the offending took place.

Initially, you were assessed as not suitable for supervision because there was no accommodation available for you in that alternative community. You then believed that you could live at the home of your uncle in the other community; however, when your uncle was asked if he agreed, he made it very clear that he did not want you in his home.

The hearing was further adjourned to enable a further supplementary supervision assessment by Community Corrections. So the disentitling factor thus far in relation to supervision is on the basis that you would not have permanent residence in the communities that have been investigated by Community Corrections.

At the same time, given that this is your first, indeed, first very serious offence, it seems to me that notwithstanding the history that I read out, you could benefit from a suspension or partial suspension of your suspended sentence.

I want to say something now about how I view your offending.

You were a 35-year-old man and your niece was only 13. Your niece was asleep and therefore vulnerable. You used your fingers to rub her vaginal area under her clothing, skin-on-skin, for albeit, a short time. Because you are the uncle of the victim and she was in your care, the offending was a serious breach of trust, and as I mentioned earlier, your offending caused great shame to the young victim.

All of the sentencing objectives are relevant to your case, including the element or the objective of rehabilitation. In sentencing you, I take as my starting point a term of imprisonment of 3 years. However, I will take off eight months for your plea of guilty, which reflects your remorse and your willingness to facilitate the course of justice.

That results in a sentence of 2 years and 4 months. I formally sentence you to a term of imprisonment of 2 years and 4 months, which is to be backdated and deemed to have commenced on 29 October 2018. I confirm that you are convicted.

The sentence will be suspended after you have served 12 months in prison. I fix an operational period of 2 years from the date of your release.

What that means is you are going to gaol for 12 months. You have already served a significant part of that, but after 12 months, you will be let out of gaol. You must then obey the rules that I have read out for two years. If you do not obey those rules, you will go back to gaol. If you re-offend within that two years, you will be dealt with not only for the fresh offending but you would also be brought back to this court and I would have to send you back to gaol.

I will now read out the conditions on which your sentence will be suspended.

1. You must report to a Probation and Parole officer within 48 hours of your release from prison.
2. You will be subject to supervision by a Probation and Parole officer and you must obey all reasonable directions, including as to where you may reside.
3. You must not travel to any location in the Tiwi Islands without first obtaining the permission of a Probation and Parole officer.
4. You must tell a probation and parole officer of any change of address or employment within two clear working days after the change.
5. You must participate in assessments, counselling and/or treatment as directed by a Probation and Parole officer.
6. You must not leave the Northern Territory without first obtaining the permission of a Probation and Parole officer.
7. You must not have any direct or indirect contact with the victim.

So, as I say, after you are let out of gaol, after you do the 12 months that I have directed that you must serve, you will be subject to those conditions for two years after your release.

You must obey those conditions. You must report as directed to your Probation and Parole officer. And I stress in particular, the fact that you must not travel to the Tiwi Islands without first obtaining the permission of a Probation and Parole officer. Yes, thank you.

Is there anything further from the Crown, Ms McNamee?

MS MCNAMEE: Nothing further, your Honour.

HIS HONOUR: Ms Wild?

MS WILD: No, your Honour.

HIS HONOUR: Yes, well, thank you to counsel.

Adjourn the court please.
