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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21814788

THE QUEEN

and

GM

(Sentence)

BARR J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON MONDAY 2 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: GM, on 2 August, you entered pleas of guilty to three counts in the indictment dated 29 July 2019. The offending that you admit to took place on 1 and 2 April 2018 at Katherine.

You were born on 24 September 1987; and so, at the time of offending, you were 30 years old. You are now almost 32.

By your plea of guilty to count 1, you admit that you performed an act of gross indecency on a female victim, TC, without her consent and knowing about or being reckless as to the lack of consent. That offence carries a maximum penalty of imprisonment of 14 years.

By your plea of guilty to count 2, you admit to the male-on-female assault on another female, RN, with the additional circumstance of aggravation, that the victim suffered harm.

By your plea of guilty to count 3, you admit that the following day you again assaulted RN with the same additional circumstance of aggravation, that she suffered harm. Each of counts 2 and 3 carry a maximum penalty of imprisonment of 5 years.

I will now state the facts in relation to your offending.

As at 1 April 2018, you and the victim, RN, were living in a house in [...], Katherine. You had been in a relationship, off and on, for about six and a half years. The second victim, TC, and RN were work mates at the Stuart Hotel in Katherine and had known each other for about a month.

On the evening of Saturday, 31 March 2018, you, RN and TC spent some time at the home of friends on [...], Katherine where you all consumed a quantity of alcohol. You then returned to the house in [...] where you consumed more alcohol. RN went to be at around midnight, leaving you and TC outside drinking alcohol. You and TC were intoxicated.

At about 5 am, TC told you that she was going to bed. She went into a bedroom inside the house and fell asleep on a mattress on the floor. A short time later, you went into that bedroom, woke TC and asked her to go back outside with you. She followed you outside.

While you were sitting next to one another outside, you leaned over and kissed TC. You also made advances to her to have sex with you and RN, which TC declined. She told you that she was going to bed.

She went back inside and fell asleep in the same bedroom. You had a shower, put on a towel and then went into the bedroom where TC was asleep on a mattress on the floor. She was wearing a T-shirt, short denim shorts and lacy underwear.

You went to the foot of the mattress where TC was sleeping on her back, knelt down and removed her shorts. You subsequently pulled her underwear to one side. You licked the outside of her vagina for a short period.

She woke up and pushed your head away and said, "No." She then rolled onto her side away from you. You moved up towards TC's head and kissed her cheek and neck.

At that stage, RN entered the bedroom and saw you leaning over TC. You were naked. She said to you, "What the fuck are you doing?" You did not respond and left the room.

RN then checked on TC and found that she was upset. She told her to get her things and leave. RN then walked into the bedroom where you were getting dressed. You and her had a heated argument about what RN had just seen.

You walked away from RN down the hallway towards the kitchen, but she followed after you, yelling at you. She was obviously very irritated with you. You went to the refrigerator and took out a six-pack of beers. RN told you not to take the beers and stood in front of you and grabbed your arm.

You responded by punching RN to the left side of her neck and her head behind her left ear. The impact of that punch caused RN to fall to the ground. She felt pain and had a small amount of swelling to the area where you had punched.

TC came out of the bedroom and saw RN sitting on the floor crying. She helped RN off the floor and the two walked to the garage, entered RN's vehicle and left the home. You left the house a short time later and walked down the road to the low-level reserve.

RN and TC returned to the house sometime later, eventually leaving at about 12:15 pm on 1 April 2018 to attend work at the Stuart Hotel. When RN came back from work at about 8 o'clock in the evening of that day, you were sitting on the back patio talking to friends. RN went to bed.

I will now refer to the events of 2 April.

At around 7:30 am the next morning; that is, on 2 April, you entered the bedroom where RN was sleeping and woke her up. She got up onto her knees and told you to get out. She told you that your relationship with her was over.

You then yelled at her, telling her to give you back your ID cards. You pulled her to her feet by the scruff of her singlet and pushed her forcefully against the bedroom wall. You yelled at her, telling her to give you your things so that you could leave. RN was scared that your behaviour would escalate.

She pushed you away and ran out of the bedroom to the bathroom. You followed her into the bathroom where you grabbed her by the scruff of her singlet

and again forced her against the wall. You began to shake her violently, causing her head to hit the wall. You then let go of her and she slumped to the floor. She was crying at that stage.

You then walked from room to room in the house, looking for your wallet. RN got up off the floor, found her car keys and ran to the garage. She got into her vehicle and drove away quickly to a friend's house nearby.

As a result of your assault, RN suffered minor bruising and scratches to her inside right arm, upper chest, left knee, and neck. Her injuries did not, however, require medical attention.

You were arrested at the [...] house in the morning of 2 April and taken to the Katherine Police Station. After seeking legal advice, you declined to participate in a formal interview with police. You were later charged and bail was refused. You have been in custody since that time.

As to formal matters, you admit that RN did not give you permission to assault her in any way, nor did TC consent to your performing an act of gross indecency on her.

I want to say something about your record of prior offending, which is significant.

You first offended in Queensland as 17-year-old in January or early February of 2005. The offence was unlawful entry of a dwelling house with intent to steal. You were fined \$400.

On two occasions in July 2005, you committed the offence of public nuisance. You were fined in respect of both.

In September 2006, you committed a property damage offence and were also drunk and disorderly on licensed premises. No conviction was recorded, but you were placed on probation for 12 months and ordered to pay restitution of \$660.

In January 2007, you failed to appear in court in accordance with an undertaking. You were convicted and fined \$500.

In March 2007, you were dealt with by the Magistrates Court for an assault or assaults occasioning actual bodily violence and for a breach of a domestic violence order; offences committed in January of 2007.

In September 2007, you were dealt with by the Magistrates Court for a breach of your probation order. You were convicted and fined \$500.

You were back before the Magistrates Court in September 2008 for another breach of a domestic violence order; also, for public nuisance and failure to appear in accordance with an undertaking. Again, you received fines.

In April of 2009, you committed another unlawful entry of a dwelling, in respect of which you received a fine of \$1000 and were ordered to pay compensation.

In March 2010, you were drunk or disorderly on licensed premises and failed to quit licensed premises. Once more, you were fined.

In June of 2011, you committed a further assault or assaults, occasioning actual bodily harm. In November 2011, you were convicted and placed on probation for 12 months, with the requirement to carry out 150 hours of community service.

However, you breached both the probation order and the community service order and, on 3 April 2012, you were re-sentenced for the original offending. A conviction was recorded and you were sentenced to imprisonment for 6 months. That sentence was suspended with a 12-month operational period.

Less than two weeks after you had received the benefit of a suspended sentence, on 14 April 2012, you committed further assaults occasioning actual bodily harm, as well as a breach of a domestic violence order. On 16 April 2012, your suspended sentence was fully restored and you were sent to prison with a parole release date set at 15 October 2012.

It appears that, after your release, you managed to stay out of trouble for about two years, but in August 2012, you were found in possession of utensils used for smoking drugs. You were convicted and fined.

In September 2015, you were once more in possession of utensils used for smoking drugs. You were convicted and fined.

In April 2017, you were found in possession of dangerous drugs and possession of utensils used for smoking drugs. This time you were fined \$350, but no conviction was recorded.

In the Northern Territory, in November 2017, you drove while unlicensed. You were convicted and fined \$1000.

Your offending against the victim, RN, is to be seen in the context of a history of repeated convictions for aggravated assaults and breaches of domestic violence orders. It would appear that your sexual offending against the victim, TC, was an escalation in the sense of a new kind of serious offending for you.

I want to say something now about victim impact.

The emotional effects on the victim, RN, were significant. She left her job and moved to another town to escape the memories of what you had done. When she was subpoenaed to attend court for your trial, she felt sick and stressed. She wants nothing more to do with you.

She considers that you have done enough prison time. While the court takes into account the wishes of a forgiving victim, they are not determinants. Moreover, RN can only speak for the offending against her and not in respect of the impact of your offending against TC.

TC has also provided a victim impact statement. Your offending was very traumatic for her. She says that her quality of life deteriorated significantly after what you did to her and she suffered ongoing psychological effects. She found it very difficult to come to court and give evidence at the earlier trial which required her to re-live the trauma of your offending.

I want to say something now about your background and personal circumstances, which have been very helpfully conveyed to the court by your counsel.

You were raised in communities located in the Atherton Tablelands in North Queensland. Your parents separated when you were young and you then had an unsettled upbringing, living at times with your mother, at times with your father, at times with different aunties and family members.

You live in various different towns and places: Cairns, Mareeba, Innisfail, Brisbane and Darwin. At other times, you lived amongst family members in communities in the Atherton Tablelands.

Your counsel has explained that you witnessed anti-social behaviour, including alcohol-related violence on regular occasions during your upbringing.

In terms of schooling, you were educated to year 9 level, but you ceased schooling at about the age of 14.

After you left school, you engaged in seasonal farming work on tropical fruit farms throughout northern Queensland, and when not working, you received benefits. You also engaged in community development work at Ravenshoe.

Despite your relatively limited secondary education, you have engaged in vocational training and you have qualifications in a number of areas. They include Certificates I, II and III in Hospitality and commercial cookery; a certificate for responsible service of alcohol; a Certificate II in Agriculture; and also training in traffic control. Your counsel draws to my attention that you were in full-time employment as a chef at the time of offending.

You are the father to five children to three separate partners. Your eldest child is 13 years old. Your youngest child was born shortly after your remand on the offending which has brought you before this court. So, you have not yet met your youngest child who is your daughter.

Your term of imprisonment to date has been particularly difficult for you, given the breakdown of your relationship with the victim, RN, and your limited ties and, indeed, no family support in Darwin or the Northern Territory.

I come now to your sentence.

I convict you on all three counts.

The Northern Territory Court of Criminal Appeal has considered penalties for the offence of sexual intercourse without consent, committed against sleeping, intoxicated or otherwise vulnerable victims in the case of *R v Nabegeyo* [2014] NTCCA 4, reported in 34 NTLR 154. Clearly, offending by taking sexual advantage of a sleeping victim to engage in sexual intercourse without consent or to perform an act of gross indecency without consent are both to be regarded very seriously.

However, it must be borne in mind that sexual intercourse without consent carries a maximum penalty of imprisonment for life, whereas performing an act of gross indecency without consent carries a maximum penalty of imprisonment for 14 years.

As mentioned earlier, you have no prior convictions for sexual offending and you have entered a timely plea of guilty to this count.

In relation to count 1, I take as my starting point a term of imprisonment of 3 years. I will take off 6 months of that for your plea of guilty.

I convict and sentence you to a term of imprisonment of 2 years and 6 months. The sentence should be backdated and deemed to have commenced on 2 April 2018.

I turn to sentence you for the two assaults on RN.

For the first assault, charged as count 2, I take into account that both you and RN had lost your tempers; specifically, that RN had lost her temper with you and had actually grabbed your arm. Nonetheless, a knock-down punch to the head was far in excess of any reasonable response in the circumstances and was potentially dangerous.

I take into account your plea of guilty and sentence you to a term of imprisonment of 9 months.

For count 3, involving violent assaults in the bedroom and the bathroom against RN, I take into account your plea of guilty and sentence you to a term of imprisonment of 18 months.

The sentences on counts 2 and 3 are to be served wholly concurrently; and cumulatively on the sentence on count 1 as to 12 months. That means I add

12 months to the sentence of 2 years and 6 months, to arrive at a total effective sentence of 3 years and 6 months.

I have given careful consideration as to whether I should suspend your sentence or fix a non-parole period. I heard submissions this morning from counsel in relation to those matters; in particular, lengthy submissions from Mr Aust, your counsel.

In relation to both of those possible dispositions, I take into account your solid record of employment and also the following matters:

1. That you have been of good behaviour in prison.
2. That you have fully participated in the prison in-reach Alcohol and other drugs program.
3. That you have been consistently employed within the prison as a block cleaner.

I also take into account that you do not have family support in Darwin and that the preferable outcome is that you return to North Queensland where such support would be available to you.

In the circumstances, I propose to suspend your sentence. I direct that your sentence be suspended after you have served 2 years' imprisonment. I fix an operational period for the suspended sentence of 2 years from the date of your release.

I explained that I do not propose to order that you be subject to supervision on the suspended sentence. However, you must understand that at the time you will be released from prison there will still be 18 months of your sentence unserved.

I warn you that if you re-offend within the 2-year operational period, you will not only be dealt with for that fresh offending, but you would be brought back to this court and, unless it were unjust to do so, I would have to return you to prison to serve the outstanding 18 months of your sentence. So, it is very important that you stay out of trouble for a full 2 years after you are released from prison.

I impose one condition of your suspended sentence. It is a dual condition, in effect, and it reads as follows: That you must have no contact with, directly or indirectly, with TC or RN. It is quite clear who those persons are, but that is the order that I make. It is an order that attaches to your suspended sentence and applies for the full 2 years of the operational period.

Is there anything further from the Crown, Ms McNamee?

MS MCNAMEE: Nothing further, your Honour.

HIS HONOUR: Mr Aust?

MR AUST: No, your Honour.

HIS HONOUR: Very well. Thank you to counsel.

Adjourn the court, please.
