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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21753970

THE QUEEN

and

GP

(Sentence)

GRAHAM AJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON TUESDAY 3 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: The matter of GP comes before me for plea and sentence on 3 September 2019. Mr Dooley appears for the Crown and Ms Collins and Ms Voumard for the offender.

The offender has pleaded guilty to a count of having sexual intercourse with FS, a child of 15 years. The count is laid pursuant to s 127(1)(a) of the *Criminal Code* and carries a maximum penalty of 16 years' imprisonment. He is also charged with a count of aggravated assault, pursuant to s 188, which carries a maximum of 5 years, and in this case, there would be a mandatory term of 3 months.

GP lives at the Hermannsburg Community.

On 29 October 2017 the offender came upon FS in Alice Springs CBD, where she was walking with friends. She went for a drive with a group of young people, including the offender, and was later dropped off by them. She subsequently re-entered the vehicle, which was then driven around for a time until it stopped at a unit complex.

The offender told the complainant, FS, to get out of the vehicle and pulled on her left shoulder area. She refused and he then grabbed her left wrist and pulled her from the vehicle. She continued to resist. He pulled her away from the vehicle, grabbing her by her shoulder and pushed her down a side path. Therein lay the assault. They eventually entered a unit within the complex and subsequently had sexual intercourse.

The complainant, FS, had removed part of her own clothing and was apparently compliant. However, she later told him to stop and he did. The Crown facts allege that she did not want to have sexual intercourse with him, but on the other hand, he did not think she was not consenting and nor was he reckless to the possibility she was not consenting. She later left the unit alone and went home.

On the following day, she disclosed to a relative what had occurred and the police were called. She did suffer some injuries that, in particular, were tenderness to her left wrist and left collarbone area.

The offender is now aged 23, but was aged 21 at the time of the offending. He is one of two children. His father passed away when he was aged approximately 11 or 12 years. His mother re-partnered, but the new partner was violent to her, and on one occasion, she was hospitalised with a skull fracture as a consequence of the assault.

The offender is the father of three children; two of school age and one 10 months old. I am told in submissions that he has continued to have contact with the children. He is a talented footballer and basketballer. He enjoys hunting with older members of the community and he has been through the men's ceremony.

He had a difficult time at school. He was expelled from school in year 9 and since then, has sporadically worked. He first consumed alcohol and cannabis when he was 12 years of age, at about the same time.

It is important in this case to note that the offender was convicted in 2013 with, one can describe as, similar offences, but more significant offences, and was sentenced to 5 years and 3 months for sexual intercourse without consent and 9 months for an aggravated assault.

As part of the plea material, the Crown tendered the facts of the prior offending, and it is clear that both the sexual offence and the assault were more severe than the facts in this case, in that there was a greater element of violence to the assault, and the sexual offence was a violent rape.

In this case, however, it should be noted that the victim impact statement obtained on behalf of the complainant shows that the crime has had a substantial effect on this complainant's psychological and emotional wellbeing. It is said she is a changed girl and is now very protective of herself. She is less engaged with her family and has, very significantly, stopped going to school.

The offender this day, through counsel, has expressed remorse to the victim, who I might say is not present in the courtroom but is present via a video link to the Director or Public Prosecutions office.

Two section 103 reports were obtained. The second report was obtained because the first was not particularly helpful. Though, I say, no criticism is made of either reporter. The problem was to ascertain what, if any, programs were available to the offender to address cannabis and alcohol issues, but also to address the fact that this man, still a young man, has now committed two very serious sexual offences against young people and something has to be done about it.

That leads me to penalty. General and personal deterrence are of great significance in the formation of a penalty for this offence. This offender must understand and the community must understand that there are going to be substantial penalties for people who molest children. And make no mistake, the complainant was a child, aged 15 years.

In addition, there has to be punishment for the crime. The offender had opportunity in the past to mend his ways and apparently, not heeded what was a clear warning to him in the circumstances of the first offence. There can be only one penalty for this offence in the first count and that is gaol.

As I said in dealing with argument from the Crown prosecutor, the assault charge is relatively minor, but still requires a mandatory gaol term of 3 months.

All in all, I propose to sentence him to 5 years' imprisonment for count 1, discounting that by 20 per cent for his plea, which brings it back to 4 years. He is

sentenced to 3 months' imprisonment on count 2, and that penalty will be served concurrent with count 1.

The 4 years is backdated to 10 April 2019. Two years of the 4 years will be suspended upon conditions, and I am going to adjourn for about ten minutes to enable counsel to draw conditions, which will be handed up to me. And the operational period of the suspension will be four years. So the penalty will be 4 years.

Any other matters?

MR DOOLEY: No, your Honour, other than the conditions.

HIS HONOUR: All right well, we will now adjourn until 11 am and then we will deal with the matter of the conditions.

RESUMED

HIS HONOUR: I will just have a look at those conditions.

MR DOOLEY: Yes, your Honour.

HIS HONOUR: Looks okay to me.

You happy with those, Ms Collins?

MS COLLINS: Yes, your Honour.

HIS HONOUR: All right well, the order will made including those conditions.

We will now adjourn.
