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THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SCC 21756553

THE QUEEN

and

PETER GANAMBARR

(Sentence)

GRANT CJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON THURSDAY 5 SEPTEMBER 2019

Transcribed by:  
EPIQ

HIS HONOUR: Mr Ganambarr, on 10 May this year, following a trial, the jury found you guilty of unlawful aggravated assault and unlawfully causing serious harm to Sean Yunupingu on 2 December 2017.

At the commencement of the trial, but in the absence of the jury, you pleaded guilty to the first two counts on the indictment dated 27 December 2018, being the unlawful assault of Samantha Ashley and the unlawful assault of Denzel Ashley. Those assaults were committed earlier on the same day of 2 December 2017.

The unlawful assaults were all attended by circumstances of aggravation and attract a maximum penalty of imprisonment for 5 years. The serious harm offence attracts a maximum penalty of imprisonment for 14 years.

The guilty pleas proceeded on agreed facts and I summarise them as follows.

You were 53 years of age at the time of this offending and you are now 55. Samantha Ashley is your niece and Denzel Ashley is your great-nephew. He was 2 years old at this time.

On the previous night, you had travelled in from Ramingining and consumed alcohol in the Palmerston area and become intoxicated. You returned to Samantha Ashley's house.

In the early hours of the following morning, you woke her and asked her if you could kiss her. She ignored you and tried to go back to sleep. You then said, "Samantha, can I rape you just one time?" before placing your hands on her shoulders to hold her down.

Samantha Ashley felt threatened. She sat up and punched you in the face, while yelling out for help. Other family members ran into the room. You then punched Samantha Ashley to the left eye with your right fist.

At or around the same time, but apparently after Samantha Ashley had gone back to sleep, Denzel Ashley woke up, began crying and went to walk to his mother. You picked up an electrical cord and you whipped the child once across the back, causing him to scream out in pain. The situation settled and you then left the bedroom.

In addition to those offences to which you pleaded guilty, the jury found you guilty of assaulting and causing serious harm to Sean Yunupingu in the afternoon of that same day. To the extent that the jury's verdict is in any way ambiguous or inscrutable in relation to the factual basis for those verdicts, the court must find the facts relevant to the sentencing exercise consistent with the jury's verdicts.

I find those facts to be as follows.

After the incidents in the morning, you continued drinking with family and friends. At one point, you were drinking at Samantha Ashley's house with Sean Yunupingu

and others. You shared some of your alcohol with Sean Yunupingu. You then went to the Gordon Stott Park later that afternoon with Sean Yunupingu and a number of other people.

Samantha Ashley remained back at her house. While there, she was told by a man who had witnessed the events earlier that day about you striking her son with the electrical cord. She decided to go and discuss the matter with you.

Samantha Ashley then went to the park and demanded to speak with you about the incident with her son. I accept that when she challenged you about the matter you apologised for what you had done and said that you were drunk.

Sean Yunupingu then joined the discussion. He said words to the effect that you should tell the truth about what happened and you should not be angry when you were the one who had done something wrong. It would appear from this that Sean Yunupingu had missed the first part of the conversation in which you had apologised for the incident.

I find that although Sean Yunupingu was not speaking or acting in a threatening manner at the time, you were annoyed that he involved himself in something which you considered to be none of his business. It is also possible that you were annoyed that he did not acknowledge the apology you had already made to Samantha Ashley.

You became aggressive to Sean Yunupingu and you said, "What's it go to do with you?" You challenged him to a fight. I find that you were substantially intoxicated at this time. Sean Yunupingu was also substantially intoxicated.

During the course of this exchange, you and Sean Yunupingu then started pushing each other. Sean Yunupingu's evidence was that he pushed you away first. Samantha Ashley's evidence was that you had pushed Sean Yunupingu first.

At some point after the pushing had begun, you started punching Sean Yunupingu in the chest. Even accepting that he pushed you first or pushed you away, his conduct up to that point did not constitute consent for you to start punching him. It was that punching which constituted the unlawful assault on Sean Yunupingu.

At one point while you were punching him, Sean Yunupingu became what he described as "wobbly" and may have fallen to the ground. He denies falling to the ground, but the jury has found that at some point during the exchange, Sean Yunupingu was unable to defend himself because of the circumstances he was in.

During that exchange, Sean Yunupingu threw some punches at you in return. He then picked up a thin stick somewhere between 50 centimetres and a metre in length. He swung the stick twice at you and, on the second occasion, hit you in the forehead, causing you to bleed.

While this was happening you told Sean Yunupingu not to hit you because you were his grandfather. You told him to drop the stick and he eventually did so. Sean Yunupingu then told you that he did not want any trouble and Samantha Ashley stopped you fighting.

After Samantha Ashley had stopped you fighting, Sean Yunupingu started walking away. Samantha Ashley then picked up the shirt which you had earlier taken off and wiped the blood from your face.

A short period of time elapsed between those events and what happened next. While Sean Yunupingu was walking away, you came up behind him and punched him in the jaw, causing it to break. The nature of that break is described in the agreed facts.

Sean Yunupingu was not carrying anything at that time. There was no basis for you to believe that punching him was necessary to defend yourself. I find that you had no such belief and that you punched Sean Yunupingu because you were still angry at him.

THE INTERPRETER: I keep on punching, your Honour, because I was bleeding.

HIS HONOUR: I beg your pardon, Mr Gaykamangu (?)?

THE INTERPRETER: I keep on punching Yunupingu because I was bleeding.

HIS HONOUR: Thank you.

Even if you did have that subjective belief, I find that your conduct was an unreasonable response in these circumstances.

THE INTERPRETER: I might be, your Honour. Do I have to say sorry for him now or later on?

HIS HONOUR: No, no, he has already said he is sorry, okay.

However, I do accept that you were subject to some provocation, with the consequences that I will come to shortly.

Now, Mr Gaykamangu, I am going to go into some more legal issues now. I will not do it with line by line interpretation. If there is anything you want me to stop for, just put up your hand and tell me. But then I will come back to a line by line interpretation when I come to sentence Mr Ganambarr, all right?

THE INTERPRETER: Yes, your Honour.

HIS HONOUR: All right, thank you.

On examination at the Royal Darwin Hospital, it was found that Sean Yunupingu's jaw was broken in two places. The bone had to be put back into its position and fixed with titanium plates and screws in the course of surgery. One of his teeth was removed. The medical opinion was to the effect that the injury amounted to serious harm because, if left untreated, the consequences would have been significant and long-standing.

It was Daphne Scotty's evidence that at some point Sean Yunupingu had also fallen to the ground and that you had kicked him once in the back and a number of times in the head. While the jury appears to have accepted some parts of Daphne Scotty's evidence, I am unable to find, for the purpose of sentencing, that at any point in the altercation you kicked Sean Yunupingu in the head in the manner described by her.

You were arrested and remanded in custody on 4 December 2017 and granted bail the following day, on condition that you return to Ramingining and remain there, not purchase or consume alcohol, and not make contact with the complainants or Daphne Scotty.

You failed to attend at the Local Court in Ramingining on 31 October 2018 in answer to that bail. You later surrendered and were granted fresh bail on the same day.

It is of note that you were on bail for a period of 17 months prior to trial without any allegation of further offending or any recorded breach of the no-alcohol condition. While the terms of your bail were not so restrictive as to warrant the backdating of your sentence to take it into account, your compliance is relevant to the assessment of your prospects for rehabilitation.

You also have some relevant criminal history for violent offending. These incidents have occurred intermittently during the course of your adult life.

Most recently, in 2015, you were convicted of two aggravated assault involving harm, the use of a weapon, and a female victim. Those assaults were committed in 2013. You were sentenced to imprisonment for 3 months for each of those assaults, which periods were suspended on the rising of the court. That disposition would seem to suggest that the assaults were at the lower end of the scale of seriousness. I have been told by your barrister that they were assaults committed in the domestic context in relation to your partner at the time and that they occurred when you were under the influence of alcohol.

Your last violent offending before that time was about 30 years ago now, when you were convicted in 1988 of unlawful assault and assault causing bodily harm. You were sentenced to imprisonment for 6 months and 18 months respectively for those offences. They were ordered to be served concurrently, with a non-parole period of 8 months.

Prior to that, in 1983 you were convicted of unlawful wounding and released on a 12-month good behaviour bond. Again, that disposition suggests that the wounding was at the lower end of the scale of seriousness.

In addition to that directly relevant offending, you have convictions for disorderly behaviour, criminal damage, unlawful entry, stealing, breaches of bail and bond, and motor vehicle-related offending. All of the more serious offending in relation to criminal damage, unlawful entry and stealing predates 1989.

I do not consider that you are a man of settled criminal habits. Rather, your criminal record suggests that you had a period of repetitive offending in your early 20s, after which time you were largely a person of good behaviour.

It is likely that the assaults you committed in 2013 for which you were convicted in 2015 were alcohol-related, as was the offending in your youth. So, unfortunately, was the present offending. That is consistent with what I have been told by your barrister about your personal circumstances.

You were born at Mata Mata on the mainland between Galiwinku and Nhulunbuy. You lived with your family there until you were about 10 years old. You learned hunting, and song and dance. You went to school in Galiwinku to year 11 level, before returning to your homeland to learn your song lines.

You married early and had a daughter who is now about 34. You separated from your then-partner and returned to Galiwinku to take up work.

A few years later, you entered into a second marriage and you had six children together, who are now aged between 13 and 24. You lived in Lake Evella and you worked for five years at the aged care centre there.

That second relationship broke down in about 2011. You then resumed the relationship with your first partner.

You now usually live in Ramingining and you were working as a groundsman at the school there. You are involved with raising your five grandchildren. You have some caring responsibilities for your mother-in-law who is disabled. You also have a senior cultural responsibility for ceremony in East Arnhem Land. You were one of the artists responsible for the ceremony poles which grace the foyer of this court building.

On your release from prison, you intend to return to Ramingining to continue your life there and resume your traditional responsibilities.

I turn then to the assessment of this offending.

Your pleas of guilty to the first two assault offences on the indictment came late in time, but you are still entitled to some discount for ultimately accepting responsibility and facilitating the course of justice. Those two offences fall at the

lower end of the scale of seriousness, notwithstanding the circumstances of aggravation and notwithstanding the abhorrence of the behaviour involved in striking a 2-year-old child with an electrical cord. I accept the assault on Samantha Ashley was also impulsive and brief, and did not cause any major injury.

In relation to the third and fourth counts on the indictment, you exercised your right to a trial by jury. While that was your right and entitlement, you will not receive the benefit of any discount.

The third unlawful assault offence is also at the lower end of the scale, involving, as I have found, punching the victim, Sean Yunupingu, in the chest on a number of occasions following a course of mutual pushing and shoving.

The serious harm charge is obviously the most serious offence for which you stand to be punished. The injuries sustained by the victim were, by definition, serious in nature. Again, however, the circumstances of your offending and the nature of the injuries sustained do not place it in the most serious category of offending of this particular type.

I also accept that you were subject to some provocation when Sean Yunupingu struck you in the forehead with the stick. Although your moral culpability and the weight properly given to specific deterrence is reduced by the fact that you were provoked to at least some degree, it is still necessary to send a clear message to the broader community that this type of conduct will not be tolerated. People cannot take the law into their own hands in response to something done to them, even in circumstances of provocation.

Assessing your prospects of rehabilitation is a somewhat more difficult task. I have already detailed your previous convictions for violent offending. That obviously causes some concern about your ability to mend your ways. However, that record is limited and intermittent in the manner I have described. I accept that you have strong family support and a stable situation in Ramingining. As I have already noted, you were on bail for an extended period prior to trial without incident. You have a relatively good prior employment record. You have approached these proceedings with a degree of equanimity. For these reasons, I consider your prospects for rehabilitation are reasonably good.

Given the nature of these offences, an aggregate penalty is not available. The sentences imposed in respect of these offences must not be crushing or disproportionate to the total criminality of your conduct. At the same time, however, it is necessary to take into account that the criminality inherent in each of the first two offences will not be comprehended by the penalty imposed in respect of the third and fourth offences. Some cumulation is required to properly reflect the different breaches of the peace involved and the different victims. However, I do intend to order that the sentences imposed in respect of the third and fourth offences be served entirely concurrently given that they are so closely related in time and circumstance.

You were initially held in custody between 4 and 5 December 2017 before being granted bail. You were remanded in custody on 10 May 2019 following the return of the jury's verdict. Following the verdict and prior to sentence, I granted you bail from 28 June through to 31 July 2019 to allow you to participate in sorry business. Your sentence will be backdated to take into account the time you have spent in custody to this point.

I turn then to consider whether I should fix a non-parole period or make an order suspending sentence after you have served the minimum time which the objective circumstances of this offending requires. For the reasons I have given, I do not consider that you are a recidivist offender. I am also of the view that at this point in your life you do not have any real dependency on alcohol which causes you to offend repeatedly. You are a man who, on isolated occasions, goes on a drinking binge, gets silly and commits offences which are out of character. You also do not have any previously recorded breaches of orders suspending sentence. You have one conviction for breach of bail and one conviction for a breach of bond back in 1986. I have no reason to conclude that you would fail to comply with the conditions of any order suspending sentence.

On the other hand, given that you have demonstrated offending behaviours while under the influence of alcohol, I do not consider that any order suspending sentence should be entirely unsupervised. I consider that your prospects of rehabilitation would be enhanced by an order suspending sentence after you have served the minimum time which the seriousness of your offending requires, subject to whatever restrictions and programs to which you might be directed to submit during a period of supervision.

For that reason, I have had an assessment undertaken of your suitability for supervision. That assessment considers you are suitable and recommended for general supervision.

So, Mr Interpreter, I am not going to fix a non-parole period. I am going to make an order suspending sentence after he has served some more time in prison. Can you ask him to listen carefully to these conditions, and then I will ask whether he agrees?

Any order suspending sentence would be subject to the following conditions:

1. You must not during the order commit another offence punishable on conviction by imprisonment.
2. You will be supervised by Probation and Parole, and you must obey all reasonable directions from Probation and Parole, and you must report to them within two days after getting out of prison.
3. You have to tell Probation and Parole if you move house or change your employment within two days after that change.

4. You cannot leave the Northern Territory unless Probation and Parole give you permission.
5. You cannot buy or drink alcohol and you have to have a test if Probation and Parole or police ask you to.
6. You will go to whatever assessment or counselling Probation and Parole tell you to go to.
7. You will stay away from Samantha Ashley and Denzel Ashley.

Mr Ganambarr, are you prepared to agree to those conditions?

THE ACCUSED: Yes.

HIS HONOUR: Thank you. So, it is against that background that I sentence you for what you have done.

Can you please stand up, Mr Ganambarr?

I have to give you a proper punishment to show other people in the community that they cannot do things like this. I have to discourage you from doing this sort of thing in the future.

The fact that you were drunk is no excuse. It shows me that you have got a problem controlling yourself when you are drunk. You know from your history that when you get drunk you have a problem controlling your temper.

This sort of violence and serious harm inflicted by people who are drunk happens all the time here in the Northern Territory. To call this type of offending prevalent simply does not capture just how frequent and damaging to the community it is.

The punishment that I impose on you also has to recognise the strain which treating the victims of this sort of violence places on the healthcare system. Those doctors spent all that time fixing Sean up because of what you did to him, rather than looking after people who are there for sickness or injury caused by something other than violence.

You have to understand that if you binge drink in the future, there is a high risk that you will behave violently again. So, you have to accept that when you get on the drink, it causes problems. Do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: All right.

I make the following orders:

- 1) The offender is convicted of count 3 on the indictment dated 27 December 2018 and sentenced to imprisonment for 3 years, backdated to 9 June 2019.
- 2) The offender is convicted of count 4 on the indictment and sentenced to imprisonment for 4 months, which is to be served concurrently with the first sentence.
- 3) The offender is convicted of count 1 on the indictment and sentenced to imprisonment for 3 months, 1 month of which is to be served cumulatively on the other sentences.
- 4) The offender is convicted of count 2 on the indictment and sentenced to imprisonment for 3 months, 1 month of which is to be served cumulatively on the other sentences.
- 5) The total effective period of imprisonment is 3 years and 2 months.
- 6) That sentence to imprisonment will be suspended after the accused has served 14 months, backdated to 9 June 2019, subject to supervision for a period of 12 months following release on the conditions set out in the assessment of offender suitability for supervision dated 27 May 2019.
- 7) I fix an operational period of 2 years following the offender's release, pursuant to ss 40(6) and 43 of the *Sentencing Act*.

Yes, is there anything arising out of that, counsel?

MS WILD: No, your Honour.

MS HOPKINSON: No, your Honour, nothing arising out of the sentence, but I need to correct a submission that I made earlier. Just for future reference, s 40(6) of the *Sentencing Act* does limit the operational period of a suspended sentence to a maximum length of 5 years. Nothing further.

HIS HONOUR: Does permit?

MS HOPKINSON: Limits the maximum length of an operational period of a suspended sentence to 5 years.

HIS HONOUR: Yes.

MS HOPKINSON: Nothing further.

HIS HONOUR: Yes, all right, thank you.

All right, good luck, Mr Ganambarr. I hope when you get out of prison you go back to Ramingining and everything goes well, all right?

HIS HONOUR: Thank you for your assistance, counsel.

Adjourn the court, please.

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