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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21809410

THE QUEEN

and

DIMITRIOS LEOTSAKOS

(Sentence)

GRANT CJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON TUESDAY 10 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: Mr Leotsakos, on 12 July 2019 a jury found you guilty of the five charges on the indictment.

The first charge was that on the morning of 10 January 2018 you unlawfully assaulted the first victim at the flat at Alstonia Street, Nightcliff by threatening her with a kitchen knife, by pointing it at her and waving it around, and by saying that you would cut her fingers and face. The maximum penalty for that offence is imprisonment for 5 years.

The second charge was that on that same day at about that same time, you unlawfully assaulted the second victim at the flat in Nightcliff by pointing a kitchen knife at him. The maximum penalty for that offence is also imprisonment for 5 years.

The third charge was that on 10 January 2018 you demanded that the first victim give you \$60,000 from her ANZ bank account, with the implied threat that you would continue to act violently towards her unless she complied with that demand. The maximum penalty for that offence is imprisonment for 14 years.

The fourth charge was that on the night of 10 January 2018 you unlawfully assaulted the first victim by entering the room where she was sleeping, grabbing her arm and pulling her out of bed and out of the house. The maximum penalty for that offence is also 5 years.

The fifth charge was that at about midnight on 10 January 2018, back at the Nightcliff flat, you had penile-vaginal intercourse with the first victim without her consent. The maximum penalty for that offence is life imprisonment.

To the extent that the jury's verdict is in any way ambiguous or inscrutable in relation to the factual basis for those findings, it is now the task of this court to find the facts relevant to the sentence consistent with the jury's verdicts. I make the following findings in relation to those matters.

You were 66 years of age at the time these events took place and the first and primary victim was 40 years of age. You had met the first victim in 2006 and you were married in 2008. You remained legally married to her at the time of these events. However, you had been living apart for approximately 12 months. You had been living in Greece and she has been living in Darwin.

You had made arrangements with her to meet in Thailand in mid-January of 2018, but the first victim told you she wanted to defer to that to late-January after she had visited Sydney together with a mutual friend of yours. I find that you were either annoyed or suspicious, or both, at what you saw as her reluctance to join you in Thailand. As a result, you arranged for someone you knew in Thailand to book you a flight to Darwin which arrived in the early hours of the morning of 10 January 2018. You did not tell your wife of your plans in that respect.

On the previous night, your wife, a female friend, who was the flatmate of your wife, and the second victim, who was a male friend of your wife, had fallen asleep in

her room in the flat you had previously shared with your wife here in Darwin. When you arrived in Darwin, you travelled directly from the airport to the flat, you let yourself into the flat and you saw your wife and the second victim in the bed asleep together.

You woke your wife and you indicated to her to come out of the bedroom. When she came out of the bedroom into the kitchen and lounge room area, you were holding a large kitchen knife which you had picked up from the kitchen bench. You waved the knife at her, pointed it at the sofa and told her to sit down. You were angry and upset at that point. That is understandable in some senses given what you had seen and the conclusions you no doubt drew.

You told your wife that you wanted the money back which you had given her in or about 2015. You said that once you had the money you would leave her alone. You then asked her who it was in the bedroom. Your wife told you that it was someone that she had met. It is likely that in doing so, she fabricated a name for that second victim because she did not want him to get into trouble. You then said to her words to the effect, "I want to cut your face. I want to cut your fingers so that you'll no longer be able to support your family." You were holding the knife and pointing it at her face while you were saying that. You were holding that knife approximately 20 centimetres from her face. You did not touch her with the knife. The victim, during that period, was fearful for her life.

You then woke up the second victim and told him to come out of the bedroom. He did so. You pointed the knife towards his stomach region and you directed him to sit down. Once the victim was seated, you approached him and started waving the knife close to his face. You held the knife as closely to that second victim as you had been holding it to the first victim earlier in the episode. You asked the second victim whether he knew who you were and you told him that you were the first victim's husband. You then moved him to the door, opened it and guided him out of the flat with the knife pointed at his face. The second victim went to his car, called a mutual friend who owned the flat, and told her that there was a man in the flat with a knife and that he thought the first victim was in trouble.

After the second victim had left the flat, you took the ceremonial crowns from your wedding to the first victim from the suitcase which you had brought with you from Thailand. You then cut those ceremonial crowns in half.

Sometime later, perhaps at about 8 o'clock that morning, the mutual friend came to the flat and knocked on the door. You opened the door and spoke with her. She said she wanted to see the first victim. You then instructed the first victim to go to the door. Once she was there, the mutual friend asked her whether she was okay and whether she was safe. The first victim said she was okay because she could not say anything while you were there. You then asked the mutual friend whether you could borrow her car and you left with her. Before you left the flat, you told the first victim to wait there because you had to do business together when you got back.

You returned to the flat about an hour later and told the first victim you were going to the bank together to withdraw money to give to you. You said words to the effect that if she gave you the money you would not bother her and you would leave her family alone.

The background to that money was as follows. In or about October 2015 you and the first victim had closed your joint bank account and had opened up separate bank accounts. You gave the first victim \$90,000 in two instalments of \$50,000 and \$40,000. You told her that the money was for her to open a small business in Thailand and buy a house. She still had approximately \$68,000 of that money in her bank account at the time of these events on 10 January 2018. It was that money, or at least part of it, that you wanted the first victim to return to you.

You travelled to the ANZ Bank together and under the threats you had made the first victim withdrew \$10,000 in cash from her bank account and gave it to you and then transferred a further \$50,000 to your bank account. After you had taken the first victim to the bank and those transactions had been undertaken, you then dropped her to the Coolspot where the mutual friends were eating lunch. You then left the area.

When she arrived at the Coolspot, the first victim told those friends that she did not want to go back to the flat because you were there. The mutual friends said that she could stay at their house. They then went to pick up her female flatmate from work and then to the flat to pick up clothes. They all then went back together to the mutual friends' house and, later that afternoon, to a birthday party for one of their grandchildren. They returned home from that birthday party at about 10 o'clock that night.

After she had returned to the mutual friends' house that night, the first victim was in the spare bedroom with her female flatmate. At about 11 o'clock that night, you came to the house and demanded to see the first victim. You went into the bedroom where she was staying and asked her why she was hiding there. You then grabbed her by the hand, pulled her out of bed and told her to pack her things. She told you that she did not want to go. You told her that she had to go. The friends were telling you to leave her alone and that she wanted to stay, but you persisted, saying that you had business to do. You then dragged the first victim out of the room and out of the house by her wrist. She was crying and protesting and trying to stop and pull away, but you kept pulling her. You then put her in the car and drove her back to the flat in Nightcliff.

During the drive back to the flat, you were verbally abusive to the first victim. When you got back to the flat, she went into the bedroom and covered herself with a blanket and cried. You went into the bedroom, pulled the blanket from her and took your clothes off. You then removed the bottom half of her clothes. The first victim tried to fend you off but was unable to do so. She said to you, "I don't want this. Don't do this."

You kept going and she tried to push your hands away. You then grabbed her by the wrists and held them near the top of her head. You told her that you wanted it one last time and then she would not have to see you again. She was crying and told you again, "Stop. Stop. I don't want this." She tried to push you away but you were too big and heavy. You put your penis into her vagina and commenced thrusting back and forward. At some point she started pulling her hair in distress. She then bit her own forearm. After a few minutes, you stopped, got up and walked out.

You then demanded that she purchase and pay for a ticket for you to fly back to Bangkok. She went to the toilet to wash herself. You then followed her into the toilet with your phone and took photographs of her while she was sitting on the toilet with no clothes on. You then asked her to drop you at the airport. She did so.

At all times during your defence of this matter, you have maintained that the intercourse was consensual. The jury clearly rejected that account.

I turn then to consider your subjective state of mind at the time. Having regard to the findings I have made in relation to the nature of the lack of consent, I find that you well knew at the time that the victim was not consenting to having sexual intercourse with you. This was not a case where you were reckless as to whether or not the victim was consenting, or in which you did not give any thought as to whether or not the victim was consenting to sexual intercourse with you. However, having said that, I have no doubt that you considered that you were entitled to have sex with her regardless of whether she consented or not.

The victim impact statement submitted by the first and primary victim describes the emotional upset which this offending has caused her. She could not sleep properly for nearly three months after these incidents, she cried every day, her appetite was disturbed and she lost weight. She also suffered bruising and soreness. During the course of the initial incident where you threatened her with the knife, she was afraid she was going to die and never see her family again. She was also afraid that you were going to go to her hometown in Thailand and injure her family. She now and still feels uncomfortable in Darwin in places where members of the Greek community might congregate, and fears some form of recrimination.

Your conduct has also had financial consequences for her. Quite apart from the \$60,000 which was withdrawn from her bank account, she had to move to new premises, with the expense that entailed, and her capacity to work was significantly reduced. The victim only resumed her usual pre-incident working hours in June this year.

So far as your personal circumstances are concerned, I approach this sentencing exercise on the basis that you are a 68-year-old man of prior good character.

I know that you were born in Greece on the island of Kalymnos. You undertook three years schooling before you went to work to assist in supporting your family.

You worked on a sponge boat from the age of 9 and in the building trade from the age of 11. You were essentially deprived of a childhood, as we would understand that concept here in Australia.

After a period of compulsory national service in the Greek Army, you came to Darwin in your early 20s, shortly before Cyclone Tracy. You then took part in the reconstruction effort and later secured employment as a concreter. You have worked over the years with many of the larger and well-known construction companies in the Northern Territory. During that period, you continued providing financial support to your family back in Greece.

You were married in 1978 and there were four children of that marriage. Unfortunately, you separated from your first wife after 25 years of marriage in difficult circumstances. You are now estranged from your children, and that is a matter which causes you great distress.

You were a hard worker through your working life and you have made a significant contribution to the Hellenic community here in Darwin, and to the broader community. I have received two references in your support. They describe you as polite, honest and hardworking. You have always maintained high standards of work in your trade. You are respected in the community as a law-abiding citizen. You have been particularly active in one of the Kalymnian associations. You worked as an organiser for that association, and always on a voluntary basis. You are a talented traditional dancer and you have provided instruction over the years to the younger members of the community, offering your advice and knowledge and support. While you are not an educated man in the formal sense, you have always, in that context, displayed the manners and the culture of a man with a good traditional upbringing.

In short, I can well accept that you are otherwise a man of good general reputation and character. You are entitled to be treated with the leniency that would be given to a first offender. The extent to which that previous good character entitles you to any leniency in the sentencing process is diminished to a degree by the conduct constituting the offences for which you have been found guilty. While you may have been a man of worth in many aspects of your life, you are also capable of this unacceptable behaviour towards your wife and another.

This matter ran to trial, as you know. That was your right and entitlement, as it is for every citizen. You are not to be punished for that. However, are you not entitled to any discount on your sentence because you are remorseful or because you have pleaded guilty. In fact, the evidence that you gave during the course of the trial suggests that you feel little remorse, if any, for your conduct over the course of that day. That evidence also suggests that you have little insight into the wrongness of your conduct or what underlies it, and the impact it has had on the victims. Of course, that evidence was given in a context in which you were asserting that there had been no assaults or extortion and that the sexual intercourse had been consensual. But, together with your pleas of not guilty, it is still reflective of a lack of remorse.

The offence of sexual intercourse without consent is the most serious charge for which you stand to be sentenced today. Having regard to the circumstances I have already described, your offending in that respect was not of the same level of objective seriousness as some other examples of this type of offending. You did not use any great degree of physical force. There were not multiple or prolonged attacks. Although scared and vulnerable, the victim was not terrorised in the process as some victims are. That is not to say that the absence of those aggravating factors operates in mitigation. It is only to say that in the context of an offence which attracts a maximum penalty of life imprisonment, the objective circumstances of this offending place it towards the lower end of the scale.

To make that assessment, however, is not to downplay the seriousness of the offending, having regard to the gross interference with the victim's person that it entailed. After the rape, you engaged in conduct which degraded the victim further by taking photographs against her will while she was naked. Even allowing for the fact that your assault was not accompanied by violence beyond the minimum which might be expected given its non-consensual nature, the crime remains very serious.

It is also necessary, however, to consider your conduct in this regard in context. This is in some senses a tragic case. As I have said, the first victim was your wife of ten years. You had been living apart at the time of these events. That was due to the fact that you wanted to reside in Greece but the victim wanted to reside in Darwin. You were in many ways a generous and supportive husband to your wife during the course of the marriage. You paid for a house to be built for her parents in Thailand. You supported her both financially and emotionally while she battled ovarian cancer. You paid for her vocational and English language training. Although you had been living apart for the 12 months prior to these events, you had holidayed together in Thailand in July 2017 and the relationship still had some sexual component, in the sense that you prevailed on your wife through the course of 2017 to send explicit photographs of herself to you, and she complied with those requests.

I also consider that, in your own way, you continued to love your wife, even if your conduct towards her on this day did not reflect that on an objective appraisal. Your conduct was referable, at least in part, to the fact that it was your hope and intention that the relationship would continue, but that feeling was not reciprocated.

The extortion charge under s 228 of the *Criminal Code* is not one frequently dealt with in this Court. When it is, it commonly involves the offender standing over an associate in relation to a drug debt or some similar matter. It also often involves the actual infliction of harm as part of the threats and menaces. This case is somewhat different. While it does not matter for the purpose of your criminal liability how the first victim came into possession of the money or whether you considered you were entitled to it, you had originally given the monies to her in the context of the marital relationship. It is also the case that your wife seemed to accept in her evidence that you were, in some sense, entitled to the monies but not entitled to extort them from her under threat. She said in her evidence that had you simply asked for the money, she would have given it to you consensually.

It is also the case that the menace in this particular case was not a threat of frank violence. Although the menace was made in circumstances in which you had, at about the same time, threatened your wife with a knife, the menace was, in its terms, that if the victim did not give you the monies you would harass her and her family.

While the amount of money involved in the extortion was very substantial, the appropriate sentence must be fixed in the context which I have just described.

The Crown has also made oral application for an order for the payment of those monies by way of restitution under the Northern Territory *Sentencing Act*. Given the circumstances I have described and the evidence given by your wife at trial, I am of the view that the question of entitlement to those monies is not a proper matter for determination in this jurisdiction, this forum and this context. In those circumstances, I will not be acceding to the application or making an order for restitution.

I turn then to the assault charges.

The first two assault charges involved threats with a knife which were no doubt terrifying for the victims. I have already described both the context in which the assaults took place and the nature of your conduct. The weapon was a large kitchen knife. You were obviously agitated at the time and you brandished the knife in close proximity to their persons.

Those first two assaults were constituted by the threatened application of force rather than the actual application of force. The assault involving the first victim was accompanied by threats to cut her fingers so that she could not work and to cut her face so as to disfigure her. No such oral threat was made in relation to the second victim.

The third assault took place later that night when you took the first victim from her friends' house. That assault involved the direct application of force but did not involve a weapon. Again, I have already described the context in which that assault took place and the nature of your conduct.

In imposing sentence, I also bear in mind your age. In relative terms, each year in custody will represent a substantial portion of your remaining life expectancy. I also accept that your circumstances are such that incarceration causes you stress and is both a depressing and distressing experience for you, and that you have been receiving medication for that.

An aggregate sentence is not permitted in this case by operation of s 52 of the *Sentencing Act*. So far as the question of cumulation is concerned, it can be accepted in the general sense that the offences formed part of an extended course of conduct with some common factors. However, there were two different victims and five quite separate breaches of the peace involved, with the consequence that the sentence imposed for one offence will not reflect the criminality inherent in the

others. This is because the circumstances in which those offences were committed were not highly interdependent in the relevant sense. That being so, a failure to identify and evaluate the nature and seriousness of each offence and to cumulate the individual sentences appropriately would amount to a failure to accord appropriate weight to the harm done to each victim on each separate occasion.

Having said that, the principle of totality stands in the way of an order requiring the sentences imposed to be served wholly cumulatively. The total effective period of imprisonment must be justly proportionate to the whole of your conduct. The sentences cannot be cumulated beyond what is proportionate to the total criminality of your conduct, and the total effective period of imprisonment cannot be crushing. In the application of that principle, I will be ordering substantial periods of concurrency.

The sentence will also be backdated to take into account the fact that you were remanded in custody between 23 February and 5 April 2018 following your arrest and prior to the grant of bail, and the fact that you were remanded upon the entry of the jury's verdicts.

Mr Leotsakos, can you please stand up while I sentence you?

Regrettably, assaults and sexual offences are prevalent in the Northern Territory community. The courts are required to impose sentences which deter others from committing crimes like this. The courts will impose sentences which afford some protection to vulnerable people in the community.

The sentences that I impose on you must also make it clear to you that the community does not tolerate conduct like this in disregard of the rights of other human beings.

As I have already said, you are not entitled to any discount on your sentence for a plea of guilty or because you have demonstrated any genuine remorse. It is, in some ways, difficult to assess your prospects for rehabilitation. While you do not have any criminal history, you have demonstrated, as I have said, no remorse or acceptance of responsibility for your conduct on these occasions. Having said that, the circumstances of this offending were somewhat unusual and I do not consider that you are in any way a risk of re-offending in this particular manner. I also consider that having regard to your relatively advanced years, your stable employment record, and your otherwise good character that you do have good prospects of rehabilitation.

As your barrister has said, s 55 of the *Sentencing Act* provides that when sentencing for sexual intercourse without consent, if the court determines to fix a non-parole period or is required to do so, it must be a minimum of 70 per cent of the head sentence for that particular offence. The interaction between that provision and the operation of the non-parole period for offences attracting the minimum of 50 per cent has recently been settled by the Court of Criminal Appeal in *The Queen*

v Cumberland. In the circumstances of this case, I will be fixing the minimum non-parole period available in conformance with that decision.

Having regard to those matters, I make the following orders.

1. The accused is convicted of the offences on the indictment dated 21 June 2019.
2. For count 5, the accused is sentenced to imprisonment for 5 years, backdated to 30 May 2019.
3. For count 1, the accused is sentenced to imprisonment for 12 months, two months of which is to be served cumulatively on the first sentence.
4. For count 2, the accused is sentenced to imprisonment for 12 months, two months of which is to be served cumulatively on the other sentences.
5. For count 3, the accused is sentenced to imprisonment for 15 months, two months of which is to be served cumulatively on the other sentences.
6. For count 4, the accused is sentenced to imprisonment for 6 months which is to be served concurrently with the other sentences.
7. The total effective period is 5 years and 6 months. A non-parole period of 3 years and 6 months is fixed.

Is there anything arising out of that, counsel?

MR TIPPETT QC: No, your Honour.

HIS HONOUR: Ms Everitt?

MS EVERITT: No, your Honour.

HIS HONOUR: Yes, thank you for your attendance and assistance in the matter.

Adjourn the court please.
