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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21842876

THE QUEEN

and

IRENE MAMARIKA

(Sentence)

GRANT CJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON TUESDAY 24 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: Ms Mamarika, you have pleaded guilty to robbing the victim of two casks of wine, two bottles of Gatorade, a packet of tobacco, some food and \$80 in cash. That robbery was made worse by the fact that you were in company with Angela Wood and the victim suffered harm.

The facts of the offending were as follows. On the afternoon of 11 October 2018 you were at the Woolworths shopping centre here in Darwin. You saw the victim making his way along the footpath from the Woolworths car park. He had been given the two casks of wine and he was going somewhere quiet to drink them.

The victim is a homeless person who lives around the Darwin CBD. Both his legs had been amputated and he is confined to a wheelchair. While he was on the footpath waiting to cross the street, you and Angela Wood walked up behind him with the intention of stealing the casks of wine, money and other items in his possession. A struggle took place during which the wheelchair was pushed over and the victim landed on the footpath. He suffered cuts and scrapes to his arm and elbows as a result. Those injuries were treated at the scene by ambulance officers, but the victim did not want to go to hospital.

After he had fallen out of the wheelchair, you took the casks of wine, the bottles of Gatorade, the packet of tobacco and the cash. You then ran away to the Tomaris Court flats where you started drinking the alcohol with Angela Wood and two others.

The matter was reported to police. They looked at CCTV footage from the area. About an hour later, you were located at the Tomaris Court flats and arrested. When police interviewed you, you admitted robbing the old man.

I have received a statement from the victim which he gave on the day this happened. He was in a lot of pain as a result of the injuries he suffered. He was angry about what you had done to him.

I have also received a victim impact report made by him a couple of months later. He said what happened to him has changed how he lives his life. He is worried it might happen again. He tries to stay in places that are well-lit. He makes sure he does not get in a position where the same thing could happen.

Your barrister has told me some things about you. You are now 20 years old. You were 19 when this happened. You have no prior criminal record.

You were born in Darwin but you were raised on Groote Eylandt. Your parents separated when you were about 14. Your mother now lives in Darwin, but your father still lives on Groote Eylandt.

You went to school to about year 9 level. You then went to school for a short time in Melbourne, but came back because you were homesick.

You have not done paid work since you left school.

You are single and you have no children.

You started using cannabis at about age 15 and you started drinking alcohol at about age 16. You had been smoking cannabis and drinking grog on the day this thing happened, and you were “half-shot” at the time.

You were remanded in custody on the day of the offending and then granted bail on 23 January 2019. You did not comply with the conditions of bail. You failed to follow directions. You left Groote Eylandt without telling Probation and Parole. You say that was because you had to leave Groote because there was trouble in the community.

After you came back to Darwin you started drinking alcohol again, in breach of your bail conditions. You failed to report to Community Corrections. You failed to tell Community Corrections about changes of address. Then, finally, you failed to appear in answer to your bail on 18 June 2019. That is, you failed to come to court. The court issued a warrant for your arrest. You were arrested on 8 August 2019 and you have been in prison since that time.

I am going to go into some legal matters now, Madam Interpreter, so I will not require a line by line interpretation, but I will come back to that.

The sentence imposed will be backdated to take account of those periods spent in custody, and to take account of your indication of an intention to plead guilty at a relatively early stage in the proceedings. I accept that in the imposition of sentence you are entitled to the leniency that would ordinarily be afforded to a youthful offender with no criminal history.

I also accept that you were the younger of the two offenders, but I do not consider that difference in age has any significance for parity purposes. However, the head sentence I impose on you will be slightly lower than the head sentence imposed on your co-offender by reason of her more extensive criminal record.

It is difficult to assess your prospects for rehabilitation. The use of alcohol and cannabis obviously gets you into trouble, which you have apparently now recognised. Your successful rehabilitation is almost certainly contingent on getting some treatment and support in that respect, and moving away from the chaotic lifestyle you have previously been leading in Darwin.

Your prospects and circumstances are complicated by the fact that Community Corrections has assessed you as unsuitable for supervision and provided reasons for that assessment. That assessment is made on the basis of their inquiries and being unable to identify any familial or other support, or stable accommodation arrangements, in the event that you are given the benefit of an order suspending sentence.

Those concerns are borne out by your poor compliance with supervision and the conditions of bail during the period during which you were on bail. In the circumstances, I am unable to assess your prospects of rehabilitation as anything other than relatively poor at this stage, even having regard to your age.

However, those concerns may be allayed in part if a condition of any order suspending sentence is that you immediately enter into a residential rehabilitation program and do nothing to cause your early exit. You were previously assessed as suitable for a residential rehabilitation program, but that assessment was conducted back in February this year. After the matter was last before the court your legal representative made inquiries of the CAAPS program. CAAPS has advised that there is a room available for you to undertake a residential rehabilitation program, commencing from today.

In those circumstances, and notwithstanding the assessment by Community Corrections, I am prepared to make an order suspending the sentence of imprisonment that I impose on you, with effect from today, subject to conditions if you are prepared to agree to those conditions.

Madam Interpreter, I am going to read the conditions out – those ones that Irene discussed with the lawyer just before – and I am going to ask at the end whether she agrees to comply with those conditions.

Those conditions are:

- 1) The offender must not, during the order suspending sentence, commit another offence punishable on conviction by imprisonment.
- 2) The offender is under the ongoing supervision of a Probation and Parole Officer for a period of 6 months following her release; must obey all reasonable directions from a Probation and Parole Officer, including where she lives, who she hangs around with, and reporting; and she must report to a Probation and Parole Officer within two clear working days after the order comes into force today.
- 3) The offender must tell a Probation and Parole Officer of any proposed change of address or employment.
- 4) The offender must not leave the Northern Territory, except with the permission of a Probation and Parole Officer.
- 5) Immediately on her release from prison, the offender is to enter the CAAPS program and undertake the 12-week residential rehabilitation program there and do nothing to cause her early discharge from that program.
- 6) The offender will not consume alcohol or a dangerous drug, including cannabis, and will submit to testing as directed by a probation and parole

officer for the purpose of detecting the presence of alcohol or dangerous drugs.

Are you prepared to agree to those conditions?

THE ACCUSED: Yes.

HIS HONOUR: You understand that if you leave CAAPS or get kicked out of CAAPS you are going to have to come back here and I might have to send you back to prison? Do you understand that?

I have made the period of supervision for 6 months following your release, so that it covers the period of the residential rehabilitation program and 3 months following your completion of that program. I want to make sure that you have the support of probation and parole for a period following your completion of that program.

I am also going to fix a period of 12 months from today – so, one full year – during which you cannot commit another offence. You still have about 7 months of gaol time hanging over your head. If you do commit another offence, you will be brought back here and I might have to send you back to prison for that 7 months.

Do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: Very good. While this offending was no doubt objectively serious, it was at the lower end of the scale for the crime of robbery. The theft, although it involved some degree of pre-meditation, was unsophisticated and opportunistic.

Robbing an elderly, frail and disabled man, and in the process, pushing his from his wheelchair, was inexcusable. However, it was still a relatively low-level of violence in terms of the violence that is sometimes employed in the commission of robberies. It did not involve a weapon. The whole incident was relatively brief. The value of the property stolen was not great in relative terms, but no doubt important to the victim.

Even accepting the assessment I have made as to the nature of this offending and the circumstances which operate in mitigation, punishment, general and specific deterrence, denunciation and community protection all have important roles to play in sentencing for this offence, notwithstanding the importance which has to be accorded to your rehabilitation.

As this court has previously observed, the community considers that the criminal of robbery is particularly abhorrent, combining as it does the features of stealing and the use or threat of violence to effect that stealing. The offence is regrettably common in the Northern Territory.

It is necessary to send a message that conduct of this type will not be tolerated. It is important to impose a sentence which is severe enough both to punish you for what you have done and to discourage you, so far as the sentencing process allows, from committing this type of offence again.

Ms Mamarika, can you please stand up while I sentence you?

I make the following orders:

- 1) I find you guilty and convict you of the offence charged by indictment dated 3 September 2019.
- 2) I sentence you to a period of imprisonment for 12 months for that offence, backdated to 25 April 2019.
- 3) I suspend that sentence forthwith, on the condition that you immediately upon you release enter into the CAAPS program subject to supervision on the conditions I have read out.
- 4) I fix an operational period of 12 months from today pursuant to ss 40(6) and (43) of the *Sentencing Act*.

Yes, anything arising out of that, counsel?

MR DALRYMPLE: Does your Honour propose referring to the period of supervision in the sentencing orders or is that covered in the conditions?

HIS HONOUR: That is covered in the conditions: "The offender is under the ongoing supervision of a probation and parole officer for a period of 6 months following her release."

MR DALRYMPLE: Yes.

HIS HONOUR: Yes, anything further at this stage, counsel?

MR DALRYMPLE: No.

MS KER: No, your Honour.

HIS HONOUR: Yes, all right. Thank you for your attendance and assistance.

Good luck, Ms Mamarika. I hope things go well for you. Stay off the grog, all right?

Yes, adjourn the court, please.
