

N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Northern Territory, proceedings for infringement will be taken.

THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21919366

THE QUEEN

and

RENE MORALES

(Sentence)

GRANT CJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON WEDNESDAY 4 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: Mr Morales, you have pleaded guilty to the supply of a commercial quantity of cannabis on 13 May 2019, contrary to s 5(1) of *Misuse of Drugs Act*. The maximum penalty for that offence is imprisonment for 14 years.

The facts can be summarised as follows.

You ordinarily reside in New South Wales. Sometime prior to this date, you came into possession of cannabis there and you travelled with it to the Northern Territory.

On 13 May 2019 you were apprehended by police while driving through Daly Waters on your way to the Minyerri Community. Your vehicle was searched a drug detection dog provided a conditioned response to a water tank attached to the vehicle.

That water tank was found to contain nine Cryovac packages of cannabis with a total weight of approximately 1.24 kilograms, which resolves to something in the order of 2 and 3/4 pounds in the old imperial measure. That is more than twice the threshold for a commercial quantity of cannabis under the legislation.

Had that quantity of cannabis been sold by the gram in the Minyerri Community, it could have yielded up to \$200,000. It would appear, from what I am told by your barrister, that you had connections to the community through your long-term de facto partner.

The vehicle was seized and that has been forfeited to the Crown by consent. You were arrested on that day and you have been remanded in custody since that time.

You have got some very old convictions in the Northern Territory for motor vehicle offences and assault; none of which have any great significance for this purpose. However, you have also got a criminal history in New South Wales; some of which is relevant.

In 2013 you were convicted of supplying a prohibited drug and put on a 9-month bond.

In 2014 you were again convicted of supplying a prohibited drug and sentenced to imprisonment for 6 months. That sentence was found to be manifestly excessive on appeal and suspended on condition that you enter into a bond subject to supervision.

Having made those observations about your convictions, I accept your barrister's submission that they were relatively minor supply offences involving, on your instructions, 14 grams of cannabis. That is reflected in the penalties that were imposed at the time.

Apart from those drug convictions, you also have convictions for some form of stalking, possessing a prohibited weapon and ammunition, going armed with the intention to commit an indictable offence, assaulting police, offensive behaviour, drink driving and other motor vehicle offences.

While I do not characterise you as a recidivist offender for these purposes, you certainly have demonstrated a disregard for the law over a number of years. I am told by your barrister that your prior offending was largely due an alcohol misuse problem and that you ceased drinking about 2014. That is reflected in the fact that these violent and disorderly offences ceased after that time. But, of course, your cessation of drinking did not prevent you from involving yourself in the offending I am dealing with today.

Your barrister has told me something about your personal circumstances in both written and oral submissions. I know that you are now 65 years of age. You were born and raised in Cuba and you completed an engineering degree there.

In about 1980 you emigrated to Australia and worked as an engineer for the Ford motor vehicle company for a number of years. After leaving Ford, you have travelled and worked extensively throughout Australia.

You have been involved in an intermittent de facto relationship for approximately 30 years now. That relationship has produced six children, who are now all adults. Your de facto partner was diagnosed with emphysema about five years ago now, and since that time you have contributed financially to her treatment.

One of your sons has got mental health issues. You were his carer for a time but he and his children, your grandchildren, now live with your partner in Queensland. The family is concerned, I am told by your barrister, that if your partner passes away while you are in custody there will be nobody to care for your son and your grandchildren.

In fixing the penalty for this offence, Mr Morales, I take into account the fact that the forfeiture of your vehicle has some punitive effect which is properly put in the balance in order to avoid disproportionality in the sentence.

In addition to the mitigating effect of the forfeiture the Crown accepts that you have pleaded guilty at an early stage and you will be given credit for that. Having said that, there is no objective indication of genuine remorse on your part that I can see beyond the bare fact that the guilty plea has been entered in the face of a strong Crown case.

While those matters go by way of mitigation, this court has repeatedly observed that the supply of cannabis in the Northern Territory is prevalent. You cannot lay any claim to leniency for prior good character or youthful indiscretion. In the circumstances, the principal sentencing objectives must be general deterrence, protection of the community, punishment and denunciation.

General deterrence is a particularly significant element in determining the appropriate sentence in this case. The amount of cannabis involved was substantial, as were the profits you no doubt hoped to make. In fact, your sole motivation seems to have been financial gain, even accepting your barrister's submission that your involvement in this offending was precipitated by financial difficulties you were having.

Although the amount of the cannabis is not the most important factor to be taken into account in determining sentence, it does remain a relevant factor. Almost 3 pounds is a relatively large amount of cannabis, although obviously not as large as the quantities sometimes dealt with by this court. But for your arrest, your conduct was likely to have led to significant quantities of cannabis – that is that almost 3 pounds – becoming available in a remote Aboriginal community with the particular detriment which would have arisen from that. That is properly taken into account as a factor which aggravates the seriousness of your offending for the reasons which have been previously identified by the Court of Criminal Appeal in this jurisdiction.

In addition to that issue of general deterrence, the sentence that I impose today must also discourage you from offending again in this way. It has to be stern enough to both punish you and to make you realise that you cannot offend again in this way.

What I am going to do is adopt a starting point of imprisonment for 2 years and 6 months for this offence. I am going to reduce that to imprisonment for 2 years on account of your guilty plea.

I do not consider that the imposition of a non-parole period would enhance your prospects of rehabilitation or facilitate your rehabilitation or otherwise be necessary in the circumstances of this case. For that reason, I am going to make an order suspending the sentenced to imprisonment after you have served the minimum time which the objective seriousness of this offending requires.

I also do not consider that active supervision by the Northern Territory Correctional Services during the period of any suspension of your sentence would be the best option in terms of facilitating your rehabilitation. As this court is aware, arranging the transfer or those supervisory arrangements to other jurisdictions can be difficult and can take some time. That has the potential to deprive you of family support structures during the period of any order suspending sentence, and perhaps more importantly in this case, it would deprive your family of the support you may need to provide given your partner's illness and your son's circumstances.

For those reasons, I am going to make an order suspending sentence after you have served 6 months on condition that you leave the Territory immediately on your release and not return for the balance of the suspended sentence. So that is for a period of 18 months after your release.

Mr Morales, are you prepared to agree to an order suspending sentence on that condition?

THE ACCUSED: Yes.

HIS HONOUR: I am also going to fix an operational period of 2 years from the date of your release. What that is going to mean, Mr Morales, is that on your release after six months, you are going to have 18 months of prison time hanging over your head. If you do not leave the Northern Territory immediately on your release – and by immediately, I mean as soon as practicable – or if you return to the Northern Territory in the following 18 months, or if you commit a further offence punishable by imprisonment in New South Wales or Queensland in the following two years, you are going to be brought back before me and I am going to be forced to restore some of all of that 18 months of prison time that is hanging over your head.

Do you understand that?

THE ACCUSED: Yep.

HIS HONOUR: Very good.

I make the following orders.

1. The offender is convicted of the offence on the indictment dated 29 August 2019.
2. The offender is sentenced to imprisonment for 2 years for that offence, backdated to 13 May 2019.
3. That period of imprisonment will be suspended after the offender has served 6 months on condition that he leaves the Northern Territory immediately upon his release and does not return for the balance of the sentence held in suspense.
4. An operational period of 2 years from the date of release is fixed for the purposes of ss 40(6) and 43 of the *Sentencing Act*.

Mr Jones, you say that this vehicle is forfeited by consent. I take that to mean you do not seek an order pursuant to s 34 of the *Misuse of Drugs Act*?

MR JONES: Actually, your Honour, I am going to seek an order. Notwithstanding that is by consent, the court should still make an order pursuant to s 34.

HIS HONOUR: Yes. I do not understand the notion of consent without an order in this context.

MR JONES: Well, issues can sometimes arise down the track and it was always the Crown's position from day 1 with respect to forfeiture. It was probably put in there as an abundance of caution, but notwithstanding that, the Crown does seek an order pursuant to s 34(5).

HIS HONOUR: Yes, all right.

5. White Toyota Landcruiser bearing New South Wales registration CR68ZZ is forfeited to the Crown pursuant to s 34 of the *Misuse of Drugs Act*.

MR MCMASTER: Court please.

HIS HONOUR: Anything arising out of that, counsel?

MR JONES: No, your Honour.

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

Adjourn the court please.
