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THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SCC 21721841

THE QUEEN

and

CASIMAR NARNDU

(Sentence)

HILEY J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON WEDNESDAY 11 SEPTEMBER 2019

Transcribed by:  
EPIQ

HIS HONOUR: Mr Narndu, as you know you have pleaded guilty to the three charges that are set out in the indictment dated 21 March 2018.

They are that on 27 January 2017 at Peppimenarti in the Northern Territory, you drove a motor vehicle dangerously and caused the death of AB. That is an offence under s 177F(1) of the *Northern Territory Criminal Code*. The second count is the same charge. That involved you causing the death of MM. The third charge is the same charge, except that involved you causing the death of ZM.

All of those are serious offences, and the Parliament has said that people can be sent to prison for up to 10 years for committing any of those offences.

You have not been in custody or on bail since you committed these offences. Accordingly, your sentence will commence today.

You are an adult male from Wadeye Community. I think you were born on [...], which means that you are now 54 years of age.

On the afternoon of 27 January 2017 you were allowed to drive a Toyota troop carrier, which belonged to the Development Council. The vehicle was normally based at the Palumpa Community. However, the vehicle was being kept at the Wadeye Community for repairs because it was unsafe to drive. Amongst other things, it was unsafe for the following reasons.

Firstly, the second gear was not engaging. Secondly, the 4-wheel-drive gear would disengage unless somebody physically held the selector lever in place. Thirdly, the left front passenger door, and more importantly, the rear back door could not be opened from the inside. You knew about those faults with the vehicle.

So on that afternoon you drove from the Wadeye Community along Port Keats Road to the causeway crossing of the Moyle River. You had 11 passengers inside that vehicle. When you got to the Moyle River, there was another group of people already there. That group of people had stopped there at the river and decided that their vehicle was not suitable to make that crossing.

I do not know whether that vehicle was a 4-wheel drive vehicle or a 2-wheel drive, but anyway, it is clear that those people had decided that the level of the river was too high for them to safely cross the river.

You spoke to some of those people from that other mob, and as a result of that, another seven people got into or onto your vehicle. That meant that you had a total of 18 passengers. Those passengers filled the interior cabin of the troop carrier and some of the passengers climbed onto the roof rack and travelled on that.

You then drove across the Moyle River causeway and you continued a further 15 kilometres to the Peppimenarti Community. You stopped at the Peppimenarti Club. From about 6:30 to 7:30 pm you drank between six and nine mid-strength

XXXX Gold beers. The Peppimenarti Club closed at 8 pm and after that, everybody left.

There was another vehicle that left before your vehicle left. That vehicle was driven by BB. It apparently safely crossed the Moyle River on the way back to Wadeye. However, before it crossed the river, some of the people who had been passengers in that vehicle tested the depth of the water first by walking across the river.

On the trip from the Peppimenarti Club to the Moyle River you were a passenger. You were sitting in the front passenger seat. At that time, the troop carrier was being driven by another person, FA. That was because he had been designated as the sober driver for the journey.

Obviously, you realised that you should not have been driving the vehicle then because you had consumed six to nine beers within that short space of one hour, only half an hour or so before you had left the Peppimenarti Club.

On the way back from the club to the Moyle River, the vehicle had a total of 24 passengers: two in the front of the cabin, 12 in the rear of the cabin and ten sitting on the roof rack. In the rear of the cabin, there were your three victims: AB, MM and ZM.

As you have just heard, AB was 21 years old and the two older people: ZM was 61 and MM, 66.

Sixteen of the 24 passengers, including those three people, had been passengers in the troop vehicle when you initially drove to the Peppimenarti Club.

So as I said, FA drove that vehicle with those 24 passengers from the Peppimenarti club to the Moyle River crossing. That was a distance of some 15 kilometres. When FA got to the Moyle River crossing, FA stopped the vehicle.

He believed that the river had risen since the time some hours earlier, when you had crossed it on the way to the Peppimenarti Club. He formed the view that it was now unsafe to cross. He got out of driver's seat and you got into the driver's seat. FA, even though he considered that it was unsafe to drive the vehicle across the river, climbed onto the vehicle, but he situated himself on the outside of the vehicle.

As I mentioned, you decided that you would drive the vehicle across the river once you had seen that FA was not going to do so. So you got into the driver's seat, took control of the vehicle and drove it into the causeway.

You entered the crossing in the centre of the roadway in a normal fashion. However, when you got about halfway across the causeway the current of the river was too strong and it effectively pushed the vehicle downstream and off the edge of the roadway. Once it had been pushed off the roadway the current of the river

overturned the vehicle and swept it downstream. Eventually, the vehicle righted itself and came to rest facing upstream about 40 metres away from the causeway.

While the vehicle was in the Moyle River, 21 of the 24 passengers managed to escape, and so did you. They made their way to the far bank of the river. However, the three victims were unable to escape from the rear cabin of the troop carrier and they drowned.

It was then discovered that there were three people missing, and so members of your group began to search for them, but could not find them. One of the others then drove you to the Palumpa turnoff to raise the alarm. At the Palumpa turnoff, you spoke to the Night Patrol manager. At the time, it was noted that you smelt of alcohol.

The Night Patrol manager notified Northern Territory Police and they went to the Moyle River causeway. Police apparently measured the height of the river at about 11:15 pm that evening and found that it was between 60 and 70 centimetres above the tray of the causeway.

The three victims were located about midday the next day. That is on 28 January 2017. They were found still inside the vehicle by Water Police officers. Their bodies were then removed from the vehicle and taken to the Wadeye Health Clinic and those three victims were formally identified.

You have acknowledged that when you drove the Toyota troop carrier into the Moyle River, you knew that the car was in an unsafe condition. In particular, you were aware that the rear back door did not open from the inside. You were also aware that the second gear was not serviceable.

You have also acknowledged that you were reckless as to the level of the river. You were reckless as to the risk of the likelihood that the vehicle might be washed into the river, largely because of the possible swelling and current of the river.

Because of your knowledge of the condition of the vehicle and because it was severely overloaded, you acknowledge that you were reckless to the fact that in the event that the car was washed into the river, there was a substantial risk that not all of your passengers would be able to escape. You have acknowledged that you were not justified in taking those risks.

When you were asked about the mechanical condition of the vehicle, you told the police that it have had a number of faults, including, and I quote you, "Gearbox slipping out number 4 and the 4-wheel drive." Indicating that you were aware of the faulty gearbox.

I would have thought that a properly functioning 4-wheel drive would be particularly important for negotiating a river crossing, particularly where the river was swollen, and that you would know that, being a very experienced driver, including of heavy vehicles.

Secondly, when you were asked about the serviceability of the vehicle doors, you said, "Back one hard to open. Had no handle." So again, that was important because that meant that the passengers in the back of the cabin would not have been able to operate the handle to save themselves.

Fourthly, you told the police that you drank somewhere between six and nine XXXX Gold cans. When police asked you why you decided to drive across the Moyle that night, knowing that the car was mechanically faulty, you said, "Just thinking about getting home."

The court has been provided with victim impact statements. One of them by the mother and father of AB. Understandably, they say they were completely shocked and very sad and feel very empty without their youngest son. They were very proud of his achievements. He had even travelled to Spain on a pilgrimage.

He has been to other cities in Australia, including Sydney, Brisbane and Melbourne with a singing group. He used to teach some kids, or some young adults perhaps, at the NORFORCE training group. He had a good relationship with young kids and young kids really miss him. They say that him being gone has left a big hole in their hearts and spirits. AB had five sisters and two brothers who also miss him.

They say that they do not blame you and they believe that there was some black fella magic involved in what happened that night. Perhaps that explains why they say that they do not think you should go to prison. They say you have suffered much pain by losing your favourite nephew. They say you should stay out bush and stay off the grog.

Then there are two victim impact statements from relatives of MM and ZM. One is from their daughter. She talks about hearing about this tragedy involving her parents and young AB. She said about a year after that, she felt lost and she did not think she could take care of herself, had trouble eating and sleeping. She would walk around the house alone, shut herself away from everyone around her.

She said in her victim impact statement of September last year that she is still grieving. She cannot believe they are actually gone. She is still feeling sad and emotional when she is alone. She said she was crying every day and night and still does that when she sees or passes your house.

The other victim impact statement was written by the nephew of those old people. He said, "All the family was very sad to lose these family members. They should still be here with us. There is now a big hole in our family. All the grandkids miss them. It's very sad that we will not see them again. This should not have happened."

Unfortunately, this is a very serious example of what we see too much in the Northern Territory. That is, a vehicle is grossly overloaded, with numerous

passengers unrestrained by seatbelts and placed in positions of extreme danger. The situation is much worse than we often see, because in your case, you, the driver, were intoxicated and were attempting to cross a swollen river at night-time.

It is also particularly tragic, because your conduct resulted in the avoidable deaths of three people. All valued members of your community at Wadeye.

Your conduct is particularly serious for a number of reasons. Firstly, you made that decision to get into the driver's seat and to allow another 23 people to travel as passengers in or on the vehicle. In the process, you made the decision to attempt to cross the river in circumstances where you should have known that was extremely risky. The designated sober driver, FA, had clearly decided not to undertake that crossing because of the obvious danger.

Secondly, you must have been affected by the six to nine XXXX beers that you had consumed within the space of an hour between 6 and 7 pm. That is a bit more than an hour and probably less than two hours before this tragedy. You should have appreciated that your state of intoxication may well have affected your ability to make the decision to cross the river, and having made that decision, to safely cross it.

Thirdly, you were aware of the serious defects with the vehicle; in particular, with engaging 4-wheel drive, and the faulty lock to the rear door, which would have prevented people from escaping out of that door. Notwithstanding your knowledge of those serious defects, including the defective 4-wheel drive levers, you still made the decision to drive the vehicle across the river.

Fourthly, because there were so many people inside the vehicle, only nine of the 12 inside the vehicle were able to escape. But for that overcrowding, it may have been that the three victims may have escaped, notwithstanding the problem with the rear door lock.

Fifthly, there was no evidence that you made any attempt to ensure that all of your passengers were safely out of the vehicle before you abandoned the vehicle and left your three victims inside.

Sixthly, your recklessness has resulted not only in the death of those three people but also in considerable grief for their families and loved ones, not to mention the considerable public expense involved in retrieving the bodies and vehicle, which I assume was written off.

Seventhly, unlike many such cases, this was not simply a case involving momentary inattention, such as failing to negotiate a corner. It involved you making a conscious decision to get into the driver's seat, allow another 23 people to get in or on the vehicle and then proceed to drive across the river at night.

Finally, your passengers, most of whom would have been known to you, probably knew that you were an experienced driver and they trusted you to drive safely and responsibly.

On the other hand, you may have thought that it was safe to drive across the river because BB had left the Peppimenarti Club before you and you may have thought that he had safely crossed the river.

Secondly, I accept that you would have been under some pressure from your fellow passengers to drive them back to Wadeye that night.

Thirdly, your barrister tells me that you felt some responsibility to return the vehicle to Wadeye that night. Having said that, I do not see why you could not have left that until the next morning.

So all in all, I consider that your offending was towards the higher level of seriousness for this kind of offence.

I turn now to refer to your criminal history. With the exception of a conviction in December 2018 for unlawfully causing bodily harm to somebody in September 2018 and another conviction in August 2019, for engaging in conduct contravening a domestic violence order, you had not been convicted of any offences over the last ten years or so. Your last offence, prior to this offending, occurred way back in April 2009, when you were charged and convicted of a medium-range drink driving and a number of other traffic offences, such as driving uninsured motor vehicles and the like.

Up until 2009, you had about five convictions for drink driving at various levels and a number of other convictions related to driving and others in relation to alcohol. But as I have said, you have managed to keep out of trouble for that period from April 2009 right through to January 2017, when you committed these three serious offences.

So you are not being punished again for any of those offences, you have already been punished for them, but that does give me some insight about the prospects of your rehabilitation. In particular, apart from those two recent offences, which appear to have been relatively minor in the scale of things, because you were only given good behaviour bonds for those, it does seem that you have been a successfully law-abiding citizen over the eight years or so preceding this offending.

I turn now to refer to your personal circumstances, as outlined to me by your barrister, Mr Bellach.

You were born in Wadeye. You were raised by your mother and your father and your grandparents. You were taught hunting and fishing skills by your father when you were young. You remember a happy childhood. You went to school at Wadeye and you were taught there by the nuns, who were then teaching at Wadeye.

You went through the ceremony as a young man and you now hold responsibility for conducting ceremony for young men from Wadeye. That young men's ceremony is usually held in Western Australia in June.

Your understanding is that your family come mainly from people that originate from the Bradshaw area near Timber Creek. You are married. You have one daughter and an adopted daughter, and you also have one or more grandchildren.

You have got an extensive and very good work history. After you left school, you undertook mechanical work. You hold a multiple-combination licence. You have got extensive experience driving heavy machinery. You did work for about a year in the early-1990s as an Aboriginal police officer; however, that role ceased due to funding issues.

You were then involved in the establishment of the Night Patrol at Wadeye, again, in conjunction with the local police. After you worked for the Night Patrol, you then moved into driving trucks and heavy machinery, and that has given you extensive experience driving graders, cement trucks and excavators.

You have done stock work, which has included working on Legune Station, over towards the WA border. You have been and are involved in an initiative to expand cattle production in the Wadeye region. You are presently employed as a machine operator for Thamarrurr Development Corporation, and you grade and maintain roads between Wadeye and Palumpa.

Your barrister tells me you have been driving graders since you were 18. You have tried to cut down on your work and retire but there is a shortage of people with your skills and qualifications available to work in Wadeye, so consequently, you often get called upon to carry out that work.

Mr Scott McIntyre, who is the general manager at TDC has provided this court with a reference. He has confirmed to your barrister that other contractors and labour hire companies often request that you be engaged because of your skills in operating machinery. You also operate the backhoe to dig graves for burials at Wadeye, and you also drive a cement truck when cement is required for the construction of new houses.

You have been involved in the Crows Football team in Wadeye and you were the head coach of that team. You managed to coach them to a successful premiership in 2018. I have also been given a reference from Joshua Cornell of the Northern Territory AFL, who points out that you have made a significant contribution to that representative side from Wadeye, which plays in the NTFL competition.

You have musical talent. You taught yourself to play the guitar. You are a member of a band called Nangu, meaning sand dune. You have played with that band at a number of festivals, including the Merrepen Festival at Daly River and the Barunga Festival. You sing about country and you see your music as a way of passing on stories for young people to understand and to help them engage with their country.

Your barrister also reminds me that the young man, AB, was your nephew and that the families of all three deceased people; that is young AB and those older people, spent time at your house following the incident.

You were seen by a Probation and Parole officer the other day for the purposes of assessing your suitability for supervision. You told the Probation and Parole officer that this was an accident that happened. You said, "We lost three people. They washed up in the river." You frankly admitted that you were under the influence of alcohol when you made that decision to try to cross the river.

You told the probation officer that you often find yourself "Thinking hard for that family that I lost." Presumably, a reference to the loss of these three people from Wadeye. You also told the probation officer that you consume alcohol mostly every weekend when you go to the Peppimenarti Club and that you will often consume eight or nine beers or even a 12-pack of cans of beer. You do not have any problem with other illicit substances.

I have mentioned that your barrister has provided some references. Mr Scott McIntyre says that you have been employed there at the Thamarrurr housing and construction business from April 2013. So presumably, you have been there for some six and half years. You were initially employed as a yard supervisor, but later, you did a lot of driving work.

He says you are a valued member of the team and a senior mentor for other workers that also worked for Thamarrurr Development Corporation. He says you are the only operator that they have available to assist in fulfilling their contracts. He says, "We hope that Casimar is able to remain an employee of TDC in the long-term."

I mentioned I have a reference from Joshua Cornell from AFL Northern Territory. He has known you, or he had when you gave the reference, for about 18 months. That is about a year ago. He said that you have been a tremendous contributor to the AFL's football programs in Wadeye, and he speaks well of your influence throughout the Wadeye Community and of your assisting, particularly the junior football programs.

He also says that you are the main carer of many children and you ensure that the children go to school at Wadeye. He says your contribution to the local community is greater than most others, helping families with funeral preparations, taking players for health checks at the clinic, quelling clan and football disputes and sharing the land with visitors.

The third reference is from parish priest, Leo Wearden. Again, this is a reference of a year ago. He had been parish priest at Wadeye for almost 14 years and he has had a lot to do with your mother, who was a regular church leader and attender. He has seen you from time to time. He said you were always very polite.

He also says that you are one of the elders of a particular clan from the Nungu country, which is about an hour's drive south-west of Wadeye. He says that you and others engage in projects there for your clan, including the construction of a solar-run water pump. He was impressed by your apparent authority over the younger men in your clan.

He talks about you having been the coach with the Nungu Crows football team and the contributions that you are making there, particularly as a mentor and leader of the younger players. He talks about the respect which they and their families have for you.

He also notes that you participated in a number of ceremonies following the death of that young fellow, AB. He also talks about a smoking ceremony that was carried out after the motor vehicle was brought back from the Moyle River to the house at Wadeye.

He also says that he celebrated a funeral for the other family, for all three of the victims, when the bishop went out there to conduct the funeral. He said that there appeared to be no blaming or tension between those families, even though you were present at those funerals.

You pleaded guilty fairly recently; however, you indicated a long time ago that you would be pleading guilty to these charges. The matters took some time to be finalised because there was some uncertainty about some of the facts concerning exactly what you were told before you got into the motor vehicle and made that decision to drive across the river.

I accept that you have had a lot of time to reflect upon this tragedy and to realise that you have caused the deaths of these three people. So I propose to give you the full discount of 25 per cent of the sentence that would normally be imposed.

I consider that your prospects of rehabilitation are good. I have mentioned your two recent offences which cause some concern, but it does seem to me that, as I say, they appear to have been relatively minor and that apart from them, you do appear to have been a contributing member to your community, at least for the last ten years, without getting into any trouble.

I have mentioned that each of these offences are offences that carry a potential of 10 years' imprisonment. You are the only person to blame for these offences, and as I have said, your conduct has resulted in the death of those three people and associated distress for their families and loved ones.

Clearly, you must be punished for what you did. The punishment must be strong enough to make you realise that what you did was very wrong and that you must not do anything like this again. In particular, get drunk, into a vehicle which is overloaded with passengers, and embark upon something as serious as this. That is cross a swollen river at night in those circumstances.

Your sentence needs to be tough enough to show other people who might be tempted to do that kind of thing that they will be in serious trouble if they do, even if their conduct does not result in death, otherwise, they will be sent to gaol. The community, and in particular, your community and the whole of the Wadeye Community is very sad that this happened, and I am sure that they do not approve of you doing what you did. That is getting into a vehicle while drunk and embarking upon such a dangerous exercise with 23 passengers.

I now turn to sentence you. Would you stand up please, Mr Narndu.

In respect of each of the three counts on the indictment, I find that facts proven and I find you guilty and I convict you of each of those offences.

I sentence you to an aggregate sentence of 5 years' imprisonment to commence today. Had you not pleaded guilty and shown remorse, I would have sentenced you to 6 years and 8 months' imprisonment.

Although I do not need to allocate a particular sentence to each count, I would have sentenced you to a sentence of 3 years and 9 months for each of these counts, after the 25 per cent discount.

Taking into account the fact that all of these offences were very much part and parcel of the same tragic conduct on your part, I have decided that a total sentence of 5 years' imprisonment is appropriate.

I do propose to partially suspend that sentence after you have served a period of 12 months' imprisonment. I will fix an operational period of 4 years from the date of your release from prison. You will only be entitled to the benefit of that suspended sentence if you accept the conditions that I am about to impose.

You might have a seat while I go through those.

I propose to impose the five conditions that are set out in the report of 10 September under s 103 of the *Sentencing Act*. That is that:

1. You must not, while the order is in force, commit another offence whether in or outside the Territory punishable on conviction by imprisonment.

I will just pause there. The effect of my sentence is that after 12 months, you will be released from prison. The remaining four years, you will be bound by these five conditions, and the sixth one, which I will impose. So in other words, if you commit another serious offence within that period of four years after you get out of prison, you can be brought back here and I or another judge can send you back to prison to serve that remaining four years or part of it.

The second condition is that:

2. You will be under ongoing supervision of a Probation and Parole officer. You must obey all reasonable directions from a Probation and Parole officer and you must report to a Probation and Parole officer within two days after the order comes into force.

So in other words, just before you are to be released from prison in 12 months' time, a probation officer will talk to you and will discuss with you where you are going to live, where you are going to work and will talk to you about reporting on a regular basis.

3. You must tell a Probation and Parole officer of any change of address or employment within two clear working days after the change.
4. You must not leave the Northern Territory except with the permission of a Probation and Parole officer.
5. For the first two years after release, you will not purchase or consume alcohol and will submit to testing as directed by a Probation and Parole officer or a police officer.

And the sixth is the additional condition that I discussed with counsel before.

6. You will not drive a motor vehicle which contains more than two passengers within two years of your being released from prison.

Finally, I disqualify you from holding or applying for a driver's licence for the next 12 months.

So I think you understand those conditions, do you, Mr Narndu? And are you prepared to agree to those conditions? Very well. I think Mr Bellach will further explain if necessary.

So just to summarise, the sentence is 5 years from today. You will be released from prison in 12 months' time under those conditions, and you will need to comply with those for the four after your release.

Anything further from counsel?

MR NATHAN: No, your Honour.

MR BELLACH: No, your Honour, thank you.

HIS HONOUR: Very well. Well, I thank counsel for their detailed submissions.

Adjourn the court please.

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