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THE SUPREME COURT OF

THE NORTHERN TERRITORY

SCC 21844311

THE QUEEN

and

PT

(Sentence)

BLOKLAND J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON THURSDAY 5 SEPTEMBER 2019

Transcribed by:
EPIQ

HER HONOUR: On 13 August this year, PT pleaded guilty to seven counts on indictment. They are:

Count 1: expose a child under 16 to an indecent act.

Count 2: expose a child under 16 to an indecent film or video.

Count 3: expose a child under 10 to an indecent act.

Count 4: indecently deal with children under the age of 16.

Count 5: expose a child under 10 to an indecent film or video.

Count 6: expose a child under 10 to an indecent film or video.

Count 7: expose children under 10 years to an indecent film or video.

Counts 1, 2 and 4 carry a maximum penalty of 10 years imprisonment. Counts 3, 5, 6 and 7 carry a maximum penalty of 14 years imprisonment, noting the aggravating feature in those matters that the victims were all under 10.

The facts of the offending are as follows. The victim on counts 1 and 2 is CB who was between 9 and 10 years of age at the time of the offending. Sometime between 1 January 2018 and 9 October 2018, CB went to play on the swing at FP's house. After playing, she walked past the house where PT was residing. She noticed PT standing in the front window. He was holding his phone over his penis, shining the light on it for CB to see. That offending constitutes count 1.

PT then held the phone up towards the victim, showing a movie she described as, "Two boys and a girl. The boy was putting his front part inside her mouth." She explained that the girl's front part is called "Yimwara" in Tiwi, and the boy's front part is called "Gudaka" in Tiwi. She watched the movie for a short time before walking away. This is count 2.

The victims on count 3 and 4 are FP, who was between 8 and 9 years old at the time of offending, AP, 11 years old, and JH, 10 years old. On 29 September 2018 most of the community were at the local sports club watching the AFL grand final. The victims and some other young girls were playing on a swing at House [X] Pirlangimpi, opposite PT's residence which was House [Y] at the time. All the girls, including the victims, gathered at a tree next to his house and voted on entering the house. They threw rocks at his house. The girls devised a system where they would take it in turns to enter his house.

FP told the others, "You mob, this man, he'll show us blue movie." She suggested that they go into his house one by one. Several of the girls stood near his door and peeped through it, looking for PT. FP said, "Give me a signal when someone comes. I'm going first." The girls stood guard and yelled out, "Echo," if

anyone came near the house. FP entered his house. She observed PT “Holding his private part, shaking it”. That offending forms count 3.

AP and JH later entered PT's house. He walked over to AP and grabbed her by the right wrist, pulling it towards his penis. AP pulled her hand away instantly, which resulted in him scratching her right hand with his fingernails as he attempted to maintain hold. The victim felt scared. One of the girls stated to investigators that AP was saying, "Help, help" and observed PT holding onto her hand, attempting to pull her inside at the back door. A witness said he was "trying to make her touch his ball bag." JH then briefly squeezed the offender's flaccid penis. It was dark and she could not see it. She felt scared and left the house with AP. The two victims on count 4 were inside for approximately two minutes.

The victim of count 5 is MP, who was between 7 and 9 years old at the time of the offending. Sometime between 1 January 2018 and 9 October 2018 she went into her friend FP's house in the morning to swim in her pool. After a while, she decided to walk home. MP walked past PT's house, which was opposite FP's house, and observed PT standing it the front room behind the window. MP's attention was drawn to the window as PT was waving his phone, shining the light in order to get her attention. He stopped waving his phone and MP saw that he was showing her a pornographic film depicting two naked girls. She described the film showing “One girl licking the other girl's front part”. She named the “front part” in Tiwi, saying “Yimwara” and described Yimwara as, "Where babies come from and you piss out of Yimwara." She watched it for a short time and then walked away. That offending constitutes count 5.

On another occasion between 1 January 2018 and 9 October 2018 MP was walking home as the sun was setting. She passed the back of his house and PT called out, "Come inside." MP observed him standing at the back window near the kitchen. He was waving at her. She noticed he was holding up his mobile phone in her direction, showing another pornographic film. She described the film to be “One boy licking another girl's Yimwara”. She saw it and ran home.

The victims of count 7 are FP, PX and LG. At the time of this offence, all three victims were between 8 and 9 years old. Sometime between 1 January 2018 and 9 October 2018 they were playing outside near the house where PT was residing. That is [House X] Pirlangimpi. They observed him standing in the front of the house at the window, showing them a pornographic movie on his mobile phone. The movie was described as one man was sucking the girl's private parts. PX told him, "Don't show that to little girls," before walking away.

He was arrested at 8:34 am on 24 October 2018. He has been in custody since that date.

Sexual offences against children are, rightly, condemned by the community and the Court reflects the community's attitude in sentencing for offences of this kind.

The seriousness of such offences is reflected in the penalties imposed by the legislation. Counts 1, 2 and 4 each carry a maximum penalty of 10 years imprisonment, and counts 3, 5, 6 and 7 each carry a maximum penalty of 14 years. In this case, there were seven separate victims and they were all of a young age. Their young age is a particular aggravating circumstance in some but not in all of the charged. In addition, the offending occurred over the course of some nine months, though the exact timing is unclear. In other words, it was not an isolated offence. There was a significant gap in age between PT and the victims and obviously so. Both counsel are in agreement that the offending on count 4 is the most serious of all the charges, given it is the count that involved physical touching and grabbing that has been described.

The Court has received seven victim impact statements. The statements outline the fear experienced by the children and the hurt and anger experienced by their families as a result of PT's actions. It is clear the victims' families do not want him to return to the Tiwi Islands. They want him to go to prison. The statements illustrate the kind of alarm that offending of this kind creates in the community. Various of the victims' guardians have said it was shocking, that the girls were hurt inside, that the families are angry and the girls were scared. The impacts on the victims are to be taken into account in sentencing.

While serious, as is all offending of this generic kind, the assessment of the gravity of the offending may be moderated for a number of reasons. Each incident was relatively brief and the offending appears to have been opportunistic in nature, in the sense that he did not leave his house to pursue the victims and commit the offences, but rather took advantage of opportunities where the victims passed his house on foot. He did not threaten the victims against disclosing what had occurred. There was no gratuitous violence and no weapons were used. One incident, of course, did involve physical contact between him and the victim. He is not directly related to any of the victims. It is not a situation of abuse of a position of trust in order to commit the offences; however, in small communities a level of trust is needed between all residents for the proper functioning of the community, including the proper care of children. The long-term effects of sexual offending against children may not be fully realised until the child is older. Whether that concerns the more serious examples of sexual offending or lesser examples, such as various examples of indecent exposure, such as here. It is for this reason that all offending of this kind is treated seriously.

PT is 51 years old. He was born in Darwin and raised in Maningrida. His first language is Burarra and he speaks very limited English. He attended primary school in Maningrida. His schooling was frequently interrupted from the age of 13, as he suffers rheumatic heart disease and required regular trips to Darwin for medical treatment. He left school in his early teenage years. He moved to Jimarda Outstation when he was approximately 15 years old. He lived between that outstation and Maningrida and participated in traditional hunting and fishing activities. He enjoyed playing football when his health permitted him to do so.

When he was in his 20s, he was the passenger in a serious car accident in Maningrida. His elder brother was driving. He suffered numerous broken bones and a back injury. These injuries meant he was no longer able to play football.

He went through ceremony at the age of 17. His sister-in-law, who is a teacher, and his brother-in-law, who is a mediator for the Burnawarra Justice Group, are senior community members. They are aware of his offending and he has, the Court was told, some appreciation that they will culturally discipline him upon his release. The Court has been told that that may include exclusion from important ceremonies and his attendance at other remedial ceremonial activities. This is to be encouraged. It is not a point of mitigation. However, it is heartening to know that those that are close to him will not tolerate behaviours of this kind. In a broad way, it may be seen to contribute towards rehabilitation and reducing the risk of re-offending.

In the 1990s he married a woman from Oenpelli. He has three adult children and several grandchildren. His wife died in the 2000s and he has not had a significant relationship since. His children and grandchildren live between Maningrida and the Tiwi Islands. At the time of the offending, he was Pirlangimpi visiting his grandsons and staying at a relative's house.

He was previously employed at Maningrida Shop as a shop assistant and afterwards as a labourer, preparing mud bricks and welding. He described to his counsel a high degree of satisfaction from working and laments the fact that his back injury and other health issues have precluded him from being able to work in recent years. It is noted that before being incarcerated, he was receiving a disability pension.

It is noted that while he does not come before the Court as a person of complete good character, he has no relevant previous matters, including matters of a sexual nature on his record. The last time he was in custody was 26 years ago. He last committed an offence in 2013, which was failing to comply with a loitering notice. He has a poor record of property offending; however, those offences do date back to the early-1990s and late-1980s.

He is a person with significant health issues. The Court has been provided with a bundle of medical records from Royal Darwin Hospital. Those records indicate multiple diagnoses. He has rheumatic heart disease that is worsening and his rheumatic mitral valve has moderate to severe regurgitation, meaning that blood leaks back and through the mitral valve in his heart, placing him at risk of heart failure. He has a first-degree atrioventricular block, also indicative of heart failure. He suffers hypokalemia; that is low potassium, which ordinarily reflects low kidney functioning, as well as bronchiectasis: chronic lung infections. He also has osteoporosis and hepatitis B. He has recurrent cholangitis: inflammation of the bile duct, resulting in numerous admissions to the Royal Darwin Hospital, and ultimately resulting in surgical removal of his gallbladder and biliary stent. He has also previously been admitted to Royal Darwin Hospital via CareFlight for pneumonia, acute rheumatic heart disease and various other physical ailments.

It was submitted and is accepted that his chronic health issues are life-limiting and that his condition is worsening.

His counsel submitted and it is accepted that he has had a difficult experience of prison as a result of both his physical health and being illiterate. He is isolated due to being one of the very few Burarra speakers in the prison. The Court is told he struggles to communicate with prison officers or fill out forms and has not been able to navigate the prison telephone system in order to telephone NAAJA and speak to his lawyers, and has consequently been completely reliant upon visits to receive updates regarding his legal matters. The Court is also told that as an older man, he finds it difficult to ask for help. I accept that as a result of these circumstances, along with his physical health issues, as mentioned already, his experience in custody is more arduous than the experience of those who are fit and healthy.

The Court was told that he does not ever want to place himself in a situation where he may need to go back to prison and that specific deterrence has been achieved in his case. That may be so; however, he will still need to serve significantly more prison time, given the charges.

It was also submitted that once sentenced, it is unlikely that he will be able to participate in any of the programs offered by the prison due to his inability to converse in English and the lack of Burarra interpreters engaged by the prison for the purpose of assisting prisoners to engage in programs. It was submitted that those factors also place him at a very low risk of obtaining parole should a non-parole period be set. His counsel noted that NAAJA Throughcare do not provide assistance for parole applications the first time they are submitted. So he will unable to obtain assistance to prepare an application should a non-parole period be set and if he wished to apply for parole.

While it is accepted that he is unlikely to obtain parole due to those extenuating circumstances, that is not really a matter that can determine the question, finally, of whether there should be a non-parole period. Ultimately, all offenders who are sentenced and have a non-parole period set must be sentenced on the basis that they may well serve the full term, either through not applying for parole or through being refused for parole. In itself, it is not a reason to refrain from fixing a non-parole period, if having regard to all of the circumstances, a non-parole period should be set.

Given the various related aspects of the offending, all occurring from the house he was staying in over a period of months, there should be some but not total concurrency. The Court is, of course, also obliged to consider totality.

As a result of the offending, he will be subject to reporting obligations set out in the *Child Protection (Offender Reporting and Registration) Act*. As noted by this Court on previous occasions, the post-release obligations are onerous for offenders and failure to comply with any one of them can result in imprisonment for 5 years. I am willing to accept in this instance that due to PT's inability to read or write English, the requirements may be more difficult for him to comply with than they may be for a

person in different circumstances. He will, of course, be subject to that Act, which is some protection for the community through the monitoring of offenders.

With the consent of both counsel, I ordered a section 103 supervision report be prepared by Community Corrections, assessing the possibility of supervision in Darwin and also in Maningrida. He was found to be unsuitable for supervision. The author of the report states that his proposed residence in Malak was unsuitable due to overcrowding. Unfortunately, the author of the report was unable to establish contact with PT's brother-in-law, GP, before finalising the report. Maningrida Police were contacted and the report indicates that other than managing PT's mandatory ANCOR reporting obligations, the police had limited ability to monitor child sex offenders in the community.

It appears that one of the other reasons that Community Corrections assessed PT as being unsuitable is that his version of offending appeared very different to the agreed facts. It is obvious that he is not sophisticated in terms of sound understanding of processes and in terms of his expression, even with an interpreter. And I am told this morning, it was a phone interpreter situation and he was using English as well. That would appear to be evident, given he has used words like "forced me," which is something of a giveaway that it is not just speaking a different language that may be an issue, but attributing different meanings to words, giving them a different meaning than standard English. "She forced me," is a very common example of this phenomenon and the situation becomes even more confusing given the particular Crown facts in this case. In any event, he is obviously to be sentenced on the Crown facts which have been agreed.

While Community Corrections have concerns about his release into the community, the reality is that at some stage in the future, he will be released. In the circumstances, I consider that the most appropriate way to meet the objectives of the *Sentencing Act* is to order a term of imprisonment that is partially suspended and that for some period, he be supervised, notwithstanding the report.

His lack of relevant priors, together with the ANCOR reporting conditions, could mean that additional supervision by Community Corrections is not absolutely essential. However, I do think it preferable he be sentenced for a period to ensure he is on track after release. In my view, although I am going to order he be under supervision, that does not put specific onus on Community Corrections, although it will mean that there is another layer of monitoring, and of course, Community Corrections can direct him not to reside in certain places. I am told this morning that there is another option that can be considered in Maningrida but that will not be for some time. So really, anything that is considered will need to be considered freshly at a later time.

Community Corrections supervision is another safeguard to the broader community. It is also worth remembering that suspended sentences are a form of significant punishment, given the consequences for the offender's record and the liability for restoration in the event of a breach. It is some incentive to not re-offend.

In my view, given all of the circumstances and given that this offending appears very much out of the blue after many, many years of not being before the courts, it is not appropriate that I set a non-parole period.

I acknowledge that this is an early plea and was entered at the first available opportunity. I accept that the entry of the plea spared multiple child witnesses from the process of giving evidence and facilitated the course of justice. I am prepared to find that the early plea demonstrates to some degree that PT has accepted responsibility for his actions.

The Court was also told that the victim impact statements have all been read to him by an interpreter and that in response, he told his counsel, "I won't ever go back to the Tiwi Islands. I know that story of what I did and the problems I caused. I heard what those girls and their families said in their stories and I'm shamed. I won't ever do it again. I feel no good." So the Court was told that he understands that he has, in effect, been exiled from the Tiwi Islands as a result of this conduct and it appears he accepts this community-led punishment.

In the end, the value of the pleas is primarily one of facilitating the course of justice, which is of significant value in cases of this kind. And I do conclude there is personal responsibility reflected in the pleas. There will be a reduction of 25 per cent in respect of each sentence.

Counsel for the Crown submitted that PT cannot be assessed as having reasonable prospects of rehabilitation. The reason for that is that he repeated the same conduct on a number of occasions and two different victims. I am not prepared to find that he has no prospects of rehabilitation, for the reason that he has never had previous convictions for similar matters. He has also accepted responsibility for his actions and shown an appreciation for the effect on the victims, and he retains strong support from family members, particularly his niece, TP, and his brother-in-law, GP. I do assess his prospects as fair to reasonable, given that lack of previous offending, and also given he has been in custody since October 2018, and it has been over 20 years since he breached a court order. His very poor health is another consideration, for while he has the physical capacity to commit indecencies of this kind, it is highly unlikely there would be an escalation, in my view, of offending, given his overall circumstances.

The sentence must, however, be primarily concerned with general deterrence, specific deterrence, denunciation and punishment. To that end, although on balance, I consider a partially suspended sentence to be appropriate, having regard to all the relevant sentencing factors, he will still need to serve a significant portion of the term.

Count 1: convicted and sentenced to nine months imprisonment.

Count 2: convicted and sentenced to nine months imprisonment. The sentence on count 2 is to commence after three months of the sentence on count 1.

The total for counts 1 and 2 is 12 months.

Count 3: convicted and sentenced to nine months imprisonment.

Count 4: convicted and sentenced to 18 months imprisonment. The sentence on count 4 is to commence after six months of the sentence on count 3.

The total for counts 3 and 4 is 24 months. The 24 months will commence after eight months of the sentences for counts 1 and 2.

That is a subtotal of 32 months.

Count 5: convicted and sentenced to nine months imprisonment.

Count 6: convicted and sentenced to nine months imprisonment.

Counts 5 and 6 will be served concurrently with each other, but will commence after serving 28 months of the sentence imposed for counts 1 to 4.

That is a subtotal of 37 months.

Count 7: convicted and sentenced to 12 months imprisonment, to commence after serving 32 months of the sentences imposed for counts 1 to 6.

The total term is 44 months imprisonment, suspended after serving 32 months. The commencement date is 24 October 2018. There will be an operational period of 12 months from the date of release, during which he is not to commit an offence punishable by imprisonment.

1. During the period of the order; that is 12 months from the date of release, he is not to commit another offence whether in or outside of the Territory punishable on conviction by imprisonment.

I will just add the rest of the conditions now.

2. He is under the ongoing supervision of a Probation and Parole officer and must obey all reasonable directions from a Probation and Parole officer and must report to a Probation and Parole officer within 48 hours of the order coming into force.

3. He must reside at an address approved by his Probation and Parole officer.

4. He must not leave the Territory except with the permission of a Probation and Parole officer.

5. He will participate in counselling and/or treatment as directed by a Probation and Parole officer.

6. He is not to reside in a house with a child who is under 16 years of age unless an adult who knows about this offending is also resident in the house.

7. He is not to return to the Tiwi Islands and not to contact directly or indirectly any of the victims.

Thank you both very much.

Thanks very much for interpreting today.

We can adjourn.

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