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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21904081

THE QUEEN

and

ARNOLD THOMAS

(Sentence)

BLOKLAND J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON FRIDAY 20 SEPTEMBER 2019

Transcribed by:
EPIQ

HER HONOUR: On 2 September Arnold Thomas pleaded guilty to one count of cause serious harm to his partner, JM, with whom he has been in a relationship with since 2012. He also pleaded guilty to a further count, namely, cause damage to property, a glass window, belonging to ST. Further, he pleaded guilty to a charge of contravene a domestic violence order. That charge was on complaint and transmitted to this Court from the Local Court.

The facts are that on 26 July 2018 Arnold Thomas was served with a domestic violence order which listed JM as the protected person and restrained him from being in her company while consuming alcohol or while intoxicated.

On the evening of Wednesday 9 January 2019 Arnold Thomas and JM attended a park near Davoren Circuit, Moulden where they consumed Victoria Bitter and rum.

At about 1 am on 10 January 2019 JM walked to a residence in Moulden. The lawful occupier of this residence is ST. A short time later, Arnold Thomas followed JM to this residence and verbally abused her. He then picked up a rock and threw it at a glass window, which caused it to smash. He then approached JM and attempted to hit her with a rock. She stood behind another male to protect herself from him.

Police were called and were advised of his conduct. Arnold Thomas and JM left the residence and walked towards Woodroffe. As they were walking, a police car drove nearby and Arnold Thomas said to JM, "Shut up and don't say anything."

He continued to argue with her before punching her once to the left side of her jaw, causing her pain and bleeding. JM called out for help but no one came to her aid. He and JM arrived at a residence in Woodroffe a short time later and the matter was reported to police by the victim's uncle.

Arnold Thomas left the area before police arrived. JM attended Palmerston Hospital that same day and received treatment for her injuries. She was later referred to Royal Darwin Hospital for further treatment on 12 January 2019.

As a result of the assault, JM suffered a left mandible fracture, jaw pain and swelling along the left side of her face, malocclusion and trismus. She underwent surgery, namely, an open reduction and internal fixation of the left mandible fracture. The injuries clearly constitute serious harm.

On 25 January 2019 Arnold Thomas was arrested at a residence in Emu Point. He was taken to the police station and charged. He did not participate in an interview with police. He has been in custody since then.

The Court has been provided with three victim impact statements; one from ST, who was the owner of the window Arnold Thomas smashed. ST tells the Court the damage was repaired by Territory Housing. It may be observed that does mean the community has effectively paid for the damage that he caused. ST tells the Court

that she thinks he should go to rehabilitation because always gets drunk and makes trouble.

JM tells the Court in her victim impact statement she attended hospital the next day because her jaw hurt a lot and she could not eat properly. She tells the Court she is very scared and that she does not want to see him anymore. In a further victim impact statement provided to the Court after the plea date, JM said she is still really scared of him when he is drunk but she wants him back.

In terms of assessing the gravity of the offending, the maximum penalty for unlawfully causing serious harm is 14 years imprisonment. The maximum penalty for criminal damage in imprisonment for 14 years. The maximum penalty for contravening a domestic violence order is imprisonment for 2 years or 400 penalty units.

Obviously, the unlawfully cause serious harm is the most serious of the charges. Taken by itself, the broken window would constitute a low-level form of criminal damage; however, breaking the window in this instance was a further way that Arnold Thomas could gain access to and intimidate JM.

He was persistent with expressing a level of aggression and abuse towards her, apparently not being deterred by the presence of police or knowing that police had been had been called. He was in breach of a domestic violence order prohibiting contact between himself and JM when drinking alcohol.

The injuries obviously were serious, requiring hospitalisation and surgery. I moderate the assessment of the gravity of the offending, noting it was a single punch to the jaw rather than ongoing violence. However, there was significant shows of aggression on his part up until that punch.

While it is a case of serious harm, it is not at the highest levels of serious harm seen before the Court. Offending of this kind, however, is prevalent. Broken jaws and the pain and distress associated with such an injury is, unfortunately, a common injury seen in serious harm cases. The prevalence of violence perpetrated on intimate partners - men against women in particular - means the sentence must reflect general deterrence.

As well as less relevant previous offending, Arnold Thomas has been dealt with before the courts for six offences of aggravated assault against JM over the last five to six years. He was dealt with for one aggravated assault in February 2014 and a further charge of aggravated assault dealt with in June 2014. He received good behaviour bonds on both of those occasions.

For an assault against JM that he was dealt with for on 5 January 2016, he received a term of imprisonment for 4 months. He received a term of imprisonment for 4 months for another aggravated assault on her that was dealt with on 20 February 2017.

On 12 December 2017 he was dealt with for contravening a domestic violence order and aggravated assault and received a total of 9 months imprisonment, suspended after three months.

On 18 November 2017 he was dealt with again for aggravated assault and contravened a domestic violence order and received a total sentence of imprisonment for 3 and a half months.

In 2008, as a 17-year-old youth, he was dealt with in this Court for a very serious offence, namely, sexual intercourse without consent. He was sentenced to 5 years and 9 months imprisonment, with a non-parole period of 3 years. His parole was revoked after he breached within three months of release. There are other instances of breaches of court orders on his history. On the other hand, in 2015, after the time was extended, he did complete 50 hours of community work, and later in 2015, successfully completed a five-day family violence program.

Given the prevalence of offending of this kind, both general and specific deterrence in his case must be emphasised in the sentence imposed. While there is a degree of impulsivity in relation to the offending, it was cruel and demeaning towards the victim.

Like many offenders in similar circumstances, his upbringing and general social environment has been difficult. He was 29 years of age at the time of this offending and is now 30. He was intoxicated at the time of the offending. Such a factor is not a matter of mitigation, but it is clear that alcohol dependency has been associated with his offending previously and was associated with the current offending. He has spent significant parts of his life in custody, in both the Don Dale Detention Centre and as an adult in prison.

He grew up in the west Daly region and speaks Murrinh Patha, Kriol and English. The Court was told his mother currently lives at Emu Point Homeland and his father is from Wududuk Homeland. He was predominantly raised in Peppimenarti Community but also spent time in Emu Point and Wududuk, Wadeye, Palumpa and Daly River.

He participated in men's ceremony in Peppimenarti at the age of 13 with his uncles and community elders. His school education is minimal. He spent some time at school at Peppimenarti and briefly at Kormilda College.

The Court was told and it is accepted that during his developmental years, there was frequent fighting in the community. His father was a heavy drinker and was often violent towards his mother. Arnold Thomas recalls seeing this from a young age. Due to increase in fighting and conflict, at the age of 15, he moved to Daly River to live with extended family.

He expressed this in a detailed letter to the Court, which has been received as exhibit D2. In that letter, he talks about witnessing the violence and hiding with his siblings in rooms to be away from it. It affected his childhood and he felt angry and

sad and ran away. He thought nobody cared about him and he started stealing, drinking alcohol and smoking at a young age.

He did some work at 16 at Emu Point through the CDEP scheme. But when that scheme was abolished, he turned to consuming alcohol and cannabis in increasing quantities.

When he was sentenced by Thomas J in March 2008, her Honour quoted from a psychological report, saying:

Mr Thomas was a young man with nothing to do, no clear role and minimal social status as a young man in his community. He was disinhibited by alcohol and sexually aroused. He opportunistically and forcibly gained sexual gratification from someone he had known, and in doing so, severely damaged his relationship in the only social environment in which he can easily cope. Mr Thomas is a quite disempowered young man, who has had limited opportunities, educationally, occupationally, socially and sexually. A combination of interrelated factors have contributed to this. These include a disadvantaged and dysfunctional family background, chronic middle ear disease, resulting in ongoing conductive hearing loss, limited language skills, limited education opportunities, chronic frustration and anxiety and limited intercultural competencies.

Her Honour accepted that loss of hearing had a significant impact on his ability to obtain an education. She accepted that cessation of the CDEP program left him bored and with no purpose.

It is accepted that Arnold Thomas has a background of deprivation of the kind recognised by the courts in sentencing. As a result of the sexual offending when he was young, he has been unable to participate in therapeutic intervention that might address problems associated with alcohol and other drugs, but also with earlier childhood disruption and traumatic experiences. As is well-known, residential rehabilitation programs do not accept persons with a history of sexual offending, save in very limited circumstances. There is a clear connection between his alcohol consumption and offending, particularly around the lack of impulse control when intoxicated.

I do take into account his difficult background and social disadvantage and deprivation, particularly as a young person, which is likely to have affected him detrimentally on an ongoing basis. However, in my view, the appropriate way to take that into account in this particular case is to consider interventions upon release, such as programs after he has served a portion of his sentence.

It is not a matter where it is appropriate simply to reduce the head sentence. That would send the wrong message and would diminish protection to Aboriginal women. However, I accept that to reduce the risk of re-offending in his case and contribute to rehabilitation, there will need to be therapeutic interventions.

Initially, he was accepted into FORWAARD alcohol rehabilitation program; however, after understanding the full facts of his previous offending, the initial approval was withdrawn. He has also been assessed on re-assessment as suitable for supervision. He has possibilities of residing at Emu Point with family members. While not as positive perhaps as residential rehabilitation, the conditions suggested would go some way to rehabilitation or to reduce the risk of re-offending and represents a form of harm minimisation. COMMIT was not possible as an option because it was not available in regional areas.

He has pleaded guilty. He has taken responsibility. He should receive an adjustment in the order of 25 per cent. He will, however, have the benefit of a partially suspended sentence, noting the disadvantages that have been outlined. The mandatory minimum terms must be applied, including accumulation for the breach of the domestic violence order.

I do think, however, that he will be required to serve more than the mandatory minimum period, given the pursuit of the victim and his previous convictions.

All things considered, for the matter of complaint, breach a domestic violence order, he is convicted and sentenced to 1 month imprisonment, commencing on 25 January 2019.

On the count of serious harm, he is convicted and sentenced to imprisonment for 3 years, which is cumulative on the 1 month for the breach domestic violence order.

On the criminal damage, he is convicted and sentenced to 3 months, concurrent with the serious harm charge.

The total is 36 and 1 month imprisonment, or if you like, 37 months, commencing from 25 of January 2019. The sentence is to be suspended after serving 20 months.

There will be an operational period of 18 months after the time of release, during which he is not to commit another offence punishable by imprisonment, or else he will be dealt with for a breach of the suspended sentence. The supervision and the conditions will also be for 18 months after release.

The conditions are that:

1. He must not during the period of the order in force, namely, 18 months, commit another offence whether in or outside of the Territory, punishable on conviction by imprisonment.
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 the Probation and Parole Officer within two clear working days after the order comes into force.

3. He must tell a Probation and Parole Officer of any change of address or employment within two clear working days after the change.
4. He must not leave the Territory except with the permission of a Probation and Parole Officer.
5. He will not purchase or consume alcohol and will submit to testing as directed by a Probation and Parole Officer or a police officer.
6. He will not consume a dangerous drug and will submit to testing as directed by a Probation and Parole Officer or a police officer for the purpose of detecting the presence of dangerous drugs.
7. He will immediately, upon release, travel to Wadeye, where he will remain for the duration of this order and not depart unless given prior permission by a probation or parole officer in the case of personal or dental emergency.
8. He will participate in assessment, counselling and/or treatment as directed by a Probation and Parole Officer.

That completes the sentencing unless there are any queries from either counsel.

MR HA: Nothing from the Crown.

MS PATERSON: Nothing from defence, your Honour.

HER HONOUR: All right. Well, thank you all very much and court can adjourn.
