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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21851083
21851078

THE QUEEN

and

ANTON WILSON
NICHOLAS KANARI

(Sentence)

GRAHAM AJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON WEDNESDAY 11 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: I will deal first of all with Mr Wilson.

In this case the offender is charged with aggravated robbery under s 211 of the *Criminal Code*. He was in company with another. He is also pleading guilty this day. The penalty has a maximum of life imprisonment.

The general circumstances were that on 10 December 2018 an argument broke out at the IGA supermarket in Eastside when the co-offender, Kanari, objected to producing an ID when purchasing cigarettes. This offender jumped the counter and kicked Mr Bennett, an employee. The kick was of sufficient force to knock him backwards and cause him to bite his tongue and bleed.

In addition, a tooth was chipped. The co-offender threw two glass bottles at a wall forcefully and pushed a display stand at the female victim, Strawbridge. Wilson stole some cigarettes and forcibly struck Ms Strawbridge. The offenders left but were later apprehended.

This young man is aged 20. He already has accumulated four pages of previous convictions, traversing a variety of counts within the criminal calendar. They include assaults, damage to property, dishonesty and escaping from legal custody. Simply, it is a bad record.

The Crown submits these are serious offences. The offenders were in company and there were two sources of aggravation: (1) that fact that they were in company, and (2) that they caused harm.

They generated clearly substantial fear into innocent people. The victim impact statement of Ms Strawbridge reveals that she suffered physical and emotional disabilities. Mr Bennett also sustained some physical injury.

Wilson is aged 20 years of age, having had his birthday two days ago. He is single. He grew up in Alice Springs, and his grandfather was an artist and a community police officer. He passed away in 2015.

I accept that in other ways, however, though his grandfather was to some extent a role model, his upbringing was seriously deprived. His education has been extremely limited and his cognitive ability, as assessed by a psychologist, is at the lower extreme range and below average. His literacy is limited.

He has a history of substance abuse. It is submitted on his behalf in a competent plea that his best chance is when he is living at a community where he has family support. It was submitted that there should be a partially suspended sentence, with completion of a residential rehabilitation upon release.

I obtained a section 103 report with this in mind to consider whether this order be carried out. The section 103 report is relatively satisfactory and has set out ten conditions that it is suggested should be imposed.

For one so young, this man has already accumulated a bad record. The time has now come for there to be a reckoning. Personal deterrence and general deterrence are of great significance in this case. The community deserves to be protected from violent, unprovoked and dangerous behaviour, such as engaged in by these two men.

Also, there is an element of punishment. He has to be punished for what he has done. There is a price to pay. There are prospects of rehabilitation. They are guarded. However, it is to be hoped that during the period of the suspended sentence, he will not offend again. If he does, no doubt the balance of the term will be imposed.

I conclude the appropriate penalty for the offence is 4 years' imprisonment. I reduce the penalty by 25 per cent for his early plea, which makes the effective total 3 years. Two years of the sentence is suspended on conditions set out in the section 103 report. He is very young and there is still some hope for him.

When will the period start, by the way, counsel?

MS INGLES: So, your Honour, in my submissions, I noted that he's been in custody solely referable to this offence since 23 July 2019.

HIS HONOUR: Yes.

MS INGLES: He was arrested on it though on 10 December 2018. So it depends on whether your Honour determines as a matter of totality, there should be any sort of further backdating.

HIS HONOUR: As a matter of totality. I understand. I have got your point.

As a matter of totality, the sentence will be backdated to 1 June 2019. And the conditions will be as set out in the section 103 report.

Is that fine with you, with your client?

MS INGLES: Yes, I didn't see any issues with those.

HIS HONOUR: Yes. And the operational period, two years.

All right, thank you, Ms Ingles. That is Mr Wilson.

MR DOOLEY: Your Honour, just quickly, at that junction; the operational period is two years and also the period of supervision will be two years?

HIS HONOUR: Yes.

MR DOOLEY: Thank you.

HIS HONOUR: Yes, and the period of supervision.

MR DOOLEY: Together?

HIS HONOUR: Yes.

MR DOOLEY: Thank you, your Honour.

HIS HONOUR: Thank you, Mr Dooley.

MS INGLES: Sorry, your Honour, can I just be clear? Is it suspended after service of two years or is it - - -

HIS HONOUR: No, no, it is 4 years down to 3.

MS INGLES: Yes.

HIS HONOUR: Two years suspended. So it is 12 months from 1 June.

MS INGLES: Yes, thank you.

HIS HONOUR: In fact, before we deal with Kanari, can you just tell me, Ms Cooper, when did he start serving his penalty? What date do I backdate it to, if any?

MR DOOLEY: Well, your Honour, the Crown's situation, of course, Mr Kanari is the man that received the 17 months' period of imprisonment in the lower court for offending.

HIS HONOUR: Something else.

MR DOOLEY: But they were offending before and after the robbery. He was involved in other offending.

HIS HONOUR: Yes.

MR DOOLEY: So the question for your Honour, of course, is how much, effectively, concurrency you give him.

HIS HONOUR: When did he start doing that 17 months?

MR DOOLEY: That was backdated, I believe, to the date of arrest, which was December of last year. So, as of today he's got through roughly - - -

HIS HONOUR: If I made it the same date; 1 June, would the Crown be - - -

MR DOOLEY: That would afford him a fair bit of concurrency, your Honour, but again, he is young and it would be within your Honour's sentencing.

HIS HONOUR: Yes. Thank you, Mr Dooley.

MR DOOLEY: Yes.

HIS HONOUR: Do you want to say anything about that?

MS COOPER: No, your Honour.

HIS HONOUR: Thank you.

Mr Kanari is charged with aggravated robbery under s 211 of the *Criminal Code*. He was in company with Mr Wilson, who I have just dealt with. He is also pleading guilty this day. The penalty is a maximum of life imprisonment.

The circumstances, to repeat what I said in Wilson, were that on 10 December 2018 an argument broke out at the IGA supermarket in Eastside when the offender objected to producing ID when purchasing cigarettes. This co-offender, Wilson, jumped the counter and kicked Mr Bennett, an employee. The kick was of sufficient force to knock him backwards and cause him to bite his tongue and bleed.

In addition, a tooth was chipped. The co-offender threw two glass bottles at a wall forcefully and pushed a display stand at the victim, Strawbridge. The co-offender, Wilson, struck Ms Strawbridge. The offenders later left but were subsequently arrested.

I am going to deal with these two offenders in the same way, though it could be said that one or other of them played a major role in some parts of the offence, effectively, it was a joint operation and a joint offence and both played a significant part, and both will receive the same penalty.

This offender has a number of prior convictions dating back to 2015, including offences for dishonesty, a sexual offence of underage girl, property offences and assaults.

He was only aged 23 years of age. He has already been in gaol on a number of occasions. He left school when he was 14 or 15. He has a limited working history. He has a partner and a 2-year-old daughter.

The section 103 report that was ordered stated that he was suitable for and recommended for supervision, subject to a number of quite stringent conditions.

The victim, Strawbridge, did suffer a head and shoulder injury and suffered some emotional stress, and she said some loss of income. That is not surprising, bearing in mind the severity of this unpleasant and sudden attack on her.

The Crown submitted, and properly that this is serious offending. They were in company and that increased the fear generated by their actions, and both victims suffered blows: Bennett with a kick and Strawbridge with a punch.

Deterrence, both general and personal are of major significance in considering an appropriate sentence in the case. The offender has to be deterred from doing this again and the community has to realise that if you commit a serious crime, there will be substantial consequence. Denunciation or punishment is also important. There must be consequences.

When one considers the past convictions of the offending, a prognostication as to rehabilitation has to be extremely guarded; however, with some hesitation, I impose a penalty of the same quantity and type as I do for Wilson, the younger man, and give him the opportunity to have part of the penalty suspended, as I did for the other man.

The appropriate penalty, in my view, is 4 years' imprisonment, reduced by 25 per cent for his early plea, which makes the effective total 3 years, backdated to 1 June 2019. Two years of the sentence is suspended on the conditions set out in the section 103 report.

As I said, he is only 23 and there is still some hope for him. I just hope he learns. The operational period and period of supervision shall be two years, and the conditions shall be those set out in the section 103 report.

Anything else, counsel?

MR DOOLEY: Nothing arising your Honour.

MS COOPER: No, your Honour.

HIS HONOUR: All right, thank you for your attendance during your otherwise luncheon adjournment.

We will adjourn.
