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THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SCC 21913916

THE QUEEN

and

BB

(Sentence)

GRAHAM AJ

TRANSCRIPT OF PROCEEDINGS  
AT DARWIN ON MONDAY 14 OCTOBER 2019

Transcribed by:  
EPIQ

HIS HONOUR: The matter of BB comes before me on 14 October 2019 in the Supreme Court in Darwin. Mr Geary appears for the Crown and Ms Wild for the defence.

The offender has pleaded guilty to a count of gross indecency upon a person, MB, pursuant to s 192(4) of the *Criminal Code*. The offence carries a maximum penalty of 14 years' imprisonment.

The offence took place in Darwin on 5 April 2019 and the offender has been in custody since that time. Any period of imprisonment will be backdated to that date.

The facts are that the victim and the offender are cousins. On the day in question, they drank liquor together and became heavily intoxicated. The offender removed the victim's shirt, pulled her skirt over her waist and pulled down her underpants. He climbed on top of her. She passed out.

Fortunately, there was a witness who remonstrated with the offender and subsequently called the police. He was then arrested.

The offender has a number of previous convictions dating back to 2014. In particular, he has been convicted of possessing a weapon, breaching a protection order, assault, damage to property and stealing. The offender has also been convicted of a number of breaches of bail.

Interestingly, however, he is a mature man and had a good record up until then. So something went wrong.

The Crown submits this is a most serious offence, because the offender took advantage of an unconscious person who was related by blood to that person. There is much force in those submissions.

When the matter first came before me, there was no s 103 report to hand and this was ordered. The substance of the report, which has now come to hand, is that the offender is not suitable for supervision. The resources on Croker Island, where he wishes to reside, are limited. There is no police presence and the only meaningful supervision would be by phone.

On behalf of the defence, it was pointed out an early plea of guilty was made and I take that into account. As I have said, he is a mature man; he is 47 years of age. He had a happy childhood. He completed primary school and undertook some high school education. He then left school at about 16. He lived with his wife on Croker Island. Up until the age of 42, he had no convictions.

He then came to Darwin and began travelling with his brother. It was then that he began drinking, I am instructed, and living a transient lifestyle. It is now said, both by his counsel and inferentially, from the s 103 report that upon release from prison, he hopes to return to Croker Island.

The offender says through counsel and I accept that he is deeply and genuinely ashamed; however, it is, as I have said, a very serious offence, because he took advantage of a woman who was incapacitated.

In considering cases such as this, both personal and general deterrence are of great significance. The offender has to be deterred from offending again and the community has to realise that this sort of offence will be dealt with firmly. In addition, there needs to be punishment for the crime. For actions, there must be consequences.

I accept the offender has some prospects of rehabilitation, particularly if he goes back to Croker Island. He is a man of mature years; he should have known better, and he did lead a blameless life for many years.

The Crown concede it would be appropriate in this case to suspend a portion of the penalty, subject to appropriate conditions. I am going to exceed to the defence request that this occur. However, the only condition of a suspended sentence will be that he be of good behaviour for the period of the suspension.

I am not prepared to make conditions about him returning to live on an island or that he abstain from drinking alcohol. These conditions would be virtually impossible or impractical, at the very least, to enforce. The only condition will be that he be of good behaviour.

In the circumstances, I sentence him to 4 years' imprisonment. I discount the penalty for 25 per cent for his plea. This makes the effective penalty 3 years. I will suspend 18 months of the 3 years upon condition that he be of good behaviour. The balance of the term, which is 18 months, will commence on 5 April 2019.

The operational period will be 18 months from the date of release.

That is all, counsel?

MR GEARY: Yes, thank you.

HIS HONOUR: All right, thank you counsel.

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