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THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SCC 21919558

THE QUEEN

and

JARVIS DOWNS

(Sentence)

MILDREN AJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON FRIDAY 18 OCTOBER 2019

Transcribed by:  
EPIQ

HIS HONOUR: Jarvis Downs, you had pleaded guilty to causing serious harm. The maximum penalty for that is 14 years in prison.

The facts are that on 21 March this year, you and your partner, Lavina Shannon visited Mungkarta Community. During the afternoon, a number of people attended Devils Marbles Hotel in Wauchope and they bought beer and rum. This grog was then taken back to House 31, Mungkarta.

You and your partner were there and you drank a lot of that alcohol and you became drunk. Later that night, Lavina became sick and she went to the front yard of House 31 and she sat down on the ground. She began to vomit.

At this time, you were standing on the veranda of the house with Virgil Downs and Selwyn Clarke. You then walked over to Lavina and there were some words exchanged between you. You then kicked Lavina once to the head.

You were then restrained by other people at the house. Joanne Rankin who lives at House number 17 came to help Lavina. Lavina grabbed hold of Joanne's leg. She was crying and she was in pain.

Joanne helped Lavina to her feet and called for an ambulance; then she took Lavina back to her house until the ambulance arrived. The police and the ambulance arrived at roughly 3:41am on 22 March. Lavina was then taken to the Royal Darwin Hospital.

As a result, she got a fracture to her jaw. This made her jaw very swollen and she could not open her mouth properly. She had to have an operation to fix it up and also it meant a tooth had to come out.

She was in hospital for three days. A doctor has said that she has suffered serious harm because, if she had not gone to the hospital, there would have been ongoing pain, she would not be able to shut her jaw properly and she would not have been able to eat properly. Her jaw probably wouldn't work properly. There would be a risk of infection and she had a higher risk of getting depression and post-traumatic stress disorder.

You were arrested at Wuppa Camp in Tennant Creek on 15 May this year. You were spoken to by the police. Initially, you told them that you were kicking a dog and you accidentally kicked Lavina. But later, you told the police the true story and you told the police that you kicked her because she said something disrespecting your story.

Lavina has signed what is called a victim impact statement. She says that it was painful and that what you did to her has made her angry. She says that you can come out, and I presume she means out of gaol, as long as you do not come anywhere near her.

Now, I have to look at what I call the objective circumstances. I note that there was only one kick to the jaw and you used your bare feet.

Lavina was a 25-year-old female. She was your domestic partner. She was drunk and defenceless and sick and vomiting. You, too, were drunk, but this is not a case where your intoxication is aggravating. That is because you do not have any history of being a bad drunk.

You did not provide any immediate help to Lavina. You say that is because you did not realise that she had broken her jaw. I accept it was a momentary attack, no planning and just impulsive; but it did have a significant injury to Lavina's jaw and it did require surgery. There is no evidence that any ongoing physical problems, but the attack did cause her considerable pain and distress.

You have no prior convictions for violence, only driving offences which were all committed on the same day in July 2014 and had nothing to do with alcohol. So, I am going to treat you as a first offender for sentencing purposes.

I note you made admissions to the police after you had falsely claimed that it was an accident. You pleaded guilty at an early time, you have apologised and you are sorry for what you did to her. I am going to give you a discount of 25 per cent on the sentence that you would otherwise have got because of that.

I am now going to talk about your background.

You were born on 31 March 1992. You were nearly 27 at the time of the offence.

You are a Warlpiri man. You were raised in Ti Tree and Ali Curung by your mother. Your father was mostly absent living in Adelaide.

There is nothing to suggest that you were exposed to family violence whilst growing up. Apparently, you had a good upbringing.

You attended boarding school in Adelaide and in Darwin, and you got to year 11. Your English is limited. You understand most things that are said to you and you are literate to some degree. That means you can read and write, although I see you have used an interpreter from time to time.

You have attended Batchelor Institute in 2009 and 2012, and you did complete some subjects in a Certificate II course in Conservation and Land Management.

In November 2018, you lost four family members when the car they were in broke down near Wilora. The circumstances of this loss caused a lot of unrest and unhappiness in Ali Curung and this meant that you and your family had to shift to Ti Tree. You were deeply troubled by this loss. Added to that was the loss of an aunt who you were very close to.

When this offending occurred, this was just after a funeral for your aunt. You were drinking with extended family members after the funeral. You are not a heavy, regular drinker. You drink only on social occasions. This is supported by the lack of any prior convictions for alcohol-related offending.

You have accepted that Ms Shannon may not want to resume the relationship with you.

I am now going to talk about your prospects of rehabilitation in the future. I take into account that you have made an early plea of guilty and you are sorry for what you have done. I take into account that you are a first offender.

You have a good work history. You worked in an abattoir in Miranda in New South Wales and also at the Ali Curung store for 15 months. I have read a reference from the store manager who said that you were punctual and that you were hard-working.

You now realise that you need to learn to control your drinking on social occasions. You are willing to do the DASA residential rehabilitation program at Aranda House and you have been found suitable.

You are also willing to do the Tangentyere men's behavioural change program. You are likely to be found suitable for that program. Overall, I assess your prospects of rehabilitation as very good.

Now, Mr Downs, the offending in this matter was serious. The courts have said many times that men who commit violence on their female partners are going to be in big trouble with the courts. Your partner was vulnerable because she was ill at the time and, therefore, there needs to be a strong message sent out to everybody that offending of this nature will not be tolerated and those who offend like this can expect to get a very significant sentence of imprisonment.

On the other hand, I do not think there needs to be as much weight given to personal deterrence as I would otherwise have thought necessary because your personal circumstances suggest that you have very good prospects of rehabilitation and that you are a first offender, I note, at a relatively mature age. I find that you are suitable for supervision.

You are convicted. But for your plea of guilty, I would have given you a sentence of 2 years and 8 months. Because you have pleaded guilty, I am going to take this back to 2 years. I backdate the sentence to commence on 15 May 2019, to take into account the time that you have already spent on remand.

I order that the sentence be suspended after you have completed 9 months of that sentence and that the balance be suspended on the following conditions; that upon your release from prison, you will subject yourself to supervision by a Probation and Parole Officer for a period of 15 months, and that during the period of your supervision, you must comply with the following conditions:

1. That you report to a Probation and Parole Officer within two working days of your release from prison; and thereafter, at such times and places as you are directed.
2. That you are to obey all reasonable directions from your Probation and Parole Officer.
3. That you undertake the Aranda House therapeutic community program, or such other program as may be directed by your Probation and Parole Officer and you do nothing to cause yourself to be discharged from that program.
4. That you undertake the Tangentyere Mens behavioural change program if you are required to do so by your Probation and Parole Officer and you do nothing to cause yourself to be discharged from that program.
5. You must tell a Probation and Parole Officer of any change of address and employment within 2 clear working days of the change.
6. You must not leave the Northern Territory without the permission of your Probation and Parole Officer.
7. You must not purchase or consume alcohol and you will submit to breath-testing, as directed by a Probation and Parole Officer.

Finally, I fix a period of 15 months from the date that you were released from prison as the period during which you must not commit another offence punishable by imprisonment.

Now, I am going to go over all that again so you can understand it. First of all, you are convicted and sentenced to imprisonment for 2 years and I have backdated that to start from 15 May 2019. Do you understand that? Okay.

I have also said that when you have done 9 months of that sentence you will be released on conditions and the balance of the sentence is suspended, hanging over your head. So, that 9 months also goes back to 15 May 2019. So, that means that around about February 2020 you will be able to go home.

But it is on conditions and the first condition is that you are going to be supervised by a Probation and Parole man for 15 months. Do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: During that period of supervision, there are some things that you have to do. Firstly, you have got to report to Probation and Parole within 2 days of getting out of gaol. After that, they will tell you how often you have to report to them and how you are going to do that; whether you report by phone or whether you have to go to their office. Do you understand that? You have got to do that as well.

The next thing is you have got to obey all reasonable directions from your probation and parole officer; so, they can tell you things like where you are going to live and work. Do you understand that?

Also, you have to do the Aranda House therapeutic community program. If that is not available and they want you to do another similar program, you do that program instead. You do the program and you finish it and you do not cause yourself to be kicked out of the program. Do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: You have also got to do the Tangentyere Mens behavioural change program if your probation officer says you have got to do it. If he says you have got to do it, you must complete it and you must not cause yourself to be kicked out for bad behaviour. Do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: You have got to tell your Probation and Parole Officer if you change where you are living or if you change your job, within two working days. So, that means if you change your job on a Friday, you do not have to tell them on a Sunday, you can wait until the Monday, okay, because Saturday and Sunday are not working days. If Monday is a public holiday, then it is Tuesday. Have you got that?

THE ACCUSED: Yes.

HIS HONOUR: All right. You are not allowed to leave the Northern Territory without permission from your Probation and Parole Officer. Do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: You are not allowed to buy or consume any alcohol, and the Probation and Parole Officer can ask you to submit to a breath-test to check up on whether you have been drinking or not. Do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: Do you agree to all of those conditions?

THE ACCUSED: Yes, all of them.

HIS HONOUR: Good.

Now, the other thing I have done is I have said that when you are released from gaol there is going to be another 15 months when you are not allowed to commit another offence punishable by imprisonment. Now, do you understand what will happen if you break any of these conditions?

You will be brought back into this court and the court might make you serve the whole of that outstanding period of gaol, which is 15 months. You might have to go back to gaol for that whole 15 months, or maybe not the whole but some part of it. That is what could happen to you; it could be as long as 15 months. Have you got that?

Now, when that 15 months is over, that is it, all finished, as long as you comply with the conditions. Do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: All right.

Anything arising?

MR DOOLEY: Not from the Crown, your Honour, no.

HIS HONOUR: Yes, thank you, Mr Dooley and Ms House.

Court is adjourned.

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