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THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SCC 21922480

THE QUEEN

and

DARCY WILSON

(Sentence)

MILDREN AJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON THURSDAY 3 OCTOBER 2019

Transcribed by:  
EPIQ

HIS HONOUR: Darcy Wilson, you had sex with that AS three times last year between September and December, and that girl was only 12. The law says that you cannot have sex with a girl until she turns 16.

That is a serious offence. The maximum sentence is 16 years.

What happened was this: at the time when all of this happened, you were 20 years old. During this period, you and the girl, who was born on 18 May 2006 and was 12, became boyfriend and girlfriend.

The first time you had sex with the victim was in your bedroom. Your family were there in the house at the time but they did not know that she was in your bedroom when this was happening.

About five days later, you brought the girl to your home and you introduced her to your family as your girlfriend. Then you took her to your bedroom and you had sex with her again and, in fact, she spent the night with you.

The next day a worker from Territory Families, went looking for that girl and found her at your place and he told you that that girl was only 12 years of age.

The worker from Territory Families provided a statement. He didn't think you quite understood the situation. And that the girl, seemed to be more mature than you are. He said that you told him that the girl was the one who was chasing you, and that you told him that you told the girl to go away and to leave you but she would not do that.

Then the worker from Territory Families says that the first time he met both of you, you were together. He said:

"I said to them, what their names were and I asked them if they were together. The girl asked me why I'm asking that for. I asked her how old she was and she said, '16.' I said, 'That's a lie. You're only 12.' I clearly remember the look on his face (that is your face). He was clearly like, 'Wait a minute.' He looked kind of like he was questioning if he'd heard the right thing when I said it. I could see a reaction. I then asked him how old he was and he said, '19.' It was later on when I checked him on the system, I saw he was 21, and it made me think he was really confused. But despite me telling them this, they continued to be together."

That is what the worker from Territory Families said.

What your lawyer is telling me is that you thought that girl was 16 for those first two times, and you were really shocked when you were told that she was only 12. That might be so, but after that, you still had sex with her, when you knew very well she was only 12. And that makes it a lot worse.

All of this came to the attention of the police on 23 March this year. Somehow the police got told that the child was pregnant, and on 8 April 2019 the child was spoken to by the police when she told the police what had happened, and she told the police about these three occasions.

It turned out that on 5 November 2018 this girl was taken to the Ali Curung Health Services by Territory Families to have a contraceptive implant inserted, which is a little curious. It means that they must have known that there was something going on to have arranged for that when she was only 12. They conducted a pregnancy test before that was done and they found out she was not pregnant.

But later on, on 23 March 2019, that girl went to the Alice Springs Hospital because she was not feeling very well, and it turned out she was 19 weeks pregnant at the time, which meant that she probably conceived the child around about 8 November 2018. She has kept the baby and she has given birth to a male child in August of this year. Testing by the scientists shows that you are the father of that child.

You got arrested on 5 June 2019 and you have been in custody ever since.

You agreed to participate in an interview with the police, but the police were not satisfied that you understood your caution and the interview was terminated. The fact that you could not understand the caution also tells me something about your level of maturity and understanding.

They are the facts.

MS COLLINS: Your Honour, sorry to interrupt. There's one matter I should have raised with your Honour about the facts.

HIS HONOUR: Yes?

MS COLLINS: In relation to the first two counts, a condom was used.

HIS HONOUR: I see. But not the third time?

MS COLLINS: No.

HIS HONOUR: You have been before the courts before today. On 11 September 2018, you came before the courts to deal with a number of property offences and also an offence of being armed with an offensive weapon; two counts. The end result was that you were given a suspended sentence of imprisonment; only a very short period.

And then a little while later, about six days later, you were brought back before the court on 17 September for another three property offences, and as Ms Collins and the Crown have pointed out, these really should all have been dealt with

together. Anyway, in relation to one of those offences, you got a sentence of 3 months, but it was suspended.

Apart from that, you have only had some further matters on 11 March this year, there were a couple of breaches and damage to property, trespass, breach of bail and an attempt. Looks as though you got 3 months all up for those offences.

Then there is another one which came to light, which is perhaps a bit more important, and that is an aggravated assault. That happened on 1 September last year. You assaulted that same girl and you got convicted of that and you were sentenced to 6 weeks' imprisonment. The court also made a full non-contact domestic violence order until 18 May 2022, when that girl will turn 16.

You are now 21 years old. You have pleaded guilty at an early time. You have indicated that you are sorry and you understand now the impact of what you have done. You understand that not only was that girl too young to have sex with you but you have got her pregnant and how this is going to interfere with her life.

As to your personal circumstances, you are 21, as I said. You are a Warlpiri man. You were born in Alice Springs. You grew up in the Yuendumu Community, primarily by your mother. You have got two older siblings and two younger siblings. Your father is from Boulder in Western Australia, but you do not have much contact with him and he does not have much to do with the family anymore.

You went to school at Yuendumu and you can read and write a little bit. When you were around 13, you went through men's business and you stopped going to school. You enjoy playing football and that is about all you seem to have done. You have never been employed before. You are keen to get a job and you want to undertake training courses to improve your ability to read and write.

You do not consume alcohol and you do not have any drug addictions. When you are free to do so, your lawyer tells me that you intend to go back to Yuendumu.

So far as the child is concerned, I understand you want to see the child. It seems that you were in love with this girl and she was in love with you. You now have decided that the right thing to do is to not have any further contact with her, but you still want to see the baby, and your lawyer tells me that if that is the case, some arrangements can be made so that that can happen.

One of the things that I have to bear in mind is the reason for this offence and why it is so serious. In a decision of the Court of Criminal Appeal in 2005, I had this to say; I said that:

“One purpose of that law is to protect young persons from entering into sexual relations before they are mature enough to do so and to weigh up the possible consequences. Another is to deter older persons, especially men, from taking advantage of the immaturity of the young in order to satisfy their lust or in order to exercise control over their victims.”

And I said:

“Another purpose is to get Aboriginal girls some freedom of choice as to whether or not they want to enter into a marriage, for that matter, sexual relations and to empower them to pursue equally with young Aboriginal men, employment opportunities or further education rather than being pushed into pregnancy and domesticity prematurely.”

So what has happened here, of course, is that that young girl is now a mother. She has had the baby. She is going to have to look after that child, and she will not have a husband to help her. In fact, you are not even allowed to help her. Although I expect that, if you can be forced to do so, you will have to pay something towards the child's upbringing in the future.

I have read a number of similar cases in the last few years, where other judges have had to deal with these sorts of cases. They vary a lot, depending on the circumstances, and I have had regard to them. I think that the most serious charge in relation to this case is the third count, and because of that, I am going to have to take a more serious view than what I would have done if there had only been one or two counts, in circumstances where you were under the impression that she was older.

I can understand why you felt she was older, because of what the worker from Territory Families told the police. But very clearly, once you knew how old she really was, you did a very wrong thing. So I have to take a more serious view of the whole thing.

I take into account that you have no Juvenile Court history, which is very interesting. It shows to me that you only got into trouble when you came into alcohol, and if you stayed out at Yuendumu, you behaved yourself. I also see that you have not done anything like this before.

There is no victim impact statement in this matter, and the reason for that is, no doubt, because I think the child was in love with you and probably still is.

One of the things that your lawyer has asked me to do is to consider backdating the sentence to at least be partly concurrent with the current sentence that is imposed by the Local Court. But I am going to do more than that; I am going to make it totally concurrent.

And I am going to backdate the sentence right back to 5 June 2019. I do not normally do that, but I think that is the right thing to do in the circumstances, because really, that matter should have been dealt with at the same time as this matter.

So in all the circumstances, Mr Wilson, I find the offences proved and you are convicted on each count. But for your plea of guilty, I would have imposed an aggregate sentence of 2 years' imprisonment, but I am going to reduce that to

18 months because of your plea of guilty and your remorse. I am going to backdate that to 5 June 2019.

I am going to release you after you have served 6 months of that sentence and I am going to suspend the balance. I am not going to order supervision. I do not think it is necessary. I fix an operational period of 12 months from the date of your release.

So what all that means is that you have got a sentence of 18 months. I backdate it to 5 June 2019. After you have served 6 months, you will be released. So you will be released on 5 December 2019. Then you will have 12 months of that sentence hanging over your head. It is suspended, and you will be free to go home to wherever you want to go. I hope, to Yuendumu, as you say.

For a period of 1 year after the time you are released from gaol, you must not commit another offence punishable by imprisonment. If you do, then you are going to be brought back before the court and the court will have to decide whether you will go back to gaol to serve the whole of that 12 months that is left outstanding or not.

Do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: All right.

Anything arising?

MR DOOLEY: Not from the Crown, your Honour.

MS COLLINS: No, your Honour.

HIS HONOUR: Thank you.

Court is adjourned.

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