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NORTHERN TERRITORY OF AUSTRALIA

SUPREME COURT

No: 21913552

THE QUEEN

and

SID M. YUNUPINGU

(Sentence)

GRAHAM AJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON TUESDAY 15 OCTOBER 2019

Transcribed by:
EPIQ

HIS HONOUR: The matter of Yunupingu comes before me on 15 October 2019 in the Supreme Court at Darwin. Mr Dalrymple appears for the Crown and Mr O'Brien-Hartcher for the offender.

The offender has pleaded guilty to causing serious harm to [JB], who we will hereafter call "the victim".

The incident took place on 2 April 2019 at Yirrkala in the Northern Territory. The charge is laid pursuant to s 181 of the *Criminal Code*. It carries a maximum penalty of 14 years' imprisonment.

Furthermore, because of the previous convictions the offender has, there is a mandatory minimum penalty of 12 months' imprisonment, unless there are exceptional circumstances. Sensibly, exceptional circumstances have not been urged upon me in this case. So, there will be a minimum penalty of 12 months' imprisonment imposed.

The offender and the victim are both Indigenous. They had been consuming alcohol on the date of the incident and were heavily intoxicated. The offender and his wife went to bed and the victim began yelling, calling out and generally behaving badly. He banged on doors, he smashed the power box to the house and he damaged a table.

A child of the offender woke and began crying. The offender then went and got a spear, it was about 8 feet long, and stabbed the victim with it. He then punched him in the face. Fortunately, another family member intervened and snapped the spear in half and threw it away.

It is to the offender's credit that he cared for the victim until the police arrived. He also later apologised. The victim was conveyed to hospital and the offender was arrested. The victim had punctures to the pulmonary artery, a puncture to the pulmonary vein and a pneumothorax to his left lung. He clearly suffered serious harm. He could have died.

There is a victim impact statement which indicates that the victim did sustain serious injuries and has residual disability. I might further add that the victim impact statement indicates that he is unforgiving. I make no criticism of him for that.

It is submitted on behalf of the Crown that the weapon used was extremely dangerous and the level of force used was extremely significant. The injuries sustained were serious, requiring quite complex surgical intervention and a blood transfusion.

The offender has five pages of criminal history, including two counts of aggravated assault in the past and a count of unlawfully causing serious harm.

Significantly, there are a number of breaches of orders that show that he has had some contempt for the law in the past. In 2008, apparently he broke his wife's

jaw and was gaoled with a partially suspended sentence. In both aggravated assault convictions, a weapon was used.

On behalf of the offender, it is submitted that he did accept full responsibility for what he has done. He did so quickly and showed remorse. As far as his antecedents are concerned, he completed Year 9 at school. He has been married twice.

It is pointed out to me that he is a significant ceremonial leader in his community. That is attested to by Mr Bowden from Bowden McCormack who knows the man and also, from the Gumatj Corporation from a Mr Djawa Yunupingu, who is the deputy chairman of that organisation.

The letters of support are significant and I take them into account. The letter from Mr D Yunupingu says that the offender has taken more responsibility in the ceremonies in recent years and is expected to take a further role in the future. It is also to be noted that whilst in prison, he missed a number of funerals within his clan, which is a matter of great concern to both himself and the clan.

A s 103 report has been obtained which indicates that the offender is suitable for general supervision. There are a number of conditions set out, including a condition that he abstain from alcohol. In fact, when one looks at the s 103 report and the two references, they all refer to the problem this man has with alcohol.

Mr Djawa Yunupingu says "I am also aware that Mapuwa (Mr S Yunupingu) has had a problem with alcohol and when he drinks, he is unpredictable and can be violent. I am aware that he has committed offences and that he has been to gaol before for those offences."

Mr Bowden says "I am aware that he has an issue with alcohol."

The section 103 report says Nhulunbuy police were contacted and they advised Mr Yunupingu is normally not a problem and they only had issues with him if he was under the influence of alcohol. The problem with simply a condition is that, it is just words. Whether he is able to resist alcohol in the future will be a matter for him.

Generally, he has a bad record. He is a mature man and he should have known better. Drunkenness of course is no excuse. On the other hand, I do take into account that the victim was damaging property and shouting and cursing and I take this into account in determining the penalty that I impose.

Clearly, in this sort of case, general and personal deterrence are of significance. Random violence is a curse in our community and the public expect and realise that it has to be curbed. This offender, who has committed these sorts of offences in the past, has to realise that he has to be deterred from doing what he has done.

In addition to that, punishment is a significant factor. If you brandish a spear and stab someone, there are going to be consequences. As far as rehabilitation is concerned, it rests with him. One must be, however, guarded about it.

He has been in custody since 3 April 2019 and I will backdate any penalty to that date. With some reluctance, I am going to suspend part of the sentence. He has had plenty of chances, but I am going to give him one more.

He is sentenced to 4 years' imprisonment. There will be a 25 per cent discount for the plea. The head sentence therefore is 3 years. I will order that 18 months of the 3 years be suspended, subject to the conditions set out in the s 103 report. He will serve the balance of the 3 years, which is 18 months and that will be backdated to 3 April 2019.

The operational period will be 18 months.

HIS HONOUR: Yes, any other matters?

All right.
