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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 22331355; 22205401

THE KING

and

LUKA PHILP

(Sentence)

SOUTHWOOD J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON TUESDAY 19 NOVEMBER 2024

Transcribed by:
EPIQ

HIS HONOUR: Luke Philp, also known as Luka Phillips, the offender, had pleaded guilty to a single count on an indictment dated 3 May 2024. The count charges that contrary to s 11.1(1) and 307.6(1) of the *Criminal Code* (Cth) on 29 September 2023 at Palmerston the offender attempted to possess a marketable quantity of methamphetamine. The substance having been unlawfully imported and the substance being a border-controlled drug. The maximum penalty for this offence is imprisonment for 25 years.

The offender is also to be dealt with for breach of the suspended sentence imposed by her Honour Brownhill J in matter number 22205401 on 14 September 2022.

The offender is a 49-year-old male of French/African descent. He was 48 years old at the time of the offending. He was born on the island of Mauritius. He lived there until he was 7 years old. His father is Nigerian and his mother was from Mauritius. He has five siblings, four of whom are older than him. He stated that his father was violent and physically abusive to him and his siblings.

The offender's parents were extremely poor and could not afford to raise him. At the request of his father, he was taken to an orphanage in Port Louis, Mauritius at a very young age. He had no contact with his parents while he was at the orphanage. He told his counsel that he was molested and had a very unhappy childhood while at the orphanage.

At the age of 7, the offender and his 3-month-old sister were adopted by an Australian couple. He and his sister were then raised in Mandurah in Western Australia.

The offender was born a Muslim. He has practised his religion while in prison and will continue to do so in the community when released from prison.

The offender described his childhood as unhappy, having been separated from his other siblings. While growing up, he was not told about his birth family, culture or language. He received racist abuse throughout his childhood while at school. He went to Mandurah Primary School and Kalamunda High School. He completed year 9 and left school without any certificates.

At the age of 15, the offender left his adopted family and sister to live with his friends. He tried to make something of himself and he studied fine arts at TAFE, but never completed the course. He later did a trade in glazing and recently, he completed five years training to be a barber. Before his arrest, he was working as a barber. He wishes to return to his job as a barber when released from prison.

In 1998, the offender and his partner had a daughter. He broke up with his partner and did not see his daughter when he was young, but he got to know her as she grew up. Unfortunately, his daughter committed suicide in 2021. The offender stated that his daughter's death caused a decline in his mental health.

In 2002, the offender returned to Africa and saw his biological mother. He was able to meet his relatives and siblings. Unfortunately, two weeks after he returned to Australia, his biological mother died.

The offender began consuming alcohol and cannabis at the age of 15. At the age of 17, he started using amphetamines. This developed into methamphetamine usage when his mother passed away.

In 2018, the offender moved to the Northern Territory. He started to receive psychological treatment and has been diagnosed with post-traumatic stress disorder, anxiety, depression and has been prescribed numerous medications over the years. He has attended sessions with a psychiatrist in prison and is prescribed antidepressants.

The offender completed the residential rehabilitation program at Stringybark in 2020.

The offender has an extensive criminal history in the Northern Territory, Queensland and Western Australia for stealing, drugs and property offending, as well as numerous breaches of court orders. His most recent substantive offending was that of supply of cannabis on 14 September 2022, for which he was convicted and sentenced by Brownhill J to 2 years' imprisonment, suspended after serving 12 months, with 12 months to be completed on strict conditions.

The facts of the offending are as follows.

Between 23 July and 29 September 2023, the offender was in regular communication with an unknown drug user on the instant messaging application known as Threema, which is a service that can be used completely anonymously. The offender and the unknown drug user used the Threema service to correspond about drug supply, and they periodically met in person.

Australian Border Force officers intercepted a consignment of drugs upon its arrival in Australia from Canada. Due to anomalies noted on X-ray screening, the officers commenced an investigation and found that the consignment contained a shoulder massager, within which there were three clear vacuum-sealed bags containing a white crystalline substance. The white crystalline substance was found to contain a total of 88.4 grams of pure methamphetamine.

The Australia Border Force officers arranged for the onward delivery of a reconstructed consignment containing an inert substance instead of drugs to be delivered to the Palmerston Post Office.

On 29 September 2023, the offender attended the Palmerston Post Office and attempted to collect the consignment. He was initially turned away by the Australian post office staff as the name on his authority to collect form, did not match his ID, but he returned with a second authority form which matched his ID and he was given the consignment.

As soon as he left the post office, officers placed the offender under arrest and searched his person. They seized the mobile phone he was carrying, together with the reconstructed consignment. An examination of the seized phone revealed that messages had been exchanged between the offender and the unknown person in the preceding two months. There were no further messages exchanged after the offender collected the parcel.

The current street value of methamphetamine in the Northern Territory is an ounce, being 28 grams, being sold for \$10,500 to \$14,800 per ounce or 28 grams.

The offender declined to be interviewed by the authorities.

Mr Crean, who appeared on behalf of the offender, told the court that the offender admitted the truth and accuracy of the facts to which I have referred. I find the facts proven and I convict the offender of the charge on the indictment. I also convict him of breaching his suspended sentence.

An institutional report has been obtained from the Darwin Correctional Centre. The report informs the court that the offender is currently classified as a low restricted remand security prisoner and he is currently accommodated appropriately within the low open security sectors of the Darwin Correctional Centre.

He is currently employed as a window cleaner within the low open accommodation security centre and he has maintained this position since 23 August 2024. He has also previously been engaged in employment as a tutor with QuickSmart and as a general hand. A reference has been provided by those for whom he was supervised as a QuickSmart tutor, which I will come to in due course.

The offender has been engaging with the Chaplaincy Program through Islamic Prayer. He is currently not of interest and has no current adverse intelligence reports. He has been progressing well while in prison and seems to be at a turning point.

A supervision assessment was also obtained from Community Corrections. That report, amongst other things, informs the court that the offender has attended the Banyan House residential rehabilitation centre in the past in Darwin. It is not known whether he completed the program; however, in addition, it notes a number of conditions from which the offender may suffer from time to time.

It goes on to state that he lacks pro-social support in Darwin and his responsibility of past trauma and mental health are contributing factors of his reoccurring offending behaviour, ongoing psychosocial treatment and alcohol and other drugs intervention. It also notes that he received a COMMIT suspended sentence when sentenced for the cannabis offence. The report notes, in summary, that the offender has shown a pattern of continuous violent and drug-related offending.

As to his psychiatric and psychological state, I note the following. Two reports of Dr Prowse are in evidence. The doctor examined the offender on a number of occasions for the purpose of providing a report to the court. The reports are difficult to comprehend.

On page 42 of the first report, under the heading "Summary and recommendations," Dr Prowse stated that the offender was suffering from substance use disorder and adjustment disorder, with anxiety. It was also stated that the offender had suffered from post-traumatic stress disorder. I note, "had suffered" from post-traumatic stress disorder which was in remission.

In addition, the offender suffered from the following personality disorders. Antisocial personality disorder, narcissistic personality disorder, with paranoid personality style and unspecified personality disorder. At page 36 of her report, Dr Prowse stated that the offender's drug scale score is in the 90 to 100 percent range, which means he has a severe drug problem.

In a later report, however, she stated the following.

"[The offender] does not appear to have been experiencing a substance use disorder at the time of his offending (based on his self-reports) or currently while in custody. Accordingly, this disorder would unlikely apply, and he should not have been experiencing any potential mental impairment impacting upon his judgement and decision-making at the time of the offending that was directly related to substance abuse"

Which seems to indicate that at the time of the offending, those factors are of little relevance."

The expert went on to state:

"At the time of the offending, [the offender] self-reported that he had not been using illicit drugs for an extended period (he did not provide a specific duration)...he chose to purchase amphetamine for his future personal use to help him through his grieving, which is in line with his maladaptive coping style of illicit drug abuse... Accordingly, he would not have been experiencing a substance use disorder at the time of offending... [The offender] reported a long history of being involved in gangs where he would sell and use amphetamine..."

However, the doctor does state that, "It would not be unreasonable to attribute the offender's abuse of illegal drugs as having a connection to Mr Philp's offending." That really seems nothing more than a bare assertion of the facts. The doctor goes on to state that, "He has a long history of selling and using drugs and difficulties regulating his psychological distress. His recent offending was the result of not coping with his daughter's suicide in October."

I have some difficulty accepting that finding of the doctor, given when the offending occurred and his daughter committed suicide, and also the fact that after his daughter committed suicide, he engaged in the cannabis offending.

In all of the circumstances, I am not satisfied that the offender was suffering from any *Verdins* type issue at the time of the offending. However, he clearly comes from a deprived background and the consumption of drugs has been a problem for him from time to time. They are factors which must be otherwise taken into account in order to formulate an appropriate sentence.

In coming to an appropriate sentence, I also note a number of references that have been provided to the court. There is a reference from the Imam of the Darwin Islamic Society. He states:

"Over the past year and a half, I have interacted with Mr Philps during my time at Darwin Correctional Centre through numerous counselling sessions. During these encounters, I have witnessed a significant transformation in his outlook and behaviour. Mr Philps has taken full accountability for his past actions and expressed genuine remorse for the harm he has caused, and I firmly believe that he is committed to leading a more responsible and constructive life. He has become a source of positive influence on many inmates."

The author of the reference goes on to state:

"He is motivated to find meaningful work and contribute to society in a productive way. The Islamic Society of Darwin is ready to support him in his reintegration by offering him a volunteer role within our community, where he can continue to serve others and develop his personal skills."

As to his period of time with QuickSmart, the administrator of that program has provided a reference, in which he states:

"The offender worked as a tutor within the QuickSmart program, a literacy and numeracy program for adults, from February 2024 to August 2024. The offender was a very good tutor. A tutor guides less literate participants through the program and also provides encouragement, motivation and perseverance to the participants. Unfortunately, more qualified people have now taken his place."

A report was also provided by Kim Brown, a senior dual diagnosis counsellor and caseworker with CatholicCare. In that report it is stated that:

"The offender was referred to CatholicCare program for counselling by Darwin Correctional Centre In-Reach Program. The offender has attended six sessions since this time. The offender is motivated to change and has been open and honest in his engagement, discussing issues and experiences in his life. During sessions, we've covered relapse prevention, including high-risk

situations, triggers, urges and cravings, self-regulation and the costs and benefits of substance use and consequences. Psychoeducation to support daily management of mental and emotional wellbeing and behavioural impacts to the offender's life offer additional strategies for strength."

So there does appear to be a change in attitude and behaviour. However, the offending was serious offending. It was committed against a background history of serious offending and involved a breach of a suspended sentence which was structured in such a way as to assist him overcome his issue with drugs.

In all of the circumstances, I take into account the relevant provisions of Pt IB of the *Crimes Act 1914* (Cth); in particular, s 16A, 16E and 17A of the Act.

The offending is serious offending. A period of actual imprisonment is the only appropriate sentencing disposition. The offender attempted to play a key role in the importation and retrieval operation in respect of a particularly dangerous drug. He did so while on a suspended sentence.

The offender's role was that of a collector. It can be inferred from the messages, that he knew the drugs that he was to collect would be on-sold. Had the offender been successful in collecting the drugs, he would have facilitated the distribution and sale of a significant quantity of methamphetamine, which is a particularly dangerous drug, in the Northern Territory community. The offender knew he was collecting a dangerous drug, and he took considerable steps to avoid being detected.

For the breach of the previously suspended sentence, I restore 11 months and 23 days of that sentence. That sentence of imprisonment is backdated to 29 September 2023.

For the offence of attempting to import the dangerous drugs contrary to s 11.1(1) and 307.6(1) of the *Criminal Code* Commonwealth, I sentence the offender to 4 years' imprisonment. That sentence of imprisonment is backdated to 29 March 2024.

That gives a total sentence of 4 years and 6 months' imprisonment. I fix a non-parole period on the commonwealth offence of 18 months. The non-parole period is to commence on 29 March 2024.

Nothing further?

MR CREAN: No, your Honour.

MS MCGLINN: No, your Honour.

HIS HONOUR: I thank counsel for your assistance.

Please adjourn the court.
