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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 22318676

THE KING

and

PETER ACE NIBBS

(Sentence)

BROWNHILL J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON THURSDAY 28 NOVEMBER 2024

Transcribed by:
EPIQ

HER HONOUR: Mr Nibbs, you have pleaded guilty to the charge that on 25 March 2023, you drove a motor vehicle dangerously and caused serious harm to PK contrary to s 174F of the *Criminal Code*.

The maximum penalty for that offence is imprisonment for 7 years.

The circumstances of the offending are that on 25 March 2023, you went to the Northern Territory Rugby Union Grand Final at Marrara Stadium. The victim, who you knew through the rugby community, separately attended. The game finished at about 6 pm. You went to a social function at a rugby club before about 9 pm. The victim and his friend, Mr M, arrived at that function at about 9 pm and the victim was socialising with people including you and another man, Mr B. You were all consuming alcohol. At around 10:40 pm, you, the victim and the other two decided to go to a licensed premises in Palmerston.

You all walked to your brother's Toyota Troop Carrier which you were driving on the night. You got into the driver's seat. Mr B sat in the front passenger seat and the victim and Mr M got into the back where there was a mattress on the floor. Mr M lay on his stomach behind the driver's seat and the victim sat on the mattress near the back doors. Neither was wearing any seat belt. You drove erratically whilst accelerating, hit the left kerb in the carpark, which caused the car to go up on two wheels. You tried to get control by steering to the right, but then hit a kerb on the opposite side of the road, causing the car to roll onto its side landing in a grassed area off the road.

The victim was ejected out of the rear passenger window of the car and was pinned underneath it when it came to rest. You and the other passengers sought help from other people, and you all lifted the car and pulled the victim out.

Police and ambulance attended and took the victim to hospital. He underwent spinal fusion surgery which fused three vertebrae with two stabilising rods and screws. He had multiple fractures of his spine and ribs. He had air and fluid in the space around his lung and avulsion injury to his hip and flank which is where bone fragments are pulled away by the muscles. He had bleeding into the space behind his abdominal organs and bruising and grazes. He was in hospital for about three weeks. He continues to suffer ongoing pain from his injuries and will not be able to play rugby again.

When spoken to by Police at the scene (and on two separate occasions), you said the victim was the driver. The incident was caught on CCTV. I watched that footage. I have received photographs of the Troop Carrier at the scene.

I have received a victim impact statement from PK dated 8 October 2024. He said his emotional state has not been the same since the incident. He has waves of depression knowing he cannot do the things he once did, such as sport, social outings, full days work and having a physical relationship. He has been out of work since this happened and has only just got a job after many rejections because of his condition. He is on restricted hours because of his injuries, so he is not earning as

much as he was before. He has not been able to return to his traditional country because he cannot travel on a dirt road for long trips. He says he has lost more than a year of his life because of your driving.

You are now 30 years old.

You have a minimal criminal record, but it does include a conviction for dangerous driving committed in 2017 and a conviction for aggravated assault committed in 2017.

Your barrister has told me various things about you.

You were born in Alice Springs. In your 20s, you lived in Darwin on and off for employment and sporting purposes. You have worked since leaving school in various roles including as a youth carer and role model for disadvantaged young people. You are presently working for a concreting company, working remotely near Timber Creek.

You are a carer for your friend who became a quadriplegic after a motor bike accident years ago. When his family are away, you go to Alice Springs and care for him for extended periods, which you do without any financial recompense. You coach under 14s rugby and help out at a boxing club when you are in Alice Springs.

You are in a relationship with your partner and have been for over 12 months. You have strong family and community support in the Northern Territory, and you enjoy hunting and fishing.

You have pleaded guilty to the offence, thereby saving the community and the victim the need for a trial. You have accepted responsibility for your criminal behaviour and indicated a willingness to facilitate the course of justice.

You did assist the victim immediately after the accident. However, that night and subsequently, you told Police the victim was the driver thereby denying responsibility for what happened.

You did approach the victim shortly after the offending, offering to assist or support the victim in any way. That approach and offer was rebuffed by the victim, who viewed it in a different way, but I accept that it discloses genuine remorse for the effects of your offending on the victim.

I propose to reduce the sentence I would otherwise impose for this offence by approximately 25 percent to reflect these matters.

The seriousness of this kind of offending is shown by the penalty prescribed by the Parliament which is up to 7 years' imprisonment.

You drove erratically whilst accelerating in the car park and lost control of the car. The victim and another person were in the back and they were unrestrained. Your

driving caused the victim to be ejected and then rolled on by the Troop Carrier which is a big, heavy vehicle. He suffered the significant injuries I have described. The effects of the offending on him are ongoing and are likely to persist for some considerable time into the future. The collision also resulted in the expenditure of public resources on attendances by Police and ambulance, and the costs associated with the victim's medical treatment.

I note that the car was roadworthy and registered. After the accident, you did not flee, but gave what assistance you could to the victim, albeit that you denied being the driver. I also note that the victim did sit in the back of the car without any restraints, so the consequences of the accident are, to some relatively minor degree, attributable to that conduct.

I accept that you had been drinking alcohol that night, but there is no evidence before me that you were intoxicated or affected by it.

I have considered the comparative sentences from the cases referred to by the Crown. I note the observations of Chief Justice Grant in *R v Magtibay* [2019] NTSC 12. The head sentences imposed by the Court for this offence range from 9 months to 3 years and 6 months' imprisonment, and almost all involve sentences of imprisonment. His Honour said conduct caused by a serious lapse of attention or misjudgment would result in a lower sentence than conduct involving a selfish disregard for the safety of other road users.

In your case, you drove a large heavy vehicle with unrestrained passengers in the back, erratically whilst accelerating in a carpark, albeit briefly. It seems to me that conduct did involve a degree of selfish disregard for the safety of those passengers and other road users using the carpark and public roads. This was a reckless act of deliberate erratic driving, which younger men frequently engage in, often in order to impress other young men, followed by a loss of control of the vehicle as a consequence. This is different to a failure to brake quickly enough or turning into oncoming traffic due to a lapse of attention or misjudgment, your erratic driving was deliberate, even though you did not intend to lose control of the car or roll it.

Overall, I consider this offence to be towards the lower end of the range of seriousness for this kind of offending.

I note that this kind of offending is prevalent which means that general deterrence is given more weight than matters particular to you, such as rehabilitation. I also note, however, that you have good prospects of rehabilitation which I will come to.

As to that, I have received six character references for you from your current and a previous employer, friends and a parent of a child you coached in rugby. They all attest to your work ethic, honesty, initiative, team spirit, empathy, loyalty and contributions to your community.

You are not a youthful offender, nor a first offender. It appears that the punishment and leniency shown to you for your dangerous driving offence did not

deter you from doing that again. Specific deterrence is therefore an important factor in this sentencing exercise.

However, your minimal criminal record was all from 2017 and you have had nothing since then, which indicates that you are capable of living a law-abiding life and you are a man young enough to turn your life around.

Given your age, your limited criminal history, your good employment and the impacts of this offending on your life, including that you have stopped drinking alcohol, I am prepared to accept that you have good prospects of rehabilitation.

I have been provided with reports assessing your suitability for home detention and supervision.

You were assessed initially as suitable and recommended for general supervision, although your residence was found suitable for home detention, your parental responsibilities were considered to require you to leave the house too often to be placed under home detention. I ordered a further assessment after making you aware that the alternative to home detention was a period of actual imprisonment. Despite making that clear to you, the supplementary home detention report I have received indicates that you were less than co-operative in the assessment process. Ultimately, you indicated that your family responsibilities could be managed if you were on home detention and you and your residence have been assessed as suitable. The report says that the proposed conditions and consequences of noncompliance have been explained to you, and that you understand them.

I will now sentence you, Mr Nibbs. Can you please stand up?

I convict you of the offence.

I sentence you to imprisonment for 13 months.

That sentence is to be served by way of an Intensive Community Corrections Order which will be for a period of 13 months from today on the following conditions:

- 1) You must not, during the period of 13 months from today, commit another offence punishable by imprisonment.
- 2) You must be of good behaviour for the period of 13 months from today.
- 3) You will be under the ongoing supervision of a Probation and Parole officer, must obey all reasonable directions from a Probation and Parole officer and must report to a Probation and Parole officer within two business days of today.
- 4) Upon your discharge from Court today, you must immediately return to [redacted] unless directed otherwise by a probation and parole officer.

- 5) For the period of 6 months from today, you must not leave [redacted] except at times and for the periods as prescribed or as otherwise permitted by a Probation and Parole officer.
- 6) Whilst subject to the home detention condition, you must wear or have attached an approved monitoring device in accordance with the directions of a Probation and Parole officer and allow the placing or installation in and retrieval from the premises or place specified in this order of such machine equipment or device necessary for the efficient operation of the monitoring device.
- 7) You must not purchase or consume alcohol and will submit to breath testing by a Probation and Parole officer or a Police officer.

Now, is there any issue with any of that, counsel?

MR DRURY: Nothing arising, your Honour.

MS MCLEAN: Nothing arising from those conditions.

HER HONOUR: Thank you.

So Mr Nibbs, what that means is that I have sentenced you to imprisonment for 13 months, but I am giving you the chance to serve that sentence in the community, that is not go to gaol, but serve it in the community by the Intensive Community Corrections Order which will be for the period of 13 months, which includes a 6-month period of home detention.

You will also be subject to those other conditions, like supervision and the nonconsumption of alcohol and good behaviour for that whole period of 13 months. If you comply with the conditions that I have just read out, that will be the end of your sentence.

If you do not comply with any one of those conditions, you will be brought back to Court and you will face the prospect of being sent to gaol. Do you understand that?

THE ACCUSED: Yep.

HER HONOUR: You also need to understand that the Community Corrections officers who will supervise you are there to help you get through the period of home detention and the rest of the conditions. It is their job to make sure that you are complying with the conditions. You are far more likely to succeed in serving this sentence in the community if you co-operative with them in every way.

They want you to succeed and I am sure you do not want to go to gaol. So make sure you comply with all of those conditions and cooperate with your Probation and Parole officer, be honest with them and they will help you to get through this process. Do you understand?

THE ACCUSED: Yep.

HER HONOUR: All right. Anything further?

MR DRURY: Nothing arising.

MS MCLEAN: No, your Honour.

HER HONOUR: Thank you. All right, thank you both for your assistance in the matter.

We will adjourn the Court.
