CITATION:	*Coulthard v Emmett* [2024] NTSC 50
PARTIES:	COULTHARD, Corey v EMMETT, Phillip
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL from LOCAL COURT exercising Territory jurisdiction
FILE NO:	LCA 24 of 2023 (22336165)
DELIVERED:	5 June 2024
HEARING DATE:	5 June 2024
JUDGMENT OF:	Grant CJ

REPRESENTATION:

Counsel:

Appellant:	J Bach
Respondent:	T Hayward

Solicitors:

Appellant:	Northern Territory Legal Aid Commission
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	C
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

Coulthard v Emmett [2024] NTSC 50
LCA 24 of 2023 (22336165)

BETWEEN:

COREY COULTHARD
Appellant

AND:

PHILLIP EMMETT
Respondent

CORAM: GRANT CJ

REASONS FOR JUDGMENT
(Delivered *ex tempore* 5 June 2024)

[1] This is an appeal against sentence imposed by the Local Court which, for reasons I will come to shortly, resolves to a resentencing exercise by this Court.

[2] The appellant pleaded guilty to the four offences of dishonestly driving a stolen motor vehicle, driving the vehicle in a manner dangerous to the public, failing to ensure a passenger complied with seatbelt regulations and driving unlicensed. The first and most serious of those offences attracted a maximum penalty of imprisonment for five years. The second of those offences attracted a maximum penalty of imprisonment for two years.

[3] On 12 December 2023, the Local Court convicted the appellant and imposed an aggregate sentence of imprisonment for 18 months with a non-parole period of nine months. The two grounds of appeal are: (a) manifest excess; and (b) specific error of law in the imposition of an aggregate sentence.

[4] The parties are in agreement that the aggregate sentence was imposed in breach of s 52 of the *Sentencing Act 1995* (NT) as it then stood, because the offences were not joined in the same information, complaint or indictment. That being so, specific error is established and it is incumbent on this Court to make its own determination in a fresh exercise of the sentencing discretion. In those circumstances, no inquiry into manifest excess is necessary or appropriate.

[5] The facts of the offending can be summarised briefly as follows.

[6] At some time during the day on 6 November 2023 the keys to the subject vehicle, and then the vehicle itself, were stolen by an unknown person. The appellant was not charged and does not stand to be sentenced for that theft.

[7] The vehicle was observed later that afternoon parked at the back of a unit complex in Alice Springs. The appellant was seen by a witness to approach the motor vehicle, told the witness that it was a stolen car, and entered the motor vehicle with four unknown co-offenders and drove away in it. The appellant was at that point clearly in control of

the vehicle, and throughout the incident remained the driver and ringleader in its use.

[8] At some time after midnight on that night, the vehicle was observed driving around the centre of Alice Springs in convoy with another stolen motor vehicle. Just before 1 o'clock that morning, the appellant was observed to be driving the vehicle along Gregory Terrace with three male passengers seated on the window sills of the vehicle's doors with their upper bodies protruding outside the vehicle. The vehicle then mounted the curb and proceeded for a time along the footpath, narrowly missing a pedestrian who was standing there.

[9] The appellant then stopped the vehicle in order to speak with the occupants of another stolen vehicle. The appellant then continued to drive along Gregory Terrace with the male passengers still seated on the window sills. The appellant then drove into the Coles shopping centre car park at speed and without regard to the traffic signs and directions posted there.

[10] Just before 3 o'clock that morning, the appellant parked the vehicle on Gregory Terrace adjacent to the Coles shopping centre and alighted from it in order to speak with another person. The appellant then re-entered the vehicle and drove it at high speed along Railway Terrace while travelling onto the wrong side of the road, before returning to the

vicinity of the Coles shopping centre. The vehicle was subsequently abandoned on a street in Alice Springs later that morning.

[11] The appellant was 19 years of age at the time he committed these offences, and already had an appalling criminal record. That criminal record included six convictions for property damage, four convictions for aggravated unlawful entry, three convictions for stealing, one conviction for trespass, one conviction for aggravated assault, one conviction for engaging in violent conduct, one conviction for attempting to endanger the operation of an aircraft, one conviction for assaulting a worker and, most relevantly for these purposes, two convictions for the aggravated unlawful use of a motor vehicle.

[12] That record also included 11 proven breaches of failing to comply with orders of the Youth Justice Court.

[13] The appellant's other personal circumstances included a diagnosis of foetal alcohol spectrum disorder. However, that condition had been subject to relatively intensive management over several different programs for a period of six years leading up to this offending. It is instructive that following the appellant's earlier release from prison in October 2022, he took the benefit of what is described in one of the therapeutic reports tendered during the course of the sentencing proceedings as "wraparound support from his care team" under the NDIS package which had been made available to him. He was also

returned to a family environment, which was described as “rich, loving and caring”. Despite those supports and safety mechanisms, the appellant went on to reoffend in a particularly flagrant fashion.

[14] It can be accepted that the appellant’s condition causes him difficulty with impulse control, impaired judgement and limitations on his capacity to assess the linkage between actions and consequences. That operates to reduce his moral culpability and to diminish the significance of general deterrence in the sentencing exercise. However, as is so often observed, those very same features elevate the significance of community protection in the sentencing calculus.

[15] Although some of the reports tendered during the course of the sentencing proceedings in the Local Court indicated that the appellant has expressed remorse and disappointment following his most recent offending, second-hand expressions of remorse in reports of that nature do not carry much weight, and certainly do not prevail over the objective facts which might suggest a different conclusion.

[16] It is difficult to accept that the appellant is genuinely remorseful in any orthodox understanding of the concept, and in the sense of resipiscence, having regard to the repetitive nature of his offending across the 2 ½ years leading up to the subject offending. That finding concerning remorse, or rather that inability to find genuine remorse,

will obviously bear upon the discount appropriately applied in recognition of the pleas of guilty.

[17] In determining whether to fix a non-parole period or to make an order suspending sentence, if that option is available, a sentencing court is exercising a wide discretion. As has been described, the first task is to impose a sentence which is appropriate and proportionate to the offending in light of all the relevant circumstances of the offence and the offender. In choosing whether to proceed by way of a suspended sentence or a non-parole period, the court must consider a range of factors including the nature of the offending, the minimum period of imprisonment necessary to reflect the seriousness of the offending, the personal circumstances of the offender and the offender's prospects for rehabilitation. Those considerations do not give rise to any form of expectation that a suspended sentence will be imposed for a particular type of offence.

[18] While one of the considerations relevant to the exercise of the discretion is the offender's prospects for rehabilitation, and how they are best addressed, it does not necessarily follow that the sentencing purpose of rehabilitation will be best served by an order suspending sentence. In some cases, an offender's track record and history on supervised orders will lead to the conclusion that a non-parole period is both necessary and better directed to rehabilitation. In many cases, the parole process will in fact form a better mechanism for determining

what restrictions, programs and services are best directed to the question of rehabilitation on any grant of conditional liberty, and will provide a greater incentive for the offender to comply with the obligations of conditional liberty.

[19] However, this is not to say that rehabilitation is the key issue in the exercise of the discretion. Another consideration is whether the sentencing court could have any confidence that the offender would comply with the conditions of an order suspending sentence. As already described, the appellant has 11 proven breaches of orders for conditional liberty. That history, together with his criminal history generally, tells against the making of a conditional order suspending sentence. So much is apparent from the fact that by March 2022 the appellant had already reached the point at which the Youth Justice Court felt compelled to impose both a conviction and a non-parole period of seven months across a head sentence of 12 months for the offending it was dealing with at that time.

[20] Similarly, the fact that the appellant is 20 years old and still relatively young does not mean that rehabilitation will be the paramount consideration in the sentencing exercise. As the Court of Criminal Appeal has observed on a number of occasions, the focus on rehabilitation over deterrence in the case of youthful offenders is directed to the offender's capacity to alter his or her behaviours so as not to reoffend. Rehabilitation may, and ordinarily will, carry less

weight in respect of a repeat offender who has previously been afforded a number of opportunities to modify his or her behaviours but has failed to do so. In such cases, the prospects of rehabilitation and the weight properly attributed to that purpose will be diminished. That consideration goes hand-in-hand with the requirement that even young offenders must be held accountable and made aware of their obligations under the law, and of the consequences of contravening the law.

[21] Turning then to the nature of this particular offending, the first offence was no doubt objectively serious having regard to the value of the vehicle, the appellant's subjective knowledge that the vehicle had been stolen, and the duration and nature of the appellant's use of the vehicle. It is irrelevant in the assessment of the seriousness of that offence that the appellant was not charged with the theft of the vehicle. Had he been, a quite different and higher maximum penalty would have application, and the sentence would be approached on a different basis. Similar observations may be made in relation to the contention that no apparent damage was caused to the vehicle. So far as this particular offence is concerned, the appellant's conduct must be assessed as falling in the mid-range of seriousness.

[22] There is no tariff for this offence, and perhaps not even an established sentencing range. The sentences imposed range from two years and three months down to four months, depending on the circumstances.

The offenders who are sentenced for this offence are quite frequently, and in fact usually, young offenders. The offending often occurs in a context similar to the present circumstances. Although this is not an inquiry into manifest excess for the reasons I have already described, it would be difficult to find that the aggregate sentence which was imposed by the Local Court was impermissibly excessive when one has regard to the comparative sentences for the most serious of the offences represented in that aggregate.

[23] The second offence was also objectively serious having regard to the manner in which the vehicle was driven on a number of different occasions and over many hours, including the danger to members of the public which that driving constituted. Having regard to the agreed facts, the offending conduct must be assessed as at or above the mid-range of seriousness for this type of offence. It is not to the point that nobody was injured as a result of the appellant's dangerous driving. Again, had a member of the public been injured the appellant would have been charged with a different or additional offence, also attracting a quite different and higher maximum penalty. The gravamen of a dangerous driving charge is the risk and potential inherent in the conduct.

[24] The third and fourth offences are obviously of a lesser order of seriousness, as is apparent from the less stringent maximum penalties.

[25] It is no doubt correct to say that offending of this nature is extremely prevalent in the Alice Springs community, is extremely corrosive of the well-being of the community and causes extreme disquiet. That recognition is not to be alarmist and does not misrepresent the nature of the situation obtaining in Alice Springs. While the appellant is not to be made some sort of scapegoat or lightning rod for the community's disaffection in relation to those matters, the question of prevalence and the purpose of community protection do form a crucial component of the sentencing considerations in this matter.

[26] Having regard to those considerations, I too have reached the conclusion that the fixing of a non-parole period is necessary and appropriate in the circumstances of this case, and that a non-parole period of nine months is the minimum period of imprisonment which the objective circumstances of this offending require.

[27] Accordingly, I make the following orders:

1. The sentence imposed by the Local Court on 12 December 2023 is quashed.

2. For the offence of driving a motor vehicle without consent, the offender is convicted and sentenced to imprisonment for 16 months, which is backdated to commence on 7 November 2023.

3. For the offence of dangerous driving, the offender is convicted and sentenced to imprisonment for eight months, two months of which are to be served cumulatively on the first sentence.

4. For the offence of failing to ensure a passenger complied with seatbelt regulations, the offender is convicted and sentenced to imprisonment for one month, which is to be served concurrently with the other sentences.

5. For the offence of driving while unlicensed, the offender is convicted and sentenced to imprisonment for one month, which is to be served concurrently with the other sentences.

6. The total period of imprisonment is 18 months.

7. A non-parole period of nine months is fixed.

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