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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 22217118

THE KING

and

AB

(Sentence)

KELLY J

TRANSCRIPT OF PROCEEDINGS
AT DARWIN ON MONDAY 11 NOVEMBER 2024

Transcribed by:
EPIQ

HER HONOUR: AB, you have pleaded guilty to five charges; robbing BL of car keys and a Mitsubishi, made worse because you were in company with three other people, and you caused harm to BL. The maximum penalty for that is imprisonment for life.

You pleaded guilty to unlawfully using a motor vehicle. That is the same Mitsubishi, that was valued at more than \$27,000, namely \$27,300. The maximum penalty for that offence is imprisonment for 7 years.

You pleaded guilty to causing damage to a window at the Humpty Doo Tavern. The maximum penalty for which is imprisonment for 14 years.

To unlawfully entering the Humpty Doo Tavern with intent to steal. The maximum penalty for which is imprisonment for 14 years.

And stealing quite a large quantity of alcohol from the tavern. The maximum penalty for that is imprisonment for 7 years.

I am going to talk about what happened, what you did. At the time of the offending, you were only 15 years old.

At about 7:20 in the evening on 5 June 2022, you and three other boys were in the Darwin CBD. You formed the common intention to assault BL in order to steal his car. You followed him along The Esplanade and waited for him to identify his car, and that was the Mitsubishi valued at \$27,300.

As he unlocked and got into his car, two of the other boys who were with you ran across the road, approached him at the driver's door and stopped him from closing the door. They demanded his keys. He ran away. He was afraid. And those two boys followed him. One of the boys kicked him in the legs as he tried to run away, then punched him in the back of the head, causing a gash on the back of his head.

As that was happening, you and the other boy crossed the street towards them. The other boy stood on the grass verge of The Esplanade and you walked towards BL.

You pushed him in the face with one hand and then you walked away and stood near the car. The first two boys demanded the car keys, and he was afraid and he surrendered his keys just so that he wouldn't be hurt anymore.

So then one of the boys took the key and got into the driver's seat. The rest of you got into the car, and JC used the key to start the car and drove off at speed through public streets without the headlights on. It was all captured on CCTV.

BL ran over to the McDonald's on Smith Street and people called the police. He was taken by ambulance to the Royal Darwin Hospital and he had a 2 to 3-centimetre wound on the back of his head, pain and tenderness. He was given a local anaesthetic and sutures in the back of his head.

At about nearly 12:20 in the morning on Monday 6 June, you and the other boys went to the Humpty Doo Tavern. You had the intention of entering to steal alcohol. You and the co-offenders smashed a glass window and went inside.

Once inside, you stole a bunch of alcohol; some Jack Daniels mixed cans, Jim Beam mixed cans, Canadian Club mixed cans, some beer and some spirits. The total value of the alcohol stolen was about \$600, and you left with the stolen alcohol. And again, it is all captured on CCTV.

At about 1 o'clock in the morning, police saw the stolen vehicle in Palmerston, activated their emergency lights and sirens, and directed the vehicle to stop. The driver ignored them, increased speed and drove off in a dangerous manner to get away.

Eventually, they put down tyre deflation devices and the vehicle stopped, and you and the other boys were taken to the Palmerston Police Station. You declined to take part in an interview, and that is your right.

I have read a victim impact statement from BL, and suffice to say that the offending had not just caused him pain and financial loss but he was also afraid. I will not read it out. He was afraid and it has had quite an emotional effect on him for a considerable period of time.

I am going to talk about you next. Your criminal history includes nine counts of stealing or possessing stolen property, three of unlawful entry and, importantly, two prior aggravated robberies. And you have committed further offences since this one while you were on bail, and I will talk about that in a little while.

I have been told a little bit about your background. You were born in Port Hedland and lived in Broome for a while before your family moved to the Northern Territory. You initially lived with your mother and father. You had an older brother and a younger sister. Your parents separated when you were about 6. Your mother re-partnered and had two daughters with her new partner, and I note that your mother is here in Court to support you, which is a good thing.

You were, apparently, exposed to domestic violence as a child, but you say you never felt unsafe at home. You were not exposed to significant intoxication within the family. You have an extensive family network across the Northern Territory and Western Australia. Despite the fact that you say you did not feel unsafe, I do think that what we call *Bugmy* factors are enlivened in your case, because, apparently, your mother had to flee with you children from Western Australia because of a violent father, and that you did suffer from trauma and abuse as a child.

I will not go into details, but I am taking into account the matters that are set out there in your lawyer's submissions about those things.

You were diagnosed with ADHD as a child, but you responded well, I am told, to medication. You finished primary school but you had problems at school, I am told, fighting with other children and property damage. You did not finish year 9, but later on, to your credit, you did year 10 at the Malak Re-Engagement Centre, attending five days a week.

I have read a report concerning some psychological testing that was done concerning your cognitive functioning. And again, I will not go into detail, but the neuropsychological report did say that you had significant cognitive impairments and behavioural disturbance due to a neurodevelopmental disability and that those matters are likely to have significantly contributed to your offending. And there were tests done, and I am taking into account the results of those tests, but I am not going to go into detail here.

You have been arrested a number of times. You had a number of episodes on remand at Don Dale Youth Correctional Centre. You were released from custody in September 2022 and attended the Saltbush community rehabilitation program for two months and then went back to live with your family.

However, since then, you have committed a number of other offences that were dealt with in the Local Court, some of them reasonably serious, others quite understandable, given your situation at the time, being left without supervision in Gunbalanya.

You were sentenced to some periods of detention, all of those have now been served. And you have been remanded in adult prison on these offences. Periods of remand first in Don Dale and then the adult prison since 2022 have amounted to 158 days, so a considerable period of time.

And on top of that you were in a, what they call, quasi-custodial setting at Saltbush for 68 days. And I can take into account, and I am going to take half of that into account in backdating your sentence. Adding all that up, the backdate is 29 January 2024.

You have a history of substance abuse in your teenage years. Smoking cigarettes, a very dangerous thing to do, since you were 13, but you stopped in 2022. Well, I am told you smoke occasionally. It is a very dangerous thing to do.

You first drank alcohol when you were 14, and at 15, you were drinking several days a week and consuming large quantities of alcohol, such as sharing a bottle of spirits and a carton of beer amongst friends. You first smoked cannabis when you were 13, and by 14, I am told, you were smoking every day.

You say you stopped drinking and smoking after you left the Saltbush program, which is good. You tried ecstasy once when you were 15, but you do not do other drugs, which is good.

I have to talk to you a little bit about the things I need to think about when I am sentencing you. Robbery is a serious offence, and I have mentioned the factors that make this robbery more serious.

I do have to pass a sentence that sends a message that the court disapproves of these offences and that will discourage you and others from doing something like this again. But I take into account that your moral culpability is reduced because of the *Bugmy* factors and your cognitive impairment. In other words, you are not as much to blame as somebody who did the same thing who did not have those factors in their life.

You have pleaded guilty, and I can give you a reduced sentence for that. You took part in an offender/victim conference and I have read a letter of apology and I have heard what your lawyer has said this morning about things you have told him. So I do accept that you are remorseful and I intend reducing your sentence by around about 25 percent.

I also need to take into account parity. That is what is there between you and those other boys. Now, in particular in relation to the robbery, it does seem to me that you are not as much to blame as the other boys. One of them got a 2-year good behaviour bond, the other got a total sentence of 16 months.

So it is broken down like this: 16 months on count 1, that is the robbery. Count 2 is unlawfully using the car, the boy got 6 months. Count 3, which was the property damage to the Humpty Doo Tavern, 12 months. Count 4, the unlawful entry, 4 months. And I am not sure what they got on count 5, but in any event, they were all concurrent. So he got a total of 16 months' detention. But I am told he served 3 months and 7 days.

So I have to take that into account. He also did not get convictions recorded. I am not going to record convictions in your case. Because even though you had a conviction recorded before, it does seem to me that, as a matter of fairness, you should be treated roughly the same as that other boy. He only got a 20 percent discount. I am giving you a 25 percent discount.

On count 1, after that reduction of 25 percent, without recording a conviction, you will be sentenced to detention for 15 months.

On count 2, the unlawful use of the car, you were just a passenger, allowing that same reduction, without recording a conviction, you will be sentenced to detention for 3 months.

On count 3, causing property damage, without recording a conviction, you will be sentenced to a term of detention for 3 months.

On count 4, without recording a conviction, you will be sentenced to 12 months.

On count 5, stealing the alcohol, without recording a conviction, 3 months.

I am going to direct that they are all concurrent, which means served together. So your total sentence is detention for 15 months. And I am going to direct that that be suspended forthwith. The start date, I already said, was 29 January 2024, suspended forthwith on these conditions.

I am fixing an operational period of 18 months.

- 1) For the next 18 months, you must not commit another offence punishable by imprisonment.

That is so important, because if you do, you can be brought back here and have to serve some or all of that sentence, and because of your age, that will be in an adult prison. And I have heard what you said through your lawyer about not wanting to go back there. So that is the first thing.

- 1) For that period, you are to be under the supervision of a Community Youth Justice Officer and follow reasonable directions from a Community Youth Justice Officer.
- 2) You are to live at an address approved by the Community Youth Justice Officer.
- 3) You are to go to the Sunrise Rehabilitation Centre, undertake their 12-week program and not to do anything to cause your early discharge.
- 4) You will submit to drug testing as directed by a Community Youth Justice Officer for the purpose of case management and harm minimisation only.
- 5) You will not consume alcohol.
- 6) You are to participate and engage in any support services as directed by a Community Youth Justice Officer, but with this proviso: if you manage to get a job, those support services and treatment and what have you are not to interfere with your employment.

Is there anything further?

MR MOODY: Nothing further from the defence.

MS WRIGHT: Nothing further. Thank you.

HER HONOUR: All right. Well, thank you both, and AB will be free to go, subject to the usual administrative arrangements.

Please adjourn the Court.
