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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21914537

THE KING

and

MK

(Sentence)

BROWNHILL J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON TUESDAY 19 NOVEMBER 2024

Transcribed by:
EPIQ

HER HONOUR: MK, on 26 July 2024, a jury found beyond reasonable doubt that you had committed the following offences charged on indictment dated 24 October 2023:

On Count 1, that between 22 April 1973 and 22 April 1975, you indecently assaulted RO, contrary to s 72 of the *Criminal Law and Consolidation Act*.

And on Count 2, that between 1 February 1983 and 28 February 1983, you indecently assaulted WO, contrary to s 72 of the *Criminal Law and Consolidation Act*.

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

To the extent that the jury's verdict is in any way ambiguous or inscrutable in relation to the factual basis for the findings of guilt, it is now the task of this Court to find the facts relevant to the sentence consistent with the jury's verdict.

At trial, you denied that the offending took place. You continue to maintain your innocence.

The jury found you guilty of the charges just referred to.

In order to do so, the jury must have accepted the two victims' evidence as reliable. I therefore proceed on the basis that the jury accepted their evidence about the offending. You did not give evidence and there is no reason to suppose that the jury did not accept the victims' evidence about how that offending occurred and the circumstances in which it occurred.

On the basis of that evidence, I find as follows regarding the circumstances of the offending.

The victims are brothers, and you are their familial relation.

Between 22 April 1973 and 22 April 1974, RO was sent to live with his grandparents in Alice Springs. You lived at that house too. When he was aged between 6 and 7 years old, and you were aged 14-and-a-half to 16-and-a-half years old, he was asleep in the bedroom with his cousin. He was awoken by you leaning on the bed and touching or playing with his penis. As a result of your actions, he got an erection. You then got onto the bed and sat on top of him, inserting his penis into your vagina, making him have sex with you. You then got off him and left the room. That is the offending the subject of Count 1. He also gave some evidence that this may have happened a second time. He was not able to be specific about that, and you were not charged with any offence in relation to that. I do not consider his evidence was sufficiently clear to find beyond reasonable doubt, that you committed any other offending against him.

Between 1 February 1983 and 28 February 1983, WO was sent to stay with his grandparents in Alice Springs. At that time, you also lived in the house. When he

was aged 13 years old and you were aged 24 years old, he was sleeping in his grandparents' room alone. He was awoken by you touching his penis. You took his trousers off and told him to "come here." You laid down and pulled him on top of you and tried to make him have sex with you by inserting his penis into your vagina. He was frightened. He did not get an erection and there was no penetration. After a short time of trying, you left the room.

Both victims kept the offending against them a secret for many years. WO told his partner and his father in 2012 and 2016 respectively. RO told his parents and sister in March 2018. Prior to that, neither of them had been aware of the offending against the other. As a result of this latter disclosure, they reported the matter to Police.

You were arrested on 12 April 2019 and were granted bail after spending one day in custody.

I have received victim impact statements from the victims.

RO said that your offending ruined the family relationship and he had to live with this for 50 years and had to keep sane in his own mind. He said that he was banished from Walkabout Bore for being a trouble maker after reporting your offending against him.

WO said he expected you to keep him safe, and you broke his trust. Your actions have impacted and continue to affect his life. He felt and feels trapped, hurt, ashamed, disgusting and unloved. It has affected his relationships, he is overprotective of his own children, he has difficulty trusting anyone, particularly women and he has nightmares and feels haunted by what happened. He said he cries, suppressing the pain and suffering, he feels ashamed, he feels dirty, he has attempted suicide, has ongoing anxiety issues and drinks to excess.

You are now 66 years old. You have a criminal history comprising being armed with an offensive weapon at night committed in 2020 and fighting in a public place committed in 2018.

You have never been sentenced to imprisonment before.

You have completed compliance with a 12-month good behaviour bond.

I have been told various things about you.

In summary, you were the youngest of 13 children. You spent your early years on a station and then the family moved to Alice Springs when you were a young child. You went to school there. You left school at 14 to work at a store, then took a job at the Child Health Unit, helping young Aboriginal children from remote communities with urgent health needs. You then worked in Darwin and in Katherine. In Katherine, you met RC, who later became your partner.

In 1983, you moved back to Alice Springs for the birth of your first child, [redacted]. He was born with spina bifida and was confined to a wheelchair all his life. You were his main carer and supported him to live independently from age 17, but had him back home when he needed that. In 1986, you had a daughter, [redacted].

In 1987, your partner passed away unexpectedly. You cared for your two children by yourself. In 1988, you re-partnered with RD and had two more children. Your fourth child passed away from illness, aged 1, which was heartbreaking for you and the family.

You lived between Alice Springs and other communities in the Northern Territory. You moved to Katherine and worked in childcare for 15 years; work that you enjoyed very much. Your partner worked away and you were working and caring for the children. You also volunteered in the community in various ways.

In the 2000s, when your eldest children left home, they had children and you took on the role of grandmother. In 2010, you moved permanently to Walkabout Bore, where you still live.

In 2013, your former partner was murdered in Katherine. Again, this tragedy was very difficult and traumatic for you and your family.

A family feud emerged in 2017, which has caused bitterness, conflict and a division between the two sides of the family, as was evidenced in the trial.

In recent years, your physical and mental health has declined. I will come back to that.

This matter ran to trial. That was your right and your entitlement.

You are not entitled to any discount on your sentence because you are remorseful. I have nothing before me to suggest that you feel any remorse for having committed this offending against the victims.

The offending was objectively serious. You are to be sentenced according to the criminal law applicable at the time of the offences. Back then, sentences for sexual offending against children were much lower than they are today.

Sexual offending against children is abhorrent and causes grave disquiet throughout the community. Such offending is prevalent and the impacts of these crimes are now understood as having long-term effects on victims.

The offending on Count 1 was against your familial relation, when he was a very young child of 6 to 7 years old. He was asleep in his bed, you woke him up, touched and fondled his penis and then had penile-vaginal sexual intercourse with him. Given his age, he is taken by the law to be incapable of consenting, so his lack of consent is not an element of the offence. However, your mental state is relevant to

the objective seriousness of the offending. You were a child yourself but one old enough to know that what you did was wrong. I also accept that you must have known the victim was not consenting to this conduct. You had woken him up from sleep, you sat yourself on top of him, you would have known his age, and that he was not mentally mature enough to consent to sexual activity with you, and you had the close familial relationship between you.

The offending on Count 2 was against your familial relation, when he was 13 years old and you were 24. He too was asleep in his bed, you woke him up, touched and fondled his penis and then tried to have penile-vaginal sexual intercourse with him. Again, because of his age, he is taken by the law to be incapable of consenting, but your mental state is relevant. Again, given the circumstances, I find that you must have known the victim was not consenting to this conduct.

I note that both instances were isolated, relatively brief in time, they were unsophisticated and spontaneous. There were no threats, physical violence or pressures applied to keep the offending a secret. Both victims gave evidence at the trial to the effect that they simply tried to forget about the offending against them or pushed it to the back of their minds and got on with their lives. They even attested that you were their favourite familial relation and that they had good relationships with you prior to the family dispute. However, it is apparent that, now that it is out in the open, they have been able to acknowledge the emotional and mental impacts of the offending upon them across the course of their lives.

I consider the offending on Count 1 to be around the mid-range of seriousness for such offences, and the offending on Count 2 to be a little less, given the victim was somewhat older.

Ordinarily, general and specific deterrence would loom large in this sentencing exercise. However, there are a number of factors that mitigate the weight of those factors here.

First, you are a person of otherwise good character. That entitles you to some leniency as a first offender. There is no suggestion that your good character enabled you to commit the offending. Further, as I will come to, I consider that you have, across the course of the past 40 years, rehabilitated yourself considerably. You have not committed any sexual offending, you have a very minor criminal record otherwise and you have undertaken a life dedicated to the service and support of your family and other members of the community. I consider you to be very unlikely to commit similar offences in the future. Furthermore, you have been subject to these charges since 2019, which is a very lengthy period of time. You have been on bail throughout that time, with full compliance, and I consider that your rehabilitative efforts were ongoing throughout that lengthy period between the charges and the trial and the further period between then and today. These things mean that specific deterrence has very little weight in this sentencing exercise.

Furthermore, you are now 66 years old, and I have received medical evidence that shows that you are in poor health, both physically and mentally. I find that because of these health issues, time in custody would be more onerous for you than for a person without these conditions and that time in custody would risk a worsening of those conditions, particularly your mental health conditions. For these reasons, you are not really an appropriate vehicle for general deterrence, so that must have less weight than it ordinarily would in this sentencing exercise.

As to your prospects of rehabilitation, I have referred to your quite minimal criminal history, which was committed after this offending. You have no history of sexual offending.

You have a good employment history. You have been on bail and compliant with your bail conditions since 12 April 2019, so for over 5-and-a-half years.

I have received 36 character references for you from members of your family and friends. They all attest to your devotion to your children and your ongoing support of them and your broader family over their lives. Your family continues to be very supportive of you and they are there in Court today in support of you.

Consequently, I consider your prospects of rehabilitation to be excellent.

There are no mandatory sentencing requirements for the offences.

I am sentencing you for two offences committed against different victims some years apart. I will impose individual sentences. There will be a degree of accumulation and a degree of concurrency to reflect the principle of totality.

The sentence will be backdated to take into account time in custody, (so that 1 day). As such, the sentence will be backdated to 18 November 2024.

In all of the circumstances, I have decided to impose a suspended sentence of imprisonment with no requirement for you to serve further time in custody and the only condition being that you are of good behaviour.

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

I convict you of the offences.

I sentence you as follows.

On Count 1, imprisonment for 2 years and 6 months.

On Count 2, imprisonment for 2 years and 6 months. Twelve months of the sentence on Count 2 is cumulative on the sentence on Count 1.

This gives a total sentence of imprisonment for 3 years and 6 months.

As I have said, the period will be backdated to 18 November 2024.

The sentence will be suspended immediately.

I impose an operational period of 3 years and 6 months from today, during which you must not commit another offence punishable by imprisonment.

You may sit down.

Is there anything arising from that, counsel?

MS RAHEEM: Not from the Crown, your Honour.

MR DONALDSON: No, thank you, your Honour.

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

I will adjourn the Court now.
