

CITATION: *Symington v Harrison* [2024] NTSC 74

PARTIES: SYMINGTON, Natalie

v

HARRISON, Adam James

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 22222044

DELIVERED: 9 September 2024

HEARING DATE: 3 September 2024

JUDGMENT OF: Reeves J

CATCHWORDS:

SENTENCING – Penalties – Suspended sentence – Breach of suspended sentence – s 43(5)(c) of the *Sentencing Act 1995* (NT) – Whether it would be unjust for the Court to restore sentence – Breach of conditions related to contact with children – Defendant aware of the consequences of breach – Defendant indifferent to conditions of sentence – Non-acceptance of guilt – Sentence partially restored.

Sentencing Act 1995 (NT) ss 43(5)(c), 43(7)

R v Bukulaptji [2009] NTCCA 7
The Queen v JO [2009] NTCCA 4
The Queen v TT [2021] NTCCA 7

REPRESENTATION:

Counsel:

Applicant: D Warner-Collins
Defendant: B Wild

Solicitors:

Applicant: Office of the Director of Public
Prosecutions
Defendant: Mindil Chambers

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Symington v Harrison [2024] NTSC 74
No. 22222044

BETWEEN:

NATALIE SYMINGTON
Applicant

AND:

ADAM JAMES HARRISON
Defendant

CORAM: REEVES J

REASONS FOR JUDGMENT

(Delivered 9 September 2024)

Introduction

- [1] On 3 September 2024 I ordered that three months of the 24 months outstanding under the defendant's suspended sentence order be restored on and from that date and that the operational period relating to that order be extended to two years from the defendant's release from custody on that restored sentence.
- [2] I said at that time that I would publish brief reasons for that decision. These are those reasons.

Factual background

- [3] It is convenient to begin by recording some of the factual background to this application. The offending that led to the defendant's sentence, took place at an address in Moulden on 27 June 2022.
- [4] From about March 2022 the defendant was living at that address with his then, and current partner JF, and her seven children. The original complainant, SE, is one of those children.
- [5] On 25 July 2023, the defendant was found guilty by a jury on one count of committing an act of gross indecency upon SE, a child under the age of 16 years - at that time, she was 12 years old. During the trial JF gave evidence which supported the defendant's denials concerning his offending and which raised questions about the reliability of her daughter, SE's, evidence.
- [6] On 21 August 2023, I sentenced the defendant to three years' imprisonment commencing from 17 February 2023. I also ordered that sentence be suspended after he had served a period of 12 months and fixed a three year operational period from 17 February 2023. Relevantly for the purposes of this application, two of the 11 conditions of that suspended sentence order were as follows:

“10. The offender will not frequent or visit any place or district specified in a direction by a probation and parole officer.

11. The offender will have no contact directly or indirectly with the victim, SE or anyone as directed by a probation and parole officer.”

[7] In the course of my sentencing remarks, following a request by the defendant, I read out those 11 conditions and asked him whether he agreed with them. He said he did. I added:

“I wish to express the importance of you complying with those conditions once you are released from prison and not committing any other serious offences within the operational period that I have set. You are being given an opportunity to pursue your rehabilitation in the community after serving a further period of imprisonment of about six months. But I warn you that if you reject that chance and commit another serious offence or breach a condition of your suspended sentence within that operational period, you will be brought back to court, and you may find yourself having to serve some or all of the balance of your sentence”

I then asked him if he understood what I had said and he replied “yes your Honour”.

[8] In accordance with the terms of his sentence, the defendant was released from custody on 16 February 2024. At that time, a Community Corrections officer handed him a written direction issued under condition 10 of his suspended sentence order¹, to the following effect:

“You, Adam Harrison, are advised by this notice that you are required to comply with the following direction, in accordance with condition 10 of the order: you must not attend JF’s home residence in Moulden.”

[9] With respect to this event, the Compliance Report included in the materials filed in support of this application records:

“On 16 February 2024, Harrison was released from the Darwin Correctional Precinct and repatriated to Palmerston Community Corrections. Harrison participated in his induction [with] a community

¹ See above at [6]

corrections officer and the written directions were explained to him. Harrison did not agree with the written directions and did not sign them. A case conference was held with the Regional Manager and Senior Clinician where it [was] agreed the written directions were reasonable and appropriate to manage the safety of JF's children.

On 26 February 2024, Harrison attended Community Corrections for supervision with his partner JF. Harrison made it very clear to the probation and parole officer that he maintains his innocence and that it was just the jury who found him guilty. He did agree to sign [the] written direction.”

[10] On 4 March 2024, the defendant was issued with a further written direction.

That direction was issued under condition 11 of his suspended sentence order². With respect to that further direction, the Compliance Report that I mentioned earlier records:

“On 4 March 2024, Harrison attended Community Corrections for supervision. Harrison was heightened, agitated and commenced shouting at his supervising officer. Due to his heightened state a Team Leader Chris Galati entered into the interview [room] to calm the situation down. Harrison agreed and signed [the further] direction.

On 11 March 2024, Harrison attended Community Corrections for supervision. Harrison was much calmer, he apologised to his supervising officer and inform his willingness to engage. He made it very clear that he was innocent of his conviction, but was willing to comply. Due to Harrison being a denier of these offences he was in an agreement with both written directions, as they would assist in him never being in a situation of being “accused” of any further child sex offences.

To date since 11 March 2024, Harrison has attended his appointments, engaged well with his supervising officer and there have been no further incidents of aggressive behaviour.”

2 See above at [6]

[11] SE is presently in the care of Territory Families. Accordingly, she no longer lives at the address in Moulden. However, while some, or all, of JF's other six children are also presently in the care of Territory Families, they do, from time to time, live at that address.

Relevant statutory provisions and principles

[12] Section 43(5)(c) of the Sentencing Act provides that, on the hearing of an application concerning a breach of an order suspending a sentence of imprisonment, the Court may "subject to subsection (7), restore the sentence or part sentence held in suspense and order the offender to serve it". The qualification expressed in subsection (7) is as follows:

"A court must make an order under subsection (5)(c) unless it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the facts of any subsequent offence and, if it is of that opinion, the court must state its reasons."

[13] As I stated on 3 September 2024, I was not of the opinion that it would be unjust to restore the defendant's sentence in part. In reaching that conclusion I had regard, among other things, to the non-exhaustive list of factors set out by Riley J in *R v Bukulaptji*³:

- (a) the nature and terms of the order suspending the sentence;
- (b) the nature and gravity of the breach and, particularly, whether the breach may be regarded as trivial;

³ [2009] NTCCA 7 at [35] with whom Thomas J agreed at [10].

- (c) whether the breach evinces an intention to disregard the obligation to be of good behaviour or to abandon any intention to be of good behaviour;
- (d) whether the breach demonstrates a continuing attitude of disobedience of the law;
- (e) whether the breach amounted to the commission of another offence of the same nature as that which gave rise to the suspended sentence;
- (f) the length of time during which the offender observed the conditions;
- (g) the circumstances surrounding or leading to the breach;
- (h) whether there is a gross disparity between the conduct constituting the breach and the sentence to be restored;
- (i) whether the offender had been warned of the consequences of a breach;
and
- (j) the level of understanding of the offender of his obligations under the terms of the order suspending the sentence and of the consequences of a breach.

The present application and supporting evidence

[14] The present application was made by Ms Natalie Symington, a Probation and Parole Officer. It was supported by an affidavit made by her on 6 August 2024. In that affidavit she deposed that:

[6] On 4 March 2024, Mr Harrison was issued with and signed a written direction to have no contact directly or indirectly with the victim or any of JF's children. (Annexure "B").

[15] The relevant parts of this written direction were as follows:

You, Adam Harrison, are advised by this notice that you are required to comply with the following direction: As per condition 11 of your Suspended Sentence of imprisonment Order you will have no contact directly or indirectly with the victim SE. Furthermore you are not permitted to have any contact directly or indirectly with any of JF's children.

[16] Upon receiving this direction, the defendant signed the following statement which appeared at the bottom of the document:

I understand this direction and agree to abide by it in full. I also understand that I may be in breach of my order if I do not abide by this direction.

The admitted breach

[17] Ms Symington went on in her affidavit to depose that the defendant breached this direction by engaging in the following conduct:

[8] On 11 July 2024, Community Corrections received information from Territory Families that a counsellor for the children of JF who remains in a relationship with Mr Harrison attended JF's home residence in Moulden for an appointment. She advised at around 1200 hours she witnessed JF exit a gold commodore which was driven by a man with 'a short shave head and goatie beard'. JF kissed the driver and four

children also exited the car. Two of the children were known to the counsellor and were identified as JFs 9 year old daughter and 10 year old son. The counsellor did not know the identity of the other two children.

[18] Importantly, she added:

[12] On 16 July 2024, during supervision, Community Corrections discussed with Mr Harrison the information that had been provided with regards to his contact with two of JF's children. Mr Harrison denied the contact with the children and informed the children were JF's support worker - "[J's]" children. Community Corrections advised the witness actually knows the two children he has had contact with, so knows that he had contact with JFs children. Mr Harrison denied this further and would like photographic evidence to prove this.

[19] The defendant maintained this denial at the first mention date of this application on 6 August 2024. Consequently it was set down for a contested hearing on 3 September 2024. On that day, through counsel, he withdrew his challenge to the application and admitted that:

At approximately 12.00 pm on 11 July 2024 the defendant had direct contact with two of JF's children, namely her nine-year-old daughter and 10-year-old son, in contravention of the written direction dated 4 March 2024 in that they were both passengers in the defendant's gold Commodore car which was, at that time, located in the vicinity of JF's home residence in Moulden.

The relevant circumstances

[20] Having regard to the factors set out in *Bukulaptji* above⁴, I consider that the following relevant circumstances emerged from the factual background and

⁴ See above at [13].

procedural history as set out above⁵, which told against it being unjust to restore a part of his suspended sentence.

[21] First, conditions 10 and 11 of the suspended sentence order and the written directions given pursuant to those conditions were plainly directed to the protection of the original complainant, SE, and her siblings. As I observed in my sentencing remarks, by reference to two NTCCA judgments⁶: “children are among the most vulnerable members of the community and are entitled to the full protection of the law.” In that light, any breach of those conditions, or a written direction given pursuant to them, must be treated as inherently serious. Conversely it is difficult to imagine a situation where such a breach could be treated as trivial. Furthermore, in this matter, I consider that inherent seriousness is compounded by its peculiar circumstances, namely the continuing relationship between the defendant and JF, the mother of the children concerned.

[22] Secondly, as the excerpt from my sentencing remarks set out above demonstrates⁷, the defendant was warned in clear terms of the consequences of a breach of the conditions of his suspended sentence order. Furthermore, at his sentencing hearing and at the time he received each of the written directions issued by a Community Corrections officer, he signified his

⁵ See above at [3] - [11] and [14] - [19].

⁶ *The Queen v JO* [2009] NTCCA 4 at [83] and *The Queen v TT* [2021] NTCCA 7 at [45].

⁷ See above at [7].

agreement to being bound by them and indicated that he was aware of the consequences of breaching them.

[23] Thirdly and relatedly, despite this agreement and awareness, he has acted from the outset of his release from custody under those conditions, as if he considers them to be an unnecessary hindrance to his freedom to do as he pleases. Significantly, he has demonstrated no insight as to the protective purposes of those measures. To the contrary, he has perversely sought to justify his belated acceptance of those conditions and/or the directions issued under them, as operating for his protection against false accusations by the children concerning sexual misconduct on his part.

[24] Fourthly, and again relatedly, it necessarily follows from his late admission of the breach in this application, that the denial he made to Community Corrections officers on 16 July 2004, which he subsequently maintained before this Court between 6 August and 3 September 2024, was false. This, in my view, significantly compounds the present breach and his generally insolent attitude towards the conditions of his suspended sentence order. In this respect I specifically reject the defendant's contention that it was not open to me to take this matter into account.

[25] Fifthly, against the background of these false denials, he has throughout the period since his release from custody, repeatedly protested his innocence in respect of the offending for which he was imprisoned and made it clear that he considers the jury verdict was wrong. Apart from anything else, this state

of mind is, in my view, fundamentally inconsistent with a genuine endeavour on his part to achieve any measure of rehabilitation for his offending. That, despite the fact, that it was made clear to him at his sentencing hearing that rehabilitation was the primary purpose of his suspended sentence order, specifically: “You are being given an opportunity to pursue your rehabilitation in the community after serving a further period of imprisonment of about six months.”⁸

[26] Finally and conversely, I consider that all these features of the defendant’s conduct stand against my accepting any of his contentions in opposition to the restoration order I made. That includes his contention that there is a relevant distinction to be drawn between his bad attitude and his actual compliance with the conditions of his suspension order and/or the written directions issued to him. It also includes accepting as significant his contentions that this was his first breach; or that the breach was of short duration; or that he had not committed any further breaches since the application concerning the present breach was made in July 2024.

Conclusion

[27] The circumstances outlined above, taken collectively, led me to conclude that it would not be unjust to restore that part of the defendant’s suspended sentence as described in the introductory paragraph to these reasons. It is appropriate to add that I do not consider there is a disparity, let alone one

⁸ See above at [7].

that could be characterised as gross, between the conduct constituting the defendant's breach as outlined above and the three month period of that restoration order.
