

CITATION: *The King v Nunes* [2024] NTSC 99

PARTIES: THE KING

v

NUNES, Andre

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory  
jurisdiction

FILE NO: 22236196 and 22313840

DELIVERED: 22 November 2024

HEARING DATE: 4 July 2024 and 2 October 2024

JUDGMENT OF: Kelly J

*Criminal Code Act 1983* (NT), s 43XA, s 43XB, s 43ZG(2), s 43ZJ

*The Queen v Adrian Faulton* [2004] NTSC 12; *The Queen v Gibson* [2017]  
NTSC 47; *The Queen v Kunothe* [2014] NTSC 41; *R v Morton* (2010) 27  
NTLR 114, referred to

## **REPRESENTATION:**

### *Counsel:*

Crown:	D Jones
Accused:	K Ranjithkumar

### *Solicitors:*

Crown:	Office of the Director of Public Prosecutions
Accused:	KJ Lawyers and Migration Consultants

Judgment category classification:	C
Judgment ID Number:	Kel2411
Number of pages:	11

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

*The King v Nunes* [2024] NTSC 99  
22236196 and 22313840

BETWEEN:

**THE KING**

AND:

**ANDRE NUNES**

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 22 November 2024)

**Nominal Sentence**

The offender

- [1] The offender, Andre Nunes, has been charged with four counts of property damage (counts 1, 3, 8 and 9), one count of unlawful entry (count 6), two counts of attempted unlawful entry (counts 2 and 4), one count of stealing (count 7), one count of stalking (count 5) and one count of robbery (count 10).
- [2] Those offences carry the following maximum penalties.

Number	Count	Offence	Maximum penalty
22236196	1.	Property damage	14 years imprisonment
	2.	Attempted aggravated unlawful entry	7 years imprisonment
	3.	Property damage	14 years imprisonment
	4.	Attempted aggravated unlawful entry	7 years imprisonment
	5.	Aggravated stalking	5 years imprisonment
22313840	6.	Unlawful entry	14 years imprisonment
	7.	Stealing	10 years imprisonment
	8.	Property damage	14 years imprisonment
	9.	Property damage	14 years imprisonment
	10.	Aggravated robbery	Life imprisonment

- [3] On 2 October 2024, by consent, the Court accepted pleas of not guilty by way of mental impairment to all ten charges pursuant to s 43XA of the *Criminal Code Act 1983* (NT) (“Criminal Code”), Mr Nunes was declared to be liable to supervision pursuant to s 43XB of the Criminal Code, and he was placed on a Custodial Supervision Order.
- [4] When imposing a supervision order the Court is required to fix a supervision term that is equivalent to the period of imprisonment (or supervision) the person would receive if they had been found guilty of the offence.<sup>1</sup> Essentially the Court is required to conduct a hypothetical sentencing

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<sup>1</sup> See s 43ZG(2) of the Code

exercise under s 43ZG(2).<sup>2</sup> The Court is required to take into account all relevant sentencing considerations that would apply had the supervised person been found guilty.<sup>3</sup> The supervised person's mental impairment can be factored into the sentencing exercise.<sup>4</sup>

### Facts

- [5] Mr Nunes is currently 30 years of age. He has an extensive history of mental health issues. He has been diagnosed with attention deficit hyperactivity disorder ("ADHD") and suffers from schizophrenia.

### File 22236196

- [6] The first complainant, JL lives in Paqualin St, Malak.

### Counts 1-3- Attempted aggravated unlawful entry, criminal damage x 2

- [7] At about 1.10am on the morning of Monday 14 November 2022 Mr Nunes entered onto JL's property without consent and banged on the bedroom window. JL was scared that someone was trying to break in and called the police.
- [8] When police arrived, Mr Nunes was standing at the front of the property. He told police, "I live here," then he ran away, and climbed the back fence, at which time Police lost sight of him. While he was on JL's property,

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<sup>2</sup> *The Queen v Gibson* [2017] NTSC 47 at [11]

<sup>3</sup> *The Queen v Adrian Faulton* [2004] NTSC 12 at [13]; *The Queen v Kunoth* [2014] NTSC 41 at [36]

<sup>4</sup> *R v Morton* (2010) 27 NTLR 114 at 126; *The Queen v Gibson* [2017] NTSC 47 at [11]

Mr Nunes smashed the bedroom window he had been knocking on, broke the windscreen on JL's car and strew property in the yard.

- [9] On the afternoon of 14 November 2022 Mr Nunes returned to JL's property without her consent causing a disturbance, yelling and smashing things. JL called police and they attended.

#### Count 4 – Attempted Aggravated Unlawful Entry

- [10] Shortly after 6.30pm on Tuesday 22 November 2022 Mr Nunes returned to JL's residence. It was unoccupied at the time. It was also secured with fencing that was chained and padlocked.
- [11] Mr Nunes was walking about the property with a t-shirt over his left hand and banging on the windows. Then he went to the back of the house and kept on banging and yelling.
- [12] After that, Mr Nunes returned to the front of the property and kept trying to enter the house, banging on the door and yelling. Then he climbed the front fence and left. A neighbour saw what had happened and reported what he had seen to police.
- [13] At about 7.30pm Mr Nunes was walking in the middle of Paqualin Street causing a hazard to passing motor vehicles. He was spoken to by police (who didn't know who he was) and directed off the road.

[14] At this point the neighbour told Police that the man in the middle of the road was the offender. Police arrested Mr Nunes and took him to the Palmerston Watchhouse.

#### Count 5 – Aggravated Stalking

[15] Between 14 November 2022 and 22 November 2022 Mr Nunes stalked JL by repeatedly going to her address on multiple occasions and loitering there.

[16] On 18 November 2022 he was back on JL’s property trying to get into the house. He was yelling, “I’ve always loved you. Call the Police, they’re not going to do anything”. Then he left.

[17] Mr Nunes’ actions had instilled such fear into JL that she took her son and left to stay with a relative in Leanyer.

[18] Police arrested Mr Nunes on 22 November 2022. He was searched by police and found to be in possession of a small claw hammer and a black handled kitchen knife.

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[19] There are two complainants in this matter, JD, a self-employed 73 year old woman, living in a unit on The Esplanade in Darwin City and MI, a 33 year old man, employed as a Security Officer to prevent stealing at the Woolworths Supermarket in Darwin City.

### Counts 6-8 – Burglary, Theft, Criminal Damage

- [20] Between 12.30am and 10.00pm on Saturday 6 May 2023, Mr Nunes entered the gated residents' car park at JD's unit block without permission on three separate occasions.
- [21] He forced entry into a Subaru Outback station wagon belonging to JD and took a number of items including a metal fencing post, a hammer and a permanent marker pen, which he then used to smash all four door windows and the front windscreen of her car and to pierce holes in the door panels.
- [22] Mr Nunes ripped off both side mirrors from the car and smashed the rear driver's side tail lights rendering the car un-roadworthy and un-driveable. He then used the permanent marker pen to scrawl the numbers "1055" on the rear tail gate of the car and poured a quantity of green fluid, believed to be engine coolant, all over the paint work.

### Counts 9 & 10 – Criminal Damage

- [23] At around 10.44am (7 May 2023) Mr Nunes went to Woolworths supermarket in Smith Street Darwin and placed various food items into a Woolworth's branded plastic shopping bag. He then left the store without making any attempt to pay for the items. He was stopped by MI acting in the execution of his duties to prevent stealing.
- [24] MI told Mr Nunes that he could not leave without paying for the items in the shopping bag, and Mr Nunes threatened him. He said, "Leave me or I'll



smash you!” Then he swung his left arm and hit MI in the face with force causing his glasses to break and fall from his face.

[25] Without his glasses MI was unable to physically prevent Mr Nunes from stealing the items. Internal CCTV of the Woolworths store captured the incident.

[26] Mr Nunes left the area before police arrived catching a Darwin City Council bus to the Casuarina Bus Interchange. Police later arrested him at the Casuarina Bus Interchange.

[27] When searched, Mr Nunes was found to be in possession of two remote garage switches for the residents’ car park at JD’s unit block along with a brass storage shed key and access fob belonging to JD stolen from her car. When questioned, Mr Nunes claimed that these items were his.

#### Time in Custody

[28] Mr Nunes has been in custody since his arrest on 7 May 2023.

#### Personal circumstances

[29] Mr Nunes is 30 years of age, and his family background is Portuguese East Timorese.

[30] He was born in Sydney, and he lived there until he was five. His family then moved to Darwin after which his parents separated. His mother moved to East Timor due to work and his father moved back to Sydney. Mr Nunes

lived with his maternal grandparents and was cared for by them during his childhood and teenage years.

[31] He attended school in Darwin and completed year 12 at Sanderson Secondary College after which he was employed for a brief period.

[32] Mr Nunes is the father of a child from a previous relationship. However, he has not been in contact with his son or the mother of his child since his arrest.

[33] Mr Nunes has suffered from drug addiction for many years and has extensive mental health issues. He has been diagnosed with attention deficit hyperactivity disorder (“ADHD”) and suffers from schizophrenia. His mother was appointed by the Northern Territory Civil and Administrative Tribunal as his legal guardian on 10 July 2023. Mr Nunes has also been diagnosed with severe substance misuse disorder. He needs to be medicated to control his mental health.

[34] The Court has received a report indicating that Mr Nunes’ mental illness played a causative role in the offending thereby reducing his moral culpability. Notwithstanding this, one of the predominant factors the Court must consider in determining a just and proportionate sentence, even if nominal, is the protection of the community.

[35] Putting aside the artificiality of the sentencing exercise it is the Crown’s submission that, had he been found guilty, Mr Nunes would most likely have

received a partially suspended term of imprisonment. This would reflect the objective seriousness of the offending and the need to ensure community protection. I agree.

- [36] Both the Crown and the defence have submitted that a nominal term of imprisonment for 1 year would be within range. I agree and on 14 November 2024 I fixed a nominal term pursuant to s 43ZG(2) of the Criminal Code of imprisonment for 12 months beginning on that date.

### **Form of supervision order**

- [37] I have received a report pursuant to s 43ZJ of the Criminal Code recommending that Mr Nunes initially be managed under a custodial supervision order in the Complex Behaviour Unit at Darwin Correctional Centre and gradually transitioned to a non-custodial supervision order. The report writers, Dr Mrigendra Das and Dr Donna Schakelaar, have expressed the view that Mr Nunes' risk profile is concerning and that he is more likely to succeed in the community if there is a gradual transition with the opportunity to build capacity while he is in a controlled environment.
- [38] It is envisaged that, while on the custodial supervision order, the opportunity would be taken to further investigate Mr Nunes' cognitive capacity and determine the extent of any cognitive impairment. He would be regularly reviewed by a consultant psychiatrist at least every four weeks and by his case manager every two weeks to enable his management, particularly his medication, to be adjusted if required.

[39] The process of applying for an NDIS package for Mr Nunes has begun but is likely to take around 12 months.

[40] The report writers recommend that Mr Nunes be placed on a custodial supervision order for 18 to 24 months to ensure that he has sufficient opportunity and time to complete necessary psychological work and to provide adequate time to prepare suitable accommodation and programs for when he is ready to transition to a non-custodial supervision order.

[41] I accept the recommendation that Mr Nunes be placed on a custodial supervision order initially. There must be a review of that order within 12 months and, because I have fixed the nominal term at imprisonment for 12 months, that review must be a major review.<sup>5</sup>

[42] ORDERS:

- (1) Pursuant to s 43ZG(2) of the Criminal Code, I fix a supervision term of 12 months.
- (2) I place Mr Nunes on a custodial supervision order at the Complex Behaviour Unit at the Darwin Correctional Centre.
- (3) I fix 30 October 2025 as the date for a major review pursuant to s 43ZG of the Criminal Code.

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5 Section 43ZG of the Criminal Code

(4) A report or reports pursuant to s 43ZK are to be prepared by 16 October 2025.

(5) Liberty to apply.

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