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THE SUPREME COURT OF

THE NORTHERN TERRITORY

SCC 22539696

THE KING

and

NATHANIEL FARRELL

(Sentence)

GRANT CJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON FRIDAY 2 OCTOBER 2026

Transcribed by:
EPIQ

HIS HONOUR: The offender has pleaded guilty to one count of sexual intercourse without consent, contrary to s 208H of the *Criminal Code*. The maximum penalty for that offence is life imprisonment.

The facts of this offending are shocking and can be summarised as follows.

The offender is a 34-year-old male. The victim was a 4-year-old female child.

On 14 June 2025, the offender approached the victim and a 3-year-old boy who were playing out the front of a house int the Bagot community. The offender offered the children watermelon. The offender then lured the victim into the house, took her to the laundry of that house, removed her nappy, forced his finger into her vagina causing a laceration to her vulva and tearing her hymen, and ejaculated into the victim's genital region. The offender then tied the victim's nappy back in place.

At about the same time, the victim's mother noticed her daughter was missing and contacted police. The mother went looking for the child. Shortly afterwards, she saw the child walking back towards her house. The child was crying and appeared fearful and kept saying, "The big man. The big man." The mother removed the victim's nappy and observed blood and the laceration to her vagina. The 3-year-old boy subsequently told his grandmother that he had seen the offender tying up the victim's nappy.

Police were called and a crime scene was declared. Swabs taken from the victim's vaginal area disclosed the presence of semen, which later returned a positive match for the offender.

This offending has no doubt had a devastating impact on the child and her family. As both the Court of Criminal Appeal and this court have previously observed, sexual assaults against children are abhorrent crimes which involve a personal violation which is assumed to have a long-standing impact on child victims.

Although this is the offender's first sexual offence, he has a long criminal history. That history includes convictions for causing serious harm, aggravated assault, assaults on workers, assault with intent to steal, assaulting police, resisting police, property damage and breaching domestic violence orders. The offender also has multiple recorded failures to comply with parole orders, orders suspending sentence and bail.

That history leads to a number of conclusions. First, the offender is a man of long-standing poor character. Second, the offender has a history of offending against women and presents a continuing danger to the community, and particularly female members of that community. Third, personal deterrence has elevated significance in this sentencing exercise. Fourth, the offender's prospects of rehabilitation must be considered as all but extinguished, at least for so long as he continues abusing drugs and alcohol.

That last consideration draws attention to the offender's personal circumstances. I considered those personal circumstances when I sentenced the offender in 2021 for inflicting serious harm on his domestic partner.

He was brought up Minyerri as the youngest of five children. Both his grandfather and his father were ministers of religion. His parents passed away when he was 12 years of age and he was thereafter brought up principally by an aunt. As I noted at that time, his upbringing was quite stable and not blighted by domestic violence or alcohol abuse. Although he saw some alcohol abuse in the wider community, his parents' house and his aunt's house were safe places.

He completed his schooling to year 12 level and is literate and numerate. After finishing school, he worked variously and intermittently with local councils and on cattle stations.

The offender commenced drinking and abusing volatile substances when he was about 16 years of age. During his adult years, he has also been an active consumer of cannabis and methamphetamine. The offender's substance abuse led to an episode of drug-induced psychosis, although that was many years ago now. He has no formal diagnosis of mental illness and is not in receipt of medication.

It can be readily accepted that addiction can be the product of a dysfunctional family background, economic disadvantage, poor education or abuse. There is nothing to suggest that that is the case here. The accused started experimenting with drugs in his youth, as is the case with many teenagers. However, he obviously did not have the social and emotional resources to cease or moderate his usage of drugs and alcohol as he got older. That addiction does not, of itself, have any mitigating effect.

Alternatively, or additionally, it is submitted on behalf of the offender that his moral culpability is reduced due to the loss of his parents at a young age and the statistical assertion that residents of the Minyerri community have low socioeconomic status. Although alcohol and alcohol-fuelled violence may be endemic in some Indigenous communities, there is no evidence that was a factor in the offender's life. It is also the case that after his parents died, he left Minyerri and went to live on Nutwood Downs Station with his aunt.

Although it may be accepted in a general sense that the offender grew up in the circumstances of social and economic disadvantage which blight Aboriginal communities in the Northern Territory, and that has some mitigating effect, that consideration cannot lead to the imposition of a sentence that is disproportionate to the gravity of the offending. In assessing the extent of that mitigating effect, I am unable to conclude that the offender has been subjected to disadvantage of any great degree and extent, or that there is any direct nexus between those circumstances and the offending conduct.

The only other mitigating factor in this case is the offender's plea of guilty. That was entered in the face of a Crown case sustained by DNA evidence which

indisputably implicated the offender. While I accept that the offender has told his legal representatives that he is sorry, and principally sorry to his deceased parents for his conduct, that is not the same as genuine remorse for the offending or genuine insight into the impact of his offending on the victim. The offender will receive a discount for his acceptance of criminal responsibility and his willingness to facilitate the course of justice.

The rape of a child is self-evidently an offence of great seriousness. As the Court of Appeal observed in both *Tennyson* and *Forrest*, cases involving child victims of sexual intercourse without consent will generally attract a starting point of somewhere between 12 and 16 years depending up on the circumstances and the level of injury.

The Court of Appeal in *Gurruwiwi* noted that there was no fixed tariff and the sentencing range described in *Tennyson*, and particularly the top of that range, has application to cases involving the egregious sexual abuse of infants and young children. The reference to egregious sexual abuse was made with particular note of the cases of *Rindjarra, Green, Inkamala* and *Riley*. *Rindjarra* involved a matter in which a 31-year-old offender engaged in the digital-vaginal penetration of a 10-year-old. In *Green*, the offender was an adult male who engaged in the penile-anal penetration of an 8-year-old boy. In *Inkamala*, the offender was an 18-year-old male who digitally penetrated a 7-month-old, causing serious injury to her vagina. In *Riley*, the offender was a 26-year-old male who digitally penetrated the vagina and anus of a 2-year-old female child, causing significant injuries.

As those cases establish, digital-vaginal penetration does not demand a lower sentence than penile-vaginal penetration. There is the one maximum penalty for the offence of sexual intercourse without consent. It cannot be supposed in fixing sentence that for the purposes of punishment one means of penetration is more heinous than another: see *Ibbs v The Queen* [1987] 163 CLR 447 at 452. That assessment of seriousness and proportionate punishment will depend upon the circumstances: see *BM v The Queen* [2023] NSWCCA 68 at [50]-[53].

More recently, the decision of this court in *Corbett* involved a 25-year-old male who performed penile-vaginal intercourse on an almost 3-year-old child, causing a cut to the victim's vagina and infecting the victim with gonorrhoea. In that case, a starting point of imprisonment for 16 years was adopted.

The relevant considerations will remain the nature and degree of the invasion of the victim's bodily integrity, any breach of trust involved and the impact on the victim. In this case, there were high levels of invasive conduct, breach of trust and impact on the victim.

This case is also one which involves the egregious sexual abuse of an infant causing injury. The child was very young and vulnerable. The offending conduct was brazen. There was a degree of what the Crown has described as “rudimentary planning” in luring the victim to a secluded location with the promise of watermelon. There was a great disparity between the offender and the victim in terms of both age

and physicality. The offending of far more than momentary duration. The offending was aggravated by the offender ejaculating onto the victim. The offending exposed the victim to sexually transmitted disease, although thankfully she did not contract anything. The offending involved a significant application of force which caused injury, pain and bleeding. All of those factors place this offending towards the upper end of the range in terms of objective seriousness.

Defence counsel draws attention to the fact that this offending did not involve the use of a weapon, did not result in infection, was not committed in company and did involve gratuitous violence. None of those matters operate in mitigation, but I do accept that they are relevant to the assessment of objective seriousness and the fixing of penalty.

Given the length of the head sentence necessarily imposed in this case, the fixing of a non-parole period is the only available option. In saying that, the Crown does not suggest that this is a case in which no non-parole period should be fixed. However, given the egregious nature of this offending, the offender's lengthy record of violent offending against females and the offender's repeated breaches of orders granting conditional liberty, I will be fixing a non-parole period of more than 50 percent of the head sentence.

Mr Farrell, please, stand up while I sentence you.

I make the following orders.

1) The offender is convicted of the offence charged by indictment dated 30 September 2026.

2) The offender is sentenced to imprisonment for 10 years, which is backdated to 15 July 2025.

3) A non-parole period of 6 years and 6 months is fixed.

Is there anything arising out of that, Ms Everitt?

MS EVERITT: Your Honour, two matters.

HIS HONOUR: Yes.

MS EVERITT: The minimum non-parole period is 70 percent.

HIS HONOUR: 70 percent. Yes.

MS EVERITT: And could I just confirm that the non-publication order will be lifted.

HIS HONOUR: The …?

MS EVERITT: Non-publication order will be lifted.

HIS HONOUR: Yes. What date was that made?

MS EVERITT: The 22 January 2026.

HIS HONOUR: Yes. Thank you for bringing that to my attention.

Do you want to say anything about that, Mr Thomas?

MR THOMAS: No, your Honour. Although, I would ask that the offender please be marked at risk.

HIS HONOUR: On what basis?

MR THOMAS: Your Honour, he has described to us fear of being hurt in the prison as a result of this offending being made public.

HIS HONOUR: Yes. Well, that is not a sufficient ground on which to be marked at risk under the relevant practice direction. But I will make sure my associate tells the Sheriff what your concern is. That is ultimately a matter for the correctional authorities. He does not seem to be suffering under any sort of duress at the moment.

MR THOMAS: May it please the court.

HIS HONOUR: I note that the standard non-parole period of 50 percent of the head sentence has no application here because it is an offence of sexual intercourse without consent, and that there is no longer any basis for the non-publication order. Accordingly, I amend the orders to provide as follows.

1) The offender is convicted of the offence charged by indictment dated 30 September 2026.

2) The offender is sentenced to imprisonment for 10 years, which is backdated to 15 July 2025.

3) A non-parole period of 7 years is fixed.

4) The non-publication order made on 22 January 2026 is revoked.

Yes. Anything further from the Crown, Ms Everitt?

MS EVERITT: No.

HIS HONOUR: Anything further from the defence, Mr Thomas.

MR THOMAS: No, your Honour. May it please the court.

HIS HONOUR: Yes. Thank you for your attendance and your assistance, counsel.

MS EVERITT: May it please.

HIS HONOUR: Yes. Adjourn the court, please.
