Nadjulurru v Hales [2003] NTSC 11

PARTIES:	DICK NADJULURRU
	v
	PETER WILLIAM HALES
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	JA 48/02 (20202386)
DELIVERED:	28 February 2003
HEARING DATES:	21 January 2003
JUDGMENT OF:	THOMAS J

CATCHWORDS:

APPEAL - JUSTICES - APPEAL AGAINST SENTENCE - DANGEROUS ACT -whether sentence manifestly excessive - whether guilty plea entered at the first reasonable opportunity - Justices Act 1928 (NT)

Criminal Code 1999 (NT), ss 154(1) and (4)
Police Administration Act 1998 (NT), s 158
Sentencing Act 2002 (NT), s 5(2)(j)

Cameron v The Queen [2002] HCA 6; *Canet v Hales* [2001] NTSC 100, applied.

REPRESENTATION:

Counsel:

Appellant:	G. Smith
Respondent:	R. Noble

Solicitors:

Appellant:	North Australian Aboriginal Legal Aid Service
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	C
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Nadjulurru v Hales [2003] NTSC 11
No. JA48/02 (20202386)

BETWEEN:

DICK NADJULURRU
Appellant

AND:

PETER WILLIAM HALES
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 28 February 2003)

[1] This is an appeal against sentence imposed by the Chief Magistrate in the Court of Summary Jurisdiction on 30 April 2002.

[2] The appellant had entered a plea of guilty to the following three charges:

(1) On 16 February 2002 at Maningrida in the Northern Territory of Australia drove a motor vehicle, namely Toyota Landcruiser 4x4 NT560-411, on a public street, namely public streets and places of the Maningrida Community, at a speed and in a manner dangerous to the public.

Contrary to section 30(1) of the Traffic Act.

This offence carries a maximum penalty of two years imprisonment.

(2) On 16 February 2002 at Maningrida in the Northern Territory of Australia did an act, namely drove your motor vehicle towards a member of the police, that caused serious actual danger to the lives of the public or a member of it in circumstances where an ordinary person similarly circumstanced would have clearly foreseen such danger and not have done that act.

AND FURTHER that at the time of committing the said act Dick Nadjulurru was under the influence of an intoxicating substance namely liquor.

Contrary to section 154(1) and (4) of the Criminal Code.

The maximum penalty for this offence is nine years imprisonment.

(3) Did resist a member of the Police Force in the execution of his duty.

Contrary to section 158 of the Police Administration Act.

This offence carries a maximum penalty of six months imprisonment.

[3] The learned Chief Magistrate sentenced the appellant to a period of 15 months imprisonment for the offence of Dangerous Act under s 154 of the Criminal Code.

[4] With respect to the other two charges the appellant received an aggregate sentence of two months imprisonment made concurrent with the sentence of 15 months imprisonment making a total of 15 months imprisonment for the three offences. The non-parole period fixed was eight months imprisonment.

[5] The appellant was further disqualified from holding or obtaining a driver's licence for two years.

[6] Mr Smith, counsel for the appellant, stated at the outset of the hearing of the appeal that the appeal is confined to the sentence of 15 months imposed on the offence of Dangerous Act under s 154 of the Criminal Code and that no issue is taken with the sentence imposed on the remaining two charges.

[7] The grounds of appeal are as follows:

> "1. The Learned Chief Magistrate erred in finding that the Appellant had not pleaded guilty at the earliest opportunity and therefore erred in reducing the sentencing discount for that plea.
>
> 2. The Learned Chief Magistrate erred by giving too much weight to deterrence in the sentencing process.
>
> 3. The Learned Chief Magistrate gave insufficient weight to rehabilitation in the sentencing process.
>
> 4. The Learned Chief Magistrate imposed a sentence, which was manifestly excessive in all the circumstances."

[8] I will deal with each of these grounds.

1. The Learned Chief Magistrate erred in finding that the Appellant had not pleaded guilty at the earliest opportunity and therefore erred in reducing the sentencing discount for that plea.

[9] I will summarise the history of the proceedings before the learned Chief Magistrate as follows:

[10] The appellant was charged on 18 February 2002 with five offences alleged to have been committed on 16 February 2002. He appeared before the Magistrates Court on 18 February. The matter was adjourned to 22 February, to 1 March and then to 4 March 2002 on which date a plea of guilty was indicated. The notation of the Court of Summary Jurisdiction file on 4 March 2002 is "Defendant will plead to some charges but these have to be negotiated".

[11] On 4 March the matter was adjourned to 18 March. On that date there was a plea of guilty to three of the charges. Two charges were withdrawn. A pre-sentence report was ordered and the matter adjourned to 29 April and finally to 30 April when the appellant was sentenced. The appellant was in custody throughout this whole period.

[12] I note that the facts as alleged by the prosecution and admitted by the defence were quite lengthy and complicated and accept that to arrive at an agreed statement of facts involved certain negotiations between the parties with the assistance of an interpreter for the appellant.

[13] On 18 March Mr Bryant submitted to the learned Chief Magistrate (tp 10):

> "He has pleaded guilty your Worship, not at the earliest opportunity, but certainly at a time when prosecution have made what I would submit is an appropriate withdrawal of charges to allow him to enter a plea to the charges which adequately reflect the seriousness of his offending behaviour."

[14] On 29 April 2002 the date to which the matter had been adjourned for a pre-sentence report, there was a further submission to the effect that there had been a plea of guilty at an early stage. His Worship noted the plea was entered on the fourth occasion the matter was before the court. His Worship then indicated the appellant would "get some credit for co-operation". He then sought some guidance on how that was affected by the fact, which does not appear to have been in dispute, that the early plea was obvious because the prosecution had a strong case and it was not difficult to prove.

[15] When delivering his reasons for sentence on 30 April 2002 the learned Chief Magistrate stated (tp 45):

> "All of these things took place on 16 February this year and you have pleaded guilty at a fairly early time and for that you get a reduction on the period of your sentence in the order of 15%. In other words, something - I have reduced the amount of the sentence by something in that order to reflect the fact that you have been co-operative since your arrest."

[16] It is the submission of counsel for the appellant that the learned Chief Magistrate should have assessed the discount according to the approach approved by the High Court in *Cameron v The Queen* [2002] HCA 6 at p 5, Gaudron, Gummow and Callinan JJ and at pp 16 and 17 Kirby J. It is the submission on behalf of the appellant that this approach allows for the full

available discount for a plea of guilty where the plea is entered at the first reasonable opportunity.

[17] I have referred to the abovementioned passages in *Cameron v The Queen* (supra) at p 5 which I set out hereunder:

> "20. The question whether it was possible for a person to plead at an earlier time is not one that is answered simply by looking at the charge sheet. As was acknowledged in *Atholwood* by Ipp J, in the Court of Criminal Appeal of Western Australia, the question is when it would first have been reasonable for a plea to be entered.
>
> 21. In *Atholwood*, the person concerned had been charged with several counts. After a process of negotiation, the prosecution withdrew a number of the charges and the offender pleaded guilty to one of the remaining charges. Ipp J said this:
>
> "It is particularly important in such circumstances to establish the time when it could first be said that it was reasonably open to the offender to plead guilty to the offence of which he was convicted. Regard should be had to the forensic prejudice that the offender would have suffered were he to have pleaded guilty to counts persisted in by the prosecution while others (that were subsequently withdrawn) remained pending against him. During the period that the prosecution maintains counts that are ultimately abandoned, there is a strong incentive for a person who recognises his guilt on other counts ... to persist in a not guilty plea to all counts. In such circumstances it should not be assumed, mechanically, that the offender has delayed pleading guilty because of an absence of remorse, or that, reasonably speaking, he has not pleaded guilty at the earliest possible opportunity."
>
> 22. The remarks of Ipp J in *Atholwood* reflect what has earlier been said in relation to the rationale for the rule that a plea may be taken into account in mitigation, namely, that, leaving aside remorse and acceptance of responsibility, the operative consideration is willingness to facilitate the course of justice. And once that rationale is accepted, the respondent's suggestion that the extent to which a plea of guilty may be taken into account in mitigation may vary according to whether it was or was not a "fast-track" plea must be rejected. Rather, the issue is to what extent the plea is indicative of remorse,

> acceptance of responsibility and willingness to facilitate the course of justice. And a significant consideration on that issue is whether the plea was entered at the first reasonable opportunity."

and Kirby J at p 16:

> "... The test is when it was reasonable, in all the circumstances and as a matter of practicality, to have expected a plea of guilty to be announced. That question is to be answered in a reasonable way, not mechanically or inflexibly."

and at p 17:

> "80. There are many factors that can affect the fixing of that time when it is reasonable to expect that the accused person who intends to plead guilty will do so. They include any delay on the part of the prosecution in finalising its charges; any delay in reasonable negotiations for a plea to a lesser charge; any difficulties that arise in securing adequate instructions from the accused, especially if the accused is in custody; any limitations on the resources of Legal Aid and its lawyers representing the accused; and the absence of a clearly stated and consistently applied discount for a plea on the part of sentencing judges. The repeated, peremptory video remands of the appellant's case, whilst the chemical analysis was awaited, suggests (as this Court's experience permits it to infer) that facilities of effective legal assistance to a person in custody such as the appellant were limited. When he appeared in person to argue for the grant of special leave, the appellant told the Court that this was so. To penalise the appellant in sentencing for this lack of provision of alternative legal advice whilst in custody would work a double injustice upon him. Sentencing judges, and appellate courts, should be alert to the realities that govern the access by indigent prisoners to legal advice when determining a question such as that presented by these proceedings."

[18] In *Cameron* (supra) Gaudron, Gummow and Callinan JJ referred to the practise in Western Australia where the matter was first heard in respect of such a plea "is to substantially reduce the sentence that would otherwise be

imposed, the reduction ranging "between 20-25 per cent up to 30-35 per cent depending upon the circumstances".

[19] Counsel for the parties in this matter were in agreement that the maximum discount given for a plea of guilty in this jurisdiction was in the order of 20 per cent - 30 per cent.

[20] I agree that given the history of this matter which I have already outlined, the appellant had entered a plea of guilty "at the first reasonable opportunity".

[21] Provision for a discount in sentence for a plea of guilty is in the Sentencing Act s 5(2)(j):

> "(2) In sentencing an offender, a court shall have regard to –
>
> (j) whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so; …"

[22] I accept that from his Worship's comments it would appear he gave credit for the plea of guilty to the extent of 15 per cent discount on the basis that the plea of guilty had been entered "at a fairly early time" rather than at "the first reasonable opportunity" which is the applied test in *Cameron v R*.

[23] However, the High Court have stated as quoted above:

> "… the issue is to what extent the plea is indicative of remorse, acceptance of responsibility and willingness to facilitate the course of justice. And a significant consideration on that issue is whether the plea was entered at the first reasonable opportunity."

[24] Mr Smith submits that if the full discount of 30 per cent had been applied this would have reduced the sentence to 12 months which would be of considerable significance to the appellant.

[25] However, I am not convinced it is appropriate to proceed to allow the appeal and reduce the sentence on this basis as Mr Smith suggests.

[26] The issue of the amount of the discount for the plea of guilty is a matter of discretion for the sentencing magistrate. The fact that it was entered at the first reasonable opportunity is not the end of the matter. As the High Court said in *Cameron v R* "the issue is the extent to which the plea is indicative of remorse, acceptance of responsibility and willingness to facilitate the course of justice".

[27] The learned Chief Magistrate did not find the plea of guilty was indicative of remorse. He did accept the appellant appreciated "the harm and risk he had put other people to" and that the appellant had been cooperative since his arrest. During the course of the proceedings his Worship had commented on the fact the prosecution had a strong case and in this context an early plea would be obvious. It was not in dispute there was a strong Crown case. From the facts this would appear self evident. The appellant was driving a motor vehicle for over an hour at high speed and in a manner dangerous. He caused serious actual danger to members of the Maningrida Community, including police and other residents. His actions were observed by police officers, members of his own family and others in the community.

[28] Nevertheless, the appellant was entitled to a discount for his plea of guilty and the learned Chief Magistrate did allow a discount for the plea of guilty. He was not obliged to give the maximum discount in the circumstances of this case. I am not persuaded that in arriving at a discount of 15 per cent for the plea of guilty there has been any error demonstrated in the exercise of the sentencing discretion.

[29] For these reasons I would dismiss this ground of appeal.

[30] I will now turn to the other three grounds of appeal.

[31] The appellant argued Grounds 2, 3 and 4 as a single ground of appeal in that the sentence was manifestly excessive. In particular, Mr Smith argued on behalf of the appellant that a sentence of 15 months imprisonment with a non-parole period of eight months was manifestly excessive and disproportionate to the gravity of the offence.

[32] Counsel for the appellant stressed the fact that there was no actual injury caused to any person by the act which was the subject of the complaint.

[33] The facts of the charge agreed by the defence are set out in the transcript of the proceedings in the Court of Summary Jurisdiction. The appellant was drinking with family members at Middle Camp in Maningrida. He consumed half a carton of beer and argued with members of his family about alcohol. The precis of facts continues (18 March 2002; tp 3 - 7):

"The defendant took a set of car keys from a family member and got into a vehicle that was parked nearby. He drove off at speed at approximately 10:50 am. The vehicle the defendant was driving was a short-wheel based Toyota Land Cruiser, Northern Territory 560411 and he drove at speed throughout all areas of the community.

The defendant continued to drive the vehicle throughout the Maningrida Community for approximately 10 minutes doing donuts, fish tails, burn outs and skids before police were called by concerned members of the public. The defendant drove to the Maningrida Police Station and upon seeing a police officer walking from his residence to the police station, he stopped his vehicle on the road. The defendant revved the engine, turned the steering wheel and completed two donuts at the front of the police station.

The defendant then stopped at the police station driveway where the police officer verbally directed the defendant to stop. He reversed the vehicle, spinning the wheels and drove off at speed. A short time later, a police vehicle exited the police station driveway and turned right. At this time the defendant was completing multiple donuts on the MPAO.

Upon seeing the police vehicle, he ceased the donuts and drove at high speed towards the police vehicle. The defendant continued his direction of travel directly at the police vehicle - [police vehicle 1] - and only veered away when the police officer drove his vehicle behind a power pole to prevent a head on collision. The defendant continued at speed directly at the second police vehicle which was stopped at the front of the police station.

The defendant forced his vehicle to swerve away from the police vehicle approximately 20 metres before the collision. As he drove past, he held up his left middle finger and yelled at police, 'Fuck you mob'. Two police officers were seated in the vehicle at the time and two police wives were in direct hearing of the defendant's language. The defendant then drove down the main access road to the police station towards the Darwin Road and turned sharply left.

He caused the vehicle to fish tail from side to side; the defendant being jolted forcefully from side to side in the driver's seat due to not being restrained by his seat belt. The defendant climbed halfway out of the driver's side window and yelled abuse at pedestrians as he drove at high speed, swerving all over the road.

.....

The defendant drove throughout the entire Maningrida Community at high speed and continued to screech his tyres around corners of the road. He completed numerous donuts on roadways and in close proximity to members of the public and the houses in Side Camp.

The defendant continued to drive throughout the community in the same (sic) as police followed him with their emergency beacons and sirens sounding.

The pursuit was abandoned after approximately 10 minutes as it was considered too dangerous to closely follow the defendant as he drove round the community. On numerous occasions, the defendant drove his vehicle in close proximity to pedestrians that were running about in Side Camp and out on to the road edges trying to wave him down. The defendant narrowly missed a pedestrian several times, with people scrambling out of the way and in one incidence the person was being saved by another pedestrian.

The defendant drove down towards the health clinic. He braked heavily at the front of the clinic before turning into the clinic driveway and then drove into a ditch where the defendant's car was stationary for a short time. Police attempted to block the defendant's vehicle using both police vehicles. The defendant revved the engine and spun the wheels hitting one of the police vehicles on the bullbar. As a result, of the defendant's driving, the spare tyre broke from its mount and flew into the air, narrowly missing a police officer that had alighted from one of the police vehicles.

The defendant then continued to drive at high speed, swerving across the entire roadway through the community and later outbound on to the Darwin Road. The defendant then drove approximately 1 kilometre outbound along the Darwin Road before coming to a stop on the roadway. In relation to the dangerous act, Your Worship, the facts are going to be read now.

On seeing police vehicle 1 come to a stop and a police officer alight from the vehicle; that was Brevet Sergeant Cheal, the defendant put the car into motion and drove directly at the police officer. The police officer ran and sought protection behind his vehicle. The defendant swerved towards the fleeing police officer as he ran behind the police vehicle, narrowly missing the police vehicle by half a metre. The defendant continued heading inbound along the Darwin access road towards Maningrida at high speed.

Approximately 500 metres from the Maningrida Community entrance, the defendant lined up an approaching police vehicle and swerved from side to side of the roadway keeping in line with the swerving police vehicle which was attempting to take evasive action. The defendant swerved towards this police vehicle as it came to a stop approximately 100 metres from the defendant's oncoming vehicle. The defendant swerved away from the police vehicle when the police vehicle moved so that it was positioned behind a power pole.

The defendant continued to head towards Maningrida Community and turned left onto Middle Camp Road at high speed. The defendant drove at speed towards the boat landing, again narrowly missing numerous pedestrians who walked onto the roadside edge and tried to wave down the defendant. The defendant then slammed on his brakes on the roadway directly outside the clinic and forced the brakes to lock and skid for approximately 30 metres.

The defendant then executed a U-turn, sped back up Middle Camp Road directly towards police vehicles forcing them off the road to avoid being hit by the defendant. The defendant then executed numerous donuts and tore up grassed lawns at the front of one of the residence. The defendant's vehicle was approximately 15 metres from the residence which was occupied by several adults and children. The defendant continued to execute numerous donuts at the front of the resident's Side Camp.

The defendant then changed tactics and began chasing at police vehicles. In one instance, the defendant was chasing police at speed with police attempting to evade the defendant by weaving behind power poles and bushes. The defendant drove away from police at speed towards the boat landing and then towards the community shop. At 12:08 pm the defendant executed a U-turn near the church and as he tried to speed off he bunny-hopped the car and stalled the engine.

A police officer approached the defendant; he was still seated in his stationary vehicle. After the defendant refused to alight from the vehicle and made threats of violence against the officer, ASROC spray was administered to subdue the defendant. After a short period, the defendant managed to start his vehicle; he drove off slowly towards his family at Side Camp. The defendant had driven approximately 400 metres when he pulled up outside one of the Side Camp shelters.

The defendant alighted from his vehicle and when confronted by police, he lashed out with his hands and legs. Family members attempted to restrain him. When approached by a police officer, Constable First Class De Nale, who was attempting to execute arrest, the defendant forcibly - forcefully pushed the police officer in the chest with both hands causing the police officer to fall backwards heavily onto his back.

The defendant was tackled to the ground by another police officer and was eventually subdued by all three police officers. He was handcuffed before forcibly being lodged in the police vehicle. While attempting to place the defendant in the rear of the police vehicle, the defendant continually pushed back against police by forcing his heels

into the ground. The defendant flailed his body from side to side in an attempt to break free.

He had to be physically lifted by all three police into the rear of the police vehicle. He was conveyed to the police station and held under section 137 due to his intoxication level. He declined to participate in a record of interview. He was later charged and bail refused by police.

At the time of the offences, Maningrida Community roads were used by - that were used by the defendant, were public streets open to and used by the public.

Some of the road surfaces were sealed, other[s] unsealed. It was fine and dry. Members of the public were actually using the roadways at the time of the defendant's driving actions. As a result of the resist police, Constable De Nale suffered grazing to his right forearm. Two police officers suffered cross-contamination of the OC spray whilst trying to calm him down. Minor damage was sustained to one of the police vehicles, of $50.

The defendant's vehicle was inspected by police and revealed that the vehicle had a bald front tyre - front right-hand tyre. In all, the defendant drove the vehicle in a manner stated for approximately a period of 70 minutes. He drove his vehicle directly at police vehicles on eight separate occasions. And when he was spoken to by police as he - at the time of apprehension, it was noted that he was unsteady on his feet and his speech was slurred. His eyes were bloodshot and he smelt strongly of beer.

… …

… There are approximately 200 Aboriginal residents at Maningrida that were directly affected by the defendant's driving. …"

[34] These facts are repeated on 30 April. However, I note that Court Reporting were not able to transcribe the complete facts on this occasion because they were not recorded.

[35] The prosecutor in the Court of Summary Jurisdiction submitted to the learned Chief Magistrate that it was one of the worst cases of dangerous driving because of the duration, some 70 minutes and the number of people in the community directly affected by the appellant's actions.

[36] Whilst there were no actual injuries as a consequence of the driving and only minor damage, the potential danger to police and members of the community at Maningrida was enormous. The offence was very serious with the potential for serious consequences and one which was deserving of a substantial period of imprisonment.

[37] The learned Chief Magistrate called for a pre-sentence report which, amongst other matters, was asked to address the issue of community attitude to the appellant returning to the community. The pre-sentence report also addressed the issue of alcohol abuse at the time of this offending.

[38] In his reasons for sentence, the learned Chief Magistrate referred to the age of the appellant being 35 years of age and to the fact he had only two prior convictions both of which were for assault police.

[39] The learned Chief Magistrate then addressed the issue of specific and general deterrence. The Chief Magistrate stated (30 April 2002; tp 45 - 46)

> "The description of your driving as your own counsel, has the soundings of a - some sort of mad movie. And it has created very serious danger to police and to members of your own community who on the facts, as you had admitted them, you had missed some of them by a metre or less from time to time as you drove around the town as they were conscious of your own safety trying to stop you behaving in such a fashion.
>
> Now the competing interests that I am trying to weigh up in this case is in relation to your own special circumstances and the sentence which the court must impose to deter you from doing this sort of thing again and the sentence which the court must impose to prevent others from doing it. In relation to yourself, given your background, what I have heard about you and the fact that you are now determined to live outside of the community to ensure that you do

not get into trouble and to give up the alcohol, I think that you now realise how very silly and stupid the acts were.

And as your counsel tells me, you appreciate the harm and risk that you put other people to. So from your personal point of view, a sentence does not have to be terribly substantial I believe to deter you from similar conduct in the future. But we do have in the Northern Territory and in recent times, a significant number of incidents where men, mostly young men, have gone about terrorising people who work in the community, the health centres, and other people.

Acts of violence which threaten a significant number of the community, must be severely deterred by the courts, so that everybody understands that it is a very serious thing to do and when this sentence is made known to people, they should, we hope, think again before they commit such further acts again in the future. So for those reasons, it seems to me that the issue of general deterrence, that is to deter others from the same sort of offence, I need to put at a premium in the sentencing process.

I have explained that to you, because whilst I accept that for yourself you do not need a big sentence although a significant sentence is necessary, a larger - a slightly larger sentence is necessary to send the message to other people. …".

[40] The submission on behalf of the appellant is that the learned Chief Magistrate placed too much weight on general deterrence. I do not agree with this submission.

[41] I accept the comments made by the Chief Magistrate with respect to men, usually young men, who have set about terrorising people in their own community. I do not consider the Chief Magistrate has been shown to be in error in his assessment as to the importance of imposing a sentence which sends a message to deter other like minded persons.

[42] Counsel for the appellant submits that the fact the appellant did not wish to pursue an alcohol abuse program should not have prevented the appellant

from being dealt with by way of a term of imprisonment with a significant part suspended on condition that he reside at the Yirarrakal Outstation with supervision as outlined in the pre-sentence report of Sharon Briston.

[43] The appellant, through his counsel, had advised the Chief Magistrate that he did not wish to participate in a formal alcohol abuse rehabilitation program. He acknowledged alcohol was a problem with respect to these offences but indicated he did not intend to drink alcohol again.

[44] I do not accept the submission on behalf of the appellant that the Chief Magistrate effectively increased the sentence or at least failed to more fully suspend the sentence because the appellant was not willing to admit himself to an alcohol rehabilitation course.

[45] In reading his Worship's reasons for sentence, his Worship appears to have accepted that there would be no point in forcing the appellant to undertake a program of rehabilitation if the appellant did not want to avail himself of such a course. The Chief Magistrate made the following remarks on sentence on the issue of rehabilitation programs (30 April 2002; tp 46):

> "… I have listened to the story about your alcohol problems and the expert who wrote the report to me says that you have a very serious alcohol problem; that whilst you might only drink once a week, you do so until you are full-drunk and until you have lots of effects of alcohol which are both unpleasant to you and to others around you.
>
> And the measures of the - and in the words of the person who wrote the report, the testing indicated that your recent alcohol consumption levels place you in the high risk and dangerous category of alcohol abuse and dependence. However, your total scores were not extreme which suggests the alcohol abuse than dependency. And the writer of the report formed the view that if you reduced your consumption of

> alcohol, you would reduce your connection or impact or contact with the criminal system.
>
> Taking all of these matters into account, and taking into account also, your indication that since you were going stop drinking you don't want to go and do a course, I do not see any point, it seems to me, in forcing you to undertake such a course when you don't want to do it. It's not likely to be productive. And similarly, it seems to me it is probably going to be unprodcutive for you to undertake such things as anger management."

[46] I am not persuaded the learned Chief Magistrate failed to consider a more fully suspended sentence and releasing the appellant to reside at Yikarrakal Outstation because the appellant expressed a desire not to participate in a formal alcohol rehabilitation program.

[47] His Worship clearly took a pragmatic approach and decided there was no point in ordering the appellant to undertake a rehabilitation program if the appellant was not a willing participant.

[48] Although he has not specifically used the term, the learned Chief Magistrate has applied the principle of totality to the sentence that he imposed. He structured a sentence that allowed for concurrency rather than cumulation of the sentences.

[49] His Worship took into account the personal circumstances and background of the appellant.

[50] I find that the learned Chief Magistrate did consider the submission on behalf of the appellant that he be released on a more fully suspended sentence to return to live at the Yikarrakal Outstation. His Worship rejected

this submission and imposed a total sentence of 15 months imprisonment with a non-parole period of eight months.

[51] I am not persuaded that in doing this he has been shown to be in error or that the sentence is manifestly excessive.

[52] For these reasons I would dismiss the appeal.

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