*JKL v The Queen* [2011] NTCCA 7

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| PARTIES: | JKL<br><br>v<br><br>THE QUEEN |
| TITLE OF COURT: | COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY |
| JURISDICTION: | CRIMINAL APPEAL FROM THE SUPREME COURT EXERCISING TERRITORY JURISDICTION |
| FILE NO: | CA 24 of 2010 (21011927) |
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| JUDGMENT OF: | SOUTHWOOD & KELLY JJ, MARTIN (BR) J |
| APPEAL FROM: | MILDREN J |

**CATCHWORDS:**

APPEAL AGAINST SENTENCE – Whether there was a failure to give adequate weight to a plea of guilty – utilitarian value of plea – no tariff – whether the sentence was manifestly excessive – appeal dismissed

*Youth Justice Act* (NT) s 4(f) and s 4(n)

*Albert v R* [2009] NTCCA 1; *DF v The Queen* (2002) NTCCA 13; *R v Goodwin* [2003] NTCCA 9; *Kelly v The Queen* (2000) 10 NTLR 39; *R v Morton* (2010) 27 NTLR 114; *Siganto v The Queen* (1998) 194 CLR 656;

*Spencer v R* [2005] NTCCA 3; *Staats v The Queen* (1998) 123 NTR 16; *Wright v R* (2007) 19 NTLR 123, followed

*Cameron v the Queen* (2002) 209 CLR 339; *R v Jabaltjari* (1989) 64 NTR 1; *R v Place* (2002) 81 SASR 395, considered

*R v Sutton* [2004] NSWCCA 225; *R v Thomson and Houlton* (2000) 49 NSWLR 383, distinguished

**REPRESENTATION:**

*Counsel:*

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| Appellant: | J Hunyor |
| Respondent: | R Coates |

*Solicitors:*

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| Appellant: | North Australian Aboriginal Justice Agency |
| Respondent: | Office of the Director of Public Prosecutions |

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| Judgment category classification: | B |
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IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*JKL v The Queen* [2011] NTCCA 7
No. CA 24 of 2010 (21011927)

BETWEEN:

**JKL**
Appellant

AND:

**THE QUEEN**
Respondent

CORAM: SOUTHWOOD and KELLY JJ and MARTIN (BR) J

REASONS FOR JUDGMENT

(Published 9 June 2011)

**SOUTHWOOD J and MARTIN (BR) J:**

**Introduction**

[1] On 6 October 2010 the appellant who is a youth was sentenced to a period of two years and six months detention with a non-parole period of one year and three months for the crime of aggravated robbery of a motor vehicle while armed with a knife. The maximum penalty for this offence is imprisonment for life.

[2] The appellant appealed against his sentence. The appeal was dismissed on 24 May 2011 following submissions.

[3] The grounds of appeal were:

1. The sentencing Judge erred in failing to give adequate weight to the plea of guilty and in reducing the discount for the utilitarian value of the plea of guilty by having regard to the strength of the prosecution case and the applicant's lack of remorse.

2. The sentence was manifestly excessive.

[4] Following are our reasons for dismissing the appeal.

**The subjective circumstances of the appellant**

[5] The appellant is a 15 year old youth who was born on 19 March 1996. He was 14 years of age when he committed the crime of aggravated robbery.

[6] The appellant has had a very unfortunate life. His parents are incapable of supporting him. At the time he committed the crime of aggravated robbery he was under the guardianship of the Minister pursuant to the provisions of the *Care and Protection of Children Act* (NT). He has been under the care of the Minister, or under the care of somebody else, for a large part of his life. The appellant has frequently absconded from care and been abusive when he returned. He has an extensive history of being abused and neglected by his parents and others and he has misused alcohol and other substances. He has threatened to kill himself or hurt himself in the past. He has engaged in sexual misconduct. As early as eight years of age he was behaving in a highly sexualised manner consistent with him having been sexually abused. In April 2007, at the age of 10, he was drinking to excess and smoking cannabis in association with a group of older men.

[7] The appellant is a poor historian. He has a marked tendency to exaggerate and confabulate events. His education has been severely disrupted. He cannot read or write. He is barely functioning academically at Grade 5 primary level.

[8] In addition, the appellant has acquired brain injury and from an early age has had severe conduct disorder. It was the opinion of Dr Adler, who was one of the doctors who provided the reports that were before the sentencing Judge, that there is a very high risk the appellant will develop an anti-social personality disorder in adulthood. There is also a high risk that he will continue to engage in violent and sexual offending.

[9] The offender has a criminal history which already extends for four pages. His prior offending includes the aggravated unlawful use of a motor vehicle, stealing, enter a building with intent, damage to property with a loss over $5000, assault a member of the police force, aggravated assault, and assault a member of the public service. He has been sentenced to detention before he was sentenced to detention for the crime of aggravated robbery to which this appeal relates.

**The facts of the offending**

[10] On the evening of 7 April 2010 the appellant was in care and living in a house in Wanguri. Also present in the house were the victims, a Family and Children's Services worker and a Family and Children's Services security guard.

[11] At about midnight the appellant entered the office area of the house with the intention of stealing the keys to a motor vehicle used by Family and Children's Services so that he could drive to Adelaide. The first victim ("AB") was in the office at the time and the appellant asked him for a telephone charger. While AB was looking for a charger, the appellant removed a knife, approximately 30 cm in length, from a kitchen cabinet. He held the knife above his head, with the blade pointing downwards, and he said to AB, "I am going to take the car and if you don't let me I'm going to stab you."

[12] AB stepped back away from the appellant in fear of his safety. While he did so, AB attempted to calm the appellant who said, "Don't move. Stay there or I'll stab you." The appellant then picked up a second knife from the cabinet with his left hand. He raised that knife above his head as if he was ready to stab AB and said words to the effect, "I'm going to take the car keys. If you move, I will stab you."

[13] AB remained stationary and the appellant picked up the set of car keys with his left hand while still holding the second knife. He then walked out of the office. As he left, the appellant yelled at AB, "If you try and stop me, I will stab you."

[14] The appellant left the office and walked along the hallway towards the second victim ("CD") who was going to the office because he heard the appellant yelling. When he was within three metres of CD he held the knife

in his right hand above his head and the knife in his left hand near his left hip and said, “Don’t move, don’t get in my way, I will stab you.”

[15] CD began moving backwards to avoid the appellant, who followed him into the kitchen and then went to a sliding door which he unlocked. He said to CD, “Don’t move, don’t get in my way or I will stab you.”

[16] Once outside the house the appellant got into a Toyota Avensis which was owned by the Northern Territory Government and reversed out of the drive way. He drove along Gsell Street, turned right into Vanderlin Drive and left onto Trower Road. At the intersection of Bagot Road and McMillans Road the appellant drove through a red traffic light at a speed of 100 km per hour.

[17] The appellant drove to the United Petroleum service station on Bagot Road. He parked the motor vehicle and refuelled it. He then got back into the driver’s seat and started the motor vehicle. The gears of the motor vehicle got stuck in reverse so the appellant drove the motor vehicle in reverse at speed down the incorrect side of Bagot Road.

[18] The appellant continued to reverse along Bagot Road until the motor vehicle collided with a steel light pole on the centre median strip of the road. The impact of the collision caused the light pole to collapse and fall onto the ground. The motor vehicle was extensively damaged and the appellant, who was injured, fled the scene on foot. He hid in the yards of nearby premises for some time before handing himself into police at the scene of the

accident. The appellant was then conveyed to Royal Darwin Hospital so his injuries could be treated. He was held in custody at the Hospital overnight.

[19] On 9 April 2010 the appellant was interviewed by the police and made full admissions to all of his alleged offences. The damage caused to the motor vehicle was extensive and the motor vehicle had to be written off.

**Ground one**

[20] As to Ground one, the appellant submitted that the sentencing Judge erred in two ways. First, his Honour failed to allow a sufficient reduction for the utilitarian value of the appellant's plea of guilty which was made at the earliest reasonable opportunity. The appellant contended that a reduction of 25 per cent should have been given. Second, his Honour incorrectly granted a lesser reduction in sentence for the plea of guilty because of the strength of the Crown case and the absence of remorse.

[21] In our opinion the first ground of appeal cannot succeed. The appellant's submissions mischaracterise the manner in which the learned sentencing Judge exercised his discretion in this regard.

[22] As to the appellant's plea of guilty, the sentencing Judge made the following remarks.

> I note that the appellant has pleaded guilty. There is no evidence of any contrition or remorse. The Crown case is overwhelming. I cannot give the appellant much in the way of a discount for his plea except to take it into account for its limited utilitarian value. It is an indication, too, that he has taken responsibility for his actions.

[23] The sentencing Judge did not quantify the reduction he gave the appellant for his plea of guilty. However, it appears likely that his Honour would have reduced the sentence he imposed on the appellant by six months or thereabouts as a result of his plea of guilty. This is a reduction of slightly more than 15 per cent. A failure to expressly quantify the reduction granted for a plea of guilty is not an error but it is desirable that a sentencing Court should indicate the extent to which a plea of guilty has been given any weight as a mitigating factor.[1]

[24] The primary basis for the reduction in sentence granted by the sentencing Judge was the pragmatic ground that the appellant's plea of guilty facilitated the course of justice to the extent that it spared the community the cost and expense of a trial. This is what his Honour meant when he referred to the "limited utilitarian value" of the plea. His Honour also acknowledged that the appellant's plea of guilty was an indication that the appellant had taken responsibility for his actions.

[25] Since the *Sentencing Act (NT)* came into force on 1 July 1996, it has become accepted that it is relevant to take into account in an offender's favour a plea of guilty – even a late plea of guilty – notwithstanding that the plea itself exhibits nothing more than utilitarian considerations. This is because s 5(2)(j) of the *Sentencing* Act is a statutory statement that a plea of guilty is a mitigatory factor intended to act as an inducement to an offender to enter a plea of guilty in return for a lesser penalty than otherwise might have been

[1] .*Kelly v The Queen* (2000) 10 NTLR at par [26] and par [27].

expected to have been passed.[2] A reduction in sentence is allowed for the utilitarian value of a plea of guilty because the State is saved the expense of a trial, witnesses are spared the necessity of attending court, the criminal list in the Court is more expeditiously disposed of and other cases in which there is a genuine issue to be determined will be brought on for hearing without delay. From the utilitarian perspective alone, an early plea offers substantially greater benefits than a plea which is made at the commencement of the trial because there is a greater saving of resources, time and cost.[3]

[26] On the material before him, it was open to the sentencing Judge to find that, despite the early plea of guilty, there was no evidence of any remorse or contrition. An early plea of guilty of itself is not necessarily demonstrative of remorse or resipiscence.[4] The Crown case was a strong case and from a pragmatic point of view the appellant had little option other than to plead guilty. While it could not be said that the appellant did not do all he could to facilitate the course of justice, his plea exhibited little more than a limited saving of cost and expense to the state and the acceptance of responsibility for his actions. It did not demonstrate that the appellant was prepared to change his ways. None of this was contested by the defence during the plea. The fact that there was no evidence of remorse or

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[2] .*Kelly v The Queen* (2000) 10 NTLR 39 at par [24]; *Staats v The Queen* (1998) 123 NTR 16 at 28 per Angel J; *Siganto v The Queen* (1998) 194 CLR 656 at par [22].

[3] .*R v Thomson and Houlton* (2000) 49 NSWLR 383 per Spigelman CJ at par [133].

[4] This old fashioned word means recognition of error and a change for the better: D Ross, Crime at [19.1870]. For a full discussion of the notion see *R v Jabaltjari* (1989) 64 NTR 1 per Asche CJ at pp 12 – 16.

resipiscence meant that the weight to be given to the mitigatory effect of the appellant's plea of guilty was reduced in the circumstances of this case.[5]

[27] Further, the remarks of the sentencing Judge do not suggest that he reduced the utilitarian value he accorded the appellant's plea because of the strength of the Crown case. His Honour relied on the strength of the Crown case to determine that the appellant's plea of guilty was not indicative of remorse. There is nothing in his Honour's remarks to suggest that he made the error which is the subject of decisions of the New South Wales Court of Criminal Appeal such as *R v Sutton*[6] and *R v Thomson and Houlton*[7] where that Court correctly held that the strength of the Crown case is an irrelevant factor in determining the utilitarian value of a plea of guilty.

[28] There is no sentencing principle in the Northern Territory which requires a sentencing Judge to grant a reduction of 25 per cent for a guilty plea that is made at the earliest opportunity.[8] The value of the reduction to be given for any plea of guilty is a matter of discretion. The value is dependent on the circumstances of the particular case and the extent to which it demonstrates remorse, the acceptance of responsibility and resipiscence, the willingness to facilitate the course of justice, the extent to which a witness who may find the procedure painful has been spared the necessity to give evidence,

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[5] *Albert v The Queen* [2009] NTCCA 1 at par [7].
[6] .[2004] NSWCCA 225.
[7] .(2000) 49 NSWLR 383.
[8] .*Albert v The* Queen [2009] NTCCA 1 at par [7];Kelly *v The Queen* (2000) 10 NTLR 39 at par [27]; *Siganto v The Queen* (1998) 194 CLR 656 at par [22].

and the utilitarian benefits that flow from the plea.[9] In the Northern Territory a reduction of 25 per cent will normally be given in circumstances where there has been an early guilty plea which is indicative of true remorse and resipiscence.[10] While a plea of guilty entered at the first reasonable opportunity may be a significant factor in assessing the extent to which it is indicative of remorse and resipiscence, it will not necessarily do so in all cases.

[29] In *DF v The Queen*[11] Riley J, with whom Martin CJ and Angel J agreed stated:

> In *Spencer v R* [2005] NTCCA 3 the Court of Criminal Appeal observed that, in determining what weight should be given to an offer to plead, it is necessary to consider all of the circumstances in which the offer is made. Matters to be considered may include any terms attached to the offer, the time at which the offer is made and the prospects, assessed at the relevant time, of conviction in relation to more serious offences on the indictment. Factors that will determine the extent to which leniency may be accorded those who plead guilty will include whether the plea demonstrates remorse, the utilitarian benefits that flow from the plea, the strength of the Crown case, and the extent to which the plea serves the self-interest of the accused.

[30] The basis upon which the sentencing Judge exercised his discretion in order determine the reduction in sentence to be granted for the appellant's plea of guilty was in conformity with the above principles. No error in the exercise of his discretion has been demonstrated. In all of the circumstances of this case a discount for the appellant's plea of guilty of between 10 to

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[9] .*Siganto v The Queen* (1998) 194 CLR 656 at par [22]; *Cameron v The Queen* (2002) 209 CLR 339 [22]; *Kelly v The Queen* (2000) 10 NTLR 39 at par [26]; *DF v The Queen* [2006] NTCCA 13 at [16]; and *Spencer v R* [2005] NTCCA 3.

[10] *Albert v The Queen* [2009] NTCCA 1 at par [7] and par [8].

[11] [2006] NTCCA 13 at [16].

15 per cent or thereabouts was within range. Such a discount was sufficient to recognise that the appellant's plea of guilty promoted the speedy disposition of justice and avoided the waste of valuable court time and other resources that are inherent in a late plea.

[31] The Court of Criminal Appeal of the Northern Territory has not adopted the range of reduction for the utilitarian value of a plea of guilty enunciated in the guideline judgment of the Court of Criminal Appeal of New South Wales in *R v Thomson and Houlton.*[12] The policy considerations which formed the basis of those decisions have not arisen in the Northern Territory. Rather, this Court has consistently taken the approach that there is no tariff or set range.[13] The extent of the discount is to be determined according to the particular circumstances of the case.[14]

**Ground 2**

[32] As to ground two the appellant relied on four submissions. (1) The sentencing judge erred in imposing an excessive overall period of detention and non-parole period. (2) The sentencing judge erred in failing to apply or adequately apply the principles for sentencing youths. (3) The sentencing judge erred in failing to consider a fully or partly suspended sentence. (4) The sentencing judge erred in failing to impose a non-parole period that was less than 50 percent of the period of detention imposed on the appellant.

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[12] 49 NSWLR 383.
[13] *Albert v R* [2009] NTCCA 1 per Thomas J at par [7]; *Wright v R* (2007) 19 NTLR 123 per Martin CJ at p 127; see also *R v Place* (2002) 81 SASR 395.
[14] *Albert v R* [2009] NTCCA 1 per Riley J at par [31].

[33] In our opinion, this ground of appeal also cannot succeed. The crime committed by the appellant was a crime of considerable gravity. The maximum penalty for the crime is imprisonment for life. The crime involved some forethought. The appellant armed himself with two knives. Knives are particularly dangerous weapons. The appellant threatened two victims who were his carers with the knives and he stole a government motor vehicle which he drove in a particularly dangerous manner in order to try and make his getaway. He extensively damaged the motor vehicle as a result of his manner of driving and it had to be written off. The appellant committed the crime like an adult. The offender stole the motor vehicle for the purpose of returning to his family in Adelaide.

[34] In *R v Goodwin*[15] the Court of Criminal Appeal observed:

> There is a well established line of authority to the effect that in the case of serious offending the youth of the offender is not the prevailing consideration in sentencing. A number of the cases are collected in the judgment of this Court in Serra (1996) 92 A Crim R 511; see also Bloomfield [1999] NTCCA 137 at paras 21 and 34. It is well established that if a young offender commits a criminal offence like an adult then that justifies sentencing him or her in a fashion more akin to an adult. Where crimes of considerable gravity are committed the protective function of the criminal court would cease to operate unless denunciation, general deterrence and retribution are significant sentencing considerations even in respect of juveniles: Pham & Lee (1991) 55 A Crim R 128 at 135; Nichols (1991) 57 A Crim R 391 at 395; Hawkins (1993) 67 A Crim R 64 at 66; Gordon (1994) 71 A Crim R 459 at 465; AEM, KEM and MM [2002] NSWCCA 58 paras 95–102. As the Director of Public Prosecutions submitted in the present case, the offence in this case is by its nature an adult crime. It must be denounced by the Courts by the imposition of appropriate penalties.

[15] [2003] NTCCA 9 at par [11].

[35] In the case before this Court the youth of the appellant was not the prevailing consideration. The sentencing judge was justified in sentencing the appellant in a fashion akin to an adult. The sentence was proportionate to the gravity of the crime. The sentence was not increased beyond which was proportionate to the gravity of the crime merely to protect the community from risk of recidivism. However, the risk of recidivism was so strong that the protection of the community required that less weight be given to the appellant's youth as a mitigating factor. The sentencing Judge accepted that there was a high risk of continued violent offending. He was also of the opinion that fixing a non-parole period would assist the appellant's rehabilitation. Such a sentencing disposition is consistent with the sentencing aims of giving the appellant an opportunity to develop in beneficial and socially acceptable ways and enabling him to be ultimately successfully re-integrated into the community.[16]

[36] When sentencing the appellant the sentencing judge made the following remarks.

> According to Dr Adler, JKL has acquired brain injury and early onset severe conduct disorder. He is at very high risk of propensity to an antisocial personality disorder in adulthood. There is a high risk of continued violent offending and sexual offending. Future management of his behaviour is likely to prove extremely difficult. A carefully devised behavioural management program is essential if JKL is to learn the benefits of pro-social behaviour. Programs designed to improve his behaviour are not likely to be successful, particularly if he continues to abuse alcohol and drugs. Medication has only a very limited role to play in his management.

[16] ss 4(f) and (n) *Youth Justice Act* (NT).

Other reports indicate that JKL is functioning cognitively well below the level expected for his age. He has limited insight in understanding right from wrong. He also has learning difficulties.

JKL has been in Don Dale on at least eight occasions. It appears from the Don Dale report that he regards Don Dale as 'a fun place' and no longer has suicidal thoughts. He struggles with planning and organisation and acts on impulse in almost all of the activities that he engages in. It has been impossible to devise an exit program for him because he has little or no comprehension of how to plan or of understanding systems. He also has a limited concentration span.

I note that his family is unwilling and unable to care for him. He will need to reside in an environment where there are highly trained professionals who are able to manage and control his behaviour. He has refused to take medications as might assist his behaviour and refused to attend medical appointments.

In addition, I have heard evidence from a Ms CM who has been his case manager for in excess of one year. She recognises JKL as a child at risk of self harm and to the community. She explained that a revised care plan which was due recently has not been done because JKL is in Don Dale and it is difficult to re-assess it formally without a release date. However, she says that she has discussed his case with JKL's case worker at Don Dale on a regular basis to discuss appropriate strategies.

In her opinion, Don Dale is the best place for JKL. She believes that JKL will remain difficult, if not dangerous, for the rest of his life. However, in the last two months she has noted some improvements: first, his hygiene has improved; secondly, he has shown improvement in reading; and thirdly, although fluctuating, from time to time he has shown an interest in learning.

As to JKL's future prospects of rehabilitation, although there has been some minor improvement in recent times it is my opinion that his prospects of rehabilitation, at least in the short term, are very low but I am not prepared to write him off entirely. His prior record is not all that bad and he is still very young. His prospects may indeed improve as he grows older and wiser and learns more about life. His plea of guilty is also a positive indication.

In my view a period of supervision by a parole officer will be necessary and that I ought to fix a non-parole period for the reason that I do not think it would be appropriate to release JKL into the

community without supervision and also for the reason that I think that only the Parole Board will be in a position to assess when it is safe for him to be released.

I accept JKL's counsel's submission that in view of his mental impairment JKL's moral culpability is relatively much lower than would be the case for an average 14-year-old.

So far as the objective circumstances of the offending is concerned, I assess it as being at the low end of the medium range, even though the car was written off, because the offending appears to have been impulsive with little planning, the knives were not actually used to injure anyone and the motive for the crime was to escape and return to his family rather than for personal greed or for need brought about by drug or alcohol abuse.

Although, as I have mentioned, at present he remains a danger to the community, the principles of proportionality established by the High Court in *Veen (No 1)* and repeated in *Veen (No 2)* mean that I cannot sentence JKL for a period of detention beyond that which his criminality deserves. However, as the High Court emphasised in *Veen (No 2)* although attracting sympathy, people like JKL who have the mental problems which he has cause particular difficulties in sentencing. As the majority said in the *Veen (No 2)* case at pages 476-477:

So a mental abnormality which makes an offender a danger to society when he is at large but which diminishes his moral culpability for a particular crime is a factor which has two countervailing effects: one which tends towards a longer custodial sentence and the other towards a shorter. These effects may balance out, but consideration of the danger to society cannot lead to a more severe penalty than would have been imposed if the offender had not been suffering from a mental abnormality. These comments have particular relevance to this case but they do not mean that I should decline to fix a non-parole period for the reasons which I have already expressed.

JKL's case is a very difficult sentencing exercise. The offence that he committed was a serious one albeit one at the low end of the medium range.

[37] The remarks his Honour made disclose no error. They are consistent with the decision of the Court of Criminal Appeal in *R v Morton*[17] that the risk of recidivism may be so strong that a mental disorder or state or capacity might not be treated as a mitigating factor, but as reinforcement of the need to impose a sentence which is proportionate to the gravity of the offending.

**KELLY J**

[38] I agree that the appeal should be dismissed, essentially for the reasons set out in the judgment of Southwood J and Martin J.

[39] I wish to add something in relation to ground 1 of the appeal. I do not construe the learned sentencing Judge's remarks in quite the same way as Southwood J and Martin J. When his Honour referred to the "limited utilitarian value" of the plea, it seems to me, on the face of it, that remark must have been intended to be a comment upon the size or quality of the utilitarian value of the plea in the circumstances. However, I discern no error in making such a comment. It cannot be denied that some pleas are of more practical/utilitarian value than others. An early plea is of greater utilitarian value than a late plea; the practical saving of the time and expense of a trial likely to take four months is greater than the saving of a trial like to take four days. Similarly, there may be differences in the number of witnesses and the cost and inconvenience (practical, financial and emotional) to them of attending. Counsel for the appellant did not suggest

[17] (2010) 27 NTLR 114 at par [51].

otherwise. In speaking of the "limited utilitarian value" of this plea, I take his Honour to have intended no more than that the practical utilitarian value of this plea was not of the highest, but "limited" in the sense of being along the spectrum of expected utility.

[40] What cannot be discerned from this comment, in context, is any suggestion that his Honour treated the utilitarian value of the appellant's guilty plea as more limited because of the strength of the Crown case – as suggested in the appellant's submissions. His Honour simply didn't say that, although he did, quite properly, take into account the fact that the Crown case was a strong one, as well as the fact that the appellant showed no sign of remorse, in determining what overall reduction should be allowed for the plea of guilty.

[41] The sentencing Judge did not quantify the reduction he gave the appellant for his plea of guilty, and I am unable to say what particular percentage was applied. However, there is in this jurisdiction, no specified range and the size of the discount depends on the circumstances of each case. In this case the learned sentencing Judge took into account relevant matters in determining what discount to allow, and no error in principle has been demonstrated. Moreover the final sentence in the sentencing Judge's remarks quoted in par [22] above is such as to demonstrate that an appropriate reduction was allowed in all of the circumstances.

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