PARTIES:	
JA26 of 1996, JA27 of 1996, JA28 of 1996, JA29 of 1996 JA32 of 1996, JA34 of 1996 JA35 of 1996	MARK DOOLING ROMOLO TCHERNA PATRICK NARNDU DESMOND NARNDU TERRENCE PARMBUCK ROBERT PARMBUCK RONALD PARMBUCK AND: GILLIAN RUTH HAYWARD
JA30 of 1996, JA31 of 1996 JA40 of 1996	DESMOND NARNDU PATRICK NARNDU JAMES LANTJIN AND: DONALD ANTHONY GARNER
JA 33 of 1996	TERRENCE PARMBUCK AND: GOTTLIEB THOMAS SVIKART
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEALS from COURT OF SUMMARY JURISDICTION exercising Territory jurisdiction
FILE NO:	JA26-JA35 and JA40 of 1996
DELIVERED:	10 February 1997
HEARING DATES:	5 February 1997
JUDGMENT OF:	Kearney J

CATCHWORDS

Criminal Law and Procedure - Appeal and new trial, pardon and inquiry subsequent to conviction - Appeal against sentence - Sentencing guidelines - General principles - Weight to be given to view of local community to offending, if evidence of those views properly before Court – Significance of general deterrence when determining whether sentence of imprisonment should be suspended, and in sentencing a young first offender -

Munungurr v The Queen (1994) 4 NTLR 63, applied.
Minor v The Queen (1992) 79 NTR 1, applied.
Brazier v Police (1994) 75 A Crim R 404, followed.
GDP (1991) 53 A Crim R 112, followed.

REPRESENTATION:

Counsel:

Appellant:	M. Little
Respondent:	R. Noble

Solicitors:

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

Judgment category classification:	B
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JA26 of 1996, JA27 of 1996,
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JA32 of 1996, JA34 of 1996
JA35 of 1996 BETWEEN

MARK DOOLING
ROMOLO TCHERNA
PATRICK NARNDU
DESMOND NARNDU
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kea97004

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

IN THE MATTER of the Justices Act

AND IN THE MATTER of appeals against the severity of certain sentences imposed by the Court of Summary Jurisdiction at Darwin

Nos JA26 of 1996, JA27 of 1996,
JA28 of 1996, JA29 of 1996
JA32 of 1996, JA34 of 1996
JA35 of 1996

BETWEEN

MARK DOOLING
ROMOLO TCHERNA
PATRICK NARNDU
DESMOND NARNDU
TERRENCE PARMBUCK
ROBERT PARMBUCK
RONALD PARMBUCK
Appellants

AND:

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JA 30 of 1996, JA31 of 1996
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BETWEEN

DESMOND NARNDU
PATRICK NARNDU
JAMES LANTJIN
Appellants

AND:

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JA 33 of 1996

BETWEEN
TERRENCE PARMBUCK
Appellant

AND:

GOTTLIEB THOMAS SVIKART
Respondent

CORAM: KEARNEY J

REASONS FOR DECISION

(Delivered 10 February 1997)

I rule today on these 11 appeals against the severity of various sentences imposed on the 8 appellants by the Court of Summary Jurisdiction at Darwin, on 22 March and 2 April 1996. By consent, the appeals were heard together on 5 February. I will deal with them individually but first it is convenient to describe the 4 incidents over 7 days in March 1996 at Port Keats, which gave rise to charges against the appellants and ultimately to their appeals.

(1) The incident of 3 March 1996; unlawful use of a Council vehicle

In the early hours of Sunday 3 March, the appellants Romolo Tcherna, Patrick and Desmond Narndu, and James Lantjin were at Port Keats. Tcherna and Lantjin, with 3 persons who are not appellants, entered the driveway of a house in Port Keats where a Council vehicle, a Mitsubishi utility, was parked. They pushed the vehicle out of the driveway and down the road, where one of

the non-appellants ‘hot-wired’ it and started the engine. The 5 climbed on board and one of the non-appellants drove the vehicle around the community.

They stopped at a house and collected Patrick and Desmond Narndu who climbed on board. The driver continued around the community, driving in an erratic manner, and narrowly missing a number of houses as he drove between them at speed. Eventually he drove to the oval and proceeded to speed around it. Desmond Narndu then took over the driving; he drove around the oval, doing a number of 'donuts' and 'wheelies', spinning the vehicle's wheels. Patrick Narndu then took over the driving; he drove to the airstrip where he did a number of 'donuts' on the apron. He then drove back to the oval. One of the non-appellants smashed the windscreen with a spanner. The vehicle was then abandoned at the oval, all 7 persons leaving the area. The cost of repairing the vehicle was $630. The 4 appellants named above were apprehended later that morning, admitted what they had done, and were charged.

(2) The incident of 5 March; Tcherna escapes from gaol

Romolo Tcherna was in gaol in Port Keats on Monday 4 March 1996 as a result of his participation in the incident of 3 March. He was due to appear in court on Tuesday 5 March. At about 11pm on 4 March 2 persons who are not appellants came to the cells; eventually Tcherna and the other 2 succeeded in breaking the padlock on the cell door. Tcherna escaped from the cell at about 3am on 5 March. With another non-appellant he then went to the grounds of the school at Port Keats. They broke into a sports shed, opened sliding doors, and threw sporting equipment around the grounds. No damage, however, is alleged. Later, at about 8.45am on 5 March, Tcherna went to the Police Station with members of his family, and surrendered himself.

(3) The incident of 9 March; unlawful use of a Council vehicle

On the afternoon of Saturday 9 March five of the appellants - Mark Dooling, Patrick Narndu, and Terrence, Robert and Ronald Parmbuck - were playing for a team in the Port Keats football competition; their team lost. That evening they went to Council flats at the old medical clinic, intending to take a vehicle. They found the security gate unlocked, entered, and found an unlocked Council vehicle, a Mitsubishi utility. Patrick Narndu smashed the cowling on the steering assembly and then the lock on the steering. He 'hot-wired' the vehicle. The 5 of them pushed it out of the yard; Patrick Narndu started the engine and drove off with the other 4. After repairing the lights on the vehicle he drove it to the football oval. There the 5 of them met 2 others who are not appellants. Patrick Narndu, Terrence Parmbuck and one of the non-appellants took it in turns to drive the vehicle around the oval at speed, doing 'wheelies'. The others took turns in riding in the vehicle as passengers. After some time spent in this fashion all of the 7 except Narndu and Dooling left, and went home. Narndu drove off in the vehicle with Dooling, who afterwards alighted. Narndu then drove the vehicle around the bottom camp area and around a house occupied by people, at speed, doing a number of 'donuts' around the houses. He then drove over a concrete manhole cover, at speed. The impact destroyed the vehicle's gear box and caused substantial damage to its underside. Narndu left the vehicle there and went home. Later, on the morning of Sunday 10 March, the 5 appellants were interviewed about this incident; they made full admissions and were charged. The cost of repairs to the vehicle is in the vicinity of $3000.

(4) Another incident on 9 March; unlawful use of a Telstra vehicle

Although full details of the facts of this incident were not placed before me it is clear that on the night of 9 March 1996 Desmond Narndu and 2 non-appellants took a Telstra vehicle, a Toyota Landcruiser troopcarrier, from the Telstra compound at Port Keats. Narndu and one of the non-appellants admitted that they 'hot-wired' the vehicle, damaging it in that process, and drove it to the oval where they collected 2 other non-appellants, Alan Parmbuck and Joseph Thardum. Narndu was involved in driving the vehicle, and some of his driving was dangerous.

The community's attitude to these incidents

A document, Exhibit P2, was in evidence. It expressed the views of the Kardu Numida Council; his Worship also heard from the Deputy Council Clerk, Mr Curwen-Walker. This evidence was introduced, without objection, by way of response to earlier submissions by defence counsel that the absence of a CDEP at Port Keats was the real reason for the appellants having behaved as they had, and that the Council was responsible for not instituting a CDEP. Exhibit P2 set out the Council's current policies, strategies and programs said to be designed to set in train a process to rehabilitate and improve the Wadeye community, which had been fragmented and socially disrupted. It recounted the historical development of the community, now an emerging town; it numbers about 1850 persons, over 60% of whom are under 20 years of age. The Council's physical infrastructure, including its vehicles, is important to its carrying out its expanding workload.

The Chief Magistrate's general sentencing remarks of 22 March 1996

About the same time as he sentenced the appellants for their part in the incidents of 3, 5 and 9 March, his Worship sentenced various other persons involved in those incidents. He said that in sentencing he had considered the "interrelationships [of the offenders] and [sentencing] parity principles"; I observe that it is clear that he did so with meticulous care. For example, non-appellants Alan Parmbuck (who was employed) and Joseph Thardum, involved in the unlawful use on 9 March of the Telstra vehicle (p4), were respectively fined $1000 and ordered to carry out 80 hours of community service work for their offences, they had been mere joy-riders, picked up at the oval after the vehicle had been taken. In sentencing them on 18 March his Worship said:

> "I am sure all of the [offenders] here in court know how the community feels; *the councillors* … speaking for other members of the community are very, very upset, angry and *are looking to the court to try to make the message clear that if you do this kind of thing you are going to be punished.*
>
> Now, you [that is, Alan Parmbuck and Joseph Thardum] are down towards the bottom as far as seriousness of role is concerned; in other words, you did not play a major role. It is not appropriate, in my opinion, to send you to prison for this offence, but I do take into account, of course, the fact that you have been in prison [on remand] for five days." (emphasis added)

In sentencing the appellants on 22 March, together with others involved in these incidents who have not appealed, his Worship first made some general remarks. He noted that he had been told that the way the vehicles had been driven on the oval had meant that its surface had to be restored and repaired. He noted the damage to the two motor vehicles "which were … for the benefit

of the community", and considered that their misuse had had "a significant impact … on the community". He observed that unlawful use of vehicles was "very prevalent" in the Port Keats community and that none of the young appellants were affected by liquor at that time. He considered that emotions had been "running pretty high" after the loss of the football match on 9 March. He concluded that "there are no serious or real extenuating circumstances", other than that in the Port Keats community there was a "lack of things to do, for young men."

On the last point, his Worship referred to defence counsels' submissions that there was a "general malaise or frustration amongst young men in [Port Keats] arising from lack of things to do, or lack of work." They had submitted that each of the appellants was "hopelessly bored and frustrated and unoccupied"; that there was nothing in Port Keats to demand "their time or their energy or their intelligence or their abilities". They had stressed the significance of the lack of a CDEP at Port Keats, to the offending.

In that connection his Worship noted the evidence from Mr Curwen-Walker, and that while there was currently no CDEP at Port Keats one should commence in 1997. He observed that despite the lack of a CDEP most young persons in Port Keats nevertheless did not commit offences of this nature. He accepted that the appellants were "somewhat bored", but then proceeded to consider the work records of 2 of the appellants, Desmond and Patrick Narndu, and concluded that it was an "inaccurate analysis" to sheet home blame for their offending to the Council on the basis that it had "provided nothing for

them to do." He did not consider that the appellants' offences should be viewed as "an indictment of the [Port Keats] community"; this had been the general thrust of defence counsels' submissions. He considered that Desmond Narndu's expressed desire to go to prison was because he wanted to "see one of his brothers" who was there. In essence, he rejected defence counsels' submissions that the real blame for the appellants' offending should not be laid at their own door.

His Worship then distinguished between the offenders, on the basis of their culpability; he noted that those who had been 'prime movers' in the offences (Patrick and Desmond Narndu, respectively, in relation to the separate incidents of 9 March) had each been charged with *aggravated* unlawful use of a vehicle, while those of lesser culpability in the various incidents had been charged with unlawful use, simpliciter. The former offence is a crime which carries a maximum punishment of 7 years imprisonment, while the latter carries 2 years; see ss218(2) and 218(1) of the *Criminal Code*. At the time his Worship heard and determined the various charges, the maximum penalty he could impose for the former offence was 2 years imprisonment; see the former s121A(2) of the *Justices Act*, the 2 years there referred to being a jurisdictional limit and not a maximum penalty, as explained in *Maynard v O'Brien* (1991) 78 NTR 16 at 21.

His Worship noted that the Council in Exhibit P2 sought to make the court "fully aware" of the significance to the Port Keats community of the appellants' offending, and had asked that the Court "give consideration to the

need for general deterrence", and to "the safety and well-being of the community". He considered that the attitude of the local community, thereby expressed, must be "given weight"; and that in these cases those views merited "considerable weight", although they could "not displace what is otherwise a proper sentencing outcome". I consider that this general approach is correct; see *Munungurr v The Queen (1994)* 4 NTLR 63 at 71 and *Minor v The Queen* (1992) 79 NTR 1 at 14. The evidence of the community's views was placed before the court "in a proper manner"; see *Munungurr v The Queen* (supra) at 73. His Worship said:

> "It is clear that these young men must understand that they are accountable for their actions in the community. That it's expected by their community that they will be punished for what they have done. And they must also understand, that their community asks for a degree of protection from the court.
>
> That protection is brought about by deterring young men like these from *repeating* this kind of thing [clearly this was a reference to personal deterrence of the offenders], and hopefully deterring others from *doing* the same kind of thing [a reference to general deterrence]. *Considerable emphasis* indeed, then, *must be placed on both general and personal deterrence* in respect of these charges. *That emphasis cannot of course entirely displace the need to give emphasis to rehabilitation, and to the age of the offenders.*
>
> Indeed they are all young. Some have no prior convictions at all, and that of course must also be reflected in [their] sentence.
>
> *But their youth and indeed the lack of prior convictions* in the cases where that applies, *does not in every case as a matter of principle, always displace or entirely dilute the need for general and personal deterrence.* And, in cases such as this when the impact on the community is considerable, *there is a need to protect that community* - [to] make the message clear, and change the behaviour of young men like these. *There is a clear and emphatic role for personal and general deterrence. But of course, taken in the balance, in the end there also must be weight placed on rehabilitation and youth.*

...

... it follows that *it is necessary to ... endeavour to reflect in the sentence, the views, the attitude, and the opinion of the community, in the context of what is a proper sentence. To give emphasis to the accountability and deterrence that the community considers to be so important.* I would have thought that the broader community also would [so consider it]. [And] *to balance that against the age and rehabilitation prospects of these young men.*

...

[The offenders] are young men who will be able to both put their offending behind them, and get on with their lives and achieve something. Although, in my opinion at the end of the analysis *it is necessary to impose sentences of imprisonment, to give effect to the principles that I've already spoken of,* nonetheless, on completion of those sentences, many of which are short, these young men should be able to progress and move forward, and hopefully without further offending.

They must understand - and I say this to them as a group - they must understand that their own community regards itself as having been a victim of [their] behaviour." (emphasis added)

His Worship then proceeded to consider each case, and to sentence each of the appellants, taking into account each individual's particular part in the incident which gave rise to the charges he faced, and to his particular personal circumstances. It is sufficient to note that his Worship carried out this part of his sentencing in detail, and with meticulous care. I turn to the appeal of each of the appellants.

(1) Mark Dooling - appeal JA26 of 1996

I have already indicated (p3) the role of this appellant in the incident of 9 March involving the Council vehicle. He was aged 18 at the time. He had previously been dealt with by this Court in May 1995 for the aggravated unlawful use of a vehicle; he had what his Worship described as a "moderately

bad record [of offending]" - 7 appearances before courts since 1993, 4 of them before Juvenile Courts, with resulting convictions for 15 offences, including 5 for the unlawful use of a motor vehicle.

He was charged with, and pleaded guilty to, unlawful trespass, and the unlawful use of a vehicle, as a result of the incident of 9 March; for the former offence he was sentenced to 1 month's imprisonment and for the latter, 2 months, with a direction that the sentences be served concurrently.
His Worship treated the appellant as having the same level of culpability as Ronald and Robert Parmbuck, who received identical sentences.

The sole ground of appeal is that his Worship gave undue weight when sentencing, to the need for personal and general deterrence. This ground was common to every appeal. Ms Little referred to *R v Williscroft* [1975] VR 292 at 299, where the Full Court referred to the "limited assistance" it gained from the well-known passage in *R v Radich* [1954] NZLR 86 at 87 on the need for deterrence by way of "severe punishment" as a means of protecting the public from the commission of crime, and the correlative duty of the sentencing court not to be "weakly merciful", other matters requiring "the most careful consideration" but being "necessarily subsidiary". I consider that is clear that the Court in *R v Radich* (supra) clearly had in mind that the sentence imposed should be commensurate with the particular act of wrongdoing. The differing, and sometimes incompatible, aims of sentencing necessarily require a balancing, and it is clear from his Worship's remarks (pp8-9) that he was well aware of that.

Ms Little also referred to *Yardley v Betts* (1979) 1 A Crim R 329 at 333, where the Court stressed that the aim of successful rehabilitation "should never be lost sight of, and it assumes particular importance in the case of first offenders and others who have not developed settled criminal habits". *Yardley v Betts* (supra) affirmed that each case of serious assault (the offence there in issue) should be dealt with on its merits, and should not automatically carry a sentence of immediate imprisonment; punishment should fit the offence and the offender - see 332-3. Ms Little submitted that none of the appellants had developed "settled criminal habits"; that may be accepted, but there is nothing to suggest that his Worship lost sight of the rehabilitative aspect of sentencing - his remarks (pp8-9) point to the contrary.

Ms Little submitted that in his Worship's sentencing remarks (pp8-9) he gave undue weight to the concerns of the public, and thus to the need for deterrence. She referred to *Brazier v Police* (1994) 75 A Crim R 404. In that case a magistrate, in imposing a sentence which was not manifestly excessive, considered that the need for general deterrence was paramount, and precluded him from suspending service of a sentence of imprisonment he had imposed for an indecent assault. Debelle J held that the need for general deterrence is a major factor in determining *whether* a sentence of imprisonment should be imposed, but is only *one* factor amongst others (notably reformation or rehabilitation) in determining whether service of that sentence should be suspended. He considered that the magistrate had effectively (and wrongly) precluded himself from directing that service of the sentence be suspended,

because of what he perceived to be the paramount need for general deterrence. There is nothing in his Worship's sentencing remarks (pp8-9) in this case to suggest that he fell into that error. I respectfully agree with Debelle J in *Brazier v Police* (supra) at 408-9:

> "…[as well as general deterrence] *due regard must also be had to the question* of whether the proper rehabilitation of the defendant requires that the sentence be suspended and *whether, in all the circumstances, it is appropriate to send a first offender to prison* when that person might be a person likely to benefit from an exercise of the court's clemency. It is particularly appropriate, in the context of this case, to have regard to the observations of Walters J in *Wood v Samuels* (1974) 8 SASR 465 at 468:
>
> > "…a suspended sentence is imposed only when, by eliminating all other alternatives, the court thinks the case is one for imprisonment, and, though it be a case for imprisonment, an immediate custodial sentence is not required in the circumstances of the offender whom it is not appropriate to send to prison for the first time and who is most likely to benefit from any exercise of the court's clemency."
>
> Those observations have been consistently applied by this Court since. As von Doussa J noted in *Ware v Betts* (1987) 134 LSJS 212 at 218, *there must still be a due balancing of the deterrence purpose of punishment on the one hand and the aim of reformation or rehabilitation of the offender on the other hand:* see also *Yardley v Betts* (1979) 22 SASR 108 at 112-113; 1 A Crim R 329 at 332-334." (emphasis added)

Having considered Ms Little's submissions in support of the ground relied on, it is sufficient to say that I am far from satisfied that his Worship gave undue weight to the need for personal and general deterrence. I consider that his Worship's sentencing of Mark Dooling was well within the proper exercise of his sentencing discretion, and no sentencing error of any type has been established. I dismiss the appeal, and affirm the effective sentence of 2 months immediate imprisonment which was imposed.

(2) Romolo Tcherna - JA27 of 1996

I have already indicated (p1) this appellant's part in the incident of 3 March, and (p2) his escape from custody on 5 March. He was aged 19 at the time; he had been educated mainly at Port Keats, but had spent year 11 at St John's College in Darwin. He was unemployed. He suffers from rheumatic heart disease. His remand in custody for these offences was the first time he had spent in custody. In November 1995 he had been convicted and released on a 12-month good behaviour bond for driving whilst unlicensed, criminal damage, and the unlawful use of a motor vehicle in June; the commission of his offences in March 1996 put him in breach of that bond.

For his part in the incidents mentioned he was convicted on his plea of unlawful trespass and unlawful use of a vehicle on 3 March; and of escaping from lawful custody and unlawful entering on premises with intent to commit an offence, on 5 March. He was sentenced to imprisonment for 1 month, 2 months, 1 month and 1 month respectively for these offences; the first 3 sentences were directed to be served concurrently, with the last to be served cumulatively thereon. The total effective sentence was 3 months imprisonment. No action was taken for the breach of the bond of 7 November 1995; it remained in force. I note that service of the sentence of 1 month's imprisonment for escaping from lawful custody should have been directed to have been served cumulatively upon the earlier sentence of 2 months, not concurrently; see s13 of the *Prisons (Correctional Services) Act* and the definition of "prisoner" in s5 of that Act. However, I consider that the direction that the fourth sentence be served cumulatively was erroneous, in

that it was manifestly excessive; this probably came about due to an initial misunderstanding by his Worship that damage had been caused in the course of the offence.

In sentencing, his Worship noted that the appellant bore a "high degree of culpability" for the removal of the Council vehicle from the premises on 3 March; however, he noted that the appellant had not personally damaged the vehicle. His Worship treated the escape of 5 March as less serious than an escape by a person by his own unaided efforts. He considered that the appellant's prior criminal record when "compared to many others, [is] a very good record"; I noted at p13 what that amounted to. He considered that the fact that the appellant had committed the present offences in March 1996 while he was on the good behaviour bond of November 1995 "substantially" aggravated "his overall sentencing position", and had made "what you did somewhat worse". He considered that the appellant had "reasonably good prospects of rehabilitation".

The only ground of appeal, as in the appeal of Mark Dooling, is that his Worship gave undue weight to the need for general and personal deterrence. Ms Little submitted in terms of what was said in *Yardley v Betts* (supra) (p11) that the appellant had no "settled criminal habits", and that his Worship should have made a sentencing disposition which did not involve immediate imprisonment. In emphasizing that "the community is angry about it, upset about it, and naturally expects punishment when it occurs" and that "the court

will listen to what the community says", his Worship had put too much weight on the need for deterrence.

Having considered these submissions, I consider that this appeal should be dealt with in precisely the same way, and for the same reasons, as the appeal by Mark Dooling (p12). I have pointed to errors as regards certain sentences being made cumulative or concurrent, but they cancel each other out, and so "no substantial miscarriage of justice has actually occurred" in terms of s177(2)(f) of the *Justices Act*. The appeal is dismissed, and the effective sentence of 3 months imprisonment is affirmed.

(3) Patrick Narndu - JA28 and JA31 of 1996

I have already indicated (p3) this appellant's role as principal offender in the incident of 9 March concerning the Council vehicle, and his lesser role (pp1,2) in the incident of 3 March. He was aged 18, and was educated at Port Keats, although he did a year's study at St John's College in Darwin. He had been employed at the Port Keats Social Club until it closed in December 1995 and had been offered a traineeship with the Council electrician.

His Worship described the appellant's role as "a leader and a principal" in the incident of 9 March. He stressed that he had to "adequately" punish the appellant, to ensure "that the community is protected". He noted that the appellant had no prior convictions, and treated that fact "as a matter which goes directly to … somewhat reduce the sentence, as does his plea of guilty." He extended "leniency", because of the clear record. As to the incident of

3 March, the appellant was convicted of the unlawful use of the Council vehicle and for driving in a disorderly manner. For the first offence he was sentenced to 2 months imprisonment; for the second, to 40 hours of community service work together with a $20 victims' levy. As to the incident of 9 March, he was convicted of the aggravated unlawful use of the Council vehicle, unlawful trespass, and dangerous driving. He was sentenced to 4 months imprisonment for the first offence of 9 March, and to 1 month's imprisonment on each of the second and third offences; all 3 sentences were to be served concurrently with each other, but cumulatively upon the sentencing for the offence of unlawful use of 3 March. In the result the total effective sentence for the offending of 3 and 9 March was 6 months imprisonment. His Worship directed that service of this sentence be suspended after 3 months, provided that the appellant entered into a bond in the sum of $500 to be of good behaviour for a period of 9 months, on the usual conditions, and subject to supervision.

As to the sentences arising from the incident of 3 March the sole ground of appeal is that his Worship failed properly to take into account the personal circumstances and antecedents of the appellant. Ms Little rightly stressed that he was a first offender and referred to the care necessary before a young first offender is sentenced to his first term of immediate imprisonment. It is clear that, in general, rehabilitation is the main aim when sentencing a young first offender; but considerations of general deterrence should not be ignored completely - see *GDP* (1991) 53 A Crim R 112 at 116. There must be a "due balancing"; see p12. However, I consider that his Worship took all these

matters properly into account, made a "due balancing", and his sentence lay within the proper exercise of his sentencing discretion; there is no substance in the ground of appeal relied on.

As to the sentencing arising from the incident of 9 March, 3 grounds of appeal were relied on: that his Worship had given undue weight to the principles of personal and general deterrence, had failed to give weight to the age, background and personal circumstances and the clean prior criminal record of the appellant, and had erred in sentencing the appellant to a term of actual imprisonment without properly considering alternative dispositions. His Worship rightly took account of the fact that the appellant was charged with *aggravated* unlawful use; further, the particular role which an offender plays in an offence in which others took part is relevant to his sentence - see *Lowe v The Queen* (1984) 154 CLR 606 at 609, per Gibbs CJ. His Worship explained to the appellant that "your community thinks [your behaviour on 9 March] … bad, serious and … a great cost to the people of Wadeye", and that that was why he had "to give emphasis to the need to stop you, and other people, doing this kind of thing in the future." It had been conceded before his Worship that the appellant was "the most significant of the participants" in the offence of 9 March, one of the 'prime movers'. Ms Little submitted that service of the appellant's sentence should have been fully, and not partially, suspended.

Having considered Ms Little's submissions, and the whole of his Worship's reasons for sentencing the appellant as he did, I am satisfied that there is no substance in any of these grounds of appeal.

In the result, both appeals are dismissed and the sentences and directions are affirmed.

(4) Desmond Narndu - JA29 and JA30 of 1996

I have already referred (p4) to the role of this appellant as principal offender in the incident of 9 March involving the Telstra vehicle, and his lesser role (pp1,2) in the incident of 3 March involving the Council vehicle.

He was aged 19 and had a traineeship with the Council until February 1996. On 7 December 1993 he had been given a non-conviction bond for the unlawful use of a motor vehicle.

As to the incident of 3 March he was convicted of the unlawful use of the Council motor vehicle and for driving in a disorderly manner. For the first offence he was sentenced to 2 months imprisonment and for the second he was ordered to carry out 40 hours of community service work. As to the incident of 9 March he was convicted of the aggravated unlawful use of the Telstra vehicle, dangerous driving, and unlawful trespass. For the first offence he was sentenced to 4 months imprisonment and for each of the second and third offences to 1 month's imprisonment; all of those terms were directed to be served concurrently, but cumulatively upon the sentence of 2 months for

unlawful use on 3 March. In the result the total effective sentence was 6 months imprisonment. His Worship directed that service of this sentence be suspended after 3 months, provided the appellant entered into a bond in the sum of $500 to be of good behaviour for a period of 9 months, subject to supervision.

The same grounds of appeal were relied on to attack the sentencing in relation to the 2 incidents: that his Worship had given undue weight to the need for general and personal deterrence, and had failed properly to take into account the personal circumstances and the antecedents of the appellant. Ms Little noted the gap of some 2 years and 3 months since the appellant had previously been before the court; she stressed his age, 19, and antecedents, in submitting that service of his sentence should have been fully suspended, or he should have been given a non-custodial sentence.

His Worship noted that the appellant was "charged with a serious offence, with substantial impact on the community", and considered that a sentence of imprisonment should be imposed, for reasons he had earlier stated in sentencing others. The sentencing he imposed was precisely the same as that he proceeded next to impose on Patrick Narndu.

Having considered Ms Little's submissions, I am satisfied that there is no substance in them; the appeal is dismissed, and the sentencing and directions of 22 March are affirmed.

(5) Terrence Parmbuck - JA32 and JA33 of 1996

I have referred (p3) to the role played by this appellant in the incident of 9 March involving the Council vehicle. He was aged 18 at the time. On 1 August 1995 he had been sentenced to 2 months imprisonment, with a direction that service be suspended on his entering into a good behaviour bond and carrying out 176 hours of community service work; this sentencing was for disorderly conduct and escaping. His offences of 9 March meant that he was in breach of that bond. Arising from the incident of 9 March he was convicted of unlawful trespass, the unlawful use of a motor vehicle, driving whilst unlicensed, and driving disorderly. For these offences he was sentenced to 1 months imprisonment, 2 months imprisonment, 40 hours community service work plus a $20 victim levy, and a further 40 hours of community service work, respectively. The total effective sentence was 2 months imprisonment, plus the community service work. It was directed that his bond of 1 August 1995 be terminated; he was committed to serve 1 month's imprisonment, to be served cumulatively upon the sentence of 2 months for the unlawful use on 9 March. In the result he was imprisoned for a period of 3 months, after which he was to carry out the 80 hours of community service work.

His Worship noted that the appellant's prior record was not "good"; he had appeared before juvenile courts on 5 occasions between April 1992 and February 1993. He had been convicted of 13 offences, including 7 for the unlawful use of a motor vehicle. He had been given community service work, released on probation, and ultimately sentenced to detention. He had breached his probation. Between March 1993 and August 1995 he appeared before

courts on 5 occasions, 3 of them before the juvenile court. He was dealt with for 8 offences, including one for the unlawful use of a motor vehicle; he received periods of detention, and ultimately a suspended sentence of imprisonment in August 1995. His Worship took into account the appellant's youth and his plea of guilty. While stressing he was involved in offences which were "totally unacceptable in your community and which caused damage, distress and loss", he noted that the appellant was "in a lesser category of culpability" than Patrick and Desmond Narndu.

The sole ground of appeal in relation to both appeals was that undue weight had been given to the need for general and personal deterrence. However Ms Little also submitted that there had been a disparity of sentencing, in comparison with the penalty imposed on a non-appellant Alan Parmbuck (see p5). However, they were not involved in the same incident. Having considered the submissions of Ms Little, I am satisfied that there is no substance in the submissions advanced in support of this appeal. The appeal is dismissed and the sentencing is affirmed.

(6) Robert Parmbuck - JA34 of 1996

I have already indicated the role played by this appellant in the offence of 9 March, relating to the Council vehicle. He is aged 21 years, unemployed, a married man with a young child who lives with his mother and family. His Worship characterized his record of prior offending as "moderately bad"; I note that he has appeared before Court of Summary Jurisdiction on 8 occasions since March 1992, and been convicted of 23 offences; he has been sentenced

to several fairly short terms of imprisonment. He has 4 previous convictions for the unlawful use of a motor vehicle. Arising from the incident of 9 March he was convicted of unlawful trespass and the unlawful use of a motor vehicle. For the first offence he was sentenced to 1 month's imprisonment and for the second to 2 months imprisonment; the sentences were directed to be served concurrently.

The sole ground of appeal relied on was that his Worship had given undue weight to the need for personal and general deterrence.

His Worship treated this appellant, together with Ronald Parmbuck and Mark Dooling as being "the lesser of this group of offenders." He noted that the appellant's role was as a mere joy-rider; that as a man of 21 he was, while young, "not necessarily within the category of young offender for the purpose of the application of [sentencing] principles." He considered that the appellant had "a moderately bad record" of prior offending; see above.

Ms Little stressed that when his Worship, in dealing with the appellant, referred to his earlier general remarks made in the appellant's presence, about the incident of 9 March, he said that the appellant had already heard "what [that incident] means to the community, and why there must be a sentence of imprisonment". That final observation, however, must be read in the context of his Worship's earlier general remarks, from which it is clear that he engaged in a "due balancing" (see p12).

I consider that there is no substance in this ground of appeal; the appeal is dismissed, and the sentence is affirmed.

(7) Ronald Parmbuck - JA35 of 1996

I referred earlier (p3) to the role played by this appellant in the incident of 9 March, relating to the Council vehicle.

He was aged 23, single, and unemployed. Between May 1987 and May 1992 he had appeared before courts on 7 occasions, 3 of them before a Juvenile Court. He had been convicted of 14 offences, 3 of them being the unlawful use of motor vehicles.

His Worship noted that the appellant was not a "young offender, in the sense in which that term is used in the courts". He referred to his earlier general sentencing remarks. He considered that there was a "real gap" in the appellant's prior offending - it was some 10 months - "which assist you".

In the result, he sentenced the appellant in exactly the same manner as he had sentenced Robert Parmbuck (p22) and Mark Dooling (p10); the effective sentence was 2 months imprisonment.

The appellant relied on 3 grounds of appeal: that his Worship had failed properly to take into account his personal circumstances and antecedents; that he had failed to give due weight to the need for rehabilitation; and that he had given undue weight to the need for general and personal deterrence.

In support, Ms Little submitted that the "gap" in the appellant's prior record should have been given more weight, with the result that he should have received a non-custodial sentence. Further, his Worship had not indicated why he considered that only a sentence of immediate imprisonment was appropriate.

I consider that there is no substance in any of these grounds of appeal. His Worship's remarks when sentencing the appellant have to be read in the context of his earlier general remarks. I consider that his Worship engaged in the necessary "due balancing " (see p12), and his ultimate sentencing disposition lay within the proper exercise of his sentencing discretion. The appeal is dismissed, and the sentencing affirmed.

(8) James Lantjin - JA40 of 1996

I have indicated (p1) the role which the appellant played in the incident of 3 March involving the Council vehicle. He had helped to push the vehicle out onto the road, and thereafter was a joy-rider. He was aged 21, and lived with his family. He had been before the courts on 14 occasions between March 1989 and October 1994; two of those appearances were before the Juvenile Court. He had been convicted of some 45 offences including 12 for the unlawful use of motor vehicles. He had been dealt with by way of community work orders, detention, and later, sentences of imprisonment.

His Worship dealt with the appellant on 2 April 1996, when he pleaded guilty to unlawfully using a motor vehicle, unlawful damage, and trespass. His Worship observed that "because of the impact on the community, and related matters" he had considered that it was "appropriate" in the earlier cases to impose "fairly short, but nonetheless emphatically deterring … custodial sentences".

The submission by defence counsel was that the appellant had helped to push the vehicle out and thereafter took part in a joy-ride. His Worship considered that he was therefore not a mere joy-rider, but of "a somewhat higher category [of] blameworthiness". Counsel submitted that the appellant should not receive a sentence of immediate imprisonment, because those who had been sentenced in that way "were much more significantly involved in the actual offending"; it can be seen from the earlier cases that there is no merit in that submission. Counsel stressed the "gap" which had occurred since the appellant's last offending, a period of some 15 months.

His Worship adjourned before sentencing. In sentencing the appellant he referred in general terms to his earlier remarks, to the appellant's role in the incident of 3 March, and to the sentences imposed on those who had been "in the same position as you".

For the first offence he sentenced the appellant to 2 months imprisonment, and for the second and third to 1 month's imprisonment; he directed that all sentences be served concurrently. The sole ground of appeal

is that his Worship gave undue weight to the need for general and personal deterrence. Ms Little submitted that his Worship had wrongly treated the imposition of a short sentence of immediate imprisonment as the only sentencing option. I consider that there is no substance in that submission. In sentencing the appellant, his Worship rightly bore in mind the need to maintain parity of sentencing with the other young men of comparable culpability he had sentenced earlier.

The appeal is dismissed and the sentencing affirmed.

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