

CITATION:	<i>The King v Satour-Brown</i> [2024] NTSC 102
PARTIES:	THE KING v SATOUR-BROWN, Kenneth
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	22238177
DELIVERED:	6 December 2024
HEARING DATES:	3 and 4 December 2024
JUDGMENT OF:	Reeves J
REPRESENTATION:	
<i>Counsel:</i>	
Crown:	G Roth
Defendant:	J Rabl
<i>Solicitors:</i>	
Crown:	Office of the Director of Public Prosecutions
Defendant:	North Australian Aboriginal Justice Agency
Judgment category classification:	C
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

The King v Satour-Brown [2024] NTSC 102
No. 22238177

BETWEEN:

THE KING

AND:

KENNETH SATOUR-BROWN

CORAM: REEVES J

REASONS FOR JUDGMENT

(Delivered 6 December 2024)

The application

- [1] The Crown has applied to restore the whole of the suspended sentence ordered with respect to the defendant, Kenneth Satour-Brown, by Burns J on 30 June 2022.

The legislative principles

- [2] While that sentence and the operational period fixed with respect to it expired on 30 June 2024, s 43(1)(b) of the *Sentencing Act 1995* (NT) permits this application to be made within the period of two years after the expiry of the operational period for a suspended sentence if “it appears...that, during the operational period, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment...”.

- [3] It is also important to note that the combined effect of ss 43(5) and (7) of the *Sentencing Act* is that the Court entertaining such an application must order that the whole or part of the suspended sentence be restored unless “it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the effects of any subsequent offence...”.

The relevant principles

- [4] In *R v Bukulaptji*,¹ Riley J (with whom Thomas J agreed at [10]) set out the following non-exhaustive list of factors to be determined in deciding whether it would be unjust to make such an order:

- (a) the nature and terms of the order suspending the sentence;
- (b) the nature and gravity of the breach and, particularly, whether the breach may be regarded as trivial;
- (c) whether the breach evinces an intention to disregard the obligation to be of good behaviour or to abandon any intention to be of good behaviour;
- (d) whether the breach demonstrates a continuing attitude of disobedience of the law;
- (e) whether the breach amounted to the commission of another offence of the same nature as that which gave rise to the suspended sentence;

¹ [2009] NTCCA 7 (*Bukulaptji*).

- (f) the length of time during which the offender observed the conditions;
- (g) the circumstances surrounding or leading to the breach;
- (h) whether there is a gross disparity between the conduct constituting the breach and the sentence to be restored;
- (i) whether the offender had been warned of the consequences of a breach;
and
- (j) the level of understanding of the offender of his obligations under the terms of the order suspending the sentence and of the consequences of a breach.²

The original offending and the sentence imposed

- [5] This matter has a lengthy and complicated history. It began on 30 June 2022 when the defendant pleaded guilty before Burns J to two counts: that on 9 January 2021 at Tennant Creek, he unlawfully entered a dwelling house with intent to steal; and that at the same time and place he stole \$310 in cash the property of WH.
- [6] His Honour convicted the defendant on both counts and ordered that he serve a total period of two years and seven months' imprisonment commencing on 7 February 2021 and expiring on 6 September 2023. Thereafter, he ordered that that sentence be suspended on certain conditions

² Supra at [35].

with effect from 1 July 2022 and fixed an operational period of two years from that date.

The conditional breaches

- [7] The defendant committed two conditional breaches of that suspended sentence, both of which were dealt with by Burns J. First, on 17 September 2022, less than three months after his release on his suspended sentence, he tested positive to the drug cannabis. On 3 October 2022, Burns J found that breach proven and ordered that no further action be taken.
- [8] Secondly, about two months later, on 30 November 2022, the defendant changed his address without notifying Community Corrections. On 4 May 2023, Burns J found that breach proven and ordered that five months of his suspended sentence be restored backdated to 13 December 2022.

The subsequent re-offending

- [9] The re-offending the subject of the present application occurred just before the second conditional breach mentioned above. It involved two offences both of which concerned the defendant's then domestic partner who I will refer to as SH. First, the defendant was charged with stealing from SH on 26 November 2022. According to the agreed facts the offending conduct for that offence was as follows:

Sometime on 26 November 2022 the defendant returned home and demanded money from [SH] by bank transfer. [SH's] phone was not working at the time and, feeling fearful of the defendant, she handed the defendant her Westpac debit card. The defendant then withdrew \$580 from [SH's] debit card.

[10] Secondly, the defendant was charged with an aggravated assault on SH on 27 November 2022. That offence occurred in [redacted], Tennant Creek after he had persuaded SH to get into the car he was driving at the time. According to the agreed facts the offending conduct for that offence was as follows:

Once she was in a vehicle the defendant slapped her once to the face and punched her once to the back of the head. [SH] was holding [their six-year-old son] [LH] at the time of the assault and was unable to defend herself.

[11] After an unexplained delay, those offences were eventually dealt with in the Tennant Creek Local Court on 18 October 2024. As a result, the defendant was sentenced to 10 months' imprisonment backdated to 16 April 2024 and the unserved balance of four months was suspended with an operational period of 12 months.

The bail conditions and compliance therewith

[12] The defendant was arrested in connection with the re-offending described above on 13 December 2022. He then remained in custody until 16 June 2023. On that date, he was granted bail by the Alice Springs Local Court on the following conditions:

- (a) the defendant will be subject to monitoring by a probation and parole officer, and will obey all reasonable directions.

- (b) The defendant will report to the Officer in Charge at the Alice Springs Police Station between the hours of 8 am and 4 pm every Monday, Wednesday and Friday.
- (c) The defendant will submit to a curfew between 9 pm and 6 am and not leave the nominated residence without prior permission from a probation and parole officer, except in the case of medical or dental emergency.
- (d) The defendant will reside at [redacted], Alice Springs, NT 0870 or any other address as agreed by a probation and parole officer.
- (e) The defendant will not leave Alice Springs.
- (f) The defendant will not directly or indirectly contact SH.
- (g) The defendant shall wear or have attached an approved monitoring device and allow the placing or installation in, and retrieval from, a specified place for the effective operation of the monitoring device.
- (h) The defendant shall comply with the electronic monitoring rules as stipulated in the Rules for Electronic Monitoring document.

[13] These conditions were amended on two occasions. First, on 18 September 2023 to allow the defendant to return to Tennant Creek. And, secondly, on 14 March 2024 to reduce the reporting requirements in the second condition to once per week.

[14] It is not in dispute that the defendant complied fully with these conditions, as amended, until 18 October 2024 when, as noted before, the subject offences were finalised in the Tennant Creek Local Court.

The recent re-offending

[15] Finally, on 2 November 2024, the defendant was arrested in Tennant Creek and charged with two offences: negligently endangering serious harm to CW, his current domestic partner, and unlawfully possessing weapons. Those charges are presently before the Alice Springs Local Court and have not yet been finalised. Nonetheless, the defendant's counsel stated at the hearing of this application that the defendant had instructed him to plead guilty to those charges based on a set of facts that have been agreed with the prosecutor.

[16] In respect of the first charge, those agreed facts state that at about 10.30 pm on 1 November 2024, while engaged in an argument with CW:

(a) the defendant used his right foot to forcefully kick [CW] in her right upper leg, causing [her] to feel fear and experience pain.

(b) the defendant [then] took a further step closer and drew a large machete, approximately 40 cm in length, which was concealed behind his back and held it above his head in a threatening manner. The defendant struck [CW] once to the top of her head causing [her] to feel immense fear, pain and apprehension.

(c) [CW] sustained a laceration to the top of her head, measuring approximately 4 - 5 cm long.

The contentions

[17] The parties agree that 281 days of the sentence ordered by Burns J on 30 June 2022 remain unserved.

[18] The Crown contended that, in the circumstances of the defendant's re-offending in October 2022 and his further more recent re-offending, his sentence should be restored in full and he should be ordered to serve the whole of the unserved portion.

[19] The defendant contended that he had demonstrated "strong compliance" with his bail conditions between June 2023 and October 2024 and that, in the same period, he had taken significant steps to advance his rehabilitation. Accordingly, he contended that he should be allowed to continue those efforts and not be returned to prison.

[20] In support of these contentions he tendered letters from Ms McCoy, the senior clinician treating his complex PTSD condition, his aunt, Ms Elizabeth Brown, his current employer, Mr Dodd, and his former employer, Ms Sheldon. He claimed that those letters provided evidence that he had obtained steady employment, he had become an active parent, he had abstained from alcohol and he had generally rejected his previous dysfunctional lifestyle.

Consideration and disposition

[21] If it were not for the defendant's recent re-offending he would have had a strong claim to be allowed to pursue the laudable initiatives he has taken over the past 18 months, approximately, to achieve his rehabilitation. However, that very serious domestic violence re-offending has, in my view, essentially destroyed all that good work.

[22] When that circumstance is set aside and the other relevant circumstances are considered in light of the list of factors set out in *Bukulaptji*,³ including, in particular, the October 2022 and most recent re-offending, there is no injustice, in my view, in restoring the defendant's suspended sentence in full and requiring him to serve the remaining 281 days of that sentence. However, since he has been in custody since 2 November 2024, I consider it is appropriate to backdate the commencement date of that period of imprisonment to that date.

[23] Accordingly, I order that:

- (a) the sentence suspended by the order of Burns J on 30 June 2022 be restored; and
- (b) the defendant serve the remaining 281 days of that sentence backdated to commence on 2 November 2024.

³ See at [4] above.