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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 22327328

THE KING

and

ALI DEVLIN

(Sentence)

BROWNHILL J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON THURSDAY 14 NOVEMBER 2024

Transcribed by:
EPIQ

HER HONOUR: Mr Devlin, you have pleaded guilty to the following charges on indictment, committed on 26 August 2023.

On Count 1, that you assaulted SB and MM, who were workers working in the performance of their duties, contrary to s 188A of the *Criminal Code*, with the circumstance of aggravation that SB suffered harm.

On Count 2, that you caused damage to property belonging to Moil Supermarket, contrary to s 241 of the *Criminal Code*.

And on Count 3, that you stole wine, the property of Moil Supermarket, contrary to s 217 of the *Criminal Code*.

The maximum penalties for the offences are imprisonment for 7 years, 10 years, and 10 years respectively.

You have also pleaded guilty to the charge on complaint that, on 26 August 2023, you provided a false name to Police when asked to give your full name, contrary to s 134(2) of the *Police Administration Act*.

The maximum penalty for this offence is a fine of 4 penalty units.

The circumstances of the offending are that on 26 August 2023 at about 5:30 pm, you and three co-offenders (being Aldrid Steven Luke Jones, BL, and David Gundari) formed a common intention to go into the Moil Supermarket and steal alcohol. You went in, and one of the four of you picked up a 2-litre cask of wine and walked out without paying for it. Another of you picked up two 2-litre casks of wine and walked out without paying. The casks were worth \$90. You all left the area and drank the wine, becoming intoxicated.

At about 6 pm, you all went back to the store. SB came out and stood in the doorway, telling you that you were not allowed in the store. You tried to get in. SB and MM both closed the door and held it shut so that you could not enter. You all got angry about this, armed yourselves with rocks the size of baseballs and threw them at the front door of the shop, causing it to shatter. The victims opened the door and tried to calm you all down. Three of the four of you threw rocks at the victims. Aldrid Jones held a rock and threatened to throw it by motioning it at the victims. The rocks that were thrown hit the victims to the head, torso and limbs.

SB picked up a baseball bat from within the store to defend himself and MM. You all rushed to the door and tried to get in by kicking the victims and throwing rocks from close range. SB swung the baseball bat towards you to defend himself. Aldrid Jones, was still armed with the rock and he was looking for a clear shot to throw it at SB, and he threatened to do so. After about 30 seconds of assaulting the victims, you all left the area and walked across the oval.

SB went to hospital for treatment for cuts to his head, finger and ear, which needed stitches and bruising to his elbow and knee. MM had cuts to his arm and a

broken little finger from the assault. The damage to the front door cost approximately \$1000 to fix.

I have received photographs of the damage to the front door and some of the rocks thrown.

I have received a victim impact statement from SB. He said he had physical pain from his injuries. He also said he has run the supermarket business for six years and has worked very hard. The incident makes him think he might lose the business and it has put a lot of stress on him and his family, including fear of being killed. His wife and children are very distressed about the incident. He would like you to be banned from his shop.

On the day of the offending, the victims spoke to Police, who viewed CCTV of the incident. You were all arrested on the oval shortly after. When Police asked you to provide your name, you gave them the name Desmond Farrell. When your fingerprints were taken at the Watch house, it became clear what your real name was and that you had given Police a false name. That is the offending the subject of the complaint.

You are now 22 years old.

Your criminal history includes:

- three convictions for aggravated assault or assaulting a worker, the most recent committed in 2022;
- two convictions for aggravated unlawful entry, the most recent committed in 2022;
- two convictions for property damage;
- two convictions for stealing;
- one conviction for unlawful use of a car; and
- one conviction for engaging in contravention of a domestic violence order.

You also have three instances of breach of the conditions of bail.

This offending was committed in breach of a suspended sentence imposed by the Local Court on 29 September 2022 for the two aggravated assaults, the breach of the domestic violence order and the aggravated property offences. There was four months of the suspended sentence to be served.

Your barrister has told me some things about you.

You are now 22 years old. You grew up in Beswick and had a traditional childhood of fishing, hunting and camping. You left school in Grade 4. You can read and write limited English. Your family still live in Beswick, although your father now lives in Tennant Creek. You are single, with no children.

You came to Darwin for the Show in 2023, and could not get back to Beswick as you had no money. You then went drinking and long-grassing in Darwin. You fell in with the wrong crowd.

When you offended, you were drunk, looking for alcohol and money and got tempted by your co-offenders to commit the offending.

You have pleaded guilty to the offences, thereby saving the victims and the community the need for a trial. By that, you have indicated acceptance and responsibility for your criminal behaviour and a willingness to facilitate the administration of justice.

The Crown accepts this was an early plea, but it was in the face of a strong Crown case, given the offending was caught on CCTV.

You did not provide assistance to the victims immediately following the offending and you did not assist Police with their investigations.

I do not have any evidence of remorse for the effects of your offending on the victims.

I propose to reduce the sentence I would otherwise impose for these offences by approximately 20 percent to reflect these matters.

This offending was objectively serious.

It was premeditated and committed in company. It involved two separate instances, one of brazenly stealing \$90 worth of alcohol and then returning to the same place to try and do it again. The victims were workers doing their job, and they were trying to defend their property, their business, and ultimately themselves. You and your co-offenders caused \$1000 worth of damage to the store and assaulted the victims with rocks. The size of the rocks used and the number of co-offenders makes harm and property damage clearly foreseeable, and it is fortunate that the victims did not suffer greater injuries. I have referred to the physical harm they each suffered and to the emotional effects of the offending on SB and his family.

I note that your use of the weapons was opportunistic, and victims' injuries were not serious.

I consider this offending to be towards the lower end of the range of seriousness for this kind of offending.

The offending of providing a false name to Police is also below the mid-range of seriousness for such offending.

The offences you have committed are serious and they do require a strong punishment. This kind of violent and property offending happens far too much, and it must be discouraged. It causes disquiet amongst business owners and the

community generally. A sentence for this kind of offending needs to warn other people that if they do this kind of behaviour, they will face a strong punishment.

The punishment must also be tough enough to make you realise that what you did was very wrong and that you must not do anything like that ever again.

You are not entitled to lenience as a first offender. You were 21 years old at the time of this offending, and I take into account that young people do not have the same decision-making capacities and judgment as older people, which mitigates your moral culpability somewhat. Your youth also means your rehabilitation is the primary sentencing factor here.

You were drunk when you committed the violent offending, but that is not any kind of excuse. It is not put that your childhood experiences mitigate your moral culpability at all.

I must also take into account the need to protect the Territory community from your actions and the risk that you might reoffend in a violent or similar way in the future.

As to your prospects of rehabilitation, I have already referred to your criminal history.

You have no work history.

I am told that you do have a supportive family and you are willing to engage in residential rehabilitation to address your alcohol misuse issues.

You are still a young man and there is time to turn your life around.

I consider your prospects of rehabilitation to be moderate at this stage and to depend considerably on your ability to stop abusing alcohol.

Count 2 is an aggravated property offence within s 78B of the *Sentencing Act*. I am required to take into account that community disapproval of people committing aggravated property offences is adequately reflected in the sentences imposed. If I convict you, I may not impose a suspended sentence but I may impose an intensive community correction order (ICCO) with home detention or an order for an approved work project unless there are exceptional circumstances.

No exceptional circumstances were put to me and I find there are none. Your barrister submitted that I should impose an intensive community correction order, and the Crown did not resist that.

You have been on remand since your arrest on 26 August 2023, so for almost 15 months now.

I am sentencing you for four offences committed in a single episode of offending. In respect of the offence on complaint, I intend to convict and discharge you under s 12 of the *Sentencing Act* because I consider that the criminality of that offending will be wholly captured by the sentence for the other offences. I intend to impose an aggregate sentence of imprisonment for those to be served by way of an intensive community correction order. As I am required to do, I will indicate the individual sentences I would have imposed.

Your co-offender, David Gundari, who was 52 years old, was sentenced in March 2024 to imprisonment for 2 years, with a non-parole period of 12 months. He had some criminal history, less extensive than yours, but had more breaches of court orders. That is why a non-parole period was imposed for him.

Your co-offender, Aldrid Jones, who was 39 years old, was sentenced in June 2024 to imprisonment for 2 years, with a non-parole period of 12 months. He had an extensive criminal history, as well as numerous breaches of court orders.

Your other co-offender, BL, is yet to be dealt with.

The main difference between the two sentenced co-offenders and yourself is your youth. Even though the roles of you and the co-offenders in the offending were essentially equal, given your youth, I intend to impose a lesser sentence than those imposed on your much older co-offenders.

I have received a report under s 103 of the *Sentencing Act* about your suitability for an ICCO with work on an approved project. The report says a referral has been made to the BRADAAG residential rehabilitation program but an assessment has yet to be conducted. However, Community Corrections would be able to help you with the assessment process upon your release. You wish to live with your father in Tennant Creek, and he said you are welcome to live with him and he will support you in your attendance at BRADAAG. You have been found suitable for general supervision and for community work and an approved work project is available. You are thought to be able to complete 16 hours of community work per week.

I will now sentence you, Mr Devlin. Can you please stand up?

I convict you of the offences.

In relation to the suspended sentence on files 22221459 and 22226210, I restore the remaining 4 months in full and order you to serve it, backdated to 26 August 2023.

For the offending on the complaint, I unconditionally discharge you.

For the three offences on the indictment, I impose an aggregate sentence of imprisonment for 18 months, commencing at the end of the suspended sentence, namely on 26 December 2023.

If I had not imposed an aggregate sentence, I would have sentenced you as follows:

12 months imprisonment on Count 1;

8 months imprisonment on Count 2, with 3 months cumulative on the sentence on Count 1; and

8 months imprisonment on Count 3, with 3 months cumulative on the sentence on Count 2.

The term of the imprisonment is to be served by way of an intensive community correction order, commencing on 18 November 2024 for a period of 7 months and on the following conditions.

You can sit down while I read the conditions out.

- 1) You must not, during the period of 7 months from 18 November 2024, commit another offence (whether in or outside the Territory) punishable on conviction by imprisonment.
- 2) You must be of good behaviour for the period the order is in force.
- 3) You will be under the ongoing supervision of a Probation and Parole officer, and must obey all reasonable directions.
- 4) You must reside at [redacted] or any other address approved by a Probation and Parole officer, and must not change that address without their permission.
- 5) If the Commissioner has reasonable grounds to do so, you may be required to reside at a specified place for the period specified in the notice, wear or have attached an approved monitoring device for the period specified in the notice and allow the placing or installation in and retrieval from a specified place of anything necessary for the effective operation of the monitoring device.
- 6) You must participate, for 100 hours, in an approved project as directed by a Probation and Parole officer.
- 7) If assessed as suitable, you must participate in the BRADAAG residential rehabilitation program or any other program for which you are found suitable as directed by a Probation and Parole officer. You must participate fully in that program and do nothing to cause your early discharge from the program.

- 8) You must not possess or consume alcohol and must submit to testing by a Probation and Parole officer or a Police officer.
- 9) You must participate in assessment, treatment and/or counselling as directed by a Probation and Parole officer.

I will also make an order that Mr Devlin be repatriated to Tennant Creek on his release.

Is there anything arising from any of that?

MS HOUEN: No, your Honour.

MR MCMASTER: Your Honour, could I just have a moment just to make sure the home detention condition doesn't have to apply because it's an aggravated property offence. That was the only thing arising.

HER HONOUR: I think the options are either home detention or - - -

MR MCMASTER: It was either/or.

HER HONOUR: Yes.

MR MCMASTER: Yes.

HER HONOUR: Yes, or an approved work project.

MS HOUEN: That's my understanding.

MR MCMASTER: Thank you, your Honour.

HER HONOUR: All right. Thank you both for your assistance in the matter. Ms Houen, I am sure you will explain to Mr Devlin about all of that.

MS HOUEN: I will. Thank you, your Honour.

HER HONOUR: But, ultimately, Mr Devlin, you will be released from prison on Monday. You will be under a special kind of order, which means you have to be supervised by Community Corrections. You will have to live at your father's place in Tennant Creek and you will have to do the residential rehabilitation program when there is a bed available there for you.

Also, you are not allowed to drink alcohol and you will have to submit to testing. If you can comply with all of those conditions for a period of 7 months, that will be the end of your sentence. If you cannot and you breach some of those conditions, you will be brought back to Court and you might have to be dealt with again. You could be sent back to gaol. Do you understand? All right. Thank you.

MS HOUEN: Thank you, your Honour.

MR MCMASTER: Please the court. Thank you, your Honour.
