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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 22237465 and 22303983

THE KING

and

JE

(Sentence)

HUNTINGFORD J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON WEDNESDAY 27 NOVEMBER 2024

Transcribed by:
EPIQ

HER HONOUR: JE, you have pleaded guilty to the following offences on file 22237465 which were committed on 3 December 2022.

First, stealing food and drink from the Puma service station in Malak. The maximum penalty for that is imprisonment for 7 years.

Second, stealing food and drink from the Woolworths supermarket at Karama. It is actually cigarettes, I think. The maximum penalty also is imprisonment for 7 years.

Next, robbing MI of car keys, with a circumstance of aggravation that you were in company with four other youths, and the maximum penalty for that offence is imprisonment for life.

Next, unlawfully using a motor vehicle, and that was the Toyota Yaris belonging to MI, with a circumstance of aggravation that the vehicle was damaged and the cost of repair was more than \$1000. The maximum penalty for that offence is imprisonment for 7 years.

You also entered a plea of guilty on file 22303983 to a charge that on 1 February 2023 you robbed the Thirsty Camel bottle shop at Leanyer, with a circumstance of aggravation that you were in company and that you were armed with a weapon. It was HW that was armed with a weapon, of course. The maximum penalty for that offence is imprisonment for life.

I will now say something about the facts of the offending.

You were 14 years old when you committed these offences. You were, on 3 December 2022, in company with HW, aged 11, TC, aged 12, JD, aged 16 and SM, aged 15. The victim in counts 3 and 4, MI was unknown to you.

On 3 December 2022, just before 7 pm, you and the co-offenders got off a public bus at Malak. Two minutes later, you all attended the Puma service station nearby and began taking items from the fridges and shelves. You pushed over shelves and attempted to jump behind the service counter.

Your group then left the store with the stolen property, which was identified as four packets of chips and three bottles of Coca-Cola. You and the other boys had your faces covered during the theft, but you were wearing the same clothes you had on when you were seen on CCTV a minutes earlier exiting the public bus, with your faces covered, so you were easily identified.

At about 20 past 9:00 the same night, so just over a couple of hours later, you and the four co-offenders were at the Karama shopping centre. You were seen on the CCTV. You all ran inside the Woolworths supermarket. TC and JD jumped the service counter area, stole an unknown number of packets of cigarettes before you all ran away.

You and the co-offenders then walked to a unit complex at [redacted], which is directly opposite the Karama shopping centre, and approached MI as he was standing near his car. That car was a Toyota Yaris with an approximate value of \$10,000.

You all encircled the victim, intimidating him and preventing him from leaving. TC and SM pushed the victim in the chest, causing him to stumble backwards, and TC then grabbed the keys from his hand. TC and SM then entered the vehicle and drove it a short distance before picking up, JD and HW. You all then left the area. TC's driving was very poor and he caused the front bumper of the Yaris to fall off.

At 11:15 pm, JD drove the Yaris to Coles Express in Durack and TC filled it with fuel worth about \$40. JD then drove away without paying for the fuel, and you were in the car when that happened. You are not charged with stealing the fuel and you are not being sentenced for that. Those are the facts of the unlawful use of the motor vehicle. You were arrested in Moulden on 5 December 2022 and were bailed the same day.

The facts on file 22033983 are that on 1 February 2023 you were with TC, HW, also NT, aged 15, and three others who were not identified when at about 9:20 pm, you created a disturbance inside the Hibiscus shopping centre. You were wearing some distinctive clothing, which was seen on the CCTV.

Sometime after that, you and the co-offenders formed a common intention to rob the Hibiscus Thirsty Camel bottle shop. You, TC and NT and one of the unknown co-offenders attempted to conceal your identity by covering your faces with your clothing. You also switched shirts with one of the co-offenders.

At 9:45, you and the co-offenders rushed on foot into the Hibiscus Tavern drive-through from Brolga Street. HW was at the head of the group. He charged at staff while brandishing a black bladed knife in his right hand. When close enough, he held the blade in close proximity to staff, particularly RJ, holding it overhead in a violent and menacing manner. Until that point, you were unaware that HW had a knife in his possession.

With the knife in hand, HW feigned a quick overhead strike towards staff in a threatening manner to cause fear in order to prevent interference. You and the co-offenders then climbed over the service counter and raced around the side to raid the spirits cabinet.

You, HW and TC and an unknown co-offender stole various bottles of liquor. HW took a 700 ml bottle of Bundaberg, you stole a 750 ml bottle of Johnny Walker Gold. TC took two 700 ml bottles of Jim Beam and the unknown co-offender took a 500 ml bottle of Jack Daniels and another unknown spirit. You all then ran towards Brolga Street.

As you were leaving, HW again threatened staff, holding the knife overhead and once more feigned a downward strike before fleeing. At the last minute, NT took a

bottle of spirits before also running towards Brolga Street. He was chased and dropped the bottle on the ground in the drive-through area.

You and the co-offenders named were identified on the CCTV and you were arrested at 10:50 am the next day.

I have read the victim impact statement from MI dated 4 December 2022. He says that he is traumatised and although he was not physically hurt, he was scared. His wife and children were also affected. MI worries that he was unable to protect his family. The loss of the car was inconvenient because it meant that he was unable to take his children to school and affected his and his wife's ability to get to work. MI would have liked compensation for the damage to his car.

You were an active participant in all of this offending, while not being the most involved in all aspects. In that regard, I note that you did not brandish the weapon in count 6 and you did not drive the car in count 4.

In relation to counts 1 and 2, you stole chips and soft drinks from Puma and acted in common purpose in stealing the cigarettes from Woolworths. Overall, the value of the goods stolen was low, particularly in relation to the offending in count 1. No one was harmed or directly threatened and no weapons were used in relation to that offending.

There was some attempt to conceal your identity, but given the presence of the CCTV and the fact that you went to the Puma on the bus, which also had CCTV, that attempt was completely ineffective.

The aggravated robbery involving MI was more serious. You and the co-offenders encircled him, causing him fear and then he was pushed by others in the group. No weapon was used. MI was not injured. While you did not personally touch MI, you acted as part of a gang, which made it impossible for the victim to get away.

Acting in company is, of course, the circumstance of aggravation which gives rise to the maximum penalty of life imprisonment. It is not an additional aggravating factor, and I am not taking it into account in that way.

You all then took the car and damaged it. The use of the car involved you as a passenger involved in the robbery, being a passenger when TC drove it away from the scene. The fact that the car was damaged was also a circumstance of aggravation captured by the charge in count 4, which gives rise to the higher maximum penalty.

In the circumstances, counts 1 and 2 are below mid-range examples of that sort of offending. Count 3 is somewhere in the upper band of a low range, approaching mid-range. Count 4 is below mid-range, noting that you were a passenger.

The robbery at the Hibiscus bottle shop is the most serious offence. It is somewhere in the lower mid-range, so far as you were concerned, for a robbery involving a weapon. The nature of the weapon used by HW, the knife, elevates the seriousness.

You were, however, not the most culpable offender. That was HW. While you did not use the weapon yourself and you did not know it was there until HW produced it on the first occasion, you continued to participate in the robbery after the weapon was produced and did nothing to attempt to stop HW possessing or brandishing it. You were an active participant and you have significant moral culpability.

I take into account also that although two threats were made by HW, no one was actually hurt. There was some minimal advance planning, which is evidenced by the fact that you and others made some attempt to conceal your identities, but the offending has the nature of something that was, essentially, spontaneous.

As to your personal circumstances, you are now 17 years of age. You were born and raised in Darwin and you are in the care of Territory Families, as you have been for most of your life. Your mother lives in Perth and your father in Kalkarindji. You see them occasionally. You have family ties to Kalkarindji and the Geraldton area and you say that you enjoy being on country at Kalkarindji with family.

You say that your goal is, and always has been, to gain employment. You recently got a job for a short time with a large company, doing construction work, which involved some training and then full-time hours. Unfortunately, you were unable to maintain that employment but you say that you want to try again.

You enjoy spending time with your dog, a Shar-Pei named Drako, and you have been responsible for looking after Drako for nearly two and a half years and this has helped you to learn responsibility. Your care for your dog is noted as a strength in the presentence report.

Your plans for the future are, as I said, to work and to stay employed. You are aware that you will be 18 in August next year and you will need to be able to look after yourself.

The document from Territory Families received into evidence as P8 sets out some bail compliance issues. It appears that you breached the conditions of your bail by associating with people you are not to associate with, including two of the accused in this matter in August and September 2024, breached curfew between July and October, failed to comply with written directions and you also are reported as being intoxicated on some occasions.

Your counsel points out there is no detail as to the nature or quality of those breaches, and that is certainly the case and I do not take them into account in relation to the specifics; however, they do indicate to me generally that you can sometimes struggle with following rules.

On the other hand, the exhibit in D1 is your structured routine in the residence where you live in the care of the CEO. The plan has periods for work, self-care and time for relaxation and external activities on weekends, such as fishing and hanging out with friends.

I understand that since you have ceased employment you are now being referred to re-engage in the First Steps program, with a goal of working towards building skills and getting new employment. Your engagement with the First Steps program in the past is reported in the presentence report as "slow to engage" initially, but you eventually gained a lot of skills, including a White Card as a result of your participation.

You were found to have built strong relationships with peers and to engage well with staff and to positively engage with team activities. So that is evidence that you can behave well and appropriately.

You have a criminal history from the Youth Justice Court. Prior to the offending for which you are being dealt with today, you were dealt with in the Youth Justice Court in October 2022 for five property-related matters, all of which occurred on 15 May 2022. Two of those offences were aggravated unlawful use of a motor vehicle, the same offence as count 4 for which you are being sentenced today. All of that offending was dealt with by way of a good behaviour order.

It is noted that the offending for which you are being sentenced today took place just less than seven weeks after that good behaviour order was imposed. So you do not seem to have taken that very seriously at the time since you committed the same offence in count 4, along with the more serious offending of two robberies.

You also have four previous findings of guilt for stealing and one for damaging property from various dates between October 2020 and June of 2021, which were all dealt with by the Youth Justice Court on 27 August 2021. And you were also dealt with in February of this year for a range of offending from October 2022 through to March of 2023.

It appears that, with the exception of one relatively less serious matter of a different character from July this year, you have not been in further trouble. You certainly do not appear to have any further property-offending-related trouble since March of 2023.

I note in relation to all of your previous offending that in none of those matters was a conviction recorded against you and all of them were dealt with by way of various good behaviour bonds.

In relation to the sentencing principles, I note that stealing from shops is prevalent. The attitude displayed by you and your friends was brazen and demonstrated a complete disregard for the rights of others. The behaviour in counts 1 and 2 was frightening for the shop assistants and, along with the bottle

shop attendants who were the victims in count 6, are a vulnerable class of workers so far as this offending is concerned. Unlawful use of motor vehicles is also prevalent offending.

All of this offending is serious. Counts 3 and 6 are particularly serious offences, as indicated by the maximum penalty. Robbery of the type inflicted on MI and the stealing of alcohol from bottle shops, which is count 6, is too common in Darwin.

This type of offending, particularly involving weapons, significantly contributes to a lack of safety of the community generally. People are heartily sick of this behaviour. The community rightly expects that the sentence will take into account the need for both denunciation and deterrence.

You were very young at the date of this offending and you are still a youth. While there is some indication of bail non-compliances, as I have mentioned, there is no further offending associated with property crime since March of 2023.

Overall, although your behaviour has been far from perfect, it seems that there has been some improvement since March of 2023. That is quite a long period of time. You have also been on bail for a considerable period of time for a young person.

I also note, so far as the robbery offences are concerned, you do not have any previous convictions for violence, and robbery is the most serious offending for which you have been charged and you have never been sentenced in the Supreme Court before.

Your history, including that you were on a good behaviour order at the time of the offending, indicates there is some work for this sentence to do in not only discouraging others but also impressing upon you that you must not do anything like this again.

Now is the time for you to stop your offending and get onto the right path. If you do not do that, you will spend every increasing periods in gaol, which will make it very hard for you to reach your potential, and that would be a pity.

It is very encouraging that you previously got a job; however, although you said that you were keen to maintain employment, you were unable to do so. The presentence report says that you worked in a construction company between 21 October and 13 November 2024.

Your employment appears to have been terminated because you only attended full-time employment on two days. However, the report says that you initially worked hard and built relationships with co-workers and demonstrated a good work ethic.

Although the company terminated your employment, they have told the presentence report writer that you would be welcome to try again if you were able to commit to doing more work hours. If you take that up, it is an opportunity for you to

gain training and experience in the construction industry and it would significantly enhance your prospects.

You have had a difficult start in life, having first come to the attention of child protection in around 2009 and having been subject to protection orders since 2015. The presentence report sets out a lot of difficulties, which I will not detail here but I have taken them into account.

In summary, your parents have not been able to play a large part in much of your life, although the presentence report says that you did live in Darwin with your father for a time.

You currently live in residential care arrangement and had done since 2021. The presentence report says that you have strong and positive relationships with your carers. The carers say that you are responsive and easy to work with and that you take pride in your environment and help around the house.

This is a case where your childhood has been marred by various types of dysfunction, and as I have said, I take that into account. That background has the effect of reducing your moral culpability for the offending and as a result, moderating the weight to be given to general and specific deterrence.

You entered a plea of guilty at an early time on counts 1 to 4 and you are entitled to the full utilitarian discount for that. At that time, count 6 was contested. However, I am advised that although that charge was listed for trial, shortly before the trial, the Crown accepted a proposed amendment to the facts previously offered on your behalf and the trial was vacated. In the circumstances, it does not appear that you could have entered a plea to count 6 at an earlier time.

Your plea is some evidence of your acceptance of responsibility, although in the face of an apparently strong Crown case. I will afford you 25 percent discount on each of the sentences which I would otherwise have imposed across all files.

The seriousness of this offending means that noting the principles and provisions of the *Youth Justice Act*, a term of detention is the only appropriate punishment, in my view. I take into account in particular in making that decision the need for you to make more positive peer associations, to give you an opportunity to develop in socially responsible ways and to be reintegrated into the community, while balancing your needs with the rights of the victim and the interests of the community. I also note that in sentencing young offenders, detention is a last resort.

It is important in sentencing young offenders to clarify the sentencing regime used. In the circumstances of this case, I consider it appropriate to proceed under the powers in s 82(1)(a) of the *Youth Justice Act* and exercise the court's powers under that legislation.

This is because of your youth at the time of the offending and your relatively moderate role in the most serious offending. In proceeding under that Act, it is

necessary to consider whether to record a conviction. A conviction is not a mere administrative act; it is part of the sentence and a significant act of legal and social censure.

Recording a conviction can have an ongoing detrimental effect upon the rehabilitation prospects of a young offender, including in relation to such matters as future employment, licencing and insurance. In this case, the seriousness of the offending in counts 3 and 6 and the fact that you have prior findings of guilt for property offending, in particular for unlawful use of a motor vehicle, might suggest that a conviction was required.

On the other hand, your youth at the time of the offending, the fact that you are now trying to turn your life around, particularly by seeking employment, and your relatively good record over the period since March of 2023 lead me to the view that a conviction is not required in relation to any of this offending. As you apply for jobs, a conviction is likely to hinder your chances and therefore has real potential to derail your rehabilitation.

In relation to concurrency and totality, counts 1 and 2 were separate offences with different victims which took place at different locations. But they occurred on the same night and in close geographic proximity. Counts 3 and 4 were one course of conduct, and sentences for those offences should be concurrent. Count 6 was entirely separate offending occurring on a different day. Count 6 is also, as I have said, the most serious charge on the indictment.

There will be some concurrency between sentences for reasons of totality in order to achieve a sentence which, in my view, reflects the overall criminality of what you have done.

I note that you have spent 45 days in detention in relation to these files and that the appropriate backdating date is 13 October 2024. I have considered all of the factors again in relation to the question of suspension of your sentence. In the circumstances, I do not consider that your rehabilitation will be assisted at this point by returning you to detention.

In fact, I think it would be positively damaging because you would be likely to lose what is perhaps your best chance for employment and training, as you are on the cusp of adulthood and receiving the support of the Territory Families program, which will likely cease after you are 18.

In the long run, returning you to detention at this point is likely to reduce rather than enhance community safety by making it perhaps more likely that you will reoffend. And therefore I intend to suspend the remainder of your sentence immediately.

That suspension will be on the conditions in the presentence report, which were these, JE.

- 1) That you follow all reasonable directions and supervision of the youth justice officers (that is the blue shirts.)
- 2) That you submit to urine testing as directed by a youth justice officer.
- 3) That you not associate with persons directed by a youth justice officer.
- 4) That you attend educational and therapeutic programs as directed by a youth justice officer.

I think there is one missing there. It should be no alcohol and no drugs, I think.

MS NICHOLS: Yes. That would be supported.

HER HONOUR: And of course, no further offending. So you have to be of good behaviour.

Do you understand that, JE? You have to do what the blue shirts tell you. No alcohol or drugs, and they can test you. If they tell you not to associate with people that are bad for you, you have to keep away from them. And you need to go to training or programs if they tell you to.

You understand that? Can you follow those rules, JE? Okay. All right now, stand up, JE. We will do the sentence at this point.

So count 1 on the indictment, that is the stealing from the Puma, without conviction, you are sentenced to detention for 1 month, backdated to 13 October 2024.

Count 2, that is the stealing from Woolworths, without conviction, sentenced to detention for 1 month, concurrent with count 1.

Count 3, without conviction, sentenced to detention for 6 months, cumulative on count 2. That was the robbery of the car.

Count 4, without conviction, sentenced to detention for 4 months, concurrent with count 3.

Count 6, without conviction, sentenced to detention for 9 months, commencing 2 months after the sentence on count 3.

So the total effective sentence is 12 months' detention, backdated to 13 October 2024 and suspended immediately on the conditions that we have been through. The s 98 period in which you must not commit any further offences is 12 months from today.

All right. Take a seat, JE. JE, I tell you again, if you commit another offence, you will be brought back here, and it is quite likely that you will have to serve some

or all of that outstanding period. All right. You have got quite a lot of period of detention outstanding.

After you turn 18, any period of detention that you are ordered to serve would be in the adult gaol. So it is very important that you follow the rules and it is extremely important that you do not commit any more offences. Do you understand that?

Is there anything arising?

MS NICHOLS: No, your Honour.

MS HOUEN: Nothing arising. Thank you.

HER HONOUR: All right. Thank you for your assistance.

We will adjourn.
