

*Daniels v Lyons* [2016] NTSC 52

PARTIES: DANIELS, Curtis

v

LYONS, Richard

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE  
NORTHERN TERRITORY  
EXERCISING APPELLATE  
JURISDICTION

FILE NO: LCA 14 of 2016 (21629085)

DELIVERED: 13 OCTOBER 2016

HEARING DATES: 13 OCTOBER 2016

JUDGMENT OF: RILEY J

APPEAL FROM: JUDGE BIRCH

**REPRESENTATION:**

*Counsel:*

Appellant: D Thomas

Respondent: G Dooley

*Solicitors:*

Appellant: Central Australian Aboriginal Legal Aid  
Service

Respondent: Director of Public Prosecutions

Judgment category classification: C

Judgment ID Number: RIL 1601

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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT ALICE SPRINGS

*Daniels v Lyons* [2016] NTSC 52  
No. LCA 14 of 2016 (21629085)

BETWEEN:

**CURTIS DANIELS**  
Appellant

AND:

**RICHARD LYONS**  
Respondent

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered *Ex Tempore* 13 October 2016)

- [1] On 11 July 2016 the appellant was dealt with in the Local Court for the offences of aggravated assault and contravention of a Domestic Violence Order. In relation to the aggravated assault he was sentenced to imprisonment for a period of 18 months and in relation to the contravention of the domestic violence order to imprisonment for a period of two months, those sentences to be served cumulatively, giving a total sentence of imprisonment for 20 months. He now appeals against the sentences primarily on the ground that they were manifestly excessive in all the circumstances.

## **The Offending**

- [2] The offending occurred on 21 June 2016 in Tennant Creek. The victim was the wife of the appellant and she was the protected person under the terms of a Domestic Violence Order made against the appellant. Contrary to the terms of the order the appellant was in her presence whilst under the influence of alcohol. The appellant took exception to the victim choosing to stay with a female friend overnight rather than return to his address. He became angry and walked up to her and pushed her to the right shoulder knocking her to the ground. This caused a cut above her eyebrow. Police were called.
- [3] The appellant was subsequently arrested and was noted to be “very drunk”. He cooperated with police. He recorded a breath analysis reading of 0.187 grams of alcohol per 210 litres of exhaled breath.

## **The Domestic Relationship**

- [4] The appellant, who was aged 23 years at the time of the offending, had not been in trouble until he developed a relationship with the victim. In January 2015 he was convicted of an aggravated assault upon her and sentenced to a period of imprisonment which was suspended. In May 2015 he was again convicted of aggravated assault upon her and sentenced to a further period of imprisonment and the original suspended sentence was restored. In January 2016 he came before the court for breaching a domestic violence order and was fined. He was also sentenced to a period of imprisonment for

a further aggravated assault upon his wife. At the time of dealing with the present matter the Local Court Judge observed that this was the “fourth occasion in a very short space of time” in which the appellant had assaulted the victim and said there was “a pattern of domestic violence being perpetrated” by the appellant upon the victim. On each occasion the offending occurred when the appellant was under the influence of alcohol.

### **The Sentence**

- [5] In determining the sentence, the Judge commented upon the prevalence of such offending within the wider community and referred to the need to give emphasis to both personal and general deterrence. The need to provide protection for the victim was also identified. The appellant was given credit for his early plea of guilty and his acceptance of responsibility for his conduct. The sentence was backdated to commence on the date the appellant had been taken into custody.
- [6] The sentencing Judge noted the appellant had been assessed as suitable for supervision by Community Corrections but observed that the appellant had previously demonstrated an inability to comply with the terms of a suspended sentence and also with the terms of relevant domestic violence orders. The Judge determined that it was appropriate to set a non-parole period to assist him in rehabilitation. His Honour fixed a non-parole period of 10 months.

## **The Grounds of Appeal**

- [7] The appellant complained that the sentencing Judge failed to give due weight to the appellant's prospects for rehabilitation and imposed a sentence which was manifestly excessive in all the circumstances.

## **The Appeal is Conceded**

- [8] In written submissions the respondent conceded that the appeal must be allowed. It was acknowledged that the sentence imposed in relation to the aggravated assault was manifestly excessive.
- [9] In my opinion the concession was correctly made. The assault was very much to the lower end of the scale of seriousness for such offences. The assault consisted of a single push to the shoulder of the victim which caused her to fall. It was not suggested that the push was especially violent or forceful. However, the victim was affected by alcohol and fell to the ground. The incident was not accompanied by further violence of any kind. It was a spontaneous action and the whole episode was of short duration. No weapon was used and there was no punching of the victim. The push was to her shoulder as opposed to any more vulnerable area of her body. As a result of the fall she suffered a single cut to her eyebrow which did not require medical attention.
- [10] It was an aggravating circumstance of the assault that it occurred while the appellant was in breach of a domestic violence order.

[11] In those circumstances a sentence of imprisonment of 18 months is disproportionate and, in my opinion, is manifestly excessive. It is unnecessary to consider the other submissions made on behalf of the appellant.

[12] The appeal is allowed and the sentence set aside.

### **Resentence**

[13] It is necessary to resentence the appellant. Having regard to the matters placed before the sentencing Judge including the nature of the assault, the personal circumstances of the appellant and his history of offending I regard a sentence of imprisonment of five months as appropriate.

[14] In relation to the breach of the Domestic Violence Order, given his criminal history including previous breaches of domestic violence orders, I see no reason to interfere with the sentence of imprisonment for a period of two months imposed by his Honour.

[15] I direct that the sentences be served cumulatively giving a total head sentence of imprisonment for seven months to commence 21 June 2016.

[16] The appellant has not been given the benefit of supervised release in the past. His earlier sentence was not the subject of supervision. In my opinion this is an appropriate case for a partially suspended sentence. In all the circumstances I direct that the sentence be suspended with effect from 21 November 2016. This will enable him to enter into the Central Australian

Aboriginal Alcohol Program Unit Residential Rehabilitation Program where a bed will be available for him on that day. The conditions of suspension of the sentence include that he be under the supervision of the Department of Correctional Services for a period of 12 months from the day of his release. The operational period will be 12 months from that date. Other conditions of his supervision include:

- he shall enter into the CAAPU Residential Rehabilitation Program on 21 November 2016, he will comply with the requirements of that program, participate fully in the program and will do nothing to cause his early discharge from the program,
- he must not, during the period of the order, commit another offence (whether in or outside the Territory) punishable on conviction by imprisonment,
- he is under the ongoing supervision of a probation and parole officer, must obey all reasonable directions from a probation and parole officer, and must report to probation and parole officer within two clear working days after the order comes into force,
- he will tell a probation and parole officer of any change of address or employment within two clear working days after the change,
- he must not leave the Territory except with the permission of a probation and parole officer,

- he will not purchase or consume alcohol and will submit to testing as directed by a probation and parole officer or a police officer,
- he will, at the direction of a probation and parole officer, attend and complete the Family Violence Program, participate fully in that program and do nothing to cause his early discharge from the program,
- he must wear or have attached an approved monitoring device in accordance with the directions of a probation and parole officer, and allow the placing, or installation in, and retrieval from, the premises or place specified in the order of such machine, equipment or device necessary for the efficient operation of the monitoring device.