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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 22018411

THE KING

and

MATEJ-HOI TSUNG VANKO

(Sentence)

HUNTINGFORD J

TRANSCRIPT OF PROCEEDINGS
AT DARWIN ON MONDAY 4 NOVEMBER 2024

Transcribed by:
EPIQ

HER HONOUR: Mr Vanko, you have pleaded guilty to two counts on the indictment of 7 May 2024. The first charge was that you took part in a riot, contrary to s 65 of the *Criminal Code*. The maximum penalty for that offence is imprisonment for 3 years.

The second offence is that you caused damage to property belonging to another, contrary to s 241 of the *Criminal Code*. The maximum penalty for that offence is imprisonment for 14 years.

The offending took place on 13 May 2020. On the evening of that day and into the early hours of the next morning, there was a substantial disturbance at the Darwin Correctional Centre, involving multiple prisoners who escaped at different times and in different groups from accommodation sectors within the prison.

During the disturbance, at least three buildings were set on fire by a prisoner or prisoners, and various buildings were ransacked and damaged by different prisoners.

You have pleaded guilty to being involved in the riot connected with that disturbance, but you are not charged with any of the various aggravated forms of the riot offence in s 66 of the *Criminal Code*. You are, of course, not being sentenced for any of the various offences set out in that section.

The aggravated forms of the offence each have a maximum penalty of imprisonment for 14 years; significantly greater than the maximum penalty for the offence to which you have pleaded guilty in count 1, which is 3 years.

In accordance with s 63(4) of the *Criminal Code*, when a group of people are unlawfully assembled and start to act in so tumultuous a manner as to disturb the peace, the assembly is called a riot and the people assembled are said to be riotously assembled.

The simple offence of riot in s 65, without the aggravating features, is, however, serious, because it involves a group using its numbers to achieve an unlawful purpose that it is likely to cause fear in other people. That fear is as to the inherent risk of injury and/or damage to property which will result from the mob.

In relation to count 2, the property which you are being sentenced for damaging, is:

- 1) A glass door in sector 6, which was damaged when you rammed a metal bedframe against it;
- 2) The security screen on your cell window in sector 6, which was bent;
- 3) Two computer screens in sector 8, one of which you are shown on the CCTV smashing with a base of a fire extinguisher;

- 4) Two fire extinguishers which you damaged by removing them from their holders and throwing one of them over a fence; and
- 5) Barbed wire on the roof of the education building, which you cut.

You are not being sentenced on the basis that you have damaged other property at the Darwin Correctional Centre, including property damaged by fire, which was a significant part of the total damage bill of around \$27m resulting from the actions of prisoners on 13 May 2020. You are not charged with arson, and so you are not being sentenced on that basis either.

At the time of these events, you were housed in Sector 6 Building B corridor 6B3.

At about 7:30 pm on 13 May 2020, a prisoner, FIR, housed in Sector 6, was frustrated about not being moved to a different cell. He smashed a glass window in Sector 6 Building C and exited that building. Other prisoners in Sector 6 saw what had happened and commenced making preparations to break out of their accommodation.

At around 8:46 pm, another group of at least five prisoners broke out of Sector 6 Building C. On seeing these prisoners running about the facility, prisoners in Sector 6 Building B became agitated and started breaking out. Some of these prisoners went to see prisoners from corridor 6 B3, including you.

Just after 8:50 pm, another prisoner in your corridor removed a metal bedframe from the external sleep-out area and unsuccessfully tried to use it to break out. Shortly afterwards, you and another prisoner, P, picked up a bedframe and attempted to smash a window at the end of the corridor. At that point, a group of eight Sector 6 prisoners, not including you, were at large in the prison grounds.

Sometime later, you left your Sector 6 accommodation, damaging property in the process, which is part of the property the subject of count 2.

At around 9 pm, you met up with a group of Sector 6 prisoners in the open area directly in front of Sector 5A guard complex. You had a makeshift weapon with you, as did other members of the group.

The group, which at times involved up to ten prisoners, behaved in a riotous manner over a number of hours. You and the group you were with managed to break into an officer area within Sector 5A and commenced to barricade yourselves in, anticipating a correctional officer response. Numerous office items were damaged in the process.

An unknown person then set alight to the Sector 5A building, causing your group to remove the barricade and depart the area.

Some of the group had armed themselves with items from building 5A. You were carrying a fire extinguisher.

The group you were in, now comprising ten prisoners, then climbed a number of fences, moving from Sector 5 to Sector 6 and then Sector 7 and then over the fence into Sector 8 until reaching the sports and recreation building in Sector 8.

At 9:17, you were seen on the CCTV attempting to smash the glass door to the sports and recreation building with the base of the fire extinguisher. Prisoner H then smashed the door with a bar. On two occasions, you were seen on the CCTV propping open the door to the building to permit other members of the group to enter.

While inside the building, various prisoners ransacked cupboards and desks and damaged items of property. You damaged two computer screens in Sector 8, as I have already described, and that is part of the property you were charged with damaging in count 2.

One of the prisoners started a fire in the building and the group left the area at about 9:30 pm.

The group congregated near the soccer nets before moving to the Education building and climbing onto the roof. Many of the prisoners were carrying makeshift weapons.

By that time, a significant response was underway, with numerous prison staff having been called on duty and the immediate action team getting ready to deal with the situation.

Other groups of prisoners caused separate damage in other areas of the prison and also had to be dealt with during what was a prolonged disturbance. It was 1 am by the time all prisoners were secured.

From approximately 9:45, the group of which you were a part assembled on the roof of the Education building, many of them still armed. In the process of accessing the roof, members of the group caused damage to property inside the Education building in an apparent attempt to construct another barricade. An unknown person ignited a fire in the Education building. The damage caused was significant and made the building inoperable. A number of internal and external office glass windows were broken.

Prison officers, including the Immediate Action Team members, gathered at the base of the Education building and observed various prisoners, particularly prisoner H, throwing office items off the roof in a dangerous manner, yelling threats at prisoner officers, and generally creating a riotous atmosphere. H was heard calling out and inciting prisoners from other sectors to join in the disturbance. Sector 7 prisoners responded by calling out, and some of the Corrections officers were diverted to go and quell the situation in Sector 7.

You were part of the group assembled on the roof. While other prisoners were involved in the conduct I have described, you were engaged in deliberately cutting a portion of the barbed wire barrier on the roof at the rear of the building, something that was captured on CCTV. Other prisoners damaged the solar hot water infrastructure on the roof. The property you were charged with in count 2 includes the damage to the barbed wire.

During this period, numerous Corrections officers attempted to engage with members of the group on the roof to get them down. Some group members made demands of the officers. Prisoner N and prisoner H yelled out offensive, demeaning and threatening comments to prison officers, including threats involving the use of weapons, as detailed in the agreed facts.

Over the course of the next few hours, the Immediate Action Team members discharged tear gas and slowly gained the compliance of the group, including you, as prisoners came down from the roof one at a time, using a ladder, at around 1 am.

I will now say something about your personal circumstances.

You are a 47-year-old man who was born in Tasmania and you were aged 43 at the time of this offending. Your family are located in Darwin and Adelaide and you have a number of siblings. You completed school to year 11 and commenced adult Tertiary studies but did not complete them.

At the time of the offending, you were and remain a prisoner serving a life sentence. Your lawyer tells me that you are keen to work towards parole and that, prior to this riot, you had achieved a medium security rating.

However, you say that since the offending, you have been placed on maximum security and subject to a management plan that involves only two hours out of cell per day, only one phone call to family or legal advisers during time out of cell, no access to toast or hot water for coffee or tea, no access to meaningful work to build a trade or skill, a limit of two showers per day regardless of situation, no access to education programs, ability to obtain a Tertiary degree and/or progression for parole, no chair, and limited TV or radio compared with other prisoners.

You say that you have also been moved between Darwin and Alice Springs Correctional Centre approximately eight times, which you say has been enormously disruptive and difficult.

Your counsel has submitted that this management regime amounts to extra-curial punishment and should mitigate any sentence you receive.

An institutional report was received from Darwin Correctional Centre. It is dated 7 October 2024. That report substantiates to some extent some of the matters you have submitted. The report says that you were first received into custody at the Darwin Correctional Centre on 26 April 2012.

You had a high classification rating until November 2014. When you were reclassified in August 2017, you achieved a medium security classification, and you remained at that level until this offending in May 2020, when you were classified at maximum security from 14 May 2020 until March 2021, when you were downgraded to high security.

So you were at maximum classification for a period of about ten months immediately following this offending. After that, you were classified on high security until you achieved a medium classification in November 2021, and that is your current level.

Notwithstanding your medium classification, you are currently accommodated in the high/medium sector at Darwin Correctional Centre. In relation to that, the report says that you have predominantly been accommodated within the high security sectors, where your behaviour is so monitored and managed. It seems that that was not the case for a period prior to this offending when you were in Sector 6, the medium/low sector, for various periods from March 2018 to May 2020. At other times, you were at the Alice Springs Correctional Centre, and I do not have a report from that institution.

Your counsel also submitted that the court should take into account in mitigation the prison conditions leading up to the riot, including the COVID-19 restrictions. These are mentioned in exhibit D1, which is the executive summary of a report which is entitled "Review investigation into the events of a break-out of accommodation and concerted indiscipline on 13 May 2020."

That executive summary says that the immediate cause of the riot was a single prisoner breaking out of their accommodation, as I have already mentioned. The report also says that COVID-19 restrictions were one factor amongst many other indirect causes of the disturbance. That matter is relevant to your moral culpability, and I take it into account in that regard.

As to your criminal history, you are serving a life sentence for murder and other offences, which sentence commenced on 24 April 2012. In 2016, you were convicted of an aggravated assault upon another prisoner after you entered a plea of guilty to that charge. The result of the 2016 sentencing was that your non-parole period was increased to 23 years and 10 months, and that remains the situation today.

In assessing the objective seriousness and your moral culpability in relation to count 1, the level and scale of the violence must be taken into account. It must be remembered that the essence of the riot offence is people acting together, and therefore your acts were committed in the context of what was happening on that night. However, your personal involvement is relevant to your moral culpability in relation to that offending.

The relevant factors in relation to the objective seriousness of count 1 are that it took place within a prison, involving an obvious challenge to authority, that the

offending was prolonged, about four hours, and it involved a group, which involved, on the agreed facts, more than three and at times up to ten prisoners engaged in riotous behaviour. Also, during the incident, the group, including you, had makeshift weapons of various types and the specialist correctional officer immediate action team were required to restore order, including by using gas.

It is clear that your behaviour as part of the group I have described on that night was violent and had the potential to cause those in the area, including correctional officers and other prisoners not involved, to fear for their safety. As pointed out in exhibit D1, many prisoners chose not to become involved in the riot on that night.

In my assessment, your moral culpability was high.

I also take into account that the riot was confined to the prison. As mentioned in exhibit D1, the Northern Territory Correctional Services remained in control of the facility throughout, largely due to the large response and professionalism of the correctional officers.

Although there was clearly a danger of injury arising from the riot, fortuitously, no one was seriously hurt. Two prisoners were taken to hospital for checks and were promptly returned to the correctional facility. There were injuries to staff, according to the summary in exhibit D1; however, luckily, they were minor.

Senior counsel submitted on your behalf that your involvement was as an active participant but that your participation was less than other prisoners during that part of the riot where there was direct engagement with prison officers. To the extent that the facts say that during the period when you and the others were on the roof of the Education building, you were busying yourself with cutting the razor wire and you were not alleged to have thrown anything at the officers or to have verbally abused them. I accept that submission.

I also note that there is no suggestion that you threatened or attacked anyone. Although you were carrying a makeshift weapon at times, including the fire extinguisher, there is no suggestion that you were engaged in planning for the riot, and therefore your involvement was spontaneous.

However, overall, you were an enthusiastic participant in the riotous behaviour on the night from the time you left your cell until you came down from the roof, a period of approximately four hours, allowing for the fact that your specific activities varied over the period.

You ranged across various areas of the prison during the riot, including restricted and prohibited areas, climbing fences and damaging property to gain access. Your involvement made a not insubstantial contribution to the riot. It took a considerable effort from officers to get you and the other rioters to come down from the roof.

Count 1 is an example of an offence which, taking all the factors I mentioned into account is, in my opinion, in the upper mid-range for offences of this sort.

In relation to count 2, you are being sentenced only for the damage which you caused. Generally, aggravating factors for count 2 are that you were in company when you committed the offence, that you were armed with a weapon, namely the fire extinguisher and that the offence was committed during a disturbance. Obviously, some of those factors overlap with count 1.

The damage to the computer screen and cutting the razor wire was particularly gratuitous. The other damage was in furtherance of your participation in the riot. While your actions appear to have been spontaneous, they were also quite deliberate.

The value of the property you damaged is not specified in the agreed facts and I cannot determine it. However, noting the items listed, it can safely be inferred that the value was likely to be of the order of some thousands of dollars. The best I can do on the evidence is that the cost of the damage was not trivial, but noting that it was a small fraction of the extensive damage done to the prison by others, for which you are not charged and you are not being sentenced.

Count 2 is an example of the offence which is somewhere in the low to mid-range for an offence of this type.

The two offences were committed as part of one course of conduct. Some concurrency is appropriate for that reason. However, full concurrency would not properly reflect the separate criminality involved in each category of offending, and therefore there will be some accumulation.

As to your plea of guilty, it can readily be accepted that it has significant utilitarian value. The matter was set for a three-week trial, which would have utilised significant resources and would have involved numerous witnesses, largely prison officers, giving evidence.

In addition, the charges to which you have pled guilty are completely different to the charges you originally faced, which included arson, which has a maximum penalty of life imprisonment. I am told that you indicated a plea to different charges about a week before the trial was due to commence. There is no evidence of remorse.

In the circumstances, I will afford you a 15 percent discount on the sentence I would otherwise have imposed.

I have referred to the submissions made as to extra-curial punishment that you say that you have suffered in gaol since your involvement in the riot, a period of over four years, and the institutional report from the Darwin Correctional Centre. Senior counsel on your behalf submitted that those matters should be given very significant weight.

The Crown accept that sanctions imposed as part of a management regime in the prison, arising from the same conduct which founds the offences, may involve a form of extra-curial punishment. As the Crown correctly point out, it is for an offender to demonstrate, on the balance of probabilities, the nature of the extra-curial punishment and the connection to the offending conduct.

The only evidence is the institutional report from the Darwin Correctional Centre. That report states that in addition to the matters I have mentioned in relation to your classification changes, you spent time in an observed cell with a camera after the offending, which, in total, approximated six months and three weeks at the Darwin Correctional Centre.

Some of that time, four months in 2021 and one day in 2023, occurred well after this incident and were not continuous with other periods, noting that you were not in an observed cell at Darwin Correctional Centre after 8 October 2020.

Those later periods do not, in my view, have the requisite connection to the offending conduct on the evidence presented. However, I am prepared to accept that the periods up to October 2020 were related to this offending.

In addition to matters I have already mentioned, you say that you were housed with prisoners with significant behavioural problems, which, amongst other things, disturbs your sleep. However, that is an instance of your placement with other prisoners of that security classification. It is part of imprisonment to be subject to a management of the prison service and does not constitute extra-curial punishment.

You also complain that you have not been treated with respect by officers, but there is absolutely no evidence about that, and I do not accept your assertion in that regard.

Prior to you committing these offences, you had, between 2018 and 2020, worked in the kitchen and had access to education and training opportunities, library use and tertiary study, among other things. You seemed at that point to have been progressing relatively well with your sentence, although there had been prior instances of poor behaviour.

After 13 May 2020, your security rating changed, as I have described, and you have been housed in that high security sector, where you remain. The institutional report confirms that, because you were housed in that area, your access to structured activities, such as employment and other programs, is limited to positions such as block cleaning or laundry. The report does note, however, that you have been continuously employed as a barber within the high accommodation sector since September 2023, and that is to your credit.

The management of prisoners within correctional facilities is entirely a matter for the Commissioner for Correctional Services and nothing I say should be taken as any comment on nor criticism of any action taken in that regard. It would have been very surprising indeed if no action was taken in relation to your management within

the prison as a result of your participation in the riot and damage to prison property on 13 May 2020.

There is no suggestion on the evidence I have seen that the measures taken were inappropriate. I also take into account that there are a range of reasons why particular management regimes could be put in place for a prisoner. For example, transfers between prisons involve numerous considerations, including operational considerations, which can have little to do with an individual prisoner.

It is also unsurprising that long-term prisoners are routinely transferred from time to time. There is no evidence that your transfers were related to your participating in this offending or are a form of punishment, and I do not regard the fact that you have been transferred as a form of extra-curial punishment.

The matters you have submitted in relation to your management in gaol are put in mitigation because you say you have suffered hardship over and above the usual incidence of imprisonment and that that amounts to extra-curial punishment directly referable to the offending.

As I have noted, the Crown submissions did not suggest that the consequences within the prison could not be relevant as a form of extra-curial punishment. The Crown submitted that moderate to light weight should be given to some aspects.

I accept that in the period following this offending you were subject to a discipline regime in the prison, in particular with respect to placement in the observed cell and the classification at maximum security rating, a classification which you had never previously been given, for the period from 14 May 2020 to March 2021.

Those actions taken by the prison authorities were a natural consequence of this offending, but they also made your time in prison more onerous, and therefore they did involve an element of extra-curial punishment.

The other actions I have mentioned I also take into account, except those that I have noted are a consequence of the obligation of the prison authorities to manage you in a prison and related to your overall behaviour and needs in the context of maintaining the good order and management of the prison.

Although I do take into account the matters I have referred to as some extra-curial punishment, it would be wrong to find that because you have been subject to a more onerous regime in the prison, you have already been sufficiently punished for what occurred. The consequences within the prison resulting from your behaviour were, in the end, self-inflicted. Therefore, although I take those matters into account when moderating the sentence you would otherwise have received, I do so in a way which is appropriately modest.

This sentence must denounce your behaviour and send a strong message to other prisoners that should they offend in a similar way, they will receive stern punishment. Prisoners must be discouraged from joining in with riotous behaviour.

Failure to impose an adequate sentence would fail to recognise the importance of maintaining law and order within prisons to ensure the safety of other prisoners, staff, visitors and the community. I have given considerable weight to the need for deterrence in setting your sentence.

As this is not your first offence since you have been in custody, there is also a need to send a message to you that you must not continue to commit offences in gaol.

I have also considered rehabilitation, notwithstanding your situation.

As I have said, you were, before this offending, pursuing education, including tertiary studies, in an effort to work towards parole, although it is far into the future.

I also take into account this offending was now four and a half years ago, a significant period, and I note that you have regained your medium security classification over that time.

You are already serving a life sentence. The question of totality is important. Your current non-parole period ends in February 2036. That is over 11 years away. I need to take that into account.

I note that this offending involves entirely separate criminal activity, and therefore full concurrency with your existing sentences, such that there is no extension of your non-parole period, would not adequately reflect the seriousness of the offending or the need for deterrence.

On the other hand, extension of the non-parole period by a period which approximates the full sentence would be crushing and would tend to harm your prospects of rehabilitation, such as they are, by failing to give you an incentive to improve your behaviour in the prison.

For all those reasons, I have decided that the extension of the non-parole period should be relatively modest.

Can you stand up please, Mr Vanko?

I find the two offences on the indictment proven.

On count 1, you are convicted and sentenced to imprisonment for 15 months after discount.

On count 2, you are convicted and sentenced to imprisonment for 12 months after discount. The sentence on count 2 is to be served cumulatively as to 3 months on the sentence of count 1, and the total effective sentence is therefore 18 months' imprisonment.

The non-parole period over all sentences is extended by 6 months. It is now 24 years and 4 months from 24 April 2012.

Take a seat please.

Was there anything arising?

MR OFFICER: No, your Honour.

MS MANDIE: No, your Honour.

HER HONOUR: Thank you for your assistance.

We will adjourn.
