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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 22331822

THE KING

and

CONWAY HERBERT

(Sentence)

GRANT CJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON THURSDAY 14 MAY 2026

Transcribed by:
EPIQ

HIS HONOUR: Mr Herbert, you have pleaded guilty to two offences which were charged by indictment dated 6 May 2026.

The first offence on the indictment is aggravated assault contrary to s 188 of the *Criminal Code*. The maximum penalty for that offence is imprisonment for 5 years.

The second and more serious offence is negligently causing serious harm to the victim contrary to s 174E of the *Criminal Code*. The maximum penalty for that offence is imprisonment for 10 years.

You have also pleaded guilty to a charge of using an offensive weapon contrary to s 8(1) of the *Weapons Control Act*. The maximum penalty for that offence is imprisonment for 12 months.

The facts of that offending can be summarised as follows:

You were 18 years old at the time. The first victim was your 22-year-old nephew in the Aboriginal way. The second victim was your 18-year-old male cousin. Some time prior to this offending, the victims and another man had broken into a local teacher's house on your home community and stolen alcohol, and indeed a large quantity of alcohol. They then went to a bush location to drink that alcohol. You joined them later, together with four other people.

You drank through the night until the morning of the following day. That morning, two members of your group went to a house on the community to continue drinking. You and the two victims went looking for them because you thought some of the alcohol had been stolen. You began arguing with the other men when you found them and you got into a fist fight with one of them.

You then left the house and returned with what is described in the agreed facts as a "tyre puncture repair spike". It was a sharp and dangerous weapon and your use of that weapon constitutes the offence in the transmitted charge.

As you were returning to the house, the first victim – that is, your nephew – walked over to you. You punched him in the face, apparently without any warning, and knocked him to the ground. While he was on the ground, you kicked him in the face rendering him unconscious. That is the conduct which constitutes the assault charged in count 1.

You then ran towards the second victim holding that tyre spike. You stabbed him multiple times to the upper chest, upper back and head using that spike. That attack lasted approximately 15 seconds before one of the other men ran in and tackled you to the ground. That is the conduct which constitutes the negligent causing of serious harm in count 2.

The second victim went home after that incident and was taken to the community clinic by his mother when she and his wife saw that he had sustained various injuries. He was diagnosed with a collapsed lung at the clinic and evacuated to the

Royal Darwin Hospital by CareFlight. Once there, it was determined that the second victim had sustained two penetrating wounds to the left chest wall which were 5 millimetres and 10 millimetres deep respectively. He also suffered a stab wound to the scalp.

The second victim had to undergo surgery and the insertion of an intercostal catheter drain. He remained in hospital for nine days before he was eventually discharged. The medical evidence is to the effect that had his injuries been left untreated he would likely have died from respiratory arrest.

I have received a victim impact statement from the second victim which was made shortly after you stabbed him with the tyre spike. He describes the physical assault and the aftermath during which he says that he could not breathe and he thought he was going to die. That was sad and worrying for him because he was still a young man and he did not want to die. He knows that his life was only saved by surgical intervention. At that time, he did not feel safe when he saw you and had not prior to this incident felt safe when he saw you because, in his words, you had a tendency to "go mad and do anything, including using weapons". This case is proof of that.

You were arrested on 3 October 2023 and during an interview with police you made some partial admissions.

Following your arrest on 3 October 2023, you were remanded in custody until granted bail on 16 November 2023. You remained on that bail until 10 March 2025 when you were arrested on allegations of further offending. I am told that the charges arising out of that incident were ultimately dismissed with the exception of a breach of bail for which you were sentenced to imprisonment for 1 day commencing on 10 March 2025. You have been remanded in custody since that time. What that means is that you have spent a total of 1 year, 3 months and approximately 20 days in custody, almost all of which is referable to these offences. It is agreed between the parties that the appropriate date for backdating purposes is 24 January 2025.

At the time you committed these offences, you already had a criminal history from your youth that included findings of guilt for aggravated unlawful entry, stealing and trespass, and juvenile diversions for multiple incidents of property damage, unlawful entry, trespass and stealing. You also have two subsequent convictions for breaches of bail which you committed in May 2024 and March 2025 while you were awaiting trial for this matter.

Despite the reputation which I have described, this is your first offence involving violence, but that does need to be considered in light of the fact that you were known in your community at the time as a violent bully. That is something on which you need to reflect and you need to change your behaviours when you get back to Kalkarindji if you are going to become a valuable member of the community.

So far as your other personal circumstances are concerned, I am told that you were born and raised in your home community of Kalkarindji. You were brought up

mainly by your maternal grandparents because your parents were unable to care for you for various reasons. You attended school on community to Year 9 level and I am told that you have English literacy. While you were growing up on community, you enjoyed participating in the usual traditional activities of hunting, fishing and Australian Rules football. Since leaving school, you have occasionally worked for the community development program, but you have otherwise remained unemployed.

Your father took you through ceremony and you have responsibility for your country. One of the regrettable features of your offending is that you have been precluded from discharging those cultural responsibilities because you have been in prison for the last 16 months or so. Again, that is something that I hope you can change going forward. Your plan when you are eventually released from prison is to return to Kalkarindji and hopefully secure some form of employment.

Moving back then to consider this offending, you were highly intoxicated at the time you did these things and alcohol abuse obviously lies at the base of your offending. You admit through your barrister and to the Community Corrections people that you are "hot-headed" and when you drink alcohol that becomes even worse. Your barrister tells me that you have not had a drink since 2023, with the implication that alcohol no longer presents as a criminogenic factor for you. That remains to be seen.

The Crown accepts that you have entered a plea of guilty, but not necessarily that it was entered in a timely fashion. In fact, the indication was given only in the week before the matter was listed to proceed for trial. However, given that a fresh indictment was filed charging a lesser offence, and that you pleaded guilty immediately upon that filing, I accept that you are entitled to an appropriate discount for your acceptance of responsibility and your willingness to facilitate the course of justice. I also accept in this case that you are genuinely remorseful for your conduct. I accept that on the basis that you have apologised to both victims, you have paid financial compensation to the second victim who sustained the more serious injuries, and that both victims have forgiven you for your conduct.

Despite that, at the present time I consider your prospects for rehabilitation to be somewhat uncertain. Although you are still a relatively young man and you had a relatively modest criminal history at the time you committed these offences, you are clearly volatile with a propensity for both violence and alcohol abuse. Unless you are able to stay off the grog once you get out of prison, I fear that you may reoffend. But Mr Herbert, that is entirely a matter for you. If you stay off the grog, you will stay out of trouble. If you go back on the grog, you are going to get back into trouble again. You understand that, don't you?

This is objectively serious offending. The most serious of the two offences charged by indictment involved the use of a very dangerous weapon. It caused the grave injuries which I have already described. You had an opportunity to remove yourself from the scene of that conflict, but you returned with that dangerous weapon and, in fact, you escalated the incident very substantially.

Your assault on the second victim was unprovoked. You did not voluntarily desist in your attack on the second victim. That attack was only stopped when you were tackled to the ground by another man, and I hate to think what the consequences would have been had he not intervened.

For all of those reasons, I accept the Crown's submission that this falls into the upper range of objective seriousness for this category of offence, but in the low upper range. That assessment of seriousness and culpability, however, takes place in the context of an offence which attracts a maximum penalty of imprisonment for 10 years, rather than the more serious offence of unlawfully causing serious harm.

Although you may not have intended to cause serious harm to the victim, you are still criminally liable for that harm. As the terms of the offence make express, your conduct involves such a great departure from the necessary standard of care, and such a high risk of harm to the second victim, that it warrants criminal punishment. That is what you are here for today. Whatever your present instructions to your barrister might be, I do not accept that you were provoked in any material way and nor is that suggested in the facts which you have agreed.

The aggravated assault was also objectively serious. You punched the victim in the face and then you kicked him in the head when he was on the ground. The force of that kick was such that he was rendered unconscious. You attacked him in a vulnerable part of his body, namely the head, and you also attacked him when he was entirely defenceless. Again, this assault was entirely unprovoked. I accept the Crown's submission that this offence also falls above the middle of the range of objective seriousness for this category of offence.

You are not a man of unblemished character. For that reason, there has to be some emphasis on specific deterrence in this case. It is also necessary to send a message to the community that this type of conduct will not be tolerated.

There will be some cumulation between the sentences imposed for the two offences charged by indictment to reflect the different types of criminality involved and the different victims. However, the extent of that cumulation will necessarily be moderated by both your youth and the principle of totality.

The use of the offensive weapon charge on complaint has primary elements in common with the serious harm offence. For that reason, the sentence imposed for that charge will be ordered to be served entirely concurrently with the other sentences.

You have not yet reached a point where the fixing of a non-parole period is necessary. For that reason, your suitability for supervision on an order suspending sentence has been assessed by Community Corrections. They note a number of matters in that assessment. The police station at Kalkarindji is currently unstaffed. The nearest police station is at Lajamanu. Community Corrections only visit Kalkarindji once a month. Supervision appointments are otherwise conducted by

telephone. There are also limited counselling and other services available at Kalkarindji and it is not a place at which an offender's location can be electronically monitored.

All those difficulties and qualifications notwithstanding, you have been assessed as suitable for supervision subject to various conditions, including that you remain in Kalkarindji during the period of supervision and that you not consume alcohol. Mr Herbert, if I make an order suspending sentence, are you prepared to agree or to comply with all of those conditions?

THE ACCUSED: Yep.

HIS HONOUR: Are you going to stay off the grog while you are in Kalkarindji for this order suspending sentence?

THE ACCUSED: Yep.

HIS HONOUR: All right. Is Kalkarindji dry?

THE ACCUSED: I'm staying in Katherine. I'm staying in Katherine with my big cousin-sister. I get away from trouble in Kalkarindji.

HIS HONOUR: Yes. But if you get out on an order suspending sentence, you know you are going to have to live in Kalkarindji. Do you know that? You know if I let you out on an order suspending sentence, you are going to have to go to Kalkarindji and stop there for the whole time of that sentence. Do you understand that?

THE ACCUSED: Yeah.

HIS HONOUR: Are you prepared to do that?

THE ACCUSED: Yeah.

HIS HONOUR: All right. Good. You are going to have a fairly long period of prison time hanging over your head when you are eventually released from prison. If you breach any of those conditions or if you commit any further offending, you are going to be brought back to this court before me and I am probably going to have to send you back to gaol. Do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: That is why it is important you comply with the conditions, do what probation and parole officers tell you and stay off the grog. All right.

THE ACCUSED: Okay.

HIS HONOUR: And stay in Kalkarindji. All right. Can you stand up then, Mr Herbert, while I sentence you.

I make the following orders:

- 1) The offender is convicted of the offences charged by indictment dated 6 May 2026.
- 2) For count 2, the offender is sentenced to imprisonment for 2 years and 3 months, which is backdated to 24 January 2025.
- 3) For count 1, the offender is sentenced to imprisonment for 1 year and 9 months, 9 months of which is to be served cumulatively on the first sentence.
- 4) The offender is convicted of the offence charged by complaint taken on 13 November 2023 and sentenced to imprisonment for 3 months which is to be served concurrently with the first sentence.
- 5) The total period of imprisonment is 3 years.
- 6) That sentence to imprisonment is suspended after the offender has served 16 months on condition that he be supervised for 1 year and 8 months following release on the conditions set out in the assessment of offender's suitability dated 11 May 2026.
- 7) An operational period of 2 years from the date of release is fixed for the purposes of ss 40(6) and 43 of the *Sentencing Act*.

Is there anything arising out of that, Mr Bodel?

MR BODEL: No, your Honour.

HIS HONOUR: Ms Wild?

MS WILD: Has your Honour got a backdating date?

HIS HONOUR: Yes, 24 January 2025, as agreed between the parties I was told.

MS WILD: Yes, your Honour.

HIS HONOUR: Yes. And that was incorporated into the first order.

MS WILD: Sorry, your Honour, I missed it.

HIS HONOUR: Yes, all right.

So what that means, Mr Herbert, is that in 9 days' time you are going to get out. They are going to take you back to Kalkarindji. You have to stop there for the next 16 months or so – that is, 1 year and 4 months – follow all those conditions, do what

probation and parole tell you and then you will be good, clear; do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: All right.

Anything further before I adjourn, Mr Bodel?

MR BODEL: No, your Honour.

HIS HONOUR: Ms Wild?

MS WILD: No, your Honour.

HIS HONOUR: All right. Thank you very much for your attendance and your assistance.

Adjourn the court, please.
