

CITATION: *Police v Mununggurr* [2011] NTMC 024

PARTIES: POLICE

v

TREVOR MUNUNGGURR

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Criminal

FILE NO(s): 21040560 & 21109970

DELIVERED ON: 5 May 2011

DELIVERED AT: Nhulunbuy

HEARING DATE(s): 5 May 2011

JUDGMENT OF: Hilary Hannam CM

CATCHWORDS:

REPRESENTATION:

Prosecutor: Ms Taylor – NT Police
Defendant: Ms Harland - NAAJA

Judgment category classification: B
Judgment ID number: [2011] NTMC 024

IN THE COURT OF SUMMARY JURISDICTION
AT NHULUNBUY IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21040560 & 21109970

BETWEEN:

POLICE
Plaintiff

AND:

TREVOR MUNUNGGUR
Defendant

REASONS FOR JUDGMENT

(Delivered as an Oral Decision 5 May 2011)

Ms Hilary Hannam CM:

N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Northern Territory, proceedings for infringement will be taken.

NORTHERN TERRITORY OF AUSTRALIA

COURT OF SUMMARY JURISDICTION

Nos 21040560 and 21109970

POLICE

and

TREVOR MUNUNGGUR

HANNAM, CM

TRANSCRIPT OF PROCEEDINGS

AT NHULUNBUY ON THURSDAY 5 MAY 2011

HER HONOUR: All right thank you, if you stand up please Mr Mununggurr.

This matter concerns your wife, Gabby Durkay who was harmed horribly by you when you assaulted her between 2nd and 3rd of December last year.

Today you're being sentenced for that assault and also for breaking an order of the court that you not contact her while you are affected by alcohol.

You have a history of assaulting your wife. In the past you have received a suspended sentence for an assault in 1999 and also a good behaviour bond for threatening her with a weapon on the same date.

On 3 November last year, a domestic violence order was made against you for your wife's protection which included a condition that you not approach or contact her while affected by alcohol.

You also have a long history of abusing alcohol. And in the words of your lawyer, you only have an "issue" which I assume means you only behave violently when you are affected by alcohol.

It is very unfortunate that for reasons unknown, although the court made an order for Ms Durkay's protection on 3 November last year, it did not protect her from a brutal and nasty assault by you one month later.

On that night you and your wife went into Nhulunbuy with both of you drinking large quantities of alcohol and you also were smoking cannabis. After your evening in town, the two of you returned to your home in Wallaby Beach by taxi.

When you arrived home, the two of you began to argue and without warning you punched your wife with what must have been enormous force to her forehead, as the blow caused her to fall backwards and her head was split with a significant cut above her eye requiring seven stitches. As

well as the pain and headache that she suffered at the time, she has been left with a significant scar on her forehead.

Your wife said in her victim impact statement that she was frightened when you hit her and that afterwards she was frightened and confused.

I can well imagine that she must have felt confused as the punch appears to have come utterly out of the blue and there was nothing that she did wrong, that she did in any way that caused it to happen.

Yesterday, when she wrote the victim impact statement she said, 'I am still scared Trevor will hit me when he is drunk' and that is five months after that incident.

On the date of your arrest for the assault you were served with the domestic violence order that had previously been put in place for your wife's protection. You were also granted bail until the matter came next before the court in February of this year.

On that occasion, you did not appear in court, but the matter was adjourned to 1 March. On that occasion, you indicated that you would be pleading guilty to the assault, but the matter was adjourned for hearing for another matter until April.

While you were on bail and while the order was in place for your wife's protection, you committed the second offence by disobeying that order of the court. On that occasion you again went into town drinking from the early afternoon. At 7.30 in breach of the order you approached your wife while you were affected by alcohol. And again at 11.30 you went looking for her at the club.

Although you were refused entry to the club because you were drunk, in what appears to me to be a controlling act, you had your wife paged over the club's PA system. When she answered the page and of course she wasn't required to, but when she answered the page and went to the foyer of the club, she saw that you were drunk and tried to convince you to go home and even walked you to the taxi rank. You committed that offence because the court had ordered that you were not to contact your wife when you were affected by alcohol.

The first thing the court has to do is decide how objectively serious these offences are and the starting point is the maximum penalty set out in the law. The law says that the maximum penalty for the assault is five years in prison and the maximum penalty for disobeying an order of the court of that kind is two years in prison.

Objective seriousness are words used to describe the things about the offences themselves that make them serious or not. The sorts of things that I take into account in relation to the assault is that the punch appears to have been intentional and without being provoked in any way. That it came without warning and that it was severe enough to knock the victim to the ground and produce a large cut to her head and that she has a permanent scar.

The offence is aggravated, that is, made worse the law says, not only because she was harmed, but because she is a female and you are a male and she was unable to defend her self.

This offence seems to me to be a typical example of the serious domestic violence encountered every day in homes across this Territory and across Australia and indeed the world.

The disobeying of the court order is also a typical offence of this kind. As you went out drinking and sought your wife out, you went so far as to have her paged simply to meet your own demands rather than being concerned that the court order was put there for her protection.

After that, the court had to go so far as to actually order you out of Nhulunbuy all together and order that you have no contact with Ms Durkay to make sure that she was safe.

In my opinion, both of these offences fall about the mid range of seriousness of offences of this kind. The next thing the court looks at is the things about you yourself that make these offences less or more serious. Firstly, you indicated when you were in court on 1 March that you would plead guilty to the assault. Pleading guilty, saves the court system a lot of time and money and the law says that the sentence that would otherwise be imposed should be less because of this. It also spares the victim the distress and trauma of having to give evidence, which is very significant in the case of victims of violence, especially from their partners.

Usually, pleading guilty also shows that an offender is sorry for what he has done. But in this case, because you committed another offence three weeks later, I can't really say that you have shown that you are sorry.

Your lawyer has said a lot about your abuse of alcohol and this does seem to be at the heart of your behaviour, but it does not make it less serious, especially because you know how you behave when you are affected by alcohol.

Even your wife Gabby says in her victim impact statement that you are 'okay' when you are sober. The problem is that you have not ever made

an effort to do anything about your drinking. And in this case, even though you were given bail after you assaulted your wife and were in the community for almost four months until you were required to leave, you made no effort to do anything about your drinking and in fact continued drinking as the second offence shows.

There is nothing in your life as is told by the court that makes your offending less or more serious than any other man in the Northern Territory or in my experience in other parts of Australia, you simply are a man who hurts his wife when you are drunk.

As far as the disobeying of the court order is concerned, you did not plead guilty early and therefore do not receive the reduction in your sentence for that reason. That is not to say you're punished more harshly, but it's not treated the same as an early plea of guilty. You did, however, plead guilty earlier this week and you do get some reduction because of that plea, particularly as your wife was once again spared the distress of giving evidence against you.

In sentencing you, the court is sending a message firstly to you that violence against your wife is never acceptable. The court also sends a message to other men that this sort of unprovoked vicious treatment of women must stop.

The same applies to disobeying court orders which are put in place to protect victims. All too often they are disobeyed and the court has to send a strong message that this cannot be tolerated.

Although you may have behaved like this in the past, I've only got evidence that that was on one other occasion prior to coming to court and I accept that that is the case that you may be a person who is able to change in the future. Although you haven't made any effort to stop drinking until very recently, that is something that you could still achieve. You are also capable of changing your thinking about your wife and women in general which could cause you to change your behaviour.

Your criminal history is reasonably short. And it's clear that you've only been convicted for being violent towards your wife. Although you are capable of changing your beliefs and your actions towards her and women, this is not ever easy and many men who think and behave like this do not ever change. Only time will tell whether you are capable of it, but as I've said, I think it is something that you are capable of.

You have been assessed as suitable for the only program that seems to be appropriate and available and I do strongly recommend that you

participate in it, that is, the Indigenous family violence program, either in custody or after you have been released.

As I have said, these are very serious matters. And in my view, there is no alternative but a full time gaol sentence. Your lawyer has asked for a partially suspended sentence, but in my view that would be insufficient for your offending.

But for your plea of guilty, an appropriate sentence in my view would have been about two and a half years which is actually greater than this court has the power to impose. I do however take into account your plea of guilty and in my view the appropriate sentence is 20 months. I do think it is important for you to receive the benefit of supervision on parole, so I will be fixing a non-parole period of 15 months in relation to the assault.

I also will be ordering that these sentences are to be served cumulatively, which means one after the other, rather than at the same time. You showed a significant disregard for the attempts by the court to make your wife safe. It was the same victim, you were on bail and as I've indicated, a strong message must be sent.

They were two separate criminal actions, so the sentence will be cumulative. I will sentence you to that offence first, because otherwise the second offence would take up a large part of your period on parole.

In relation to the breach of domestic violence order, you are sentenced to three months imprisonment from 1 May 2011. You are then sentenced to a term of imprisonment of 20 months with a non-parole period of 15 months from 1 August 2011.

It means that you will be eligible for release on parole on 1 November 2012.

Dated this 5th day of May 2011

Hilary Hannam
CHIEF MAGISTRATE