

CITATION: *Peter Skeen v NTA [2021] NTLC015*

PARTIES: Peter Skeen

V

The Northern Territory of Australia

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NO(s): 21728591

DELIVERED ON: 28 May 2021

DELIVERED AT: Darwin

HEARING DATE(s): 6 and 7 July 2020

DECISION OF: Judge Woodcock

CATCHWORDS:

Don Dale Youth Detention Centre
Section 153 – Prohibited actions - Youth Justice Act 2005

REPRESENTATION:

Counsel:

Plaintiff: Jon Tippet QC

Defendant: Trevor Moses

Solicitors:

Plaintiff: North Australian Aboriginal
Justice Agency

Defendant: Solicitor for the Northern
Territory

Judgment category classification: A

Judgment ID number: NTLC015

Number of paragraphs: 12

IN THE YOUTH JUSTICE COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21728591

BETWEEN

PETER SKEEN

Plaintiff

AND

THE NORTHERN TERRITORY OF
AUSTRALIA

Defendant

REASONS FOR DECISION

(Delivered 4 June 2021)

JUDGE WOODCOCK

1. The Plaintiff was born on the 24th of March 2002. On the 12th of December 2016 he was a 14 year old detainee in the Don Dale Youth Detention Centre (Don Dale), in Darwin, The Northern Territory of Australia.
2. The Plaintiff seeks damages from the Defendant for alleged batteries by Senior Correctional Officer Jacob Bonson (Bonson) and Youth Justice Officer Leon Rotumah (Rotumah) on the Plaintiff, in the court yard of the high security unit (HSU), at Don Dale on the 12th of December 2014.
3. The Plaintiff gives evidence in his affidavit of the 24th of January 2020 as follows:
 4. *On 12 December 2016, I was in N Block, which is the rec yard at Don Dale.*
 5. *While I was in N Block, I wrote my initials ('PS') on a plastic window with pool cue chalk.*
 6. *After the guards saw the writing, they told me to try to clean it off with some spray and a rag.*

7. *I tried to clean the chalk off with the spray and a rag, but me writing with the chalk had scratched the plastic window.*
8. *After I tried to clean the writing off, a guard walked me back to my cell and locked me in. I got angry and upset because I was in lockdown.*
9. *After the guard had locked me in my cell, I kicked the door because I was angry.*
10. *After I kicked the door, the cell door just flew open. I didn't mean to open the door.*
11. *After the door opened, I was thinking I was screwed and I would be going to the HSU. The HSU is the High Security Unit at Don Dale. Because I hated the HSU so much, I just sat in my cell and got a drink from a bubbler. I didn't want to do anything else that would get me into more trouble.*
12. *After a little while, some guards came into the cell and took me down to the HSU.*
13. *When I got down to the HSU, I was walking around the yard of the HSU. I was so upset and I was crying. I felt angry, depressed and stressed out. I really didn't want to be in the HSU.*
14. *When I was walking around, one of the guards came up to me. I think there was another guard who was coming up to me as well.*
15. *When the guard came up to me I started feeling more angry, depressed and stressed out. I also got a little bit worried about what would happen when the guard came close to me.*
16. *I didn't want to talk to that guard because I was angry and when I am angry I just don't like talking to people. I like to be left alone.*
17. *I think I said something cheeky to the guard but I can't remember what it was. I said this because I was angry and frustrated.*
18. *After I spoke to the guard, he kept coming closer. He got really close to me, probably about a metre.*
19. *The next thing I remember after the guard got really close to me is waking up on the ground. I can't remember the bit between the guard getting close to me and waking up on the ground. Because of this, I think I must have been knocked out from the impact of hitting the ground.*
20. *When I came to, two guards were on my back holding me down and pushing my head into the concrete. I could feel lots of force on my head and neck. I felt sick and sore on my neck and head.*
21. *The Plaintiff gave evidence. In evidence in chief the Plaintiff said he had accidently kicked the door open with one kick. Footage was played and he was cross examined. He agreed in cross examination*

that he had kicked the door more than once and had intended to kick it open.

22. *The Plaintiff recalled saying something cheeky to Bonson, but could not recall what was said. Footage of the alleged assault was played. It was suggested to the Plaintiff the footage showed him throwing a right hook “or haymaker punch” at Bonson. He answered “not really, it was my arm... the same time they was pulling the shirt off... that’s what made my arm swing forward... but I didn’t throw a punch. He was asked “what exactly do you say happened to your shirt to make your arm swing like that? To which he answered... “Don’t know. My memory is a bit messed up.”*
23. *It must be born in mind when assessing the account of the Plaintiff that he was at the time a 14 year old boy in a detention centre who was physically restrained during the event in question. The events themselves occurred more than three and a half years prior to the Plaintiff giving evidence. Sadly however his account is unreliable and he cannot recall his conduct immediately before and during the alleged assault.*

4. Bonson gives evidence in his affidavit of the 5th of March 2020 as follows:

29. *I was rostered on as the senior officer in the HSU for the 12 December 2016 day shift. That afternoon, shortly before the incident occurred, I was in the courtyard of the HSU with the HSU detainees and some other staff. It was a standard afternoon activities period, and we were throwing balls around in the yard.*
30. *I remember being notified that Peter was being brought up to the HSU for housing purposes.*
31. *I cannot remember who told me this. It is possible that a call came into the HSU office and then another officer answered and relayed the message to me.*
33. *Around this time, two things happened. First, the afternoon activities period ended. The HSU detainees started heading to the muster room to get ready for lockdown. Getting ready for lockdown might include: collecting meals, filling up water bottles, making any last minute requests of officers, and sometimes making a phone call. During this time, staff and detainees are moving in and around the muster room, which is where the phone is located and cold water is available. The dining room is also next to, and can be accessed from, the muster room. This is a busy time, especially in and around the muster room. Second, Peter arrived in the HSU courtyard. I do not remember if Peter had an escort.*
34. *These two things were happening around the same time. Initially, I did not realise that Peter was upset. But as the other detainees were*

walking out of the courtyard, Peter walked to the back corner of the courtyard and stayed there. He was crying.

35. *I kept an eye on Peter. As I did, I had a conversation with a nearby officer, Leon Rotumah (Leon). While I cannot recall exactly what was said, it a conversation about Peter's behaviour, and how we could best manage that behaviour.*
36. *We decided to leave Peter alone rather than approach him to give him space to calm down and de-escalate on his own. Unfortunately, he did not de-escalate on his own and instead started to walk around the edge of the courtyard punching windows and kicking doors.*
37. *When Peter started punching windows and kicking doors, I remember thinking "oh shit, we better go over there". I remember thinking that if no one intervened, Peter might rile up the other detainees, or he might hurt his hand punching the walls.*
38. *I started to walk towards Peter. I kept my hands open, palms towards Peter, with my arms at either side of me. I was still carrying balls under my arms from the earlier activities. Showing Peter my open palms was part of DCR training, using body language to communicate: 'my hands are open, I'm not a threat to you'. I was talking to Peter, trying to de-escalate the situation. I was saying things like "What's wrong?", "It's alright, you're not in trouble. We've got a room ready for you with a TV". Peter started swearing at me, but I can't recall exactly what he said.*
39. *Peter kept walking. He was walking near the edge of the courtyard, in the direction of the muster room. There were still lots of other detainees in or around the muster room at this time. I remember thinking that if Peter went inside the muster room in that kind of agitated state, there was a real risk that the situation would escalate. For example, Peter might lash out at one of the other detainees or staff, or rile up the other detainees so they started smashing things up or fighting with staff. What I wanted to do was find out what was wrong and keep Peter in the courtyard until he had calmed down.*
40. *Peter walked up to the locked door to the muster room. He kicked it. This made me really worry — it raised my assessment of the risk. There was clear view through the door from the courtyard to the muster room near where the phone was located. I couldn't be sure whether, in kicking the door, Peter was directing his aggression towards the detainees on the other side. It seemed to me that if Peter was lashing out in the direction of other detainees, there was a real risk that if he went into the muster room he would start a fight with the other detainees.*

41. *After kicking the door, Peter started walking closer to the open gate to the muster room.*
43. *At this point, there were a couple things going through my head. First, the gate to the muster room was still open and there were detainees on the other side. I had to keep them safe. Second, this incident was occurring during lockdown. Lockdown and unlock are critical, high-risk times in prison and detention centres. Prisoners and detainees often become non-compliant: they don't want to be locked in a cell; or, when they're unlocked, they don't want to leave. There tends to be a lot more incidents during those times. If Peter managed to rile up the other detainees it could have been like a spot-fire turning into a bush-fire. Third, I thought about the need to cordon and control the incident. This is one of the key aspects of incident control. After making an assessment of an incident, the first thing you try to do is safely cordon it off. In my assessment, Peter needed to be cordoned off from the muster room to prevent the situation from escalating. In addition to the risk of injury or escalation, the muster room also contained a number of items like the phone, which could be damaged if Peter decided to vent his frustration, and various items which could be used as weapons were nearby. Rooms that could be accessed from the muster room, such as the laundry, also contained items that could be used as weapons.*
44. *As Peter kept walking towards the open gate to the muster room, I kept walking too, trying to keep myself between him and the open gate. I was still talking to Peter, trying to de-escalate him. I still had an open stance. I still thought that I would be able to get Peter to calm down with words alone, or at most, I might have to step between him and the door to the muster room until he de-escalated.*
45. *Although I knew Peter had assaulted staff in the past I did not expect him to do so now.*
46. *As I got close to Peter, he knocked one of the balls out of my hands.*
47. *Peter was getting very close to the muster room gate. I was tracking along with him, making sure that I could position my body between Peter and the gate. I never felt like I would not be able to step between Peter and the gate if I needed to.*
48. *I remember I was saying something like "Come on Peter, we've got a room ready for you with a TV". As I said it, Peter brought his hands up. He grabbed me around the collar of my shirt and I believed that he was going to punch me.*
49. *It all happened very quickly and I reacted by grappling with Peter and trying to use the 'head control' technique. This is part of our DCR*

training. It is about protection and control. The goal is to pull the detainee's head into your chest and hold it there. From that position there's no way for the detainee to effectively punch or kick.

50. *Peter and I were then grappling for a bit with Peter trying to hit me while I used the head control technique to prevent Peter being able to effectively hit me. Peter continued grabbing me with one hand, pulling on my shirt, while trying to throw punches at me. I remember that my shirt had to be thrown away afterwards, as it was ripped during the tussle.*
51. *As I was grappling with Peter, Leon came to assist me. Leon grabbed Peter's legs.*
52. *I realised Leon was trying to bring Peter to the ground. Once I realised this, I stopped using the 'head control' technique to restrain Peter. Instead, I cradled Peter and controlled his descent towards the ground.*
53. *In my training and experience, ground stabilisation is the most effective way to safely control a detainee and is always used to secure a violent detainee or prisoner before escort to a de-escalation room. Part of the reason for this is that the detainee will often take some time before they de-escalate enough to be safely escorted. And it is safest and easiest to secure a struggling detainee when they are on the ground.*
54. *As I was guiding Peter to the ground so that he could be restrained, Peter was still grabbing onto my collar and pulling me downwards. I was pulled off-balance. I started falling towards the ground too. I don't know what part of Peter's body hit the ground first. I controlled his movement to the ground; it was my movement after that I could not control. My hands were still caught up holding Peter and I could not use them to protect my fall. In order to avoid injury by falling face first I rolled as I hit the ground. When I rolled to avoid injury I ended up landing on Peter. I immediately got off him. I cannot now recall exactly what part of my body and Peter's made contact during that rolling motion.*
55. *There was a period immediately after Peter and I went to ground when he went quiet. I do not know if he lost consciousness, or if he was winded or shocked. Whatever happened was brief. Within about 5 seconds he was struggling again and yelling abuse at us.*
56. *After Peter was on the ground Leon and I secured his hands behind his back and restrained them there. I used minimum force to do so. While Peter was on the ground, I was assessing him and I could see*

he was injured. He was saying "my head, my head" and I recall seeing that he appeared to have blood coming from his nose.

57. *While we are were retraining him on the ground, neither Leon nor I had a knee on Peter's back or were applying pressure through a knee, arm or hand on his neck or head. As discussed above, avoiding pressure on a detainee's torso was part of training and procedure in youth detention. Similarly, it is generally not part of the training or procedure to restrain a detainee by the head or neck, and I would only have done so if the detainee was banging his or her head on the ground and injuring themselves. Peter was not doing this.*
58. *Bonson gave evidence. He was vigorously cross examined. He made appropriate concessions. He was unmoved in cross examination. I accept his account as both truthful and reliable.*

5. Rotumah gives evidence in his affidavit of the 6th of March 2020 as follows:

16. *On 12 December 2016, I was rostered on as a Shift Supervisor (now known as Team leader) at Don Dale between 7:00 and 19:00 hours.*
18. *I remember responding to an incident that Peter was involved in earlier that afternoon. I do not recall the specific details, but I remember that Peter had kicked and damaged the door to his room in S Block.*
19. *Peter needed to be accommodated in a different room because the door to his room in S Block could no longer be locked after the damage he caused.*
24. *When we got to the HSU, it was almost time for the afternoon lockdown when the young people are secured in their rooms. Because it was almost lockdown, the young people in the HSU were leaving the courtyard, collecting anything they needed from the muster room and getting ready to go to their rooms. I thought Peter would join the other young people and do the same.*
25. *However, once Peter got into the HSU he walked over to the corner of the exercise yard by himself. It was clear to me at this time that he was upset. Peter stayed in the corner of the yard and started crying. He did not go to his room.*
26. *When I escort a young person to a new block, my standard practice is to have a 'handover' conversation with the senior officer of that block. This would cover things like what had occurred to require the young person be moved, what state the young person was in, and any other information I thought the senior officer should be made aware of.*

27. *The senior officer for the HSU that day was Jacob Bonson (Jacob). Looking at the CCTV footage, I can see that as Peter is standing in the corner of the yard, Jacob and I are standing next to each other talking and observing him. While I cannot recall exactly what was said, I would have been having a handover conversation with Jacob and discussing what we were going to do with Peter now that he was upset.*
28. *Jacob and I left Peter alone for a while so he could calm down.*
29. *Instead of calming down, Peter started to get more agitated. Within a few minutes, he was on the move and he punched one of the doors or the walls in the courtyard. Jacob and I saw this, and we walked over to Peter to de-escalate him.*
30. *Jacob took the lead. He was talking to Peter, asking him things like "are you okay?" and "what's wrong?". I kept slightly back from Jacob, and let him do the talking. This was to avoid crowding Peter and agitating him by having two people talking to him at once.*
31. *In my experience, de-escalation usually works better if only one YJO is talking to a young person. If too many people start talking to an agitated young person all at once, it can just make things worse.*
32. *In response to Jacob's questions, Peter started swearing at us. I do not remember exactly what he said.*
33. *Peter was walking down the length of the yard, towards the gate separating the courtyard and the muster room. When he got to the corner, he kicked the locked gate in the corner of the yard. Peter then started walking towards the open gate to the muster room.*
34. *A copy of a plan of Don Dale showing the HSU is attached and marked "Annexure LCR-2". On that plan, I have marked an "S" where Peter was standing in the corner, a "P" showing approximately where Peter punched one of the doors or walls, a "K" where Peter kicked the locked gate, and an "M" where the muster room is.*
35. *I was concerned that Peter was still agitated and walking toward the muster room. In the courtyard, Peter was well-contained. There were no other young people there, and nothing much he could damage. However, there were still other young people in the muster room. This presented several risks.*
36. *First, in Peter's agitated state, he might have started a fight with one of the other young people or responded violently to a comment by one of them. Arguments and fights between young people in detention occur practically every day. And in my experience, when a young*

person in detention is upset it is not uncommon for other young people to tease them, heightening the risk of violence between them.

37. *Another risk is that Peter might have encouraged or incited the other young people in the muster room to attack staff or become violent. Peter appeared to me to be generally well liked by the other young people and may have been able to encourage others to misbehave. Also, it was lockdown. In my experience, incidents occur more frequently at or around lockdown when some young people do not want to go to their rooms and become angry or non-compliant.*
38. *Finally, Peter may have been encouraged by the presence of other young people to act up. In my experience, it is much harder to control a young person when others are around. My impression is that a detainee acting up with others nearby does not want to be seen to submit too quickly to directions from staff.*
39. *For these reasons I thought that the risk of a serious incident occurring was much lower if Peter was contained in the courtyard, away from other young people, until he de-escalated.*
40. *Jacob and I were tracking Peter down to the exit point to the muster room. I remember Jacob was still talking to Peter. He was trying to keep Peter in the courtyard, calm him down, and get him to go to his room. I was still hanging back behind Jacob, giving him the space to take the lead. I did not think that Peter was an immediate threat to Jacob. However, from experience, I knew that this could change suddenly. I was keeping a close watch on Peter and Jacob, and was close enough to assist if I needed to.*
41. *I remember Peter knocking a football out of Jacob's hand as they got close together. Jacob kept tracking Peter towards the exit to the muster room. He was still talking to him, trying to get him to calm down.*
42. *A moment later Peter reached out and grabbed Jacob. Peter was the one who made the first move. He took hold of Jacob's shirt, near the collar. Jacob reacted quickly. He was wrestling for control with Peter, while Peter was throwing punches at Jacob.*
43. *Once Peter and Jacob started struggling with each other, I felt that I had to assist Jacob with the restraint. I intervened, grabbing Peter around the upper legs or waist.*
44. *I was trying to get Peter off balance so that I could bring him down and place him on the ground. From training and experience, I know that an incident is much safer once a young person is on the ground. It is easier to restrain the young person and bring the situation under*

control, so that everyone is kept safe. If a young person is upright, it is harder to get control, and there is a greater risk that someone will get hurt.

45. *Peter was resisting. He was still punching at, and wrestling with, Jacob. Jacob had a hold of Peter's top half and I was holding onto Peter's lower half. We managed to unbalance Peter and bring him towards the ground.*
46. *Looking back at the CCTV footage, there is a moment in the initial struggle where Peter is quite high off the ground. I did not intentionally lift Peter up high. I was trying to destabilise him so that I could get him to the ground in accordance with my training. However, Peter was actively resisting and still had a hold on the collar of Jacob's shirt at this time.*
47. *As we brought Peter down toward the ground, he pulled Jacob forwards. Jacob appeared to lose his footing and came down on top of Peter. He sort of rolled over, and then off, Peter.*
48. *As Jacob was collecting himself, I started to restrain Peter on the ground. My recollection is that Peter landed on his back, so I had to roll him over. Once Peter was on his front, I secured his arm behind his back by holding his wrist. I remember Jacob came over to help. Looking back at the footage, it looks like I restrained one of Peter's arms and Jacob restrained the other. This is consistent with my general memory.*
49. *Once Peter was on the ground, Jacob and I were both talking to him, asking him things like "are you okay?". I cannot recall exactly what I or Jacob said but it was words to this effect. The purpose of talking to Peter while he was on the ground was to check his welfare and also to try to calm him down.*
50. *Peter did not respond for the first few seconds but then started swearing at us in response to our questions. After a few more seconds, Peter started swearing more loudly at us and struggling.*
51. *At some point while Peter was on the ground I noticed a small amount of blood on the ground which appeared to have come from Peter's face.*
52. *I am told that Peter says that he was unconscious while on the ground. I do not know whether that is true or not but if Peter was unconscious it could only have been very briefly in the first few seconds after we went to ground. After those first few seconds, Peter was swearing at us.*

57. *During this incident, I did not put my knee, arm or any other part of my body on Peter's neck or head. It is not something I would do. My training was to avoid any pressure on a young person's neck. The only time I might touch a young person's head during a restraint is if he or she was spitting at me. In those circumstances, I might use minimal force to turn the young person's head away from me enough to avoid being spat on. Peter was not spitting.*

58. *Shortly after Peter was ground stabilised, I took Peter's shirt off. Peter's shirt was ripped during the struggle.*

6. Rotumah made concessions in cross examination and did not resile from his position on material facts. I accept his account as truthful and reliable.
7. I am satisfied that the Plaintiff has initiated the physical contact on Bonson and assaulted him by grabbing him on the upper body. I am also satisfied the Plaintiff endeavoured to punch Bonson. The Plaintiff's behaviour during the day had escalated from graffiti to vandalism and ultimately to an assault on Bonson. I accept Bonson was concerned about the Plaintiff entering the common area, through the nearby door and the prospects for an escalation in danger if he did so. I also accept Bonson was endeavouring to talk the Plaintiff down whilst he walked next to him (closer than is recommended in the guidelines). Bonson appears on the footage relaxed and conciliatory in the moments before the assault by the Plaintiff on him. The Plaintiff presents as aggressive and upset in the footage immediately before the assault by him on Bonson. I do not accept the suggestion Bonson aggressively threw away a ball he was carrying.
8. As was conceded in cross examination other options in dealing with the Plaintiff were available. However, I am satisfied with the explanations as to the choices made by Bonson and Rotumah, and the steps taken as reasonable in the circumstances and made in good faith.
9. I accept both Bonson and Rotumah are large physically able men and the Plaintiff is a slender youth. It is clear however, that the Plaintiff struggled with such momentary vigour that the two men briefly lost control of him. I am satisfied that the force used by the two men was not excessive, nor was it punitive. The entire physical transaction was initiated by the assault on Bonson by the Plaintiff.
10. **Section 153 – Prohibited actions - Youth Justice Act 2005**
 - (1) The superintendent of a detention centre:
 - (a) must not take an action mentioned in subsection (2); and
 - (b) must take reasonable steps to ensure that a member of the staff of the detention centre does not take an action mentioned in subsection (2).

- (2) Each of the following actions is prohibited in relation to a detainee:
- (a) the use of force, except:
 - (i) under section 154 or another provision of this Act; and
 - (ii) in accordance with section 10;
 - (b) the use of a restraint, except an approved restraint that is used in accordance with section 155;
 - (c) the use of force or a restraint for the purpose of disciplining a detainee;
 - (d) the use of any form of physical, verbal or emotional abuse, including the following:
 - (i) the administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the detainee;
 - (ii) any act or omission intended to degrade or humiliate the detainee;
 - (iii) excessive control over the detainee's access to basic human needs, including toilet facilities, food and clean drinking water;
 - (e) the use of any form of psychological pressure intended to intimidate or humiliate the detainee;
 - (f) any kind of unlawful discriminatory treatment.

11. I am satisfied on all the evidence that the conduct of Bonson and Rotumah was reasonably necessary in the circumstances.

12. The action in battery by the Plaintiff is dismissed.

Dated this 4th day of June 2021

Alan Woodcock
LOCAL COURT JUDGE