

CITATION: *Police v Ms Jones* [2013] NTMC 017

PARTIES: POLICE

v

MS JONES

TITLE OF COURT: YOUTH JUSTICE COURT

JURISDICTION: Criminal

FILE NO(s): 21248319, 21248320 & 21226248

DELIVERED ON: 22 July 2013

DELIVERED AT: Darwin

HEARING DATE(s): 22 April 2013

JUDGMENT OF: Chief Magistrate Hannam

**CATCHWORDS:**

*Youth Justice Act* section 4 Objects and Principles

Sentence that meets needs of youth, community and victim. Borderline personality disorder and alcohol abuse disorder

**REPRESENTATION:**

*Counsel:*

Prosecution: DPP  
Defendant: NAAJA

*Solicitors:*

Prosecution: Mr Aust  
Defendant: Mr Edwards

Judgment category classification: B  
Judgment ID number: [2013] NTMC 017  
Number of paragraphs: 40

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

Nos. 21248319, 21248320 & 21226248

BETWEEN:

**POLICE**  
Plaintiff

AND:

**MS JONES**  
Defendant

REASONS FOR JUDGMENT

(Delivered 22 July 2013)

Ms Hilary Hannam CM:

1. Ms Jones who is 18 is being sentenced for two offences which were committed when she was a youth as well as one minor matter which she committed as an adult. As the facts of the matters indicate, the offences committed by Ms Jones as a youth are serious and most of this judgement is concerned with matters arising under the *Youth Justice Act*.

**The Facts**

2. The first offence was committed by Ms Jones in December 2011 when she was 17 and in custody at a juvenile detention centre. Ms Jones approached the victim, another inmate and accused her of having said something unacceptable. The victim walked away as advised by a youth worker, but Ms Jones approached the victim and yelled in her face causing the youth worker to intervene. Ms Jones reached past the youth worker and grabbed the victim by the hair, pulling her backwards and down toward the concrete

floor and whilst holding onto the victim's hair with one hand, used her other hand to slap the victim, striking her several times to the face and head.

3. Ms Jones was not arrested in relation to this matter for 12 months.
4. The second offence committed as a juvenile involved Ms Jones who was heavily intoxicated, upon seeing the victim in the street, engaged in an argument with the victim over what is described in the statement of facts as "jealousy matters". Ms Jones, without warning, grabbed the victim by the hair and punched her several times to the face, knocking her to the ground. Ms Jones then walked to a nearby service station and armed herself with a car windscreen squeegee and returned to the victim who was still lying on the ground. Ms Jones then raised the squeegee above her head and struck the victim three times to her head and a number of times to the victim's arms. The victim ran into the service station and fell at the front counter with the defendant following her and still carrying the implement. Members of the public intervened and Ms Jones dropped the implement and fled from the scene. As a result of the assault, the victim suffered a broken wrist and a severe laceration to the head, requiring a number of stitches.
5. Ms Jones was originally remanded in custody, but was subsequently granted bail. After failing to appear in Court in November 2012, a warrant was issued for her arrest.
6. In December 2012, by which time Ms Jones had become an adult, she was arrested for stealing a bottle of alcohol valued at \$7.00 from a hotel bottle shop whilst under the influence of alcohol and cannabis. In that matter, the defendant simply picked up a bottle from the fridge, placed it down the front of her shorts and left the bottle shop without paying for the item, even though at the time of her arrest she had enough money in her possession to pay for it.

7. When Ms Jones appeared in Court on 20 December 2012, pleas were indicated to all matters. She has also subsequently been charged for a matter which is before the Supreme Court and has remained in custody in relation to that matter.

### **Objective Seriousness of the Offences**

8. The maximum penalty for assault in relation to the December 2011 offence in the detention centre is two years detention or imprisonment. The maximum penalties for the aggravated assault and going armed in public relating to the assault at the service station shortly before the youth became an adult are five years and three years imprisonment or detention respectively.
9. Each of these matters is being dealt with under the *Youth Justice Act* and under section 83(2) the term of detention or imprisonment must not exceed two years in respect of each offence. In relation to the minor stealing matter, Ms Jones is being sentenced as an adult.
10. In my view, the first assault, in the detention centre is a mid range example of a common assault. It is of particular concern that it occurred within a detention centre and objectively involved the grabbing of the victim's hair and slapping her to the face and head several times. The victim did not suffer any harm as defined in the Act and the Court has not been provided with a victim impact statement.
11. The aggravated assault using the weapon on the other hand is, in my view, a fairly serious example of an aggravated assault. The attack was unprovoked, on a public street and sustained. The victim was punched several times to her face and knocked to the ground and whilst lying on the ground, suffered a number of blows delivered with a high degree of violence to her head and arms sufficient to cause a severe laceration and a fracture. Objectively, this matter is at least a medium degree of seriousness for an offence of this type.

12. The defendant has a criminal history which includes three prior matters of assault, being an aggravated assault committed when she was 16 and two counts of assaulting a member of the police when she was 17. There is a significant amount of relevant material contained within a pre-sentence report, a report obtained under section 51 of the Act, an education report and a psychological report to which I will return to shortly.

### **Objectives & Principles of *Youth Justice Act***

13. So far as the more serious matters are concerned, being dealt with as they are under the *Youth Justice Act*, the principles of that Act must be taken into account in sentencing Ms Jones, together with the principles and considerations in relation to sentencing in s 81. Section 4 sets out 18 principles to be taken into account which relate to matters including the acceptance of responsibility for offending by the youth and her responsible adult, dealing with a youth in a way that acknowledges her needs and provides her with an opportunity to develop in socially responsible ways and with an emphasis on reintegrating her into the community and taking into account the needs and rights of the victim.
14. Principle 4(b) provides that “a youth should be dealt with in a way that acknowledges her needs and will provide her with the opportunity to develop in socially responsible ways” and 4(f) provides that “a youth who commits an offence should be dealt with in a way that allows her to be reintegrated into the community”. These principles, together with the defendant’s subjective circumstances under general sentencing principles require reference to the pre-sentence report (Exhibit 6), section 51 report (Exhibit 7), section 68 education report (Exhibit 8) and psychiatric report (Exhibit 9).
15. The pre-sentence report is helpful in dealing with the attitude of Ms Jones towards the offence relating to the assault near the service station, but does

not address the assault in custody. In relation to the assault near the service station, according to the author of the report, Ms Jones claims that she caught the victim and her partner red handed and had seen them kissing and holding hands. Although this is not supported by the statement of facts, Ms Jones consistently has stated the motivation for the offence was jealousy she felt about a relationship between the victim and her ex-partner. At one point in the report, Ms Jones is recorded as stating that she did not regret her actions and had no remorse for the victim who deserved it, but the author went on to say that Ms Jones later said that she wouldn't do it again but "it's too late to take it back now ... too much jealousy".

16. In my experience, jealousy is very often quoted as the motivation for violent offending, particularly amongst Indigenous offenders. The theme of jealousy, jealousy as a justification for violent offending and an acceptance of violence as an ordinary part of relationships also arises commonly in the Courts and is repeated in the pre-sentence report under the heading of social history. For example, Ms Jones described that her former relationship was characterised by domestic abuse including significant physical violence and that she is currently in a relationship with a man who is in jail. She said that when she previously went out with him, he used to hit her and it would appear that the current charges against him relate to an assault by him against Ms Jones and that she plans to "drop the charges for him ... coz I love him and it was only a little hit ... he promised me he would never hit me again and if I dropped the charges he would marry me ... he even cried".
17. It appears that an entrenched normalisation of violence surrounding Ms Jones as she has grown up has affected her own attitude toward violence and is connected with the severity of violence in her offending.
18. Although the pre-sentence report paints a reasonably good picture of her childhood, describing it as she did as good and strong and that she had a big family to look out for each other and that both her parents held full-time

employment, the section 51 report, education report and subsequent psychiatric report present a very different picture.

19. In fact, Ms Jones was placed by her natural parents as a baby into the care of her maternal grandmother and spent most of her life until the age of 14 growing up in her grandmother's care in a remote community.
20. Ms Jones first came into contact with the Department of Children & Families in 2007 when she was treated for three types of sexually transmitted infections at the age of 12 – though there are suggestions of sexual activity at a much younger age. A few months later she presented at a health centre requesting contraception after disclosing that she had been raped and kicked by a 19 year old man. This was not investigated by the Department with the reason in the report being given as “the Department had started to open a protective assessment case for extensive case work intervention”, the meaning of which I do not understand.
21. A few months later, at age 13 Ms Jones threatened to commit suicide and attempted to hang herself following an altercation with her mother. She is also recorded as having made threats to kill a school teacher and her carer. The report indicates that Ms Jones was referred to a sexual assault referral centre for assessment and to mental health services and also the Department “opened a family support case for follow up”. The report indicates however that “due to lack of engagement by Ms Jones [who was 13] it was not completed”, which I assume means that Ms Jones did not receive any services.
22. The report also suggests that in March 2008, when Ms Jones was 15, that she and another young female allegedly sexually abused an intellectually disabled female, but this was not pursued criminally by the victim's family. By May 2008, at 15, Ms Jones' grandmother advised that she had no control of her and in November 2008, at 16, Ms Jones was evacuated to Royal

Darwin Hospital for attempting to hang herself, which she said was a result of “boys teasing her”.

23. Ms Jones was then placed in the care of the CEO under a temporary care agreement under which she was placed with eight different carers, both foster carers and family over a two month period. The Department then sought and the Court made a short-term order of parental responsibility to the CEO until Ms Jones turned 16.
24. Unfortunately, even though the record indicates that Ms Jones committed her first offence, an aggravated assault shortly after the short-term responsibility order to the CEO expired and although there were continual concerns about self harm, the Department was not further involved with Ms Jones. Why a longer order was not sought or made is unclear.
25. Despite being described in the section 51 report as being at “high risk of sexual abuse, pregnancy, further STIs, suicide or further harm” and that she has “no self preservation or concern for her wellbeing, minimal insight into inappropriate or appropriate sexual behaviour and her current circumstances are normalised”, the author of the report expressed the view that because of her age, (17 years at the time of the report) and family willingness to provide support, she was not in need of care and protection.

## **Education**

26. Although Ms Jones has been noted by a psychiatrist to be unreliable in her reports about most aspects of her life, the level of education she has reached can be pieced together in the various reports. The section 51 report does not address education, but the report from the Department of Education indicates that Ms Jones did attend school in Lajamanu for six years from 2004-2010, but has not attended school from the age of 15 and whilst she did enrol at middle school in Darwin, she did not attend. A school psychology report prepared when she was 13 indicated that she was



functioning at a low level on her adaptive behaviour assessment and was extremely low in some domains. It was recommended that Ms Jones would benefit to one to one intervention. Ms Jones advised the author of the pre-sentence report that she completed year 12 at Sanderson High School in Darwin, which is not supported by the education report.

### **Substance Misuse**

27. As with other areas, Ms Jones' own recounting of her use of substances is contradictory and is likely to be unreliable. She told the author of the pre-sentence report that she started drinking when she was around 16 years and that she continues to consume alcohol "occasionally" and usually in the company of friends. She did however confirm to that author that she could link alcohol to most of her offending and reported that she knows she needs to give up drinking to address her offending behaviours. She also advised the author of the pre-sentence report that she did not consume any other illicit substance.
28. The section 51 report makes passing reference to alcohol consumption, by the psychiatrist sees it as a central issue. Ms Jones admitted to the psychiatrist that she commenced heavy alcohol and cannabis use from the age of 15, often resulting in intoxication. She also told the psychiatrist she smoked cannabis on a daily basis whilst in the community and it is noted that two of the offences in the community were committed under the influence of alcohol and one under the influence of alcohol and cannabis. The psychiatrist noted that Ms Jones' judgement is good when she is calm and not intoxicated, but reiterated as is revealed by her criminal report that she demonstrates a pattern of persistent poor judgement when intoxicated.
29. The psychiatrist diagnoses Ms Jones as having alcohol abuse disorder due to her recurrent use of alcohol in situations in which it is physically hazardous, experiencing recurrent alcohol related legal problems and the continued use

of alcohol despite having persistent or recurrent social or inter-personal problems caused or exacerbated by the effects of alcohol.

### **Mental Health**

30. As a result of Ms Jones' dysfunctional life experience and childhood, early exposure to victimisation, sexual abuse and heavy alcohol and cannabis use, Ms Jones has been diagnosed as suffering from alcohol abuse disorder and a borderline personality disorder. The psychiatrist reports that whilst personality disorders represent enduring disturbances in a person's way of viewing themselves, others and the world, it is difficult to predict the likelihood of persistence of the disorder into young adulthood, particularly if she is compliant with attempts to stop substance abuse and other suggested treatment and support.
31. So far as alcohol abuse disorder is concerned, the psychiatrist said Ms Jones would benefit from a period of drug and alcohol counselling. Treatment for borderline personality disorder is more difficult. The psychiatrist described the definitive treatment as Dialectical Behavioural Therapy which he says is available in the community in larger centres with strong mental health teams. The psychiatrist said it is not likely that formal DBT will be delivered in a Corrections setting in the near future. He said that the best approach may be for Ms Jones to be seen by Top End Forensic Mental Health Services to assess her suitability for engagement in a caring relationship with a professional who can help her to learn emotional self regulation techniques and this approach is likely to be almost as beneficial as formal DBT and is more likely to be able to be delivered remotely.
32. The psychiatrist describes Ms Jones as experiencing distress and dysfunction related to a past history of sexual abuse and that she is at risk of developing a post-traumatic disorder, particularly if the trauma were to be repeated. He said that sexual assault counselling is likely to be useful for Ms Jones and

would ideally compliment the work of the Top End Forensic Mental Health Services clinicians.

33. The psychiatrist also said that Ms Jones has recognised on her own accord that she needs anger management therapy, which should be delivered in a coordinated fashion with the other interventions. All of the treatments the psychiatrist recommends may take, in his view, months to years to have the desired effect and rely in a large part on Ms Jones' motivation to change.
34. Taking all of the matters into account, there is no doubt that Ms Jones' traumatic childhood experiences has shaped her subsequent behaviour and development and that the high degree of violence shown in the two significant matters (and in all likelihood is the case with her prior violent offending) is linked to her borderline personality disorder developed as a result of these childhood experiences. Similarly, her alcohol abuse disorder is both related to those childhood experiences and connected to her offending.
35. In other words, if a sentence is to meet her needs and to allow her to be reintegrated into the community and develop in a socially responsible way, it is imperative that she receives all of the treatment recommended by the psychiatrist. This includes drug and alcohol counselling, anger management counselling, sexual abuse counselling and Dialectical Behavioural Therapy, or a similar therapy.
36. It is most unfortunate both for Ms Jones and for the community that although extremely alarming matters relating to her care and protection were known to relevant agencies such as the Department of Children & Families, nothing effective was done to protect her from harm, especially as that harm is directly related to matters such as the development of a personality disorder and substance misuse, which in turn is related to her offending, particularly in a context where a high degree of violence appears to have been normalised in Ms Jones' life.

37. The Court is required to craft a sentence which both recognises the objective seriousness of the offences, takes into account her past similar offending, but also takes into account the very powerful subjective factors, together with her plea of guilty. Ms Jones is still young and is capable of being rehabilitated, but this will only occur if the services she requires to address all of her needs are made available to her and if she continues to be motivated. Taking into account that she has spent four months in custody, I am of the view that there is no alternative other than a custodial sentence for each of these offences. Further, the sentences should be cumulative as each of the matters is entirely different, though of course the principle of totality will be applied in such a way as to reach a just outcome.
38. In relation to the assault in custody, Ms Jones is convicted and sentenced to a term of imprisonment of one month to commence on 26 February 2013. In respect of the aggravated assault and going armed in public, Ms Jones is convicted and sentenced to an aggregate term of six months imprisonment, cumulative on the first sentence, making a total effective sentence of seven months. I direct that she is to be released forthwith with the balance of the term of imprisonment to be suspended for a period of 12 months on conditions that the defendant:
1. Be of good behaviour and not commit any offence;
  2. Accept supervision of Corrections and comply with all reasonable directions, including surveillance in respect of alcohol and illicit drug use;
  3. Not consume, possess or purchase alcohol or any illicit substance;
  4. Co-operate with referrals and engage with counselling and therapy of the type recommended by the psychiatrist.
39. If the defendant is to remain in custody in respect of other matters, I recommend that she begin counselling and therapy within custody.

40. In respect of the stealing offence, the defendant is convicted and released on a good behaviour bond for six months. She is ordered to pay a victim's levy of \$40.00.

Dated this 22<sup>nd</sup> day of July 2013

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Hilary Hannam  
CHIEF MAGISTRATE