

CITATION: *Wayne O'Neill v Steven Jangala Robertson* [2017] NTLC 28

PARTIES: Wayne O'NEILL
v
Steven Jangala ROBERTSON

TITLE OF COURT: Local Court

JURISDICTION: Criminal

FILE NO(s): 21700024

DELIVERED ON: 5 December 2017

DELIVERED AT: Lajamanu

HEARING DATE(s): 3 October, 7 November and 5 December 2017

JUDGMENT OF: Greg Macdonald

CATCHWORDS:

Sentencing – Aggravated Assault - Sections 78DD, 78DG and 78DI *Sentencing Act* - exceptional circumstances.

REPRESENTATION:

Counsel:

Plaintiff: Ms M Sikandar
Defendant: Mr P Curtin

Solicitors:

Plaintiff: NAAJA
Defendant: DPP

Judgment category classification: B
Judgment ID number: [2017] NTLC 28
Number of paragraphs: 20

IN THE LOCAL COURT
AT LAJAMANU IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21700024

BETWEEN:

Wayne O'NEILL

Complainant

AND:

Steven Jangala ROBERTSON

Defendant

REASONS FOR JUDGMENT

(Delivered 5 December 2017)

Judge Macdonald:

1. On 10 January 2017 defendant Steven Jungala Robertson was charged with one count of aggravated unlawful assault contrary to s 188(1) and (2) of the *Criminal Code*. The incident giving rise to the charge occurred on 1 January 2017 at the Lajamanu family home of the Defendant, with the victim being his long-time partner.
2. Mr Robertson sought to contest the charge and pleaded not guilty at hearing on 3 October 2017. On 7 November 2017, following the benefit of written submissions by both prosecution and defence counsel, Mr Robertson was found guilty as charged. The matter was then adjourned for submissions on

sentence, which were received from the DPP and NAAJA on 8 and 23 November 2017 respectively.

3. Other than that I would characterise the assault as at the lower end of such offending, I accept all points made by DPP. Although not expressly addressed, those submissions were made against the background and notice of a possible finding of the circumstances of the case being exceptional.
4. Having regard to Division 6A of the *Sentencing Act* (Act), the offence was a second Level 3 offence, so attracts the minimum mandatory sentence of 3 months actual imprisonment prescribed by s 78DD(2) of the Act, unless “the court is satisfied that the circumstances of the case are exceptional” within the meaning of s 78DI(1)(d). If exceptional circumstances are found, s 78DG of the Act then applies.
5. Robertson is a 47-year-old man who has been married to the victim for 20 years, and with who he has four children and a grandchild. The defendant and victim are generally reliant on each other, have what has been described as a strong relationship, and spend time with their children and grandchild in traditional pursuits. The offence occurred more than 11 months ago, with Mr Robertson having been in no further trouble since that date, and rehabilitation is a relevant factor.
6. Although Mr Robertson is in employment, since 1 January 2017 there has also been an appreciable number of deaths in the family, necessitating a significant amount of time in bereavement, and efforts by him and the victim to ‘keep the family together’.
7. The aggravated assault took place in the context of house 337 having only one room with air-conditioning, and at the hottest time of the year. It was uncontroverted that the assault followed a heated argument, the centre of which was that the victim wanted Mr Robertson to vacate the air-conditioned room, including due to children sleeping there.

8. Except for an assault conviction 25 years ago, Mr Robertson had no convictions for violence until 2015. Although the court is unaware, the 2015 conviction, which was a serious offence of violence, is likely to have been in relation to the same victim.
9. The offence occurred in the remote community of Lajamanu, which is on the Northern edge of the Tanamai desert, almost 900 kilometres from Darwin. Lajamanu comprises approximately 600 people, the vast majority of who are Aboriginal of the Walpiri language group. A feature of the community is that much of its functioning, including community safety, obtains the benefit of input or oversight from a group of Walpiri elders, the Kurdiji.
10. In relation to court matters, it is well known that the Kurdiji also ensure that, once convicted, offenders are made further aware of the communities opprobrium for and disapproval of the offending. This is done through language, and not by any unlawful means, and is an important aspect of community recognition and identification at Lajamanu, including in relation to acceptance of law. The involvement of the Kurdiji in this regard has increased over the past 2 years.
11. Associated with the Kurdiji's exceptional role in the fabric of the Lajamanu community is that the size of Lajamanu results in any punishment carried out in the community being amplified, particularly in terms of both general and specific deterrence. The concept of 'shame' in the context of the size and community consciousness of Lajamanu is far more pronounced where punishment is visible and apparent to the community.
12. It is also relevant that the Family Violence Program is now delivered in situ at Lajamanu, which must lead to improved prospects of rehabilitative effect. Namely, to assist perpetrators of domestic violence to obtain broader and more lawful perspectives.

13. The manner in which Mr Robertson pleaded not guilty and gave his evidence is not uncommon or unusual in criminal matters heard in remote communities. Their size results in a social proximity which is foreign to urban centres and which, together with kinship relationships, results in contested hearings being a very different proposition to those in larger centres. In addition, there are the broader language and cultural factors which render conduct of contested hearings in remote communities more difficult.
14. One aspect which was, however, unusual in the case was the willingness of the victim to attend the contested hearing and give cogent and uncompromised evidence. Despite the significant number of aggravated assault charges against men in remote communities of the Northern Territory arising in the context of domestic relationships, the frequency with which contested matters result in conviction is low. It is disturbingly common, probably for the cultural and proximity factors referred to, for victims to either not appear at a contested hearing or, alternatively, to attend but fail to 'come up to proof'.
15. In my experience, the hearing of the relevant charge was only the second remote community 'trial' since August 2017 in which the hearing proceeded in the ordinary course and led to conviction. That is, without the prospects of either issuing a warrant of apprehension for the victim or having the charges read in the absence of the victim, or withdrawn.
16. The victim's willingness was despite that her evidence at hearing included that, since 1 January 2017 Mr Robertson had treated her well. The Victim Impact Statement (VIS) tendered at hearing stated "I am happy for the judge to decide his punishment" and I note s 78DI(3)(a) expressly entitles the court to have regard to that statement. I also infer from the oral evidence and the victim's presentation at hearing, including in the presence of Mr Robertson, that she does not wish for the "imprisonment" referred to in

the VIS pro forma. Mr Robertson has spent a day in custody, however that was only at the Lajamanu Police Station, and not in DCC at Holtze in Darwin.

17. I have had regard to the approach and principles fixed by the Court of Criminal Appeal in *The Queen v Duncan* [2015] NTCCA 2 at [24] to [29], including through *Yacoub v Pilkington (Aust) Ltd* [2007] NSWCA 290 at [66], and the subsequent discussion on sentence in *The Queen v Gail Philomac*, unreported SCC 21615363 of 21 October 2016. I also note the potential relevance of broader considerations arising through the Act, as discussed in *Dhamarrandji v Curtis* [2014] NTSC 39 at [24] to [31] and the passages of the second reading speech of 29 November 2012 referred to in *Duncan* (supra) at [24].
18. The negative and positive features of the offender and offending, the victim, and the milieu within which the offending arose, and in which it would now be appropriate to be dealt with, have been referred to. I consider that, as a whole, the case has sufficient unusual features to satisfy the exceptional circumstances contemplated by s 78DI(1)(b) of the Act.
19. Despite being at the lower end of the scale, the offence for which Mr Robertson was found guilty is objectively serious, carrying a maximum penalty of 7 years imprisonment. Due to both Mr Robertson's prior relevant criminal history and that he contested the charge, I am unable to extend any leniency or discount on those accounts in imposing sentence. As previously noted, the prevalence of aggravated assaults by men on women, including in remote communities, is a very serious problem in the Northern Territory. No weapon was employed by Mr Robertson and, the harm sustained was a good deal less than in many of the assaults before the courts. Regardless of the subjective matters relevant to the case, general and specific deterrence, together with denunciation, require imposition of a term of imprisonment.

20. I record a conviction against Mr Robertson for the offence and sentence him to 3 months imprisonment, backdated by one day and suspended forthwith under s 40 of the Act on supervision for an operational period of 12 months. That disposition includes in the context of a Probation Parole Officer having assessed Mr Robertson as suitable for both community work in Lajamanu and for the Family Violence Program at that remote community, noting that he is generally in employment. The conditions of supervision are that, within the operational period, Mr Robertson shall:-

- (i) Commit no further offence punishable by imprisonment;
- (ii) Be subject to the ongoing supervision of a probation parole officer, and report to such officer at Lajamanu within 2 working days of today;
- (iii) Undertake and complete 100 hours of community work at Lajamanu;
- (iv) Undertake and complete the Family Violence Program at Lajamanu;
- (v) Inform the probation parole officer of his address and employment, and of any change in either, and not leave the Territory except with permission.
- (vi) Otherwise follow and comply with any reasonable directions of the probation parole officer.

Dated this 5th day of December 2017.



Greg Macdonald
Local Court Judge