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TRANSCRIPT OF PROCEEDINGS

DISTRICT COURT OF QUEENSLAND

CRIMINAL JURISDICTION

JUDGE DEARDEN

[redacted]

THE QUEEN

v.

[redacted]

ROCKHAMPTON

[redacted]

SENTENCE

Any Rulings that may be included in this transcript may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR:Stand up, please, [redacted] Before I pass sentence, is there anything that you want to say about any aspect of this?

DEFENDANT: Your Honour, distinguished prosecutor, Mr McMillan, thank you for the opportunity to speak today. Today is the lowest point of my life. Three and a-half years ago, I was involved in an incident that changed people's lives. Since that event, I've worked tirelessly to ensure [redacted] is compensated and is in a good place. Your Honour, I've done nothing but work hard and tirelessly and felt so much pain in this event. I've had trouble sleeping; I've had trouble functioning.

Your Honour. I'm a family man. I've got a beautiful wife and a little son. If you give me the opportunity, I will work tirelessly in the community to ensure I make up for my mistakes. Given the opportunity, your Honour, I will work tirelessly to ensure I never put myself in a situation like this again. Given this opportunity, I will work tirelessly to reward my friends, my family and my beautiful wife for the support they've shown through this [indistinct] thank you, your Honour.

HIS HONOUR: Thank you, [redacted] You pleaded guilty – stand up, please. You pleaded guilty to one count of grievous bodily harm. The starting point when a court considers a matter such as this is that we are all precious, but fragile human beings, whether we be three years old, 30 years old, 57 years old or 90 years old. One of the extraordinary things about human beings is that we can go through the most awful experiences – train crashes, plane crashes, motor vehicle crashes – suffer the most awful injuries and recover or we can be killed by a single blow. And of course, you'd have to be living under a rock, in recent times, if you haven't heard or become aware of the One Punch Can Kill Campaign. But that's the reality of it.

Quite a few years ago now, when I was a solicitor in private practice, sitting where your solicitor's sitting, I acted for one of the nicest men I'd ever met in my life. He was a New Zealand Maori man, had an honourable discharge from the New Zealand army, was living in Australia, had a wife and two children and, at the end of year football break-up party, received some information – incorrect, as it turned out – that the team coach had administered some discipline to one of his children.

It turned out he'd – someone had misheard what someone else had said and, in the awful way in which Chinese whispers can sometimes work, that was how it came to him. And so he went and confronted the coach – probably a reasonably similar amount of violence to here: a number of blows and, in fact, a couple of kicks. Interesting enough, the kicks didn't actually achieve very much. It was the blows, including one blow to the head – just to the back of the head here – just the back of the skull.

That particular blow, which was described in the pathology report as being mild to moderate – so didn't actually leave any mark on the external surface, but it killed the football coach. And so my client found himself in the Supreme Court, initially on a charge of manslaughter. It was upgraded to murder and eventually downgraded, by agreement, to manslaughter. And he ended up serving, after appeal, from memory, eight years, to serve two and three-quarters.

Now, what that demonstrated, of course, was, although there was probably a similar amount of violence to what you were involved in, just one punch – just one mild punch, wrong place, wrong time, for a man who was drunk – and therefore his body wasn't protecting him in a way that it would have done if he had been sober – was killed.

You didn't kill [redacted] but you most certainly caused significant injury to him, which may or may not have lifetime affect. And certainly the titanium plate screws that he has in his face are there for the lifetime – for his lifetime. And I have no trouble in accepting that you are deeply remorseful for what you've done, but, of course, I still don't understand why you did it, because that's the starting point.

The starting point is that you were a group of people at a bar, dealing with the normal issues that you deal with in any crowded bar: "Can I sit there?" "No." Or, "Can I borrow this seat?" "No/yes" – whatever it might have been. It was just normal human interaction in dealing with limited resources – in this case seating – and trying to sort out whether the limited seating was going to cope with the needs of your group and [redacted] group.

Now, that's a no-brainer. That's a situation where, ordinarily, people politely negotiate a resolution that is sensible. And yet, in this case, when [redacted] went to get that stool back, the stool – sorry – he was hit by someone in the back of the head. That's said to be unknown, so it's not said to be you. And then you punched him three or four times. He fell to the ground and you punched him five or six times on the ground.

I, firstly, of course, struggle to understand why you punched him over an argument over something as minor as whether or not his group had the stool or your group. And I might say that he struggles to understand that as well, but, secondly, why it was then necessary to continue that violence while he was on the ground, obviously, helpless. And, of course, it only stopped when you were pulled off by security guards and you and your group were ejected.

Now, it's not said that you fled the seen. It seems it's took some time to have the matter proceed, so you're not in the situation, for instance, of [redacted] who actively took steps to avoid being identified. And it's not said, subject to some comments that I'm going to make in a minute, that you've prolonged the matter for any reason other than to attempt to resolve the proceedings.

[redacted] however, suffered a displaced left zygoma – that's his left cheekbone – maxilla – that's the bone next to his nose – and left orbital, which is the bone area underneath his eye – so basically, fractures to his eye socket, cheekbone and nasal bone. He had three hours of surgery on the 28th of June 2012, this incident having occurred on the 23rd of June 2012, so that's five days later. A titanium plate and

screws were inserted and, if he had been untreated, he would have had a sunken left eyeball and double vision. And he required further surgery the next year, 26 March 2013, for ingrowing eyelashes. And, of course, as we've seen from the report of [redacted] which is exhibit 3, he's suffering, on an ongoing basis, leakage of fluid behind the retina, which is calling blurriness and requires injections – regular injections that cost $800 a pop.

Now, his victim impact statement, which, as I said to the prosecutor, was detailed, objective and comprehensive, makes chilling reading. He is a man who was having a pleasant family day with his family, going to the races and then catching up with people for a drink and a meal afterwards, and was quite appalling and brutally assaulted by you, even if, perhaps, you didn't throw the very first blow to the back of his head.

This matter has been complicated by ongoing negotiations about compensation. As I discussed with the prosecutor in her reply, at the end of the day, the prosecution is not bound by any outcome of any negotiations between a defendant and a complainant. And that's always been the situation. Of course, you were initially charged with a more serious charge: malicious act with intent. And you were subsequently charged with grievous bodily harm.

That matter's had a number of listings. It's – if I can put it this way – staggered its way through to a final resolution and a plea of guilty, which is a late plea of guilty, but as your counsel has indicated, explicable, it seems to me, by the course of the negotiations. And there is, apparently – I'm told – concurrent personal injuries proceedings – civil proceedings on foot, which have added another layer of complexity to the matter.

The matters stressed by your counsel, Mr McMillan, are your almost total lack of criminal history. There's one very minor matter, for which you received a very small fine, back in 2001. That was some level of street offence, behaving in a disorderly matter. There are – well, there's significant material, which indicates that you've achieved very highly in your professional life and you currently hold a position as the General Manager of Operations, Engineering and Supply for a large explosive supply company.

As part of that, you're required to hold what's called an explosives authority and your plea of guilty, which you entered this morning, will inevitably result in a conviction being recorded for a grievous bodily harm offence, which is, Mr McMillan tells me, a "relevant offence" under section 15 subsection (10) of the Explosives Act. And that will mean, in a practical sense, that you are going to lose your explosives licence – or authority and that

may well affect your capacity to carry your job, which is a high-level managerial job and which, not to put to fine a point on it, you should have been a whole lot more cautious – although you weren't directly in that job at the time, but you were in another, equally responsible job at the time that this incident occurred.

The events occurred in licensed premises. There was no provocation. The injuries were serious. The consequences have been potentially life-long and, certainly, have lingered through till today, which is two and a-half years later. There were serious aspects to the offending, given blows both while the complainant was standing and after he fell to the ground. And you were, at the time of the offending, 34, so you are not a young man and, not to put too fine a point on it, you should have known better.

If, as seems likely, alcohol played a part in this offending, then, if I were you – and it's not my decision – I'd be swearing off alcohol for the rest of your life. It's obviously only going to bring you a lot of pain and heartache.

What's clear and what complicates sentencing in this matter is this: that you've already paid [redacted] in ongoing negotiations with him, the sum of $100,000. A further sum of $25,000 currently sits in [redacted] solicitor's trust account. It's not entirely clear to me the status of that other than it seems that it's been relinquished from your control to [redacted] control in some way, and there is, as Mr McMillan has outlined, a concurrent personal injuries action proceeding under the Personal Injuries Proceedings Act for a large sum of money. To raise the funds to pay that compensation you've sold two investment properties with relatively modest equity in each and that, Mr McMillan stresses, is an issue when it comes to remorse because you've clearly, in effect, sacrificed your investment future to try and resolve this matter even though he stresses in his submission it was not an attempt to buy your way out of prosecution or punishment.

The references speak very highly of you and that's to your credit. Your employment history speaks very highly of you. That's to your credit. I've got no doubt that you have suffered, although nowhere near as much as [redacted] but you are suffering, it's said, by [redacted] who's prepared a pre-sentence psychological report, from both depression and distress. Of course, you had the very sad loss of your first wife, and you are the father to a young child and the husband of a woman who obviously loves you and cares very much for you and has supported you through these matters which, of course, have not just been incredibly stressful and distressing for [redacted] but also very distressing for you and those who love you and care about you.

I've been referred by the prosecutor, [redacted] to two decisions, the decision of [redacted] ex parte the Attorney-General, and [redacted] ex parte the Attorney-General. I've been referred by your counsel, Mr McMillan, to a range of single judge decisions in the matters of [redacted] and there are, of course differences in respect of all of those matters all of which, as the Court of Appeal has said repeatedly, makes sentencing for matters like this, grievous bodily harm matters, particularly difficult because there's an enormous variety of circumstances in which they've occurred, the nature and extent of the violence, the nature and extent of the injuries, the long-term issues in respect of the injuries, the criminal history of the person who's committed the offences, and, of course, the significant issue in your case of the payment of compensation.

Weighing all of the matters as best I can, and I don't pretend that it's been an easy weighing of a range of competing considerations, I'm ultimately of the view that the appropriate sentence is as follows. You are convicted and sentenced to two and a-half years' imprisonment. Not without some significant hesitation but recognising the very significant benefit to the complainant of the payment of a very significant sum of compensation and without any way indicating that this is a buying of your way out of jail, I am prepared in the circumstances to wholly suspend the sentence. There'll be an operational period of three years. If you commit any offence at all punishable by imprisonment in the next three years you'll be brought and you'll be called on to show cause why should not serve the whole or some portion of that sentence of two and a-half years.

I acknowledge that sends the very clear message by the head sentence that violence of this kind, particularly when it occurs in licensed premises and where it involves significant injury to a person who was doing nothing

more than minding his own business and trying to enjoy a pleasant evening or afternoon after the races, must bring substantial and appropriate sentences, and I've had to balance that against your personal circumstances, the matters that were raised in the psychologist's report, despite the relatively late plea, the genuine remorse, which I accept, the commitment to compensation which is, I must say, above and beyond what these courts see in 99.9 per cent of matters and, ultimately, it seems to me that as best as possible the sentence I've imposed deals with all of those issues.

I'm also comforted, to some extent, by the fact that your only criminal history was very, very dated, 2001, and there's been no further criminal history since these events occurred on the 23rd of June 2012. I sincerely hope, of course, that not only do you not commit any offences during the operational period of the suspended sentence but you don't come back to any court ever at any time.

Are there any other orders I need to make?

[redacted] No. Thank you, your Honour.

HIS HONOUR: Thank you, [redacted] Thank you, Mr McMillan.

MR McMILLAN: May it please the court.

HIS HONOUR: We'll just adjourn briefly and return and do the [indistinct]
