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NORTHERN TERRITORY OF AUSTRALIA

LOCAL COURT

No: 22327278

WORK HEALTH AUTHORITY

and

LINDSAY CLIVE ELLIOTT

CHIEF JUDGE MORRIS

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON 4 DECEMBER 2024

Transcribed by:
Epiq:

HER HONOUR: Good morning, gentlemen.

MR GOODFELLOW: Good morning, your Honour.

HER HONOUR: I'll just be a moment. All right. So – now, dealing with the matter of Lindsay Elliott.

Appearing for the authority?

MR GOODFELLOW: Goodfellow, your Honour, appearing for the authority.

HER HONOUR: Thank you.

MR ROUSSOS: May it please the court, Roussos for Mr Elliott.

HER HONOUR: Thank you.

MR ROUSSOS: Thank you.

HER HONOUR: And he's online there.

MR ROUSSOS: Yes. Thank you. With Mrs Elliott.

HER HONOUR: All right. And Mr and Mrs Elliott, I'm just checking, you can hear us okay?

THE DEFENDANT: Yes. Yes.

HER HONOUR: All right. Thank you. Is there anything further, Mr Goodfellow, that you wish to put before the court?

MR GOODFELLOW: No, your Honour. No.

HER HONOUR: Mr Roussos?

MR ROUSSOS: No.

HER HONOUR: All right. Mr Elliott has pleaded guilty to offences that as a worker he failed to take reasonable care that his acts or omissions do not adversely affect the health and safety of others, and that that failure exposed Henry Dunn to a risk of death or serious injury. And a similar charge in relation to Jack Hartley (?).

Despite this occurring in 2022 and the first mention being in October 2023, this is regarded as an early plea, with the normal weight attributed to that. Mr Elliott appears to have at all times cooperated with the regulatory authority and the investigation. This offence incurs a fine, with or without a conviction. However, of course, other lesser sentencing options under the *Northern Territory Sentencing Act*

are open to the court, such as a Community Corrections order, previously regarded and referred to as a bond.

There were two young men who were exposed to the risk, Mr Jack Hartley and Mr Henry Dunn. I have a victim impact statement from Mr Dunn. He says, and rightly so, that the amputation of his arm has had a profound and ongoing impact on his life. There was the shock and trauma from the moment of the injury, the dealing with the amputation and the treatment and ongoing physical therapy required. He has ongoing pain and discomfort daily.

He was an active sports player and had, in fact, had a first-class honours degree in science, studying sports injuries and rehabilitation. It is a very moving victim impact statement. Here is a young man, whilst devastated by his injury, but intent on giving himself the best chance of recovery, both physically and mentally. He has embraced a new sport. He's engaged psychological assistance early.

He has, because of this injury, a reduced earning capacity and has to deal with the bureaucracy and time-consuming challenges of his insurance claim. I take note and pay close attention to the information that he has carefully and thoughtfully provided to the court.

Mr Elliott is, and I unreservedly accept, extremely remorseful for the offence and the ultimate result. He had engaged these young men, hired and worked with them. I have no doubt that his remorse is genuine. Mr Elliott has no prior convictions. He's a man of genuinely good character. I come to this conclusion having read the seven references and all written with care and thoughtfulness.

These references speak of his high ethical standards, his care for his workers, his normal safety-first approach. One of the referees, Mr Eric Seacombe (?), who's worked with Mr Elliott on and off for – from 2013 to 2021, says, and I quote:

“Lindsay taught me how to process cattle, operate station machinery correctly, how to instal waterpoints, how to stand fencing, ram posts, pull bores, all with a great deal of detail and a high standard of safety. Lindsay is a gentleman to work for. He's very thorough with directions and details of the job that was at hand.

“I have always found Lindsay to be a man that would not ask others to do a job that he would not do himself, which I have always greatly respected. He has a wealth of knowledge to offer in this industry if you are willing to learn. There should be more managers like him.

“Every person who wanted to be a ringer in the Top End should do a year or three under his management and direction. No job is too big or small for this man on a cattle station. He has a wide range of skills that vary throughout the station aspects and roles. His directions and leadership are second to none, even with the foreign workers that have language difficulties.

“He will always take the time to explain and show everyone with great detail and safety how to do the aspect of the job that needs doing. Nobody is ever left behind with Lindsay at work or at home. Everyone is always included, every person on the station, in social activities, on and off station. E.g. rodeos, camp drafts, drinks on the veranda, barbecues and station outings for the Christmas parties. I highly recommend this man. He demonstrates excellent leadership, in my opinion.”

Like all of the referees, of course, Mr Seacombe was well aware of the charges and incident that the court is dealing with today. The incident itself is explained in detail in the statement of facts, which is exhibit 1. In short summary, a post driver attached to a tractor for the purposes of installing fence posts. The post driver did not have a safety cage with which it was originally manufactured. The control levers for the tractor did not have labels or markings to differentiate the levers that operated the hydraulic system.

The result being the very heavy hammer or dolly could freefall in the event that the operator activates the hydraulic system, or the hydraulic system fails or the cable holding (inaudible) hammer snaps. Whilst Mr Dunn had his arm up over a post to measure to the next post, Mr Hartley drove off as instructed but accidentally activated the hydraulic system which released the dolly, slamming down on Mr Dunn’s left forearm.

An investigation by the authority, of course, commenced. As a result, charges were laid against three entities, Mr Elliott, but also Mr Nguyen (?) and the company Vehmelha. This is Mr Nguyen’s company, and he is the director. They are the employers. Mr Elliott is a worker. Of course, work safety is always everyone’s business. There is basic training for all people now which stresses this from any induction. “If you see it, say something”, etcetera.

However, there is a great responsibility on an employer to ensure the safe working environment for his employees. Whilst criminal charges were initially laid against all three, they were withdrawn against Mr Nguyen and Vehmelha, as they’ve entered into an enforceable undertaking, which was accepted under s 216 of the Act.

As a consequence, they are not facing criminal sanction. They must do, however, certain things. Whilst these things do come at a cost, it’s estimated to be \$200,000, some of the things would be expected to be done, in my view, as normal business. Others were an extra. Some are not related to the situation as to what occurred on 15 November ’22, at all. But they form part of a safety workplan for the business, as well as encouraging others in the business of station work to provide safe working environments.

It is clear that some of these things in that undertaking have thus then been directed to Mr Elliott to fulfil in his continuing role as manager of the station. Proceeding with these charges against only one of the three parties responsible creates an unusual sentencing exercise for the court. As those outside the criminal

system who arguably, bear the greater and ultimate responsibility, are not open for conviction or otherwise by the court.

In considering sentence then, I turn to whether or not to impose a conviction. Section 8 of the *Sentencing Act* provides circumstances to which I must have regard. The first of those is character, antecedents, age, health and mental condition. Of these, the first three, of course, are relevant. Mr Elliott is a man of excellent attested character, and he is also 63 years of age. He has lived long enough to demonstrate to the court and the community that character and those good antecedents.

The second part, part B – and of course, the law says that all three of the particular factors under s 8 need not apply in order to not impose a conviction. But the second part of that is the extent, if any, to which the offence is trivial. This offence, of course, is not trivial. Safety is an important aspect in relation to the running of any business. There were serious consequences and impacts as a result of the failure, particularly, of course, in relation to Mr Dunn.

General deterrence in these kind of offences is an important sentencing consideration. Having said that, in my view, personal deterrence is not such a significant consideration. And while Mr Elliott does continue to work in the industry, the mere fact of these consequences and these ultimate proceedings, in my view, is sufficient deterrence in relation to him personally.

Sentencing in matters where great harm has occurred, is difficult. As there is the temptation by the community to weigh the worth of the damage in the sentence. However, it is, of course, about the exposure to the risk. That there was great harm illustrates the gravity of the risk. In my view, the likelihood of injury without that safety cage though, was a high likelihood.

The third arm under s 8 is extenuating circumstances. I note that there – it was claimed in the submissions by Mr Elliott and not disputed by the prosecution, there had been previous requests to the owner to purchase a new tractor and posthole digger, which of course, would have been compliant. After much deliberation I have considered that I should exercise my discretion not to record a conviction.

In no way should this diminish the horrendous injury suffered by Mr Dunn. It is about considering and balancing all of the sentencing factors, including the result for the employer of an enforceable undertaking. It also appears to me in all of the circumstances that a fine is not appropriate, but a Community Corrections order for a period of 12 months on each offence with the statutory conditions of not committing another offence and to be of good behaviour, is.

This order is like an undertaking by Mr Elliott for this period of time. There will also, of course, be the standard victims' levies totalling \$300 across both of the two offences. The formal orders of the court then in relation to count 3, without conviction, a Community Corrections' order for 12 months with the standards conditions. And count 5, a Community Corrections' order without conviction for 12 months, both with the statutory conditions. And the \$300 victims' levy.

These orders will need to be signed by Mr Elliott, but we can organise for him to sign that at a suitable time. I understand he's – so is the closest – is Katherine – where is the closest for him?

MR ROUSSOS: I think it's Larrimah. But could go to Katherine, yes.

THE DEFENDANT: Katherine is the closest court.

MR ROUSSOS: Katherine? Katherine Court, Mr Elliott?

THE DEFENDANT: Yeah. Katherine's the closest court.

HER HONOUR: All right. So we can organise for this documentation to be sent down to Katherine and he could sign that.

Anything further from you, Mr Goodfellow?

MR GOODFELLOW: No, your Honour. As your Honour pleases.

HER HONOUR: Anything further from you, Mr Roussos?

MR ROUSSOS: No. Thank you, your Honour.

HER HONOUR: Okay. Thank you very much.

So Mr Elliott, just keep in touch with Mr Roussos and we'll get the court to send this documentation to Katherine. You do need to sign it as soon as practicable. Thank you.

MR GOODFELLOW: If your Honour pleases.

HER HONOUR: All right. I've got other matters in the court, though you're both excused.

DEFENDANT: Thank you.

HER HONOUR: Thank you.

ADJOURNED