



Transcript of Proceedings

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State Reporting Bureau

Date: 12 January, 2005

DISTRICT COURT

CRIMINAL JURISDICTION

JUDGE HOATH

Indictment No 1909 of 2004

THE QUEEN

v.

VINCENT THOMAS BOYLE

BRISBANE

..DATE 17/12/2004

SENTENCE

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: Vincent Thomas Boyle, you have pleaded guilty to taking a natural resource, namely trees and vegetation, in a protected area, namely Main Ridge National Park, without being authorised to do so.

That offence involved you clearing approximately 13 hectares of mountain forest in the Killarney section of the Main Ridge National Park, which is situated on the Great Dividing Range on the Queensland, New South Wales border.

Prior to 1994, the Killarney section of the National Park was known as State Forest 400. It was declared part of the Main Range National Park on 3 June 1994. That declaration was designed to protect the mountain terrain and its natural habitat and to preserve endangered species living in the area.

You either personally, or through a family trust, own a number of grazing properties in the Killarney area. Two of those properties, referred to as Lots 89 and 90, abut the Killarney section of the Main Range National Park.

In August and September 2001, you employed Ray Sellens, using two bulldozers, to clear an area in the National Park between Lots 89 and 90. Some parts of that area were densely forested. When the timber was felled, it was pushed up and burned. The cleared area was then sown with pasture seed.

Apart from giving you an additional 13 hectares of grazing land, more significantly perhaps, the clearing provided access

for your cattle to move between Lots 89 and 90 which had
previously not been possible.

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The Central Eastern Rain Forest Reserves of Australia, which
include the Main Range National Park, were given World
Heritage Listing in January 1995. That listing indicates the
important evolutionary, scientific and conservation
significance of the area.

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You knew that the land adjacent to Lots 89 and 90, was
National Park and had been told before it was listed, that it
had been nominated for World Heritage Listing.

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The clearing by you of that section of the National Park,
resulted in the direct loss of rare and threatened frogs and
reptiles and ongoing loss of habitat for those species. The
presence of your cattle in the cleared area, has had a severe
impact on a stream flowing through the park and its immediate
environment.

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Re-forestation of the cleared area, would cost in the order of
\$385,000 and would have to take place over a period of six
years.

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It is not suggested that the land was cleared to harvest the
timber for sale; it was, however, done for commercial gain in
that it increased the area available for grazing your cattle.

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The area of National Park cleared is quite isolated and it was not brought to the attention of National Park authorities until it was reported by bush walkers in January 2003.

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You were questioned at the time and admitted that you had been responsible for clearing the land. To your credit, you have fully cooperated with the authorities since that time.

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You are 76 years of age, you left school at the age of 12 and commenced working on dairy farms and cattle properties. Some 35 years ago you commenced acquiring properties in the Killarney area. You now obviously have considerable land holdings. You hold the reputation of being a very hard working and honest person. You are regarded as one of the leading graziers in the area. A number of prominent citizens, including the local mayor, attest to your standing in the community.

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The conduct you have engaged in is an offence under the Nature Conservation Act. The object of that Act is, as its name suggests, the conservation of nature. It reflects the community's interest in and need to preserve native vegetation.

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The seriousness of the type of conduct you engaged in is evidenced by the fact that the Act provides that the maximum penalty for this offence is a fine of \$225,000 or two years' imprisonment.

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In cases of this nature, it has been emphasised that
deterrence plays a significant part in the sentencing process.
Offenders who engage in significant environmental destruction
for commercial gain should be under no misapprehension that
they only run the risk of a financial penalty if detected and
prosecuted.

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The decisions of the Queen -v- Moore (2003) 1 Queensland
Reports, 2005 and the Queen -v- Dempsey (Unreported Court of
Appeal 358 of 2001) emphasise that significant environmental
damage such as you have committed, will generally result in
custodial sentences. Consistent with that principle, the
Prosecutor, Mr Devlin, has submitted that, were it not for the
fact that you have agreed to make available approximately 500
hectares of land to become National Park, I should sentence
you to a term of imprisonment.

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However, in the light of that agreement, your age, your
previous good character and your cooperation with the
authorities, Mr Devlin has submitted that a fine in the order
of \$10,000, with an order for compensation, would be an
appropriate penalty.

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It should never be thought that an offender can buy their way
out of a prison sentence. That is a basic principle of
sentencing practice. All sentencing principles must, however,
be applied having regard to the circumstances of the
particular case.

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In this case, you are in the rather unique position of owning land not only covered with vegetation similar to the vegetation you destroyed, but land which if made available to the public, would not only extend the Killarney section of the Main Ridge National Park, but would link two separate areas of National Park and provide a corridor through which fauna could move from one park to another.

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The agreement that you have entered into is as a result of negotiations between you and your legal advisors and environmental representatives of both the State and the Commonwealth. The commercial value of the land you have agreed to make available, is at least as valuable as the full cost of restoration of the cleared land.

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Mr Goodwin, on your behalf, whilst acknowledging the extent of the environmental damage done by you, has emphasised your advanced age, your previous unblemished character and the significant contribution you are prepared to make by handing over the land for National Park purposes.

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In the particular circumstances of this case, I am of the view that the sentence proposed by Mr Devlin is realistic and appropriate. A fine of \$10,000 and the loss of the agreed land is a significant punishment for you.

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The land's future use as a national park will benefit the people of Australia. The fact that you have avoided a gaol sentence, should not be regarded as a precedent for sentences

in other cases. Land owners who destroy significant areas of protected vegetation or cause other significant environmental damage, will continue to be at peril of a sentence of imprisonment.

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I order that you be convicted and fined the sum of \$10,000. Pursuant to Section 35 of the Penalties and Sentences Act, I order that you pay compensation in a sum notionally fixed at \$410,000. That compensation is to be effected by you on or before the 30th of March 2005, delivering to the Environmental Protection Authority, unencumbered title to:

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- (a) (i) Lot 89 on Crown plan M341449;
- (ii) Lot 90 on Crown Plan M341449;
- (iii) Lot 34 on Crown Plan M341219;
- (iv) Lot 41V on Crown Plan M341219;
- (v) What is currently Lot 88 on Crown Plan ML3 and will become Lot 1 on Survey Plan 176693;

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- (b) Providing such reasonable assistance requested by the Environmental Protection Authority, in transferring title of the additional land to the Environmental Protection Authority, including providing fully executed release of mortgages over the above land, fully executed mortgagee's consent to realignment of boundaries, certificates of title and fully executed transfers of title for the above land;

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(c) Providing such other reasonable assistance requested by the Environmental Protection Authority in declaring the additional land as national park; and

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(d) Providing such other reasonable assistance requested by the Commonwealth Department of Environment and Heritage, in listing the additional land as a World Heritage area.

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If you fail to comply with the terms of the order I have just made, to effect compensation, you must appear in the District Court at Brisbane, at 9.30 a.m. on Monday, the 4th of April 2005, to show cause why you should not be imprisoned for a period of 12 months.

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MR DEVLIN: Your Honour, do you intend to provide a date by which the fine be paid and a default period?

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HIS HONOUR: Oh sorry, I meant - yes.

MR GOODWIN: In all the circumstances, would your Honour consider six months? Whilst Mr Boyle has some assets, this will cost him some moneys to effect the transfers and-----

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HIS HONOUR: Yes. I allow six months to pay the fine of \$10,000; in default of payment by that time, I order that the prisoner be imprisoned for a period of three months.

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