

Case Summary
Office of the Judge Advocate General

DEFENDANT: PO Young
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 29 June 2023
VENUE: Court Martial Facility, Fyshwick, ACT

Charges and plea

| | Statement of Offence | Plea |
|-------------------------|---|-------------|
| Charge 1 | DFDA, s. 61(3), and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent | Not Guilty |
| Alternative to Charge 1 | DFDA, s. 34 Assaulting a subordinate | Guilty |
| Charge 2 | DFDA, s. 60(1) Prejudicial conduct | Guilty |

Pre-Trial: Closed hearing and non-publication orders

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|-------------------|-----|
| Application made: | No |
| Determination: | N/A |

Trial: Facts and legal principles

Nil, as the case proceeded by way of a guilty plea.

Findings

| | Finding |
|-------------------------|----------------|
| Charge 1 | Not Applicable |
| Alternative to Charge 1 | Guilty |
| Charge 2 | Guilty |

Sentencing: Facts and legal principles

The defendant was a Petty Officer on the training staff at HMAS Cerberus. On ANZAC day 2022 he was the senior rank present with junior sailors after the parade at Phillip Island. Whilst intoxicated he made inappropriate sexual comments to a very junior sailor about another female colleague, and then when rebuffed he touched her buttocks. Later he made further inappropriate remarks to the same sailor.

He was originally charged with an act of indecency concerning the touching of buttocks. The prosecution accepted a plea to the alternative offence of assaulting a subordinate. The prosecution reduced 10 particularised acts said to constitute prejudicial conduct to two.

As the female junior sailor the subject of the assault and the inappropriate comments was new to service, and a few weeks later would have come under the defendant's direct instruction, this made his behaviour serious.

- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*

The DFM found that his guilty pleas to the amended charges were made at a very early opportunity and he accepted responsibility for his actions. Despite his good service record and an acceptance that the behaviour was out of character, the DFM found that the minimum sentence which could be imposed was one of reduction in rank. This was due to the serious departure from behaviour expected on a senior sailor and in this instance aggravated by the fact the defendant was an instructor in a training environment.

Punishments and orders

| | |
|-------------------------|--|
| Charge 1 | Not Applicable |
| Alternative to Charge 1 | To be reduced to the rank of Leading Seamen with seniority in rank to date from 01 July 2004 |
| Charge 2 | To be reduced to the rank of Leading Seamen with seniority in rank to date from 01 July 2004 |

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 08 August 2023.

| | Conviction | Punishments / Orders |
|-------------------------|-------------------|-----------------------------|
| Charge 1 | Not Applicable | Not Applicable |
| Alternative to Charge 1 | Upheld | Upheld |
| Charge 2 | Quashed | Quashed |

Outcome on petition

The Reviewing Authority's decision on petition was handed down on 06 October 2023.

| | Conviction | Punishments / Orders |
|-------------------------|-------------------|-----------------------------|
| Charge 1 | Not Applicable | Not Applicable |
| Alternative to Charge 1 | Upheld | Upheld |
| Charge 2 | Quashed | Quashed |

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