

STATE OF TASMANIA v ALBERT FREDERICK RILEY
COMMENTS ON PASSING SENTENCE

22 MAY 2020
PEARCE J

Albert Riley, you plead guilty to three counts of armed robbery. I also agreed to deal with your plea of guilty to the summary driving charges of evading police, reckless driving, driving without a licence, driving a car which was unregistered and uninsured and driving with an illicit drug in your blood.

At about 10.25 am on Thursday 9 January 2020 you and another male went to the K-Mart in Launceston. You loaded up the trolley with various goods worth a total of about \$600 and walked to the exit without paying for them. When the security guard asked to see a receipt you pulled a 10 cm knife with a curved blade from your pocket and pointed it towards him. You were standing about a metre away. He stepped back. You pushed the trolley outside the store and left.

On the next day, Friday 10 January 2020, at about 3.30 pm, you drove a light blue Toyota Camry to the drive-through of a bottle shop in Ravenswood. You walked into the store. You took a 10 pack of pre-mix cans from the cool room and presented them to the counter. As the store manager went to scan the items you stepped back, pulled a pistol from your pants, raised it and pointed it at him, and demanded that he give you the cash from the till. When he produced \$150 you demanded he open the second till, which was empty. You told him to close his eyes and count to ten, at which time you left in your car with the cash and alcohol.

After robbing the bottle shop you drove straight to a general store in Waverley, not far away, arriving at 3.35 pm. The female shop attendant was at the counter. You approached her, produced a pistol and pointed it at her torso. In your other hand you held a large knife, like a machete. You asked her to give you money. She opened the till and removed the notes. You asked her where all the fifties were. You then walked around to where she was standing, and demanded that she load the cigarettes into a bag. While she was doing that she heard the gun click and pleaded for you to not hurt her. She gave you the bag, but you demanded that she also put the tobacco pouches into it. You then walked to the exit, turned and told her to close her eyes and count to ten, at which time you left in your car. You stole \$800 in cash and cigarettes and tobacco worth \$4,000.

Before long the police were made aware of the robberies and were looking for you. You were spotted by officers in a police car driving the Camry on Punchbowl Road. The lights and sirens of the police car were activated, but you sped off into Amy Road and then Penquite Road. As you drove north on Penquite Road you accelerated dangerously onto the incorrect side of the roadway to overtake other cars. As you attempted to return to the correct side of the road you lost control of your vehicle which slid into the path of truck travelling in the opposite direction. A serious collision occurred. You were injured and trapped inside your vehicle and had to be removed by Tasmania Fire Service. The pistol which you had produced during the robberies was found in the car. It was a toy, but it looked real. On the following day you were flown to Melbourne for treatment. You were arrested on your return to the Launceston General Hospital on 24 January 2020. You made some admissions when the police spoke to you, but did not participate in a formal interview. None of the things you stole were recovered except for a small amount of cash.

You are now aged 23. Before being taken into custody you lived with your partner and her three children aged 18, 13 and 10. You acted as parent for the younger two. You have had a

very difficult life. Your parents separated when you were 2 and you have had little contact with your father. Your early life was characterised by abuse and neglect. When you were 9 you came into the care of your grandmother. I am told that she did her best, but there were still difficulties, and you have had to fend for yourself since you were 14. You were educated only to grade 6 and you have limited literacy. You began to use cannabis at age 12. That has remained the primary drug you resort to, although you first used methylamphetamine at age 16 and thereafter you used that drug from time to time. According to your counsel you also became addicted to chroming, that is becoming intoxicated by inhaling deodorant.

All of those unfortunate factors are reflected in your record. You began to commit crime when you were 13. You served periods of detention for numerous offences of dishonesty, including one count of attempted aggravated armed robbery committed in 2011 when you were 15. When sentences were deferred or suspended they were invariably breached. You became an adult in 2014. The pattern of offending and re-offending has continued. As an adult, until these crimes, the seriousness of dishonesty and violence offences had not been as great. But despite numerous opportunities for reform, you continued to offend. On 23 November 2017 a sentence was deferred, and later suspended, for drug-related driving offences, dishonesty, destroying property and breaches of bail. The only real break in offending occurred around the time those sentencing orders were made as a result of supervision and guidance provided through the mental health diversion list of the Magistrates Court. However that ceased when the program no longer became available and you re-offended. Throughout 2018 and the first part of 2019 you continued to commit driving offences, some related to use of drugs. For a period from mid-2019 you were also managed under the court mandated drug diversion program through bail conditions but success was limited. You committed more offences culminating in the commission of these crimes. On 10 March 2020 you were sentenced by a magistrate to a total term of imprisonment of six months from 10 January 2020. That complicated sentencing exercise involved re-sentencing for offences stretching back to 2015.

What appears clearly from the whole of your record is that you have, for a long time, displayed a general disregard for the law, for authority and for the welfare of other members of the community. You were on bail and subject to a deferred sentence when you committed these crimes.

Courts in this State and elsewhere have repeatedly emphasised the seriousness of the crime of armed robbery. These crimes were not sophisticated. You were not disguised and you can be easily identified from the CCTV. There was a degree of spontaneity in respect of the robbery at the K-Mart, but you plainly went prepared for the two other robberies. The robberies, especially those committed on 10 January, were of vulnerable commercial premises. It is a crime which is commonly committed by persons under the influence of illicit drugs. You contend that you realised, after having produced the knife at K-Mart, that you were in trouble and you became concerned about the difficulty this would create for your family, especially your stepdaughter who was suffering from kidney failure and required dialysis. Whilst your concern is understandable, financial hardship provides no justification at all for armed robbery. One reason that armed robberies, especially those involving weapons, are so serious is the potential effect on victims. Firearms, or things appearing to be firearms, have a terrifying and traumatising effect. Knives have a similar effect. The fact that the pistol you used was a toy means that there was no risk of intentional or accidental discharge, but otherwise it makes little difference. You say that you did not intend actual violence, but the victims were not to know that. Both victims you pointed the pistol at thought it was real. You

pointed the pistol at the bottle shop attendant at very close range in a particularly menacing and aggressive way. It was also used against the shop attendant in a particularly threatening way and she thought she may be shot. She of course was faced not only with the pistol but a very large knife. You moderated your aggression when she became distressed, but you persisted with the robbery even so. The victim impact statements from the bottle shop attendant and the shop attendant describe the type of profound psychological effect which may be expected to occur as a result of crimes of this nature. The bottle shop attendant has continuing anxiety and has become more socially isolated. He feels less secure at work. The shop attendant is aged 24. Her immediate distress is apparent from the CCTV. She was pregnant at the time. You did not know that, but you committed these crimes not knowing how any of your victims may react and what qualities or vulnerabilities they may have had. She has been unable to return to work. She requires counselling for anxiety and feelings of insecurity. She has nightmares, relives what happened to her and fears for the safety of herself and her children. The effects of the crime will extend to her family and are likely to last a long time. I have no victim impact statement from the K-Mart security guard you threatened with a knife, although that does not mean there is no impact. You have written letters of apology but they carry little weight for crimes of such gravity.

The driving offences must not be overlooked. You have a terrible driving record. Although you have no prior convictions for reckless driving or evading police, you have committed many other driving offences including numerous convictions for driving without a licence and seven for driving with an illicit drug in your blood. Recent legislative changes have reinforced the seriousness with which dangerous driving offences of this type are regarded by the Parliament and the community. You were seriously injured. You suffered facial fractures and fractures to your arm leg and pelvis. For a time it was thought you might die. You are still recovering. You are to be pitied for that, and it would be punishment of itself, but it emphasises the risk of serious injury or death you posed to others. Fortunately no-one else was hurt. The danger you posed was exacerbated by the fact that methylamphetamine was in your system and you were fleeing from the police. I have not been told that the driver of the truck suffered any serious or lasting physical or psychological impact. No doubt it was frightening and confronting for the driver to see an out of control car careering towards him or her. Although the police chase was brief, reckless driving involves an admission that you appreciated the danger you posed and drove as you did regardless of that risk. You have never held a driver licence and the car you drove was unregistered and uninsured. I am required to impose a separate sentence for evading police, which was yet another demonstration of your disregard of authority.

Because of the current delay in jury trials arising from the COVID 19 pandemic, your early plea of guilty carries weight because it facilitates justice, although you have not given up any hope of acquittal. Your injuries have made prison more difficult and treatment is not as easy for you. Because you are already serving a sentence, and you are now to be sentenced for multiple further crimes, I must take into account the total effect of the sentence, so that it is a proper reflection of your overall criminality. All of the crimes were committed within two days. All but one were over the same course of conduct on the second day. The three robberies were crimes of the same nature. The total sentence I impose should not be crushing, in the sense that it removes any hope for a useful life on release. There has not been much sign of rehabilitation so far, but I accept that the possibility of reform should not be written off. The sentence should also be reduced to avoid double punishment, and because the need for deterrence, denunciation and punishment will be addressed by each of the individual sentences. At the same time, the sentence must also reflect the criminality and impact

involved in each separate crime. Although the robberies on 10 January happened within a short time, they were quite distinct crimes and the trauma suffered by each victim must be reflected in the total sentence.

Leaving aside for a moment the issue of totality and the reduction in sentence which will apply as a result of the plea, I would have imposed the following sentences. Were you being sentenced only for the K-Mart robbery I would have imposed a term of 18 months. For the bottle shop robbery I would have imposed a term of three and a half years. For the general store robbery, I would have imposed a term of four years. The driving offences warrant a total term of imprisonment for 18 months. That is an aggregate total term of ten and a half years.

To allow for totality I would reduce that term to eight and a half years. To that term I would apply a discount of about 15% for the early plea of guilty. I will allow for parole but not until you have served the minimum period that justice requires taking into account the need for punishment, deterrence, denunciation and vindication of the victims. I will make three months of the term concurrent with the term you are currently serving.

Albert Riley, you are convicted on each count on each complaint. I make compensation orders in favour of K-Mart Launceston in the sum of \$600, BWS Sunny Hill Hotel Ravenswood in the sum of \$190, and Karen Pinner in the sum of \$4,443.80. I order that the sum of \$372.20 seized from you by the police be restored to Karen Pinner. I order, pursuant to the *Crime (Confiscation of Profits) Act 1993*, s 16(1), that the plastic pistol is forfeited to the State.

On count 1 on complaint 31029/20, evade police, you sentenced to a term of imprisonment of five months. Three months of that term will be concurrent with the terms imposed by a magistrate on 10 March 2020 and the balance will be cumulative. I order that you not be eligible for parole until you have served three months of that term. You are disqualified from driving for two years cumulative to any period of disqualification you are serving or liable to serve. On all remaining counts I impose one sentence. You are disqualified from driving for two years cumulative to the disqualification just imposed. You are sentenced to a cumulative term of imprisonment of six years and ten months. I order that you not be eligible for parole until you have served three years and nine months of that term.

In accordance with the *Sentencing Act*, s 92A, I specify that the total term of imprisonment that you are liable to serve for all the sentences of imprisonment that are being imposed today is seven years and three months, three months of which is to be served concurrently with the sentence imposed by a magistrate on 10 March 2020, and the balance to be cumulative. You are not eligible for parole until you have served four years of that total term.