

Patrick Curbishley, you plead guilty to aggravated armed robbery. The crime was committed on 2 November 2009, more than ten years ago. You were then aged 23. At about 7.30 pm you and another man went to the home in Rocherlea of a young couple and their 10 month old daughter. Your associate was aged 17 and I will refer to him as M. Once inside, M grabbed the male occupant and demanded money, guns or drugs. He held a knife against the victim's neck and eye. You helped gather things to steal. Together you stole \$360 in cash, 20 ornamental knives, some of which were antique, an Xbox and controller, 15 Xbox games and two shotguns. The total value was at least \$4,000. Before leaving, M threatened to kill the victims if the police were notified.

You were arrested a few days later. When interviewed you admitted what you had done. You told the police about the firearms they had not known about, and they were recovered from M. You were kept in custody until you were granted bail on 18 November 2009. You failed to appear in December 2009. A warrant was issued but you were not arrested until February 2011. You were committed for trial in the Supreme Court and again granted bail, but you failed to appear in October 2011 and a warrant was issued. This time the warrant was not executed until 30 November 2019, about eight years later. You were in custody from arrest on 30 November 2019 until you were granted bail on 5 May 2020.

You are now aged 34. Your childhood was characterised by extreme physical, sexual and emotional abuse perpetrated, you say, by your stepfather. Violence became normalised. The abuse disrupted your education, development and ability to form normal relationships. Your strategy for dealing with abuse and violence was to submit and comply so as to avoid confrontation. This mechanism carried on to your life. From a young age you abused drugs and alcohol. When this crime was committed your criminal record was mostly for driving offences, but with some important exceptions. On 9 April 2008 you were sentenced to imprisonment for six months from 23 January 2008 for wounding. That crime was committed on 4 November 2006 when you stabbed a stranger in the stomach with scissors for no reason. On 2 October 2008 a drug treatment order was made for offences of dishonesty. You did not comply and committed further offences, including drug and firearm offences, and you were imprisoned for five months.

The means you adopted of avoiding violent confrontation is relevant to the circumstances of this crime. Although M was younger than you, he was the principal offender. He was volatile and aggressive. He took the lead and was directly responsible for the threats and violence. When he produced the knife and became threatening, the complainant describes you as trying to calm him down and bring an end to the incident as soon as possible. You did not go to the house intending violence, but when you became aware of the threats for money you went along with it to try to ensure that the situation did not escalate to actual infliction of violence. Nevertheless, you accept by your role that you became a party to, and criminally responsible for, the same crime.

M was sentenced by Crawford CJ, to detention for two years. However, I am satisfied that parity of sentencing is not required. Your moral culpability for the crime is less than that of your co-offender. Although he was younger, he had a much worse record for dishonesty and violence, and played a more aggressive and direct role. Nevertheless, you were six years older

than him, and you should have displayed the moral fortitude to remove yourself from the crime without participating in it.

Some mitigation arises from your plea of guilty. However the delay in resolution of the charge arises from your decision to abscond. Thus, it is not mitigating except to the extent that you have demonstrated that you are or can be rehabilitated. That is an important consideration in your case. After absconding you left Tasmania. During the intervening period you have tried to improve your life by education and employment. You became a full time employee of the Victorian Aboriginal Legal Service as a client services officer. However your mental health problems persisted. For a time you relapsed into abuse of illicit drugs. You managed to cease using drugs in 2016 following your sister's death and you have been drug free for an extended period. You were undertaking university studies. In 2019 you returned to Tasmania for a funeral. You resolved to turn yourself in but you were apprehended by the police before that occurred. You had been in custody from your arrest on 30 November 2019 until you were granted bail. You were sentenced by a magistrate on 9 January 2020 to imprisonment for 30 days from 30 November 2019 for some outstanding summary matters. Thus, I will take into account the period of custody of about four months following 30 December 2019, in addition to the shorter periods in custody in 2009 and 2011, as relevant to this sentence. I take into account that you have served that period of custody although I do not intend to order a term of imprisonment. It is relevant to my determination of the sentence I have fashioned to the circumstances of your case.

Aggravated armed robbery is a very serious crime. The principal victim of this crime and his partner would have been terrified. No doubt the young male would have feared that he would be very seriously injured or killed. In general, the crime requires that a term of imprisonment be imposed. However the particular circumstances of this case warrant an individualised approach. In my view, you can be properly dealt with by a home detention order. You have been assessed as suitable for such an order. I would otherwise have sent you to prison. Your crime is a violent offence but it is not my opinion that you pose a significant ongoing risk of violence during the operational period of the order. Although a home detention order is less onerous and punitive than prison, it is still a significant restriction on your liberty and freedom of movement. You will be required to comply with onerous conditions. Despite the substantial progress you have made, there can be, during the period of detention, further focus on aggression and addition programs, ensuring continued drug abstinence and assisting your continued education. Hopefully such services can be made available during the pandemic. A home detention order may be for a maximum period of 18 months. I think that, in your case, 12 months is the appropriate period. It is relevant to the length of the period that, if I had ordered prison, I would also have ordered parole, and no question of parole arises here.

You are convicted on the indictment. I make a compensation order in favour of the person whose name will be specified on the formal order in a sum to be determined. I make a home detention order. The operative period of the order is 12 months from today. I specify the premises at which you are to reside during the operational period of the order as [home detention premises]. I order that immediately upon your leaving Court you report to the office of Community Corrections at 111 Cameron Street Launceston, for induction into this order, and an explanation as to its full terms. The order will be subject to all of the core conditions set out in the *Sentencing Act 1997*, s 42AD(1). They will be set out in the order that you will be given, but include that you will submit to electronic monitoring and must, during the operational period of the order, if directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of an illicit

drug. I specify that you must be at the home detention premises at all times unless for a relevant reason. In short, that means that you must be at those premises unless there is a need for urgent medical treatment, there is a serious risk of death or injury, or you already have the approval of a probation officer to be absent. It will be for the probation officer to determine what to approve so as to allow for employment, rehabilitation courses, education or for any other purpose. The conditions will include that you not commit another offence punishable by imprisonment and that you comply with all directions given to you by your probation officer. I impose special conditions that:

- you must submit to the supervision of a probation officer as required by that officer;
- you must not take any illicit or prohibited substances. Illicit and prohibited substances include any controlled drug as defined by the *Misuse of Drugs Act 2001*, and any medication containing an opiate, benzodiazepine, bupropion, hydrochloride or pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication;
- you must submit to a medical, psychological, psychiatric or physical or mental health assessment or treatment as directed by a probation officer;
- you must attend, participate in and complete the EQUIPS Aggression Program as directed by a probation officer;
- you must maintain an active mobile phone service, provide the contact details to Community Corrections and be contactable at all times.

This order comes into effect immediately. You must understand that if you do not comply with the conditions, imprisonment is likely. If you breach the order by committing another offence, the order must be cancelled unless there are exceptional circumstances, and in that case imprisonment would be highly likely.