

Michael Leonard Linnell has pleaded guilty to one count of burglary, one count of unlawfully injuring property and one count of stealing.

On 21 February 2018 the defendant drove to an area near the IGA Everyday Store, a supermarket at Brighton Road in Brighton. He was with another person, Jason Goscombe. The defendant walked a distance and climbed over a fence and reached the back of the supermarket. There he made a hole in a brick wall. He entered through the hole, entering the part of the building where the back office is. The back office contained a safe and also served as a storeroom for the stock of cigarettes.

The defendant removed cartons of cigarettes and passed them through the hole he had made in the wall. The cigarettes were placed in the same motor vehicle that the defendant had driven to the area.

Until this point the defendant's conduct had been filmed by a CCTV camera inside the office. The defendant moved the camera so that the remainder of his actions were not recorded.

He used a screwdriver or something similar to force open a second locked cabinet containing tobacco products and cigarettes. He removed cigarettes and again passed them through the hole in the wall.

There was a safe underneath a work bench. The defendant gained access to the cash by damaging a slot in the front of the safe designed to deposit cash.

At about 5am while the defendant was still in the back office of the store, staff members began arriving for work, including the store manager Tanya Backhouse. She went to open the office door but the door was blocked, the office photocopier had been pushed against the inside of the door. She managed to push the door open and saw that the store had been broken into. The police were contacted. Police took a swab from an open cordial bottle inside the office. It was tested for DNA and produced a high grade DNA profile matching the defendant's profile. Checks in relation to a vehicle seen leaving the area soon after the burglary also provided the police with a lead to the defendant.

The defendant's home at Bagdad was searched by police on 22 February 2018. Police found 79 packets of cigarettes and 33 packets of tobacco. When cautioned he told police he had bought the tobacco and cigarettes the day before. He was interviewed and denied involvement in the crimes and gave a false account of how he came to be in possession of the cigarettes at his house, saying he bought them from a stranger at the Brighton pub.

On 22 February 2018 police searched Jason Goscombe's house. They located the car driven by the defendant with no registration plates. They found two cartons of cigarettes and a cordless grinder.

In excess of 200 cartons of cigarettes were stolen. The total value of the cigarettes stolen was approximately \$60,000. The cigarettes that were recovered were valued at approximately \$3500. While there was an insurance policy covering the property, it was capped at \$10,000.

In addition, cash amounting to \$12,581 was stolen. The complainant was fully insured for that loss but had to pay an excess of \$1000.

In the course of the burglary, damage was caused to the wall and the safe and also the cigarette cabinets.

Jason Goscombe pleaded guilty to one charge of receiving stolen property with respect to \$360 worth of cigarettes. For that crime and other unrelated summary offences he received a suspended sentence of 3 months' imprisonment. The defendant's position is entirely different given the charges he faces.

The defendant is now 39 years of age. He has pleaded guilty to these charges, although not at an early stage. He has prior convictions for offences of dishonesty committed in Tasmania, including a substantial number for stealing, aggravated burglary and burglary. He has received a range of penalties: suspended terms of imprisonment, in 2008, a drug treatment order which was cancelled in 2009, as well as partially suspended sentences of imprisonment and actual terms of imprisonment. In 2016 he received a sentence of 18 months' imprisonment imposed by the Brisbane Magistrates Court for crimes of dishonesty. In 2019 he received cumulative terms of imprisonment amounting to seven months' imprisonment. He was released in early December 2019. In May this year, he was sentenced to six weeks' imprisonment wholly suspended for a period of two years, for summary offences of being in possession of stolen property and for assault a police officer. His criminal history reflects a drug problem with convictions for offences involving the use of drugs and offences of drive a motor vehicle whilst an illicit drug is present in his blood.

At the time he committed these crimes in February 2018, the defendant had a serious and entrenched addiction to methamphetamine (Ice). He was using it daily. He has a long history of polysubstance abuse which commenced as a youth. This arose from a traumatic home life, his stepfather was abusive and violent. The defendant would escape from this home life and spend time with peers who were using drugs. He has been battling his addictions since that time. He has a history of anxiety which at times is debilitating. At times he has resorted to drug use as a means of self-medicating.

At the time of offending, his financial circumstances were dire. He had gradually sold all of his assets to fund his addiction. He was receiving Newstart allowance and trying to fund his drug habit. He estimates it was then costing him about \$250 per day. He was trying to hide his addiction from his partner who strongly disapproved of his drug use and the impact it had on him, and their family. It was in these circumstances that he was approached by a friend who had a proposition to make some money. Driven by his addiction he agreed to participate. His understanding was that his role was to be the driver and to help load the vehicle, but even if that had been the limit of his involvement his conduct would still be regarded as very serious.

He spent time in custody, as mentioned for some months in 2019. He stopped using methamphetamine. He has not used it now for over 12 months. He was released from custody in December 2019. That period of time in custody provided time for him to reflect on where his life was heading and the impact of his addiction on his partner and children. He resolved not to resume his use and he put in place sensible measures to enable him to cut his ties with former associates. He remains motivated to be abstinent and not to return to his former path which he can clearly see was destructive for him and his family.

The defendant's focus is now on his family. He and his partner have three children aged 12, 6 and 4 years. He is a stay at home dad while his partner works. He is a devoted father and he has a strong relationship with his children. I note he home-schooled his children during the COVID-19 lockdown period. They are doing well and he is proud of them and their accomplishments. He has a good relationship with his 20 year old son from a previous relationship. The family is supported by his partner's mother who offers practical assistance such as driving the children to and from school.

The defendant has been assessed for home detention and is considered suitable. This order can only be imposed if the Court would have sentenced the offender to a term of imprisonment, actual or suspended. That condition is undoubtedly met here. A home detention order can only be in place for a maximum of 18 months. Home detention is a new order that is properly regarded as a type of imprisonment: *DPP v King* [2020] TASCCA 8. Because it is served in a person's home, it is obviously less onerous than serving that term in a prison. But still, home detention is by its nature a very onerous sentence: *DPP v King* at [32] per Blow CJ, [52]–[55] per Wood J and at [139] per Estcourt J. It is a sentence that is punitive in its effect and yet allows rehabilitation to be promoted.

These are serious crimes, targeting commercial premises where there was likely to be valuable property and cash. The efforts to gain entry were determined and calculated. The value of property and cash stolen was considerable.

A term of imprisonment would be counterproductive for the defendant's rehabilitation. It would be disturbing for his children, and the family life that is the focus of his existence now. It would expose him to his old life and the temptations inherent in that life-style. He would be vulnerable to those temptations given the severity of his past addiction, the failure that prison would represent and also the anxiety that would result, noting anxiety symptoms are associated with his use past use. He has not had the opportunity of a home detention order before.

After careful consideration of all matters, the nature of the offending and Mr Linnell's circumstances, I have decided that the appropriate sentencing option is a home detention order coupled with a community correction order.

Michael Leonard Linnell, on the three charges before the Court I record convictions, noting your consent, I impose a home detention order. The operational period is 15 months to commence tomorrow, 26 August, 2020.

There will be the statutory core conditions including electronic monitoring for the whole of the operational period. These conditions will be specified in a written order that will be given to you. The home detention premises is [address]. In addition, I impose special conditions as follows:

- (a) you must, during the operational period of the order, remain at [address] at all times, unless approved by a probation officer;
- (b) immediately upon your release from Court, you must attend the Community Corrections office at 3 Terry Street, Glenorchy for induction with respect to this order;

- (c) you must, during the operation period of the order, maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact by this device at all times;
- (d) you must submit to the supervision of a Community Correction officer as required by that officer;
- (e) you must not, during the operational period of the order, take any illicit or prohibited substances. Illicit and prohibited substances include:
 - i any controlled drug as defined by the *Misuse of Drugs Act* 2001;
 - ii any medication containing an opiate, benzodiazepine, bupropion, hydrochloride or pseudoephedrine, unless you provide written evidence from your treating medical practitioner that you have been prescribed the relevant medication.

In addition to this home detention order, I also make a community correction order for a period of 18 months from today. The core conditions of that order will be set out in the written order given to you.

A special condition of that order is:

You must, during the operational period of the order, submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.

I make a compensation order in favour of M & D Nikitaris Pty Ltd, the terms adjourned sine die for assessment.