

THE STATE OF TASMANIA v BRADLEY ROBERT ABEL
COMMENTS ON PASSING SENTENCE

16 October 2020
ESTCOURT J

The defendant, Bradley Robert Abel has pleaded guilty to one count of aggravated burglary, one count of stealing and one count of unlawfully injuring property. He was 33 years old at the time of the offending. He and his co-defendants, Stuart Fergusson aged 39, and that man's son Ty Fergusson aged 20, were not known to the complainants.

On 9 July 2019 the complainants Matthew Tringrove and Sarah Rigney left Tasmania on a six week holiday. On 17 July 2019 the defendant and his co-defendants unlawfully entered the property. While inside, the inside of the property was damaged and the defendant and his associates then left the house taking with them a large amount of goods and cash to a total value of some \$23,400. At about 6 am police intercepted a white Holden Commodore travelling north on Main Road, Berriedale in which all three defendants were inside. The defendant was searched and the following items from the aggravated burglary were found on him: \$300 New Zealand dollars; 75,000 Vietnamese dong; and \$1575 Australian dollars. Other items were found in the possession of the co-defendants. All three occupants of the car were arrested. The total value of the goods not including Australian currency stolen from the house was \$30,488.35. Approximately \$15,182 worth of that property has been recovered. The total value of goods not including Australian currency that the Crown assert the defendant is responsible for stealing from the house is \$18,082. That property has been recovered. The total value of cash in Australian currency that the Crown assert the accused is responsible for stealing from the house is \$5318. That sum of money has been recovered.

Significant damage was caused to the house and personal property during the course of the burglary, the total value of repairs or replacements, with some exceptions, was \$16,985.05.

The Crown makes an application pursuant to s 68(1) of the *Sentencing Act* for a compensation order in favour of Sarah Rigney and Matthew Tringrove in an amount to be assessed, and the assessment of that be adjourned sine die. I make that order.

The Crown makes further application pursuant to s 68(1) of the *Sentencing Act* for a compensation order in favour of Blue Zebra Insurance in an amount to be assessed, and the assessment of that be adjourned sine die. I make that order.

The defendant entered a plea of guilty in the magistrates court on 15 October 2019, but as I understand it, no blame is attributable to either the Crown or the defendant in respect of the delay.

The State asserts that this was a premeditated planned and targeted offence and that all three of the men physically entered the property and participated in searching for, damaging and stealing the property. The defendant by his plea is taken to accept that. While it cannot be asserted which property each defendant physically took or damaged, it is alleged that all three of the defendants are criminally responsible for all items stolen. Via one or other pathway to criminal liability, the defendant by his plea must be taken to accept that.

I have read a victim impact statement prepared by Ms Rigney. Her and her family had to pay for additional flights home to return to their property, and when they did they experienced panic attacks and could not live in the house. It ended up being sold.

The defendant has prior convictions for burglary and for stealing and unlawful possession of property for which he has received both suspended and actual sentences of imprisonment. The Crown makes application pursuant to s 24(a) of the *Sentencing Act* to breach the two partially suspended sentences imposed on 24 May 2018 in the Hobart Magistrates Court. The defendant

was sentenced on that date to three periods of suspended imprisonment, totaling six months, for a number of summary matters. The defendant shows now cause, and although initially did not seek to suggest that it was unjust to activate those sentences, it has been drawn to my attention today that the global sentence included sentences of differing nature to the offending in respect to which they were imposed. Nonetheless, in this case it seems to me that it is no unjust to activate those suspended sentences, totaling six months, and backdate them to 8 November 2019.

The defendant is a 34 year old Aboriginal man. He is the eldest of four children and prior to being remanded in custody resided in Claremont with his mother and younger brother.

He enjoys a close extended family, and although his parents separated when he was 13 years old, both remain supportive of him. Around the same time his parents separated his maternal and paternal grandfathers both died he did not deal with that.

He did well at school and excelled at sport. He had a good employment record but began drinking heavily and using drugs in 2016. He started using cannabis and drinking alcohol as a 17 year old in 2003, although he ceased using cannabis around the time his daughter was an infant. He acknowledges that he has a methamphetamine addiction and that he use other drugs and that the offences currently before this Court and in the Magistrates Court are directly related to his drug addiction.

He was high on methamphetamine and did not want to take responsibility for the present offences at the time. He has since accepted his guilt.

His partner is not a drug user and is fully supportive of the relationship with the defendant and will continue to support him on his path to abstinence from drug use, but will not stand by him if he continues to use illicit drugs and commits offences. Creating a safe and loving home for their son is her priority.

The defendant has numerous prior and subsequent convictions, as already noted, for dishonesty offences, burglary and stealing but they appear to be at the lower end of the scale of seriousness in value, at least, if not volume. This is his first offence of aggravated burglary. Of course, he is not to be sentenced for his record.

The defendant has a large number of matters he has plead guilty to before His Honour Deputy Chief Magistrate Daly in the Magistrates Court. He was assessed as suitable for a therapeutic Drug Treatment Order (DTO) in a Court Mandated Diversion Report (CMD) dated 14 February 2020, which I am told has not altered to this day.

He had entered a plea of guilty in the Magistrates Court to C/N 7574/2019, the offence before me today on 15 October 2019 and appeared in this Court on 16 March 2020. It was anticipated that this matter would be dealt with quickly in order for the lower court matters to then be finalised and for him to be sentenced to a DTO.

However, the Police file was not completed and as a consequence and subsequently he disputed the particulars on the indictment and the crown statement of facts. Those issues have resolved without need for a trial or a disputed facts hearing.

Whilst it is an unintended consequence, had Mr Abel been sentenced earlier this year in the Magistrates Court he would not have been sentenced to a DTO due to the COVID restrictions which meant there were no services available to support DTO participants. I am told that services are now resumed.

Mr Abel has been in custody now for 343 days. While in custody he has been threatened and assaulted in relation to these charges and has been moved to the Huon Unit for his safety. In that unit there was limited outside exercise, no sheets on the bed, no TV, no phone calls except for legal calls and no visits. I have been urged to consider deferring the defendant's sentence under s 7(eb) of the *Sentencing Act* in order to allow him to be sentenced in the lower court to a Drug Treatment Order. I am inclined to accede to that request. Clearly participation in CMD is a purpose embraced by s 57A(2) of the *Sentencing Act*, and for the purposes of s 57A(3), the defendant would have served the activated suspended sentences, leaving him with some months of time spent in custody available to be taken into account on any deferred sentence, which might end up being suspended depending on how he goes in the CMD Program. Also, those days might be used as default days if he embarks upon the program and falters.

Accordingly, I order that the defendant is convicted. I order that his sentencing be deferred for a period of two years from today until Friday, 14 November 2022. I have chosen two years because two years is the maximum amount of time Mr Abel really has to succeed in the CMD Program.

I admit him to bail until Friday 14 November 2022 at 4pm in the afternoon. The bail is simple bail, but I include a condition of bail that the defendant appear before me again on Friday 11 December 2020 at 4pm and on any subsequent date ordered by me so as to enable me to consider the extent to which the purpose of the deferred sentence is capable of achievement.