

Dylan Cruse pleads guilty to armed robbery. I also agreed to deal with his plea of guilty to stealing. On 30 August 2019 he was resident of a rehabilitation facility in Hobart. On that day he was delegated to purchase groceries for the residents, and at around 10 am he signed out \$515.55 in cash. However, instead of buying groceries, he used the money to purchase alcohol. That is the stealing. He did not return to the facility and drank through most of the day. That evening, at around 8.40 pm, he went into a bottle shop at a hotel in Lindisfarne. After purchasing a bottle of soft drink he waited outside before re-entering wearing a balaclava and carrying a 30 cm kitchen knife. He pointed the knife at the male who was the only employee present at that time. The defendant said "I don't want to kill you, just give me the money." The employee took \$1,130 from the cash register and put it into a plastic bag. The defendant told him to throw the bag on the ground and stand back. The defendant then took the bag and left with the money in a backpack.

The employee activated the alarm during the robbery and, after the defendant had gone, phoned the police who were already on their way. They did not immediately find the defendant but, a few minutes before midnight, he walked into the police station at Bellerive and confessed to the robbery. When interviewed he said that he planned the robbery to get money for food, and handed himself in after having been to McDonalds because he knew that he would be caught anyway. He was remanded in custody on the day of the crime and has been in custody since then. He pleaded guilty at an early stage.

The defendant is aged 25. He has no prior convictions for dishonesty, but on 16 June 2016 he was sentenced to imprisonment for five and a half years for attempting to murder his cousin's mother on 23 December 2015. It was a very disturbing crime. The victim was a frail person with Huntington's disease and serious physical disabilities. He had known her his whole life. He stabbed her in the neck. The sentencing judge allowed eligibility for parole after two years and nine months. He was granted parole on 4 February 2019, but this crime was committed about seven months later. It is an aggravating factor that Mr Cruse committed the crime while he was on parole. His parole was revoked and he was returned to custody. Subject to a further grant of parole, that sentence will not expire until 22 June 2021. That raises the issue of totality, but this crime involves very serious additional criminality which must be reflected in the sentence.

This sentencing hearing commenced in March this year. I was given a report written by Dr Michael Jordan. Dr Jordan is an experienced and highly qualified forensic psychiatrist. As a result of the contents of that report and submissions made by the defendant's counsel, I decided that I should obtain further reports addressing the question of whether a supervision order or a restriction order should be made instead of or in addition to the sentence I impose. Thereafter I have received a series of reports respectively dated 11 May 2020, 17 July 2020 and 10 September 2020 prepared by Dr Cheryl Colquhoun, also a highly qualified and very experienced forensic psychiatrist. I also received a further report from Dr Jordan dated 18 June 2020 prepared after having Dr Jordan spoke again to Mr Cruse on 16 June 2020 at the prison. On 27 October 2020 both prosecution and defence counsel had the opportunity to cross-examine Dr Colquhoun about the contents of her reports. In the course of the sentencing proceedings the State also made application that the defendant be declared a dangerous criminal.

Mr Cruse comes from a stable and supportive family but he has an intellectual disability. In 2015 his full scale IQ was assessed at 64, placing him in the extremely low range. Bullying at school and problems with learning led to poor self-esteem, impulsivity and personality dysfunction. Dr Colquhoun diagnoses antisocial personality disorder accompanied by other personality vulnerabilities. Mr Cruse has no pervasive psychotic disorder but he started to abuse drugs and alcohol at an early age and developed polysubstance abuse disorder. Substance abuse has led to recurrent psychoses. He has had eight admissions to the psychiatric unit at the Royal Hobart Hospital since 2013. None of the presentations exceeded a week, but all were for behavioural disturbance brought on by substance abuse. Most significantly, he committed the attempted murder after having used methylamphetamine and started hearing voices telling him to kill someone and become a serial killer. He continues to have violent ideation. He told Dr Colquhoun that he has urges to kill someone as regularly as three to four times each week. He carried knives while in the community and has made sharp weapons while in prison with the thought of harming others. He has a narrow social circle and finds living in the broader community difficult.

Following his release on parole the defendant lived with his parents and engaged with services for a while, but relapsed into alcohol abuse and was admitted to the residential rehabilitation facility for two months. I do not regard the offence of stealing from the facility as particularly serious, although it involved a breach of the trust that was placed in him, and resources at such facilities are often limited. He took that money to buy alcohol. However, the defendant told Dr Jordan and Dr Colquhoun that he committed the robbery with the primary intention that he return to prison. According to Dr Jordan it was because, after the defendant was released on parole, he felt more comfortable in custody than in the community. The defendant suggested to Dr Colquhoun that his urges to kill people were getting out of hand and he wanted to go back to prison where he "can be controlled". According to his counsel, the defendant had intrusive thoughts, and believed he was possessed by a demon, but according to Dr Jordan there is no evidence that psychosis or his description around "voices" explained his actions during or while planning the robbery.

In his report Dr Jordan addresses the ways in which Mr Cruse's mental impairment may influence sentence in accordance with the *Verdins* factors. In his opinion, Mr Cruse was able to understand that what he was doing was wrong but had limited understanding of the potential impact on the employee at the bottle shop. I would accept that the defendant's mental impairment was causally connected to the crime in that it reduced his ability to think clearly about what the impact might be if he proceeded. His moral culpability is marginally reduced, but despite his awareness of the wrongness of his actions and that the consequence would be a return to prison, he proceeded anyway. I do not see that there is a reduced need for general deterrence.

Conversely, Mr Cruse has little insight into the broader consequences of his actions. His lack of insight increases the risk of future violence and the need to protect the community. Mr Cruse is not to be punished again for the crime he committed in December 2015, but it is relevant in the assessment of the future risk he poses. The prospect of revocation of parole and return to prison did not prevent this crime. Indeed, the crime was motivated by that result, which gives rise to a pressing need to minimise the risk of repetition. Mr Cruse does not seem to find prison difficult, and there is no risk of an adverse impact on his mental health.

Courts in this State and elsewhere have long emphasised the seriousness of the crime of armed robbery. It is a primarily a crime against the person. It can have a profound impact on

victims. There is no victim impact statement here, but that does not mean that there is no impact. The victim in this case was working alone in vulnerable premises. The defendant was disguised and planned what he intended to do. Although he did not intend to threaten the victim with his words, they were very likely to have that effect. His use of the knife was particularly confronting. Given the gravity of the crime there is no proper alternative to a term of imprisonment.

Dr Colquhoun assesses the risk posed by the defendant of future violence as high. She paints a bleak picture of the prospects for rehabilitation although some treatment and medication has already been commenced since Mr Cruse's return to prison. Because of his intellectual disability and personality structure, his response to treatment may be limited. The risk that the defendant poses is not to result in a sentence which is disproportionate to his crime, but protection of the public is a key sentencing consideration and is relevant to proportionality. Both Dr Jordan and Dr Colquhoun refer to the considerable thought which will be required about how the defendant is returned to the community. Both consider that a supervision order would provide a legal framework through which to enforce the defendant's engagement with services. Such an order will provide some form of safety net because it will enable his compulsory return to a secure mental health unit if thought necessary by the Chief Forensic Psychiatrist. Dr Colquhoun originally recommended against a supervision order because those responsible for management of such an order while Mr Cruse is in the community are not likely to be able to do so successfully without a comprehensive government support package involving fully supported independent residential placement, psychotherapy and drug and alcohol counselling and support. She proposed a restriction order, but when the prerequisites for making such an order, and the consequences of it, were made clear, Dr Colquhoun returned to the possibility of a supervision order. She has not changed her opinion. In the absence of a report from the Chief Forensic Psychiatrist recommending a restriction order I cannot make one. Dr Colquhoun proffered an opinion that she did not consider that two years of ongoing detention is necessary to meet the defendant's therapeutic needs prior to his release. The prison environment is not conducive to the most effective treatment, although as a result of Dr Colquhoun's intervention the defendant has, since May of this year, received more treatment than he was previously receiving. In her words, she would release him tomorrow if it were up to her and the circumstances for his proper care on release were in place. However Dr Colquhoun's opinion is directed to forensic mental health matters. The length of a custodial sentence for a crime as serious as this is for me to determine. Under a supervision order, Mr Cruse's return to the community can be managed by Forensic Mental Health if an appropriate NDIS package is in place. If an appropriate package is not in place he may be apprehended under the supervision order and, subject to the decision of the Mental Health Tribunal, detained. Some work has already started. Dr Colquhoun is working closely with the authorities to do what can be done to make the best arrangements as can be achieved. A certain release date will help facilitate the necessary planning for his release. Because of the sentence I am to impose it will be a considerable time before Mr Cruse is eligible for release. I assume that the prison authorities and treatment providers will be aware of the contents of Dr Colquhoun's reports. From caution I order that it they be provided to them. I have no power to direct distribution of Dr Jordan's reports but it would plainly sensible for them to be distributed also.

As part of the sentencing orders I will make a supervision order. I am not persuaded that the making of a supervision order should result in the reduction of the length of the head sentence. However, because this crime was committed while he was on parole, and because the certainty of release date is of such significance for organisation of the circumstances of

Mr Cruse's release, I will not provide for parole. The Director accepts that I may reduce the head sentence, in the exceptional circumstances of this case, having regard to his non-eligibility for parole.

Dylan Cruse, you are convicted on complaints 8138/2019 and 9585/2019. I impose one sentence. I make a compensation order in favour of Big Bargain Bottleshop, Lindisfarne, and adjourn the further terms of that order to a date to be fixed. You are sentenced to imprisonment for two years and three months. I order that the sentence be served cumulatively with the sentence that you are presently serving. I make a supervision order under the *Criminal Justice (Mental Impairment) Act 1999*, s 29A, to take effect on your release from custody. The effect is that when you are released from prison you will be under the supervision of the Chief Forensic Psychiatrist. There will be conditions of the order that you are required to take medication or submit to the administration of medical treatment as determined by the Chief Forensic Psychiatrist and to comply with any directions as to supervision given by the Chief Forensic Psychiatrist.