

STATE OF TASMANIA v GEOFFREY LYNNE LUCAS
COMMENTS ON PASSING SENTENCE

26 FEBRUARY 2021
ESTCOURT J

The defendant Geoffrey Lynne Lucas, aged 18 at the time of the offending, has pleaded guilty to one count of aggravated burglary and one count of stealing.

On Friday 16 August 2019 the complainant in this matter secured and left his residence at 21 Boa Vista Road, New Town, closing the front gate, but leaving it unlocked. At approximately 11am a witness observed four or five males in the street next to Boa Vista Road looking "out of place".

The defendant had bright hair that was standing up and was wearing a brightly coloured top and was carrying a bag and looking around. The others were looking down. A witness observed a male wearing a large cap, a male wearing a red jumper and a male with tattoos on his head looking at cars on Boa Vista Road, and that witness contacted police.

Tasmania police attended the intersection of Boa Vista Road and Letitia Street and observed four males near 23 Boa Vista Road. The defendant's co-offender, Davey, was standing on the footpath next to another co-offender, Jones, who ran off towards the CBD. He threw things into the yard of 23 Boa Vista Road as he did.

An LED handheld light, iPhone, firearm scope and two boxes of ammunition were located in the yard of 23 Boa Vista Road. Another co-offender, Causon, was squatting down next to a parked car. In front of the rear passenger side wheel was a fob watch, an emerald and diamond ring in a red box, two keys and a pair of green and white gardening gloves.

The defendant was walking 5–10 metres behind Davey and Jones and was carrying a heavy red fuel tank. His hair was dyed blonde and spikey and he was wearing a red jumper, as I have noted.

Davey, Causon and the defendant were arrested and transported to the Hobart Police Station. And as the defendant was being put in the divisional van, a number of foreign currency coins fell out of his trousers. He was searched at the police station and plastic bags containing more foreign currency, a silver memorial coin in a blue box and an envelope were located in his trousers.

The complainant was contacted by police as it was believed his house had been burgled. He returned home and confirmed that. His workshop door opened, his laundry door had been opened, and his firearms safe unlocked and opened. Three firearms had been removed, a quantity of ammunition, a camera, and other related items.

The ammunition was located spread on the ground outside the external doorway to the workshop. The firearms were located wrapped in a towel from the house on the lawn in the complainant's yard. It seems that the offenders were interrupted as they were leaving the premises.

Other items had been stolen from the complainant's house to a value of \$4,250. Further items had been moved from inside the house to outside the house. All property was recovered.

Jones was 26 at the time of the offending, Davey was 16, Causon was 23 and, as already noted the defendant was 18.

It is the Crown's case that Jones, Causon and the defendant were part of a joint criminal enterprise, acting in concert with one another and are liable for the acts of each other by their participation in such an enterprise.

The defendant has spent 4 days in custody in respect of this offending, and I take that into account.

The defendant has a prior conviction recorded by this Court on 15 December 2017 for aggravated armed robbery and aggravated burglary committed on 18 June 2017. He was sentenced to a 12 month detention order wholly suspended for a period of three years on condition that he commit no crime or offence involving damage to property, violence to the person or the use of the drug methylamphetamine.

The defendant also has a prior conviction recorded by a Court of Petty Sessions on 16 April 2019 for aggravated robbery committed on 8 December 2018. He was sentenced to a 6 month detention order which was wholly suspended for a period of two years on condition that he commit no offence which if committed by an adult would be punishable by imprisonment.

The Crown has made an application to breach the suspended detention order imposed on the defendant on 15 December 2017. It does so pursuant to s 94(1) of the *Sentencing Act* 1997.

The condition imposed upon that suspended sentence by the learned sentencing judge was, in my view, unlawful. However s 93 of the *Youth Justice Act* operates of its own force to impose a condition that, where a suspended sentence is imposed, a condition exists that the person not commit any offence which if committed by an adult would be punishable by imprisonment. Nonetheless I am of the view that it would be unjust to activate that sentence when the troubling aspects of the defendant's earlier criminal behaviour, namely violence, drug use and damage to property, are not features of the present offending. I am also somewhat influenced by the fact that the period of suspension was three years, and the defendant had at least complied with the conditions of the suspended sentence for about 12 months before committing the offence which was dealt with in the Court of Petty Sessions.

The defendant acknowledges that a sentence of imprisonment would ordinarily be encompassed within the sentencing range for these crimes but refers to the principles set out in *Garcie v Lusted* [2014] TASSC 27 and *Allie v Wilkie* [2019] TASSC 27, and notes that the defendant was largely following the direction of an older, dominant offender; that the offending was opportunistic; and that he has taken the opportunity for reform during the period of the proceedings by largely avoiding the company of those who he believes might encourage him to break the law. And I note that that is a period well in excess of a year, at the moment. The defendant says that he is remorseful, and the State does not suggest otherwise, and his pleas of guilty saved the State the expense and inconvenience of trial.

I have had the benefit of a pre-sentence report. The defendant is the only child born to the union of his parents, however he has four half-siblings to his mother's subsequent partnership and one older half-sibling from his father's previous relationship. His father died when he was aged six and he reported they held a good relationship until that time. Similarly, he described his relationship with his mother as very good. He reported being aware his mother was using illicit

substances from when he was aged 11 and advised Community Corrections that she was currently subject to the Methadone Program. Community Corrections contacted the defendant's mother who advised that she has not used illicit substances for some five years.

The defendant is Aboriginal and maintains a close relationship with his maternal grandmother, who is an elder within the community. This information was verified by the defendant's grandmother. Additionally, he reported holding a good relationship with his siblings.

The defendant has been assessed as suitable for a Home Detention order and that is the sentencing option that I propose to adopt. While the defendant's aggravated burglary and stealing was foiled, in effect, by the arrival of police and all property was recovered, the offending is made more serious by the attempt to transport off a number of firearms, ammunition and associated items. Fortunately that did not occur, and they did not fall into the wrong hands.

The defendant is to be treated as a youthful offender and I bear that, his pleas of guilty and his recent behaviour in mind in setting the period of home detention. The defendant is convicted of each of the crimes to which he has pleaded guilty and I impose a single sentence of nine months' home detention to take effect from today.

All of the core conditions contained in s42AD(1) of Part 5A of the *Sentencing Act* 1997 are imposed.

With specific reference to s42AD(1)(g) and (h), the following conditions form part of the order:

- 1 the defendant must, during all of the operational period of the order submit to electronic monitoring, including by wearing or carrying an electronic device;
 - 2 during the operational period of the order the defendant is required to submit to electronic monitoring:
 - (a) he must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;
 - (b) he must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;
 - (c) he must comply with all reasonable and lawful directions given to him in relation to the electronic monitoring, including in relation to the installation, attachment or operation of a device, or a system, used for the purposes of electronic monitoring by:
 - i a police officer;
 - ii a probation officer or prescribed officer; or
 - iii another person whose functions involve the installation or operation of a device, or a system, used for the purposes of electronic monitoring.
- ☐ he must, during the operational period of the order, remain at [address] at all times unless approved by a probation officer;

- ☐ I was going to impose a condition that immediately upon his release from Court today, he must attend the Community Corrections office at Hobart for induction onto this order, but I am told that officers from Community Corrections are here present at the moment, so I will order that immediately upon his release from Court today, he be inducted onto this order;
- ☐ he must, during the operational 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 through this device at all times;
- ☐ he must submit to the supervision of a Community Corrections officer as required by that officer;
- ☐ he must not, during the operational period of the order, take any illicit or prohibited substances which include any controlled drugs as defined by the *Misuse of Drugs Act 2001*, any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride or Pseudoephedrine, unless he provides written evidence from his medical professional that he has been prescribed the relevant medication.

In addition I make a community correction order for a period of 9 months with all of the core conditions, and the special condition that during the operational period of the order the defendant undertake 98 hours of community service. I am conscious that I have not sought an assessment of the defendant's suitability for community service, but programs are available and there is absolutely nothing in the reports that I do have from Community Corrections which would suggest he is unsuitable.