

STATE OF TASMANIA v JMARLI REX BURGESS
COMMENTS ON PASSING SENTENCE

3 MARCH 2021
GEASON J

Mr Burgess, you have pleaded guilty to attempted robbery, and to some additional matters on complaint 7319/20 which I am dealing with pursuant to s 385A of the *Criminal Code*, specifically counts 2, 3, 4, and 5 on that complaint which allege in order, destroying property - a door at premises in Glenorchy; destroying property - a car windscreen and assaulting a police officer by spitting at him, and a charge of possessing cannabis.

You have also pleaded guilty to two counts on a second indictment alleging aggravating burglary and stealing.

I convict you in respect of all matters.

Your conviction places you in breach of a suspended sentence of 4 months' imprisonment, which I am asked by the State to activate.

The facts in relation to the attempted robbery are that at about 8pm on 16 August 2020 you and three other men were at Northgate Shopping Centre. You were observed by a security officer interfering with the Tea Hut store and directed to leave the complex.

Outside you approached the taxi rank where the complainant, a taxi driver, was parked. You opened the driver's side door of the taxi and demanded money. He told you to close the door. You continued to demand money and said that you had a knife and that if you were not given money, you would punch him.

He told you to go away, whereupon you attempted to punch him. He was able to move out of the way such that the contact with him was minimal. Bystanders came to his assistance and you ran away towards Tolosa Street. No money had been handed over to you.

Fortunately the taxi driver did not receive any physical injuries as a result of the attempted robbery.

Later, at an address in Glenorchy at about 8.10pm, you kicked a wooden sliding door about eight to ten times, creating a hole in the door. The resident at the property watched this occurring, and eventually your foot came through the door. You fled the scene. The damage to the door is quoted at about \$1,000.

At about 8.30pm you entered the driveway at another address in Glenorchy and jumped onto the bonnet of a Toyota Corolla vehicle and stomped on the windscreen twice. This smashed the windscreen. This episode was captured on closed circuit TV. You left that address, having caused about \$350 damage to the motor vehicle.

You were arrested later that evening. You became aggressive towards police spitting at a constable who was merely carrying out his job. A search was conducted of the premises and you were found to be in possession of a small bag of cannabis. You were transported to the police station where you participated in a video recorded interview.

You told police that you had purchased a litre of Jack Daniels spirits and started drinking it with a friend, but that you did not remember a lot about the evening as you were intoxicated.

You said that you had no idea what had happened until you woke up in the remand centre and you were told what you had done, by your friend, who had also been arrested.

I turn to the second indictment which charges two counts, one of aggravated burglary and one of stealing.

Sometime between the 26 and 28 February 2020, you and three others entered residential premises which were undergoing renovation by climbing a scaffolding, gaining entry by smashing a glass door. The owner of the property was interstate at the time.

A significant amount of property was taken with a valuation of over \$58,000. This included jewellery, a laptop, power tools, alcohol, clothing and bank cards.

The value of the jewellery in particular should be mentioned, as it comprised over \$50,000 of that total. It might be expected that as well as its monetary value some of it at least, had significant sentimental value to its owner.

Recovered from an address where you were suspected to be - though you were not, was a corded drill case and a replica firearm belonging to the complainant. That is all the property that was recovered.

You were 18 at the time of this offence; you were interviewed by police in relation to it, and under caution you made admissions.

These included admitting to breaking in to the house; that you had planned to do so with others because you could see the house was undergoing renovation; that you went there with duffle bags, and went through the house filling those bags; that you took the stolen property to a friend's house nearby; that you exchanged some of the items for drugs; that some property was sold but that you derived no money from those sales; that you remembered stealing jewellery but you do not know what happened to it.

The State's case against you is that you were acting with others as a participant in a joint criminal enterprise. Whilst it is not possible to identify precisely which items were taken by you, you are criminally responsible for all items stolen and the damage inflicted pursuant to the shared plan between you and I sentence you on that basis.

I have received a report in relation to you which indicates that you were removed from your family at a very young age due to issues of parental substance abuse, domestic violence and neglect. You were subsequently placed with foster families, but according to the report these placements were also marred by violence and conflict, and you rebelled against restrictions that were placed on you. You eventually ran away. You have been responsible for yourself since you turned 18. You are now 20 years of age.

You now have daily telephone contact with your natural mother who resides in South Australia, and occasional contact with older half-sisters. It appears that you do not have contact with your biological father.

You were educated at St Virgil's College and the Jordan River College, and you have no issues with literacy. Any issue in respect of your academic achievement, or achievements since, appear to relate to lack of application on your part. I note that you have never participated in paid employment.

As is so often the case, alcohol and drug use are at the heart of your antisocial behaviour. Apparently your use of drugs and alcohol, including Ice, had escalated and you were using methylamphetamine with alcohol daily before you went into custody. This offending was committed, primarily, to fund your drug habit but also for food.

You have indicated that you would be happy to address your substance abuse issues, and that you may be willing to see a counsellor.

Your brother has indicated a willingness to support you upon your release from custody, including offering accommodation. He will also assist you to attend counselling and other appointments as necessary.

It is also apparent that Anglicare will offer you assistance if that is necessary. I urge you to take advantage of these offers of help.

You will be eligible for an unemployment allowance upon your release.
I note that you have a small debt of \$453 in unpaid fines.

You have a number of prior convictions, and whilst you are not to be sentenced twice for these, a number of them indicate a propensity to dishonest conduct. You are a youthful offender, and rehabilitation is a primary sentencing consideration here. That does not mean that the Court is not obliged to vindicate the victims of your offending, or to impose a penalty which deters others, but such considerations are secondary in respect of youthful offenders.

You are at a crossroads in your life. You have now experienced prison, and unless you make significant changes I expect that the pattern of offending and imprisonment will continue. For that reason I intend to make a community corrections order as part of the sentence I impose today in the hope that it will provide some assistance to you.

I accept that by your pleas of guilty you acknowledge your wrongdoing, and exhibit a preparedness to accept the consequences of your behaviour.

I also acknowledge that your plea has a utilitarian benefit and I intend to discount the penalties I would have imposed otherwise, by 20% in recognition of that benefit to the administration of justice.

As I have noted, this offending places you in breach of a suspended sentence of 4 months' imprisonment imposed in the Magistrates Court on 31 July 2020. I am asked to activate that sentence which I intend to do. I order that that sentence of 4 months' imprisonment imposed on 31 July 2020 be activated and commence on the date that you went into custody, 16 August 2020.

In relation to the offending on the indictments I have regard to the totality principle, which requires me to consider the effect of the totality of the sentences imposed in order to avoid a sentence which is crushing.

The sentences that I intend to impose on the indictments will run concurrently, but they are cumulative to the suspended sentence which I have activated. That means they begin after that 4 months sentence has been served.

On the indictment for aggravated burglary and stealing I sentence you to 16 months' imprisonment; I order that the last 10 months of that sentence be suspended on condition that you are of good behaviour for a period of 2 years and commit no offence punishable by imprisonment in that time.

On the indictment for attempted robbery I sentence you to 6 months' imprisonment, to operate concurrently with the sentence I have just imposed.

Whilst I have just activated a suspended sentence, I remain optimistic that, having experienced prison, a partially suspended sentence can have a rehabilitative effect.

On the indictment alleging aggravated burglary and stealing, I make a community corrections order to operate for a period of two years from your release. That order is subject to the core conditions, and further special conditions that you are to submit to the supervision of a probation officer as required by that officer, and undergo such assessment and treatment for drug dependency and alcohol dependency as directed by your probation officer.

In respect of the destroy property charges, I record convictions.

On the assault police charge – a disgusting action on your part, I sentence you to 7 days' imprisonment to run concurrently with the sentences that I have imposed today.

I make the orders sought by the State in relation to compensation in the terms sought on those applications.

The effect of the sentence I have imposed today is this, that:

- 1 The suspended sentence from the magistrates court of four months is activated and commences from 16 August 2020, being the day you were taken into custody.
- 2 At the expiration of that sentence, your sentence for the indictable matters begin: 16 months for the aggravated burglary and stealing. I have suspended the last 10 months of that sentence, meaning you must serve 6 months, and I have imposed 6 months for the attempted robbery, which runs at the same time as the other sentence. That is they are running together
- 3 The total time therefore that you are required to serve is 10 months commencing on 16 August 2020.
- 4 The remaining 10 months of the first sentence, the sentence in respect of the aggravated burglary and stealing, is suspended for 2 years.