

Mr Nicholas, a jury has found you guilty of one count of aggravated burglary and one count of stealing.

The crimes were committed in December 2018. Police responded to a report of a burglary at the house at Grindelwald on 21 December 2018, and the burglary had taken place sometime before that. The owner had been in hospital since September 2018, but his carer was living in the house at that time. She did not give evidence at the trial, and the evidence suggests that she deliberately avoided doing so. In your testimony at trial, you said that you had been to the house around that time with the carer's permission and she had, in fact, sold some property to you. However, it is clear that the jury rejected this explanation. I am satisfied that you may well have been to the house legitimately, with the permission of the occupier, at some time recent to the burglary, but on the occasion in question you in fact went to the house without her knowledge and broke into it by gaining access through the kitchen window. This is the window on which your palm prints were located by forensic police. I am satisfied also, having regard to the condition of the house as photographed by police on 21 December, that you then searched through the house and took some property from it. I have no idea whether you were alone when you did this, but I do not think the answer to that question affects your culpability to any significant extent, and I make no finding about it.

The only substantive submission made by your counsel concerning the factual basis of sentence relates to the amount of property stolen by you during the burglary. There is a list of property set out in the late owner's statutory declaration, which he observed to be missing when he returned from hospital to the house in January 2019. Police located his bank card and some electronic sound equipment from the house in your possession when a search was conducted of your residence later in January. Some of the missing property would clearly have come from inside the house. I refer in particular to the sound equipment, the televisions, the Blu-ray player, the electric blanket, jewellery, the blender and the antique gliders and matchbox cars. However, the other property in the list, in particular the ride on lawn mower and the box trailer, are more likely to have been taken from a location outside, or from the outdoor shed. The evidence at trial suggested that the shed had also been unlawfully entered, but it is impossible to determine whether this occurred at the same time as the burglary of the house. Further, there was evidence that there had been other burglaries during the time that the owner was in hospital and that a car and a motorcycle had been stolen as a result of those burglaries. There is no suggestion by the prosecution that you are responsible for the theft of these items. On that basis, it is impossible for me to be satisfied beyond reasonable doubt that any equipment which may have been located outside the house or in the shed was stolen by you. The reasonable possibility that such property was stolen during the other burglaries cannot be excluded. Accordingly, I do not find that you stole the box trailer, the ride on lawn mower, the Karcher cleaner, the tool or the motorcycle gear. I am satisfied, however, that you did steal the property likely to have been located within the home. There is no evidence of any other unlawful entry of the house. Further, I am satisfied that it is your blood on the wall from which one of the televisions was taken and this is consistent with you stealing at least that item. This supports the conclusion that you searched the house for other items to take, and I am satisfied that you stole the missing items located within the house. I am satisfied also that you stole the CCTV system including cameras and hard drive. You admitted in your evidence that you had taken at least the cameras and these were at your house, although they were not taken by the police. The jury obviously rejected your explanation that the occupier had sold this property to you, and I also reject that claim.

I have been given some information about the value of the property taken but it simply amounts to rough estimates by the owner and does not appear to be reliable. I have now been given some information about the insurance payout, but, once again, I do not know whether this is a gross figure that relates to all the property taken in all the burglaries, or whether it is relevant to the property that I have found was taken in this burglary. Doing the best I can on the information provided to me, I estimate that the aggregate value of the property taken by you, at least on a replacement basis, is somewhere between \$10,000 and \$20,000. Apart from the few items of property found in your possession by police, none of this has been recovered.

You are 36 years of age, single and have no dependants. You have a good employment history, although you have not been employed for the last couple of years. A significant aspect of your background is a long-standing problem with illicit drugs. This problem is reflected in your criminal history. There are no prior convictions for offences of dishonesty, but you have a significant history of offending largely concerned with illegal drugs and traffic matters. Your criminal history goes back to 2004, when you were 19 years of age. On 12 July 2017, a magistrate imposed a six-month wholly suspended sentence in respect of a number of summary charges and the major offence of trafficking in a controlled substance which was being dealt with by the magistrate pursuant to s 308 of the *Criminal Code*. This offence involved the drug methyl amphetamine, but the trafficking was at a low level. The sentence was suspended for a period of two years. You committed these crimes less than six months after the imposition of that sentence. The prosecution has made application for orders consequent on the breach pursuant to s 27 of the *Sentencing Act*. The law requires that I activate this sentence unless I am of the opinion that it would be unjust to do so. Your counsel has submitted that it would be unjust because this offending was of a different nature to that for which the suspended sentence was imposed, that the activation of the sentence would be a disproportionate response to this offending, and because you have not committed any further offences of dishonesty since that time. You claim to be rehabilitated in respect of your drug problem. I am not persuaded by these arguments. The crime of aggravated burglary, in particular, involved serious and deliberate offending. You invaded another person's home. The nature of such crime inherently involves premeditation and commitment to the criminal conduct. When you did, you must, or ought to have realised that the crimes would amount to a breach of the conditions of suspension of the earlier sentence. It is impossible to see this as anything other than the deliberate repudiation of the leniency extended by that sentence. I acknowledge that your criminal record does not disclose any further offending of a dishonest nature, but you have committed other offences during the period of suspension, although these did not result in the activation of the sentence. I will accept your claim that you are not using drugs at the present time, although I have not been presented with any independent evidence concerning any work done by you to overcome your drug problem. Ultimately, I am not of the opinion that it would be unjust to activate the sentence and, accordingly, it must and will be activated.

With respect to the sentence for the crime itself, I cannot detect any mitigating circumstances, apart from the fact that you had no prior or indeed subsequent history of dishonest conduct. However, the mitigatory weight to be attributed to this consideration must be weighed against your lengthy history of other forms of offending. Further, you have not shown any remorse nor returned any of the property, apart from that which was forcibly recovered by the police. Deliberate crimes of this nature which involve breaking into another person's home seem to me to be particularly amenable to general deterrence. I regard that sentencing factor as predominant in this case. The appropriate sentence is a period of imprisonment. I will, however, provide the

opportunity for early release on parole having regard to your lack of prior offending of a similar nature and in order to support your ongoing rehabilitation.

The orders I make are as follows:

- 1 You are convicted of the crimes of which you have been found guilty;
- 2 I activate the suspended sentence of six months' imprisonment imposed by the Magistrates Court on 12 July 2017. That sentence will be served from 15 March 2021. You are not eligible for parole until you have served one half of that sentence.
- 3 In respect of the crimes of which you have now been convicted, you are sentenced to a global term of 10 months' imprisonment, which will be served cumulatively upon the activated suspended sentence. You are not eligible for parole until you have served one half of that sentence.
- 4 For the purposes of s 92A(3) of the *Sentencing Act*, I specify that:
 - (a) the total term of imprisonment which you are liable to serve in respect of all of the above sentences is 16 months commencing on 15 March 2021
 - (b) the total period that you must serve before you become eligible for parole is the aggregate of the non-parole periods relating to the said sentences, which is a total period of 8 months.