

STATE OF TASMANIA v H F R
COMMENTS ON PASSING SENTENCE

23 MARCH 2021
WOOD J

H F R has pleaded guilty to aggravated armed robbery. On 3 March 2018, the defendant and other youths robbed Hiroyuki Mori of an apple iPhone and at the time, the defendant was armed with a metal pole.

In the early evening, the defendant aged 17, and three others, NM and ZD both aged 15 years, and J aged 13, were drinking alcohol in South Hobart. They walked along the rivulet track near the South Hobart Primary School towards the city. At about 6:15pm, the complainant, Mr Mori, walked towards them alone listening to music on his headphones. The defendant said to his companions, "let's rob this Asian". As they approached the complainant, the defendant asked him for money. The complainant said that he did not have any cash as he was just out for a walk and he continued on his way.

About two minutes later, the four youths approached the complainant. The defendant was holding a metal pole approximately 1 m in length and 2 cm in diameter, and the others were standing next to him. The youths including the defendant demanded the complainant's phone and the defendant swung the pole at the complainant but not striking him. The complainant refused. He tried to reason with the youths, saying "I know you are good guys actually".

Then one of the youths pushed the complainant into some bushes and another youth jumped on top of him from behind. All of the youths including the defendant were punching and hitting the complainant to his face and head while he lay in the bushes. I note that while the defendant threatened the complainant with the metal pole there is no suggestion that at any stage he struck him with it.

The complainant threw his phone away, one of the youths retrieved it and the group then left the complainant.

The defendant was a principal offender in that he threatened and delivered violence and was a party to a joint criminal enterprise to inflict violence and rob the complainant of his phone. Indeed, the defendant is the most culpable of the group as he was the eldest, it was his initiative and he had the weapon.

Fortunately, the complainant was not seriously injured. He suffered scratches, a bleeding lip and swelling of his right forearm and he lost his glasses.

I accept that this crime was not racially motivated. However, it is very serious conduct. It was a cowardly attack, four onto one. It involved threats with a weapon. The purpose was selfish greed for someone else's property. It would have been a very frightening experience, Mr Mori did not know how it would end. It was shameful behaviour. Anyone would be appalled to see four people pick on someone like that. I am conscious that the defendant and the others were intoxicated, and the defendant was also affected by Valium but that is no excuse and it does not reduce the seriousness of this conduct.

The defendant was interviewed by police and denied any involvement in the crime.

Four months before committing this crime, the defendant had appeared in the magistrates court on charges including trespass, two offences of burglary and two of stealing and had been released on conditions that he be of good behaviour for 12 months. Then about six months

after this crime the defendant committed burglary and stealing. There was other serious offending in this same period of early 2018 that was dealt with by the courts in May 2019, such as destroy property, aggravated burglary, stealing and possession of stolen property. The defendant was sentenced to a community correction order. Last year he was sentenced in May 2020 for similar offending of burglary, stealing, computer related fraud and breach of bail, and received wholly suspended terms of imprisonment. He breached his suspended sentences and in July last year, the magistrates court sentenced the defendant to a short period of actual imprisonment.

Since committing this particular crime of aggravated armed robbery, the defendant has committed nine offences of burglary or aggravated burglary and 13 offences of stealing and other offences but I note, has no other convictions for violence before or since committing this crime.

The three others were charged and have been dealt with. NM was dealt with in this Court under the *Youth Justice Act* and received a partially suspended detention order of 18 months. D ultimately pleaded guilty to different charges, assault and stealing, and was dealt with in the youth justice court and received a good behaviour order. The youngest was dealt with in the youth justice court and received a community service order.

The defendant has pleaded guilty at a late stage which is still of benefit to the community and has meant that the complainant did not have to give evidence.

The defendant has spent 55 days in custody attributable to this crime of aggravated armed robbery.

The defendant is now aged 20 and still a youthful offender.

I have a report from Youth Justice dated 18 December 2020, and a report from Community Corrections dated 17 March 2021.

The defendant's background and circumstances are relevant. His childhood and adolescence was highly disadvantaged and unstable. His mother was addicted to drugs and as an infant he was placed in the care of his maternal grandmother and partner. His grandmother had an alcohol problem and was verbally abusive and at times physically threatening. The difficulties in the home setting included violent altercations and led to him leaving home at 14 and living on the streets. The defendant's mother still has a drug problem but his relationship with his mother has improved. He has a maternal aunt who has been and continues to be a source of support.

His accommodation history is very unstable and he has had multiple periods of homelessness in the past 12 months. Until his incarceration recently, he was living in a youth shelter on a temporary basis. In view of these circumstances, he is unsuitable for a home detention order.

The defendant's education was cut short part way through grade 11. He is interested in pursuing an apprenticeship in the construction industry.

He began consuming alcohol at a young age of just 14. He does not drink frequently now but on the occasions when he consumes alcohol, he drinks a lot and his tolerance is low. He started experimenting with illicit drugs at the same age. He was using methamphetamine on a regular basis from the age of 18. He has taken up daily use of cannabis since his release from

incarceration in November 2020. He is also using ecstasy on a regular basis. The defendant says that he has been diagnosed by his general practitioner with post-traumatic stress disorder, attributed to the abuse he experienced while living with his grandmother. He also says he has been diagnosed with major depression and anxiety by his general practitioner and has been prescribed anti-depressants. He has been referred to Salamanca Psychology under a mental health plan, but has not yet had an appointment with a specialist.

The defendant considers his drug abuse is linked to his mental health difficulties such as anxiety and depression symptoms. That would seem likely but I do not need to make a finding about that. The important factor is that the defendant suffers from mental health symptoms, he has a drug and alcohol problem and that he is willing and motivated to do what he can to address these difficulties. He has had support in the past from Targeted Youth Support Services and he appreciates that that was very beneficial to him. Indeed, he misses that support, acknowledging that he is someone who needs guidance and direction at this time in his life. His insight and motivation is an important factor pointing to the prospect of rehabilitation.

His previous response to a community correction order was poor. He is assessed by Community Corrections as needing a very high level of support and direction. There are reservations expressed by Community Corrections about whether he will be compliant if such an order is made given his past poor response but, given he is willing to comply with community based supervision, given the seriousness of his position and his risk factors that would benefit from structured support, an order for 18 months supervision and intervention is recommended by Community Corrections.

There are significant risk factors for reoffending that need addressing urgently. The defendant has a serious drug problem, his associates are criminally minded and a bad influence, he has no stable accommodation, he has mental health issues and there is a real need for him to be engaged in productive activities such as training and employment.

However, there are positives in terms of your prospects. You have insight, understanding into the seriousness of your offending, you are remorseful. After committing this crime you decided that you did not want to be involved in robberies or crimes that caused harm to others, and I note that you have not been involved in any other crimes like that since. You are motivated to change your life, and you have taken steps already to address your mental health problems and are willing to engage in intensive drug rehabilitation. You want to be employed and you want to lead a good life.

I have read a number of past reports from Youth Justice, the first of these was in November 2017. They speak well of your underlying character and the promise that you have shown and your motivation. What I can see is that for a number of years now you have had goals of turning your life around. You told Youth Justice that you would change when you were 18. Here you are now 20. The time to act is now. You do not want to be saying I'll change when I'm 30 or when I'm 40, do you?

Having considered the nature of the crime and your circumstances and prospects of reform the sentence that will be imposed will provide an opportunity for rehabilitation but also will provide for serious consequences if you do not make the most of the opportunity it gives you.

You are to be sentenced in part under the *Youth Justice Act* and in part under the *Sentencing Act*. For the sentence under the *Youth Justice Act* I make an order under s 47 of the *Youth*

Youth Justice Act, I record a conviction and I impose a suspended detention order of 18 months. It is suspended for 18 months from today. It is subject to the conditions set out in s 90(3) of the *Youth Justice Act* for a period of 18 months. You must not commit another offence which if committed by an adult could be punished by imprisonment, and you must report as required to an assigned youth justice worker, and you must receive visits. Now while it talks about an assigned youth justice worker, because of another order I am about to make I expect that that will be supervised by Community Corrections. The additional conditions are:

- That you must notify your assigned youth justice worker of any change of address, employment, educational or training establishments before or within 2 working days of the change;
- You must obey all reasonable and lawful instructions of your assigned youth justice worker;
- You must attend educational, personal health and other programs as directed; and you may be tested for controlled substances in accordance with s 90(3) of the *Youth Justice Act*;
- You must undergo medical, psychiatric, psychological counselling and treatment as directed by your youth justice worker.

As mentioned, the conviction is being imposed under the *Youth Justice Act*. Pursuant to s 107(3)(b) of the *Youth Justice Act*, I specify that the responsible Department in relation to the *Sentencing Act* 1997 is to be responsible for all matters relating to the administration of the suspended detention order.

Bear in mind that once somebody who is 18 breaches a suspended detention order and it is activated, they have to serve it in an adult prison.

Now, I turn to the order I make under the *Sentencing Act*, and what I do here is make a community correction order for the operational period of 18 months from today.

This is a very serious order, it carries very significant requirements of you and if you breach it you will be brought back before the Court and a more serious order can be imposed.

The first condition is that it is in place for 18 months from today, so the same period of time as the suspended detention order, and you are to be subject to the supervision of a probation officer for that same period of 18 months.

Other conditions of the community correction are:

- You must not during the operational period of 18 months commit another offence punishable by imprisonment;
- You must report to a probation officer within 1 clear working day of your release to 114 Bathurst Street, Hobart;
- You must report to a probation officer as required;
- You must comply with all the reasonable and lawful directions of your probation officer;
- You cannot leave or remain outside of Tasmania without permission;
- You must give notice to your probation officer of any change of address or employment before or within 2 working days of the change;

I also impose special conditions that:

- You must attend educational and other programs as directed by your probation officer; and
- You must submit to the supervision of a probation officer as required by your probation officer;
- You must undergo assessment and treatment for drug dependency as directed by your probation officer;
- You must submit to testing for drug use as directed;
- You must undergo assessment and treatment for alcohol dependency as directed;
- You must submit to testing for alcohol use as directed;
- You must, during the operational period of the order, again 18 months from today, submit to medical, psychological or psychiatric assessment or treatment as directed by your probation officer;
- You must attend, participate in and complete the EQUIPS addiction program as directed by your probation officer.

H F R, this order represents a critical opportunity for you to reform. I have made the order because I think you can reform. It is now up to you.