

STATE OF TASMANIA v KJD
COMMENTS ON PASSING SENTENCE

12 APRIL 2021
GEASON J

Mr D you have pleaded guilty to aggravated burglary and aggravated armed robbery. At about 11.30pm on 18 June 2018 the complainant in this matter was at his home in Ulverstone. He was expecting a friend to arrive and opened the front door when he heard knocking. Two men, one of whom was you, were at the front door. You were both wearing jeans and hooded tops.

Both of you began punching him to the head and upper chest, and kicked him. You forced him back into the house and he fell to the floor. One of you kept punching him while the other yelled repeatedly "I'll fucking stab you". Immediately after this threat was made, the complainant felt a sharp pain to the inner groin area of his right leg and the back of his right knee. One of you reached into his pocket saying "Give me your fucking wallet" whilst the other was saying "Give us your wallet or I'll fucking kill you".

Once you were in possession of his wallet you both fled. The complainant chased after you, and one of you turned back to him and said "I'll fucking stab you again if you keep following us".

He went back inside and called the police.

He was unable to identify the offender at the time, however after viewing CCTV footage he formed the view that you were one of the men. He believes you were the one who punched and kicked him and grabbed his wallet. The person who stabbed him is not known to him. His identification of you seems to be the result of your having stayed at his house for several days the week before.

At about 11.50pm that night police attended at Barker Street in Ulverstone. You were at that residence and you were searched. Police found a knife and a brown wallet containing the complainant's identification. There was no cash in the wallet. You were arrested and taken into custody and you took part in a record of interview. You denied any knowledge of the assault, and you denied knowing the complainant. You could not give an explanation for being in possession of the wallet, and stated that it must have been in your jeans when you put them on several hours earlier. You were charged and bailed.

At the time the wallet was taken there was approximately \$1100 in cash in it.

The Crown asserts, and I accept, these matters as aggravating:

- 1 That at the time of the incident there were three children in the house aged 7, 10 and 12. They were woken by your intrusion and shaken and scared as a result. (I accept that their distress is based upon what they heard and it is not suggested they saw this episode). It is aggravating because you must have been aware that they were likely to be there at that time having lived at that house yourself.
- 2 You were in the company of another person at the time of the robbery.
- 3 The complainant suffered two small wounds to his leg as a result of the knife being used in the robbery. He also suffered a cut to his face and bruising to his face and body. An ambulance attended and administered first aid.

By way of background, you and your mother had been residing with the victim who was your mother's partner. There had been a falling out between you and the victim, which resulted in

your relocating from his home to another residence. Apparently it was suggested to you that you go to his home and confront him in relation to some accusations which had been made. The other offender has never been identified. You have not assisted police in identifying that person for reasons, I am told, relating to your sense of personal safety.

I note, in relation to the history of this matter, your failure to appear on at least 3 occasions when this matter was before the Court, and this has contributed to the significant delay in its resolution. According to the statement of facts you failed to appear in November 2019, May 2020, November 2020, and then following some other offending you were remanded in custody in January 2021. You have been in custody since then and there has been 14 days spent in custody in March 2020. Nevertheless having regard to your plea of guilty and despite that delay, I accept that there is a utilitarian benefit flowing from that plea and I consider that it justifies a reduction in sentence of 10%. I accept the submission that your plea of guilty also evidences your remorse.

I ordered a report in relation to you and I have considered that report and have regard to its contents generally. It discloses a childhood filled with trauma and neglect and that you were exposed to family violence, and illicit substance abuse. Your mother was an intravenous drug user, worked as a prostitute and had many pro-criminal persons within the home. The house was fire bombed on one occasion. You report incidences of violent behaviour perpetrated on you and your siblings by visitors to the home. Your mother has spent various periods incarcerated. Your father also engaged in alcohol and illicit substance abuse and exhibited violent outbursts that impacted you. You spent two years in the care of Child Safety Services. You have spent the majority of your later teenage years residing between the homes of friends and acquaintances. You are apparently now in a relationship which itself is abusive. As to that, the report indicates that there is a family violence order which has been issued protecting you from your partner, and that she currently is before the courts for allegedly assaulting you.

Though you were a youth at the time of this offending I have decided to sentence you as an adult. Your rehabilitation is an important consideration as a young offender but the seriousness of your offending cannot be ignored in fixing penalty. The nature of that offending requires a sentence that marks its seriousness and, in my view, a term of imprisonment is necessary in order to achieve that. I take account of the fact, that in prison you have had a difficult time, that you have been involved in fights due to other inmates apparently picking on you, and that you have according to the report that I have received, experienced some "pretty horrible things". I afford that consideration some weight in fixing the length of the sentence that I intend to impose today.

Mr D, I convict you on the indictment. I sentence you to 12 months' imprisonment. That sentence is backdated to 1 January 2021, to take into account time spent in custody.

As I have said your rehabilitation is an important sentencing consideration. In order to encourage your rehabilitation I have decided to suspend 8 months of the sentence that I have just imposed. I do that on condition that you are of good behaviour for a period of 2 years and commit no offence punishable by imprisonment in that time. I also intend to make an order for community based supervision upon your release. I direct that in addition to the usual conditions there is a special condition requiring you to submit to the direction of a probation officer with respect to alcohol and drug use. That order operates for a period of 2 years

Unless you change your ways you run the risk of serving further terms of imprisonment into the future. You should take advantage of the opportunity that I have afforded to you today. The effect of the sentence is that you must serve an actual period of 4 months' imprisonment, and you have 8 months hanging over you for a period of 2 years. If you commit another offence punishable by a term of imprisonment in that time, you may be required to serve the remainder of the sentence.

I make a compensation order in favour of the complainant in the sum of \$1100.