

STATE OF TASMANIA v DENIM FAYE O'CONNOR
COMMENTS ON PASSING SENTENCE

30 APRIL 2021
BRETT J

Ms O'Connor, you have pleaded guilty to the crimes of aggravated burglary and stealing, stealing firearms and unlawful trafficking in firearms.

On 11 September 2019, you and another woman travelled by car to a rural property, broke into the house there and stole a number of items of personal property including jewellery. You also stole 15 firearms and some ammunition. These were lawfully stored in gun safes within the home. The safes were accessed by keys located by your co-offender during an extensive search of the home. You attempted to disable CCTV cameras within the home while she was searching for the keys. The firearms were a combination of rifles and shotguns. The ammunition was capable of being discharged from at least some of the stolen firearms. After loading the weapons into your vehicle, which both of you did, you and your co-offender drove to a house in Launceston and delivered the firearms and the ammunition there. This act constitutes the crime of trafficking in firearms.

It is obvious that the sale of the firearms had been prearranged. It is clear from the state in which some of the firearms were found at the Launceston address that they had very quickly been prepared for sale, and some had already been removed from the premises. Police recovered seven of the stolen firearms, but eight have not been recovered. It is a reasonable inference that these firearms, and the ammunition relevant to them, are now unlawfully in the community, probably in the hands of those who would use them for criminal purposes.

You were 32 years of age at the time of this criminal conduct and you are now 34. You have a modest criminal history, consisting of traffic, minor drugs and bail offences. There is no prior offending involving dishonesty, nor anything as serious as this in your record. You completed education to grade 12 level and have a reasonable employment history. You are now caring on a full-time basis for your four children, aged 11, 4, 2 and, as at this time, 5 months. You have very limited family support. It would seem that the fathers of the children do not provide support to you in respect of their care. You have no contact with your own father, and your mother passed away some time ago. Your only assistance is some limited support from one child's grandmother, your stepfather and some support agencies. One of the children has a disorder which includes behavioural issues. It goes without saying that your care responsibilities impose considerable stress on you. You have been diagnosed with depression and anxiety and have had a problem with the use of illicit drugs. You claim to have got on top of your drug problem since you committed these offences, and to have been drug-free for some time. I agree with Ms Mason that there is some support for that, in particular the pattern of offending in your prior convictions.

There is no question that this is serious offending which has a number of aggravating features. You claim to have become involved at the urging of your co-offender. You were not involved in planning the crimes, and claim to have only become aware of the intention to break into the house and steal the firearms shortly before or at the time of arriving at the property, although text messages between you and the co-offender shortly before the crimes seem to me to make it clear that you had contemplated and discussed some form of dishonest offending in the lead up to this. I note that it was your co-offender who had some knowledge of the property and presumably knew that the firearms were stored there. I infer that it was she who arranged their sale. You claim to have received little benefit from the crimes. I was told that you may have received an interest of modest value in a motor vehicle. However, it is also clear that once you realised what was intended, you participated freely and fully in the commission of the crimes. You can be seen on CCTV approaching the property wearing a hat, gloves and sunglasses, the latter presumably to disguise your appearance. You were carrying a hammer, which was

subsequently found within the premises and which was obviously intended or actually used to gain entry to the house. You can be seen on the CCTV carrying some of the firearms to the vehicle.

All of these crimes have a high degree of objective seriousness. Breaking into another person's home involves a terrible breach of privacy and intrusion into the sense of security to which the homeowner is entitled. Stealing firearms and then trafficking them is a matter regarded with great concern by the community and reflected in the fact that these are indictable offences. It is obvious that criminal behaviour such as this directly results in these dangerous weapons coming into the hands of criminals. General deterrence is a very significant sentencing consideration.

An important issue in the assessment of the sentence to be imposed on you is the question of parity with the sentence imposed on your co-offender. There is a distinction to be made between you in terms of your respective involvement in planning and arranging the crime, as I have already discussed, although the effect of this must be limited. Further, your co-accused had a significantly worse record than you, with prior convictions for numerous counts of aggravated burglary and other offences of dishonesty committed within a period of approximately two years prior to these crimes. In fact, she was subject to a suspended sentence imposed for some of these crimes at the time of this offending. The sentencing judge, Pearce J, activated the suspended sentence and, by way of sentence for these crimes, imposed a drug treatment order with a custodial period of 15 months. The co-offender had also spent a short period in custody awaiting sentence which was not attributable to the suspended sentence.

In my view, the need to emphasise general deterrence and denunciation of conduct of this nature requires the imposition of a sentence of imprisonment. However, I must also take into account your personal circumstances, which include your lack of prior convictions for similar offending and your care responsibilities in respect of your children. I have regard, in particular, to the age and health needs of your children and the lack of close family support. I think that, taken together, these are exceptional circumstances, and the impact on your children of a term of immediate imprisonment is properly taken into account. I imagine if that you are sentenced to actual imprisonment, there is a significant possibility that your children will be taken into care, and very possibly separated from each other. I also take into account your claim that you have got on top of your drug problem and would benefit from ongoing supervision. Having regard to these factors, I am satisfied that it is not necessary to impose an immediate term of imprisonment in order to achieve the sentencing aims already discussed. An assessment has indicated that home detention is not a suitable sentencing option, and I agree completely with that assessment. In the circumstances, I think the appropriate sentence is a wholly suspended sentence of imprisonment, with conditions of suspension, including probation supervision. In arriving at that decision, rather than simply imposing a community correction order, I have considered your propensity to commit, what might be considered to be relatively minor offences, but still imprisonable offences, and offences which will breach the condition of suspension, and cause you to, more than likely, have to serve the sentence. I am concerned that I might be setting you up to fail. Having said that, I think these crimes are too serious, and the requirement of general deterrence is so important, that a sentence of imprisonment must be imposed. I have regard also, as I have said, to the issue of parity. It will be up to you, Ms O'Connor, as to whether you end up serving this sentence. You will have the opportunity to avoid doing so, and if you truly love and care for your children as you have indicated you do, then you will be very careful to ensure you do not commit any offence which might breach the conditions of suspension.

Accordingly, the orders I make are as follows:

- 1 You are convicted of the crimes to which you have pleaded guilty.
- 2 You are sentenced to a global term of 12 months' imprisonment. The entire sentence is suspended for a period of 18 months on the following conditions:
 - (a) That you are not to commit another offence punishable by imprisonment during that period.
 - (b) That you will be subject to the supervision of a probation officer. You must comply with this condition for a period of 18 months. That period will commence immediately. The Court notes that the conditions referred to in s 24(5B) of the *Sentencing Act* apply to this condition. These include that you must report to a probation officer within 3 clear days of today. In addition to the core conditions, the order shall also include the following special condition:
 - (i) you must, during the operational period of the order,
 - attend educational and other programs as directed by the Court or a probation officer;
 - submit to the supervision of a probation officer as required by the probation officer;
 - undergo assessment and treatment for drug dependency as directed by a probation officer;
 - submit to testing for drug use as directed by a probation officer;
 - undergo assessment and treatment for alcohol dependency as directed by a probation officer;
 - submit to testing for alcohol use as directed by a probation officer;
 - submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.

I make a compensation order in a sum to be assessed and adjourn the assessment of that order sine die.