

Mr K, you have pleaded guilty to one count of attempted aggravated armed robbery.

The crime was committed on 22 August 2019. At about 4:15am, you and your uncle got into a taxi which was parked at Moonah, waiting for a fare. You had both been drinking, and were intoxicated. Your apparent purpose was to travel to an address in another suburb. You entered the back seat and your uncle got into the front passenger seat. As the taxi was moving, you placed your arm around the taxi driver's neck, applied pressure and told him to give you his money. When the driver requested assistance from your uncle, he also told him to hand over the money. He then pulled out a knife, pointed it at the driver and held the sharp end into his stomach. The driver pulled over and stopped the taxi. A short time later, and despite the fact that you maintained your hold around his throat, the driver managed to attract the attention of a passing vehicle. When it became apparent that this other vehicle was stopping and likely to provide assistance, you and your co-offender fled. You were both arrested by police soon after.

Fortunately, the driver did not suffer any physical injury, but understandably there have been significant psychological and emotional consequences for him. He has continued to work as a taxi driver but suffers anxiety in certain situations. This has led to some reduction in his working hours and consequent financial loss.

You were 17 years of age at the time of committing this crime and are now 19. Your upbringing was impacted by your father's excessive drinking and domestic violence. Your parents separated when you were 13, and it seems that by the age of 15, you were homeless. This situation has persisted to the present time. You completed education to grade 10 level and, although you are currently looking for work, you have not been previously employed. Earlier this year, you suffered a significant injury in an accident when you were the passenger on a motorbike. You required lengthy hospitalisation and still suffer the physical consequences of this injury.

You have criminal history which in fact commences when you were 9 years of age. Before committing the crime with which I am dealing, you had been dealt with as a youth for various offences on a number of occasions. Some of these offences were quite serious and included burglary and stealing. However, you have not committed a crime as serious as this before. You have subsequently been dealt with for other offending and are currently subject to a community correction order imposed by a magistrate, which is due to expire in September. A youth justice report prepared in October last year notes intermittent but reasonable compliance with this order. The report recommends a further community correction order.

You cannot explain your decision to participate in this crime, apart from the fact that you were extremely intoxicated. You also claim to be devastated by your actions, and to hold genuine remorse for the harm caused to your victim. It seems that the crime was relatively spontaneous and unplanned, although there was clearly some rudimentary co-ordination between your uncle and yourself. You claim that you did not know that he had possession of or was going to use a knife, and your liability for the attempted armed robbery, as opposed to attempted robbery, is as an accomplice to the crime, based on your concession that you saw him produce the knife, and with that knowledge, and for a very short time, continued to restrain the taxi driver in the expectation of stealing money from him. In any event, this was a very serious crime. The taxi driver was vulnerable to offending of this nature. I am sure that this was a terrifying experience

for him. It is not surprising that he continues to experience psychological consequences. There is no question that general deterrence and denunciation of your conduct are important sentencing considerations.

I must also have regard to parity between you and your co-offender. He was sentenced by Geason J on 26 August 2020 to imprisonment for two years and nine months, with a non-parole period of 18 months. This sentence was cumulative upon an activated suspended sentence of three months. Of course, there are some very significant differences between your case and his. He was 10 years older than you and had a considerably more significant prior criminal history, which included sentences imposed for an armed robbery committed in 2009 and an aggravated burglary and stealing committed in 2017. As already noted, he was subject to a suspended sentence at the time of committing this crime. It is also significant that he was the one who had possession of and produced the knife during the course of the robbery. On the other hand, it was noted by the judge that a psychological report had concluded that he had an extremely low range of intellectual functioning.

Ultimately, I think that the differences in age and prior criminal history between you are so significant that a very different sentencing outcome is indicated in your case. Having regard to these matters, it seems to me that rehabilitation must take precedence over the other applicable sentencing considerations, including general deterrence. Although the crime is so serious that imprisonment is the only reasonable sentencing option, I am satisfied that it is appropriate to give you the opportunity to avoid spending a lengthy term in actual custody. Of course, rehabilitation will only be effective if you are committed to it, and the youth justice report on this question is somewhat equivocal. In any event, my intention is to suspend the bulk of the sentence. This will mandate, encourage and facilitate ongoing supervision. However, make no mistake, if you reject the opportunity offered to you to pursue rehabilitation, and in particular if you commit further offences, the only alternative will be severe punishment, including the activation of the prison sentence.

The orders I make are as follows:

- 1 You are convicted of the crime to which you have pleaded guilty.
- 2 You are sentenced to a term of 18 months' imprisonment, which will be backdated to 2 May 2021. The balance of the sentence from today will be 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 from today. 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 your actual release from custody. In addition to the core conditions the order shall also include the following special conditions:
 - (1) you must, during the operational period of the order,

- (2) attend educational and other programs as directed by the court or a probation officer;
- (3) submit to the supervision of a probation officer as required by the probation officer;
- (4) undergo assessment and treatment for drug dependency as directed by a probation officer;
- (5) submit to testing for drug use as directed by a probation officer;
- (6) undergo assessment and treatment for alcohol dependency as directed by a probation officer;
- (7) submit to testing for alcohol use as directed by a probation officer;
- (8) submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.