

STATE OF TASMANIA v BENJAMIN MARK NUTTING
COMMENTS ON PASSING SENTENCE

7 JUNE 2021
GEASON J

Mr Nutting you appear for sentence on a charge of armed robbery. On 13 January 2021 the complainant was working at a bottle-shop in the Wellington Centre in Hobart. At about 7.30pm you entered the shop, selected a pack of whiskey and cola valued at \$44 and you approached the counter. You said to the complainant "I usually pay for these but I am not going to this time and I'm happy to rob you". You held up a pair of scissors in your right hand and you waived them around the complainant's face. You said that you were happy to kill him if he told anyone or did anything stupid. He was about half a metre away from you when this occurred. He stepped back from the counter and told you to take whatever you wanted. This appeared to him to make you more aggressive. You said again "Don't do anything stupid or I'll kill you". You stepped away from the counter before again raising the scissors and pointing them at the complainant. You continued threatening to kill him. Then as you left the shop you turned around and said "I'm sorry for doing this".

The complainant feared for his safety and believed that you could hurt or kill him. He observed that you appeared to be under the influence of drugs.

The incident was captured on CCTV. On 17 January you were arrested. You were transported to the Hobart Police Station where you were interviewed. You admitted that you were coming down off drugs and that you had a headache from not drinking all day. You said that you were dehydrated but did not have money to pay for alcohol. You acknowledged that you probably said something to the effect of "don't come after me I've got scissors", but you could not recall threatening to kill the complainant but agreed that it was possible. You denied stealing anything other than the whiskey and cola. You said you were sorry, that you were harmless and that you would not hurt anyone. You said you were not feeling well and you were not yourself. You told police that you had the scissors for cutting cannabis. You expressed a desire to apologise and to fix the problems you had caused. You were remanded in custody and have been in custody since 17 January 2021.

I have a pre-sentence report in relation to you. You had a stable upbringing though you recall some isolation growing up which you found difficult. You maintain contact with your mother but no one else in your family. Your mother advises that prior to being remanded in custody you would see her two or three times per week to obtain money. You have struggled maintaining accommodation and you were sleeping rough in the weeks leading up to this offending. Before that you had been squatting in an abandoned building. You have previously rented accommodation but you became unable to pay for it owing to the amount of money you were spending on illicit drugs. According to the report you continued to use cannabis, methylamphetamine and alcohol in the period leading up to this offending. You are unemployed, you receive a Newstart allowance of \$750 per fortnight and you have outstanding fines of about \$4000. You claim to suffer depression and anxiety but you have not been formally diagnosed with either of those conditions.

Relevantly, it is reported that you are regretful and embarrassed by your criminal history, and that the recent time in custody has significantly impacted you. You recognise that you must address your substance abuse issues if you are to make progress. You appear to have an insight into the impact of your offending behaviour on others and you have expressed sympathy for your victim.

You have been assessed as someone for whom a supervision order is recommended but you are considered unsuitable for community service work. I intend to make a community corrections order.

You have a number of offences of dishonesty as well as some offences which include a violent aspect to them. You are not to be punished for your record of prior convictions but you exhibit an attitude to the law which indicates behaviour such as this is not out of character for you.

I take account of your early plea of guilty and discount the sentence I would otherwise have imposed by 20% to recognise the benefit to the administration of justice which accrues. The Court has an obligation to impose a sentence upon you which punishes you and deters others from this sort of behaviour. People, such as the complainant in this case, are at significant risk from people like you by reason of the nature of their employment, and the prevalence of offending such as this is high. In order to address the relevant sentencing considerations, and in particular the issue of general deterrence which I regard as particularly important because of the vulnerability of people such as the complainant in this case, a term of imprisonment is necessary.

Accordingly, I convict you and I sentence you to 9 months' imprisonment backdated to the date you were taken into custody. I direct that the last 4 months of that sentence be suspended on condition that you commit no offence punishable by a term of imprisonment for a period of 3 years from your release. I make a community corrections order operative for a period of one year. It will incorporate all the standard conditions as well as special condition requiring you to engage with such programs directed towards alcohol and drug abuse and addressing your criminogenic needs as directed by your probation officer.