

**STATE OF TASMANIA v STUART FERGUSON
STATE OF TASMANIA v TY FERGUSON
COMMENTS ON PASSING SENTENCE**

**2 JULY 2021
ESTCOURT J**

The defendants, Stuart Fergusson aged 41, and his son Ty Fergusson aged 22 have pleaded guilty to one count of aggravated burglary, one count of stealing and one count of unlawfully injuring property. They and their co-defendant Bradley Robert Abel who was 33 years old at the time of the offending, were not known to the complainants.

On 9 July 2019 the complainants Matthew Tringrove and Sarah Rigney left Tasmania on a six week holiday. On 17 July 2019 the defendants unlawfully entered the property. While inside, the interior of the property was damaged and the defendants then left the house taking with them a large amount of goods and cash to a total value of some \$23,400.

At about 6 am police intercepted a white Holden Commodore travelling north on Main Road, Berriedale in which all three defendants were inside. The defendants were searched and the items from the burglary were found on them. All three occupants of the car were arrested.

The total value of goods (not including Australian currency) that the Crown asserts was stolen from the house is \$18,082. That property has been recovered.

The total value of cash in Australian currency that the Crown asserts was stolen from the house is \$5,318. That sum of money has been recovered.

The total value of items stolen, including both goods and cash, was \$23,400.

Significant damage was caused to the house and personal property during the course of the burglary. The total value of repairs or replacements required was \$16,985.05

The Crown makes an application against both defendants pursuant to s 68(1) of the *Sentencing Act* for a compensation order in favour of Sarah Rigney and Matthew Tringrove in an amount to be assessed, and the assessment of that to be adjourned sine die. I make that order.

The Crown makes further application against both defendants pursuant to s 68(1) of the *Sentencing Act* for a compensation order in favour of Blue Zebra Insurance in an amount to be assessed, and the assessment of that to be adjourned sine die. I make that order.

The State asserts that this was a premeditated, planned and targeted offence and that all three of the men physically entered the property and participated in searching for, damaging and stealing the property. While it cannot be asserted which property each defendant physically took or damaged, it is alleged that all three defendants are criminally responsible for all items stolen. Via one or other pathway to criminal liabilities, the defendants by their pleas must be taken to accept that.

I have read a victim impact statement prepared by Ms Rigney. She and her family had to pay for additional flights home to return to their property, and when they did they experienced panic attacks and could not live in the house. It ended up being sold.

Stuart Ferguson is now 41 years old. He has numerous convictions for offences of dishonesty. He has been to prison before and was sentenced in this Court on 2 May 2008 when he was convicted of one count of aggravated burglary, one count of stealing and one count of unlawfully injuring property. He was ordered to serve a period of 18 months' imprisonment to commence at the expiration of a sentence that he was then serving.

In 2016 I sentenced him to 4 ½ years' imprisonment for a brazen and vicious armed robbery in company. Once again regrettably, the cause of the defendant's offending could be traced to addiction to methylamphetamine.

Ty Ferguson, aged 22 has only one relevant prior conviction, namely for burglary for which he was sentenced by a magistrate in May 2020 to a period of 4 weeks' imprisonment.

Stuart Ferguson was educated to a grade 10 level at Oatlands High School, however, his literacy and numeracy skills were poor on the completion of his secondary education. He was unable to read and write when he left school but developed those skills in adulthood.

Despite his limited education, he has been able to secure employment although the longest period he has ever been employed in one job is for 18 months.

He is currently in a relationship of 11 years. There is one child from this relationship aged seven. He has four biological children to a previous relationship. Ty Ferguson is one of the children from that relationship.

He has used illegal drugs from the age of 14. At that age he initially experimented with amphetamines in the company of older friends. He used this drug sporadically until the age of 17, and from that age his use of amphetamines began to increase. He developed a daily addiction and would inject a number of times a day.

His second drug has been methylamphetamine. He was not been able to maintain his drug use on a Centrelink allowance and would commit crimes to obtain money to fund his illicit drug use.

He has previously attempted to address his substance abuse through participating in the Bridge Program with the Salvation Army, and has completed relevant courses in prison, such as, "Getting Smart Program", and "Making Choices Program". He participated in the Bridge Program commencing August 2010, where he attended the course for the period of eight weeks. He was also placed on a Drug Treatment Order in August of 2012, however, on 15 August 2013, the Drug Treatment Order was cancelled, and he was re-sentenced to a term of imprisonment.

Since being released from prison in September 2020, he reengaged with the Bridge Program, having commenced with the program on 16 June whilst still in prison. He remains engaged with that program and seeks to successfully complete the course. He commenced a 10 week residential program with the Bridge Program on 22 April 2021.

In addition, he has engaged in employment since leaving prison. He is working as a landscape gardener with and works four days per week in this occupation. He sees his engagement in employment as a further barrier to taking illicit drugs and believes that if he remains gainfully employed, he will not get bored and take illicit drugs.

Since being released from prison, he has not approached his pro-criminal associates and remains committed to his family residing in West Moonah when not with the Bridge Program.

I obtained a report and he has been assessed as suitable and eligible for a Court Mandated Drug Treatment Order.

Ty Ferguson was educated to a Grade 11 level at the Claremont College. In September 2019 he secured employment with a roofing contractor. He has two sons to separate partners. One child is aged five and the other is aged two. He has regular access to the two children. He is now self-employed in the construction of domestic sheds.

He was a young man when asked to participate in these crimes. He was aged 19 years. He submits that but for the request from his father and misplaced loyalty for him, he would not have participated.

I accept that submission and propose to impose a suspended sentence of imprisonment.

Stuart Ferguson you are convicted of one count of aggravated burglary, one count of stealing and one count of unlawfully injuring property. I impose a drug treatment order.

As to the sentencing order, the custodial part is a term of 2 years' imprisonment in respect of all charges.

The total custodial period is 24 months. Mr Ferguson, you will not be required to serve any part of that sentence unless you are ordered by a court to do so as a result of you not complying with the treatment and supervision part of the order.

The drug treatment order will contain all of the usual core and program conditions contained in ss 27G and 27H of the *Sentencing Act* 1997.

The core conditions of the drug treatment order are as follows:

- You must not, in Tasmania or elsewhere, commit an imprisonable offence.
- You must attend court, as directed by a court.
- You must report to a court diversion officer at Community Corrections, 114 Bathurst Street, Hobart at 2pm on Monday, 5 July 2021.
- You must undergo such treatment for your illicit drug use problem as is specified by a court from time to time.
- You must report to, and accept visits from your case manager or court diversion officer.
- You must, unless there are special circumstances, give your case manager and court diversion officer at least 2 clear working days' notice before any change of address.

- You must not leave Tasmania except with the permission, granted either generally or in a particular case, of a court.
- You must comply with all the lawful directions of a court.
- You must comply with all reasonable directions of your case manager and court diversion officer concerning the core conditions and program conditions of this order.

The following program conditions are added to the order:

- You must not use or associate with anyone determined by CMD to be an inappropriate contact and/or who uses any mood or mind altering substances, synthetic substances, or any unidentified substances and to submit to testing as directed by CMD.
- You must reside at [address specified] or any other address approved by CMD.
- You must not be absent from those premises between the hours of 9pm and 6 am, and you are to present to an officer between those times, when required to do so, unless you have pre-approval from your Court Diversion Officer.
- You must be contactable by phone 24 hours a day and inform CMD immediately of any change in telephone number.
- You must obey all the directions from your court diversion officer or any other case officer (this includes case management appointments, counselling, medical appointments or assessments, urinalysis and any other appointment or assessment as required).
- You are not to use any prescription medication without approval from a general practitioner or court diversion officer, and only to take prescribed medication in accordance with directions.
- You must comply with the direction of your general practitioner or other mental health practitioner in relation to the management of your mental health, including taking prescribed medications as directed.
- You must notify CMD of any prescribed medication as soon as possible.
- You must refrain from the consumption of alcohol and submit to breath analysis as requested by CMD or Tasmania Police.
- You must appear in the Hobart Magistrates Court on 7 July 2021 at 10.30am.

Ty Ferguson, you are also convicted of one count of aggravated burglary, one count of stealing and one count of unlawfully injuring property.

You are sentenced to a period of 9 months' imprisonment, which sentence I wholly suspend on condition that you commit no offence punishable by imprisonment for a period of 18 months.

In addition I make a community correction order for a period of 18 months. As well as the core conditions as to supervision and the like I add special conditions as follow:

- Under s 42AP(1)(g) you must, during the operational period of the order, undergo assessment and treatment for alcohol dependency as directed by a probation officer.

- Under s 42AP(1)(j) you must, during the operational period of the order, submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.
- I direct that you attend at Highfield House, 144 Bathurst Street, Hobart at 2pm on Monday 5 July for induction onto that community correction order.