

STATE OF TASMANIA v DAVID McGRATH SMITH
COMMENTS ON PASSING SENTENCE

30 JUNE 2021
BRETT J

Mr McGrath Smith, you have pleaded guilty to possession of stolen firearms and unlawful trafficking in firearms. You have also pleaded guilty to two associated summary offences of conveying the firearms contrary to prescribed safety requirements.

The firearms in question are two rifles and a single barrel shotgun. The crimes were committed between 11 and 12 January 2020. It is clear that the guns, together with other property, including a significant amount of ammunition, were stolen during separate aggravated burglaries committed on both of the said days, of a house at Boat Harbour. It is not alleged that you were directly involved in the burglaries, but you and another man transported the guns, and in particular delivered them to an associate, clearly to enable that person to on-sell them to others. It is significant, in my view, that CCTV footage shows you and your companion transporting the weapons to the house of the said associate on both nights. Although you denied being involved in the planning of these crimes, such involvement so soon after both burglaries, suggests that you were closely involved in, at the very least, the execution of this criminal enterprise, although you cannot of course, be punished for the aggravated burglaries. At least one of the guns was on-sold by that person to a man with a lengthy criminal history. This cogently illustrates the serious potential consequences of crimes such as these. Police found the loaded weapon in the car of this man after he had been intercepted following reckless driving and his attempt to evade police.

You are 34 years of age and were 33 when you committed these crimes. Prior to 2019, your criminal history consisted only of relatively minor traffic offences. In February 2019, a suspended sentence was imposed on you for a number of offences which included a number of examples of driving a motor vehicle with a prescribed illicit drug in your blood, and the minor offences of using and selling a controlled drug. There are no further convictions on your record. You were subject to that suspended sentence when you committed the crimes with which I am dealing. The suspended sentence has since been activated because of the commission of other offences.

Your criminal history is substantially consistent with your personal history, as described by your counsel and in a pre-sentence report. You have had a problem with substance abuse since 2015. You blame the poor influence of your peer group for this, but you have either not tried or not been successful in breaking away from that group. It is clear that you have made some attempts to overcome your drug problem but this has been a struggle because of your continued association with such people. In fact, your counsel claims that you were essentially a follower in respect of the commission of these crimes and your motive was largely concerned with ingratiating yourself with the other people involved in this affair. You have now also conceded that you had an expectation of receiving methylamphetamine in return for your involvement in this enterprise. It is clear that you were still in the grip of your drug problem when you committed these crimes. You have now been in custody since April of this year as a result of the activation of the suspended sentence. Your counsel claims that this has been a significant wake-up call for you, and you have resolved to recommit yourself to overcoming your drug problem and staying out of trouble. You do have a good work history and you come from a stable family background and have good ongoing support from your parents. You also have a 12-year-old daughter with whom you stay in regular contact. I accept that you are genuinely committed to rehabilitation and that such is a relevant sentencing consideration in this case.

Having said that, there is no question that crimes involving stolen firearms, and in particular trafficking in stolen firearms, are inherently serious. The unlawful presence of firearms in the community and their availability to and use by criminals is a matter of great concern to the public. It facilitates and is often associated with serious crime and, of course, creates significant risk, and sometimes actual harm, to victims and the wider community. Parliament has reinforced the serious nature of these crimes by making them indictable offences. It goes without saying that general deterrence is also a significant, if not the primary, sentencing consideration.

Finally, in assessing your sentence, I must take into account parity. At least four co-offenders have now been sentenced, although three of them played different roles and their sentences do not have significance beyond that derived from an overall consideration. However, the criminal conduct of your co-offender, Mr Howard, is, in my opinion, directly comparable to your case. Although he was also convicted of receiving stolen property, and the property included more than just the stolen firearms, I do not think that there is any significant difference in a general sense in the objective seriousness of the criminal conduct in respect of each of you and your respective moral culpability for such conduct. You claim that he was more heavily involved in the planning, but according to the comments on passing sentence relating to him, he seems to have claimed that he also was a follower of others, and he was sentenced on that basis. His criminal history, as far as I can tell, is relatively similar to yours. Any greater seriousness in his case can be balanced against the aggravating fact that you were subject to a suspended sentence when you committed these crimes. In any event, I am satisfied, irrespective of considerations of parity, that the sentence imposed on him is the appropriate sentence in your case. However, I do not intend to require you to perform community service. I think that a further short period of imprisonment, operating cumulatively to the activated suspended sentence, together with the suspension of the balance of the sentence, constitutes sufficient punishment. This will also provide the opportunity for an extended period of supervision, which will proceed beyond the end of the supervisory period in the order made by the magistrate.

Accordingly, the orders I make are as follows:

- 1 You are convicted of the crimes and the offences to which you have pleaded guilty.
- 2 You are sentenced to a global term of 10 months' imprisonment, which will be backdated to 7 June 2021. The last 7 months of this sentence 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 when you lawfully cease to be imprisoned under this sentence. 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 at Burnie within three clear days of the day that you lawfully cease to be imprisoned under the sentence. In addition to the core conditions the order shall also include the following special conditions:

You must, during the operational period of the order:

- (i) attend educational and other programs as directed by the Court or a probation officer;
- (ii) submit to the supervision of a probation officer as required by the probation officer;
- (iii) undergo assessment and treatment for drug dependency as directed by a probation officer;
- (iv) submit to testing for drug use as directed by a probation officer;
- (v) submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer;
- (vi) attend, participate in and complete the EQUIPS addiction program as directed by a probation officer.

3 I order that the stolen firearms be returned to Dylan Wilton, and I make a compensation order in favour of Mr Wilton in a sum to be assessed and I adjourn that assessment sine die.