

STATE OF TASMANIA v KYAM KEITH BROADBY
COMMENTS ON PASSING SENTENCE

20 JULY 2021
PEARCE J

Kyam Broadby, you plead guilty to aggravated burglary and two counts of stealing. At about 1 am on 24 September 2019 you went with about four other people to a car wrecking and recycling business in Mowbray. The chain on the locked gate was cut and entry was forced into a locked building. The joint intention was to look for things to steal. An employee of the business, Mohammed Qasimi, was asleep inside one of the rooms. When he woke and went to investigate he saw two people, one of whom was you. You followed him back to his room, picked up a kitchen knife which was sitting there and said to him “go back to sleep or I will make you.” You stole his mobile phone, a set of keys, and other personal belongings. You told him you would kill him if he told anyone what he had seen or heard. He tried to leave but you demanded that he return to his room. You and the others stayed on the premises for about two hours. You then drove off in a 2007 Toyota Hilux worth about \$8,000 with power tools worth about \$850 and about 70 sets of vehicle keys. You drove that vehicle to Longford, at about 3 am, you left it at the property of someone known to you.

Mr Qasimi did not come from his room until after you had gone, when he was sure it was safe. He drove to his boss’s house and the police were called. You were quickly identified as one of the offenders and arrested later that day. Your involvement was later confirmed by fingerprints and DNA evidence left at the scene. When interviewed you denied any involvement and claimed to have been asleep at home. None of the other offenders have been located or charged, but that makes no difference to the sentence to be imposed on you.

You are now aged 25. You were 23 when the crimes were committed. You have a record commencing in 2014 for offences involving dishonesty, violence and breaches of bail. You have served some short periods of imprisonment but have been given the benefit of a number of suspended terms. In 2017 you were given a wholly suspended three month sentence. You were then charged with further dishonesty and bail offences committed in 2018 and 2019 but left for Queensland where you were charged with a crime alleged to have been committed in that State in July 2019. You were admitted to bail on condition that you live in Tasmania. It follows that at the time of these crimes you were subject to bail orders made in two States. That you took advantage of the grants of bail to offend goes against you. In March 2020 you were sentenced by a magistrate for the outstanding Tasmanian summary offences to imprisonment for a total of six months from 24 December 2019, three months of which was suspended. You breached the suspended part of that term by escaping custody and resisting police in April 2020. The suspended sentence was activated from 1 March 2020 and you were ordered to serve a further three months. You were due for release on 31 August 2020 but held in custody until granted bail on 9 September 2020. Finally, in November 2020 a wholly suspended three month term was imposed for family violence offences committed in 2017. Sentences imposed after the crimes I am to sentence you for are not prior convictions for sentencing purposes but are relevant to understanding issues of totality and rehabilitation. Your record is consistent with a person who has had, over time, a significant issue with the abuse of illicit drugs. You claim to have been using Ice, MDMA and other drugs at the time of the aggravated burglary.

You have been living with your mother. You have an industrious work history. You have two children, but one you have had no contact with. You have been in a relationship with a new partner who you say has been a good influence on you, and has assisted to address your drug problem. It is in your favour that you have pleaded guilty. The plea of guilty was not an early one. It did not come until just before the trial was due to commence. It nevertheless facilitated

justice and avoided the need for Mr Qasimi to give evidence and for that reason I will reduce the sentence I would otherwise have imposed.

Your crimes of course involve dishonesty. However the aggravated burglary is serious principally because it was committed against a person, Mr Qasimi. I infer from what I have been told that you were not expecting that anyone would be asleep inside what were business premises, but it did not deter you once you realised he was there. Although he was not subject to actual violence, he was, for about two hours, confined by fear of multiple offenders and threats of violence you made including with a weapon. His phone was taken and not returned. There is no victim impact statement but it must have been a terrifying experience for him. The vehicle and some of the business items have been recovered, but not Mr Qasimi's personal belongings. You spent two days in custody in November 2020 and were in custody since 19 May 2021 until I granted bail on 16 June 2021 for the purposes of a home detention order assessment. You have been assessed as unsuitable because the proposed premises were not suitable. The assessment report raises real issues about whether you have proper insight into the seriousness of your conduct but I do not take the contents of that report into account in any relevant respect because they are disputed. However, in any event, after reflection I have concluded that your actions towards Mr Qasimi are too serious and, to ensure adequate punishment and deterrence, actual imprisonment is the only appropriate sentence. I will take into account the total of 41 days in custody which are yet to be taken into account.

Kyam Broadby, you are convicted on each count. I impose one sentence. I make compensation orders in favour of Broken Car and Truck Collection Tasmania and Mohammed Qasimi and adjourn the further terms of those orders to a date to be fixed. You are sentenced to imprisonment for nine months from 9 June 2021. Because of the possibility that you may be subject to other sentences for matters pending in the Magistrates Court I order that you not be eligible to apply for parole until you have served half of that term although the effect of the *Corrections Act 1997*, s 70, is that, absent exceptional circumstances, you may not be released on parole before the completion of a continuous period of imprisonment of six months.