

STATE OF TASMANIA v BRANDEN MALCOLM CHARLESWORTH 18 AUGUST 2021
COMMENTS ON PASSING SENTENCE **BRETT J**

Mr Charlesworth, you have pleaded guilty to 1 count of attempted armed robbery, 1 count of robbery, 2 counts of assault, 1 count of carjacking and 3 counts of attempted carjacking. You also pleaded guilty to the summary offences of assault, injuring property, attempted motor vehicle stealing and driving while disqualified.

The crimes were committed on 15 December 2020, during a course of conduct which commenced in the late afternoon of that day. You had attended the Brighton hotel with another man and were playing gaming machines there. After doing this for a few minutes only, you committed the attempted armed robbery by using a pair of scissors to attempt to break open a cash register which contained \$327 in cash. When you were approached by the female manager, you threatened her with the scissors and demanded the money out of the till. Your companion intervened and attempted to restrain you. After scuffling with him, you then tried to break into another till. A male patron tried to stop you this time, and during the ensuing struggle, you threw a number of punches at him, one of which connected with his face. You then tried to re-enter the service area, but the manager resisted this by holding shut the swinging entry door. You punched the door repeatedly with both fists and eventually pushed your way into that area. You then approached and assaulted the manager, including by putting your hands around her neck. You were yelling that you were going to kill someone and that you wanted money. The male patron who had earlier tried to stop you, and his wife, attempted to intervene again, and the manager was able to escape your grip. However, you continued to follow and physically threaten her and then wrestle with her over the till. This till contained \$350 in cash. You continued to threaten the manager in an attempt to obtain a key to enable you to access the till. These threats included telling her that you could kill her "with one finger".

After this, you went to another area of the hotel, carrying the till. You came across a female staff member who was returning from a break and had not witnessed your conduct to this point. She came through some automatic doors and saw you standing there with the till in your arms. You said to her "Sorry, we are closed". She started to run away in fear but you grabbed her by the arms, pushed her to the ground, stood over her and asked her if she had a gun. When she said no, you lent over her with your right arm raised and your hand in a fist, causing her to believe, not surprisingly, that you intended to punch her. Other patrons then intervened, and you ran from the hotel.

Outside the hotel, the criminal conduct continued. You attempted to carjack a vehicle in the car park by opening the driver's door, telling the female driver to get out and trying to take the keys from the ignition. Your attempt was unsuccessful because the male passenger got out of the car and confronted you. You made another attempt at carjacking by standing in the middle of the road in front of a car driving towards you and putting your hands up. The driver stopped because he thought you needed help. You pulled the driver's door open and demanded that he get out of the car. This attempt was also unsuccessful because the driver drove away. You then immediately approached another vehicle parked near the post office, which contained a female driver. You threw a rock at the windscreen causing damage to the bonnet of the vehicle. You then tried to steal a parked motorcycle by sitting on it and attempting to start it, but this also was unsuccessful.

The final offences occurred immediately after this. You carjacked a vehicle parked near a supermarket. The vehicle was occupied by the male driver and his six-year-old son. You

continually threatened the male that you would kill him and his child if he did not get out of the car. It is obvious from your threats that you were aware that the child was sitting in the back seat. Eventually, he got out of the vehicle with his son and called out for help. You got into the driver's seat. A bystander tried to remove the keys and pull you from the car, but you commenced to reverse in a semicircle before driving out of the carpark. This driving was in breach of a disqualification. You left the car after driving a short distance, and ran towards another car which was occupied by a female driver. You told her to get out and took the keys from the ignition, but as you did this police arrived. You were arrested after a brief stand-off with police.

Fortunately, no one sustained serious physical injury as a result of your conduct. The male patron who tried to stop you at the hotel sustained a cut to his upper lip and the female staff member sustained a minor scratch and bruise to her elbow. I have received impact statements from her, the male victim of the carjacking and the female driver of the last attempted carjacking. As would be expected, each of these people was significantly traumatised by your conduct and have endured ongoing emotional and psychological consequences. Two have sought counselling. The child has demonstrated ongoing impact and has also received some counselling. I have no doubt there was potential for widespread and long-term impact on many people who experienced or witnessed this frightening episode of public violence.

You were 22 years of age at the time of this offending. You had a troubled childhood and were living on the streets at the age of 13, and between 15 and 18 were in the child protection system. You have a long-standing drug problem, having commenced the use of cannabis at the age of 13 and methylamphetamine at 15. You have a lengthy record of offending as a youth and this has continued into your adult years. Your record demonstrates a propensity for violence and violent crime. In 2014, when you were 16 years of age, you committed and were sentenced for two counts of aggravated armed robbery. Both crimes involved your use of a crowbar as a weapon to physically threaten your victims, one of whom was a young female employee who was alone in the shop at the time. The sentencing judge noted that you had, in the past, been offered considerable support, including through prior sentencing orders but had not taken up that support. Your prior offending also includes common assaults, resisting police and driving offences, such as disqualified driving and evading police. The criminal conduct with which I am dealing was committed the day after your release from prison after serving a sentence. Your counsel makes the point that you have spent a substantial part of your adult life in prison. It is submitted that this has been difficult for you with much time spent in segregation and that you lack essential life skills to enable you to effectively deal with life in the community. I agree with all of this, and do not underestimate the importance of your rehabilitation. However, having regard to the seriousness of this offending, and your lack of engagement with prior community based sentencing orders, it is inevitable that your rehabilitation must be addressed within the custodial system, and your transition to the community at the end your sentence managed by way of parole, if that is the determination made by the Parole Board. It is certainly appropriate, particularly having regard to your age, that I make provision in this sentence for the opportunity for release on parole, but the non-parole period will need to take into account the seriousness of this offending and your failure to be deterred by or benefit from prior sentencing orders.

While your rehabilitation is important, the primary sentencing considerations are general deterrence and community protection. You engaged in a lengthy and unprovoked course of public violence, which directly impacted numerous innocent members of the community and, because of its public nature, had the potential to impact many more. At least one small child

was directly caught up in your violence. Your moral culpability for this offending is significant, and compounded by the cruel, threatening and demeaning nature of some of your interactions with your victims. The fact that you were under the influence of drugs or alcohol does not provide you with any mitigation. In fact, in my view, it exacerbates the need to consider community protection in the sentence. I accept that you have some remorse, although I think the significance of this is somewhat limited, given your failure to be deterred by prior sentencing and the fact that you committed this crime so soon after your release from prison. I will take into account your pleas of guilty as indicative of that remorse and also give you some benefit in respect of the utilitarian value of the pleas. At the very least, you have saved your victims the further trauma of giving evidence in court against you. Finally, I will also have regard to the principles of totality. While a significant sentence of imprisonment is the only possible sentencing option, it is necessary to avoid a crushing sentence, particularly having regard to your age, and I will also have regard to the fact that this was a connected course of conduct. However, once again this consideration needs to be balanced against the number of people who were actually or potentially impacted by your violence.

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 imprisonment for a global term of four years and six months, which will be backdated to 14 June 2021. I order that you not be eligible for parole until you have served two years and nine months of that sentence.
- 3 Having regard to the involvement of motor vehicles in the commission of some of the crimes, and the disqualified driving offence, it is appropriate, in my view, that a period of disqualification from driving be imposed. Accordingly, I order that you be disqualified from driving for a period of four years which will commence on the date of your actual release from prison.
- 4 I make compensation orders in favour of the Brighton Hotel, Mark Hunt and Jason Anthony White in sums to be assessed and I adjourn each assessment sine die.
- 5 I make a compensation order in favour of Innovation group Pty Ltd in the sum of \$968.24.
- 6 I order that the scissors used during the commission of the crimes be forfeited to the State of Tasmania and I nominate the value of the property at \$5.