

STATE OF TASMANIA v WILLIAM JOHN PAUL EVENETT-SMITH 8 SEPTEMBER 2021
COMMENTS ON PASSING SENTENCE PEARCE J

William Evenett-Smith, you plead guilty to aggravated armed robbery. During the evening of Sunday 8 November 2020 you contacted the complainant, who was your friend, by phone and arranged to meet him. He was aged 23, is a person with an intellectual disability and lives in supported accommodation in Devonport. You met just after midnight and went to his home. After about 10 minutes you both went out again on foot. You told him that you were walking to collect some alcohol you had left in the bush, but that was a lie. In fact you had planned with two other young men to rob him. In accordance with the plan, those two men, Jessie Woodhouse and a youth, approached the complainant and you walking along the street from the opposite direction. They told you to lie on the ground. You pretended that you did not know them and complied. One of the men, a 14 year old youth, put his knee on the complainant's back and asked if he "had anything on him." After you both stood up, Mr Woodhouse and the youth again both asked the complainant whether he had anything. Mr Woodhouse, who was wearing gloves, pulled out a kitchen knife and threatened the complainant that he would stab him unless he handed over what he had. The complainant tried to defend himself but was pushed to the ground. Still pretending to protect him you fell onto him, but you took his keys and phone and gave them to Mr Woodhouse. Either he or the youth stomped on the complainant's glasses before leaving.

As you and the complainant were walking back to his unit you ran off when a police car drove past. You met up with your two associates and, between you, you spent time attempting to sell the phone to various people. When, later that day, Mr Woodhouse's home was searched, the police found the complainant's phone and keys, and the gloves and knife used in the robbery. You were later arrested. You admitted what you had done although you said that you were not aware that Mr Woodhouse had or intended to use a knife until he produced it, and that you were so drunk you could not remember the exact sequence of events.

At the time of the crime you were 22. It is in your favour that you quickly admitted your role in the crime and pleaded guilty. You told the police you were sorry and ashamed of what you had done and I accept that it was a genuine expression of remorse. Your record is not a bad one, although on 25 August 2020, just over two months before this crime, you were fined for three counts of dishonestly acquiring a financial advantage. On three separate occasions you accepted money from persons but failed to supply a mobile phone you advertised for sale. You have subsequently been fined for bail and family violence offences involving damage to property and a threat. The youth was sentenced by a magistrate to community service and probation. Different considerations apply to sentences imposed on him. Jamie Woodhouse was sentenced by Geason J to imprisonment for 18 months, with eligibility for parole after nine months. Although you are criminally responsible for all of the conduct, I regard your culpability for the crime as marginally less than his. The plan to rob someone was originally his idea. He is your cousin and was in a position of some influence over you. He produced the knife, but even if you did not know about the knife at the start, its production was a probable consequence of the planned robbery and you participated in the crime even after you became aware of it. I do not see a need for parity in sentencing primarily because his criminal record was considerably worse than yours and, in his case, there was a much greater need for specific deterrence and protection of the public.

However you committed a serious crime. It was you who identified the complainant because you thought he would be an easy target and you played a key part in the plan to rob him. You

betrayed the trust implicit in your friendship and took advantage of his vulnerability, by creating a situation in which he was alone, late at night, and faced with the combined force of two other men, one of whom produced a knife. That would be terrifying enough for even the most robust person, but would have been especially so for a person with an intellectual disability. Of course, those men were secretly supported by you. Your intoxication is not mitigating. It is not suggested that the complainant suffered any physical harm. He did not make a victim impact statement but that does not mean there is no impact. He was subjected to what must have been a terrifying and traumatising attack.

I have a report from a very experienced forensic psychologist, Dr Georgina O'Donnell. She and your counsel outlined your personal circumstances. You come from a large family. You completed secondary education and have had some seasonal work since leaving school. You have one child with a former partner but you have not had contact for some time. You live with a new partner and she is very supportive of you. You have a history of a chronic generalised anxiety condition and there is some indication of Tourette's syndrome which results in some tics. You have not previously been diagnosed or treated for either condition and you have self-medicated with alcohol. You do not have an intellectual disability. Although your anxiety disorder may have contributed to your consumption of alcohol and cannabis at the time of your crime your moral culpability is not reduced. I accept Dr O'Donnell's opinion however that the anxiety condition will likely mean that prison will weigh more heavily on you, and you are at heightened risk of mental health deterioration in a prison environment. You are still a relatively young man and there is a very real community benefit if the sentence allows a chance for you to become a law abiding and productive member of the community on your release. On the other hand, there is a need to punish you, to vindicate the victim and to make clear to you and others the consequences of such actions. A term of imprisonment is required, some of which is to be immediately served. To allow for your possible rehabilitation I will allow you the opportunity to avoid having to serve all of the term by suspending part of the term subject to conditions. One of the conditions will require that you submit to supervision by a probation officer. That order will enable issues such as your mental health, substance abuse and the possibility of your employment to be addressed. If you reoffend in any serious way while the suspended sentence is in force it is almost inevitable that you will be required to serve the balance of the term in addition to any further sentence.

William Evenett-Smith, you are convicted. I make a compensation order in favour of the complainant, whose name will be specified in the formal order, in an amount to be assessed. You are sentenced to imprisonment for 15 months from today. I suspend 12 months of that sentence for 21 months from today on the following conditions:

- (a) You are not to commit another offence punishable by imprisonment during that period. If you breach that condition you will be required to serve the term unless that is unjust.
- (b) During the 21 month operational period of the order, you will be subject to the supervision of a Community Corrections officer. The conditions referred to in s 24(5B) of the *Sentencing Act* apply to this condition and will be set out in the order you will be given. These include that you must report to a Community Corrections officer within three clear days of your release.
- (c) In addition to the core conditions, the order will also include the following special conditions that you must, during the operational period of the order:
 - i. attend educational and other programs as directed by the Court or a Community Corrections officer;

- ii. submit to the supervision of a Community Corrections officer as required by that officer;
- iii. undergo assessment and treatment for alcohol or drug dependency as directed by a Community Corrections officer;
- iv. submit to testing for alcohol or drug use as directed by such an officer;
- v. attend educational and other programs as directed by a Community Corrections officer;
- vi. submit to medical, psychological or psychiatric assessment or treatment as directed by a Community Corrections officer.

If you breach any of those conditions you may be brought back to court and re-sentenced.