

STATE OF TASMANIA v DANIEL FRANCIS FERGUSON
COMMENTS ON PASSING SENTENCE

4 OCTOBER 2021
MARSHALL AJ

Mr Ferguson pleaded guilty to committing the crime of robbery contrary to s 240(1) of the *Criminal Code*.

At Devonport on 17 December 2020, Mr Ferguson entered the Kmart store and stole five fishing lures and two popper lures and resisted the complainant with violence as he exited the store without paying for the goods. Noticing that Mr Ferguson was about to take the goods without paying for them, the complainant sought to engage him in discussion. He responded by punching the complainant to the left side of his face with a closed fist, using considerable force.

The complainant was knocked to the ground. His glasses were knocked off his face. His face was tender due to the blow and his bottom sore as a result of falling.

Mr Ferguson was chased by members of the public, held down by two males in the Kmart car park and detained by them until police arrived. The police located a \$50 note in Mr Ferguson's shirt. The value of the stolen goods was \$15.50.

Mr Ferguson was held in custody overnight and is currently on bail. He claimed that he was hungry and homeless and that he wanted the lures to enable him to catch a fish to eat. He did not explain why he did not use the \$50 note he had on him.

Mr Ferguson has several destroy property prior convictions, some convictions for stealing offences, assaults on police and common assault. He has no prior offending involving robbery and the combination of theft and violence.

Mr Ferguson was 30 years old at the time of the offending. The complainant was 53 years old and not known to Mr Ferguson. The complainant was employed as a greeter and bag checker. Mr Ferguson is deeply remorseful and has written a letter of apology to the complainant. He was fostered at a young age. His birth mother is aboriginal. He has had a troubled life. As a teenager he fathered a child. The child died when 2 years old after being struck by a vehicle outside Mr Ferguson's home. He attempted to contact his birth mother in 2014 but he has no ongoing contact with any family members.

Since April 2021, Mr Ferguson has been homeless. He engages in busking for enjoyment. He completed school up to year 11. He is unemployed and in receipt of a disability support pension. He has a substantial history of offending by stealing small items from shops for "basic needs". He has fines owing in the sum of almost \$7,000. He does not drink alcohol or presently use Ice but is a habitual cannabis smoker.

He has cerebral palsy. Previous attempts at community based corrections orders have failed due to his continued offending while on probation. He is unsuitable to participate in a program involving supervision. He is unwilling to address his cannabis substance abuse issue.

Sentencing options for Mr Ferguson are limited. Home detention is inappropriate, as are any orders involving community service or probation. A fine would be pointless. Prison is unlikely to be of any benefit to Mr Ferguson, however the crime in relation to which he is convicted

accompanied by violence is a serious one. Nonetheless, Mr Ferguson should be given one last chance to mend his ways before an actual prison sentence is imposed on him. The Tasmanian Aboriginal Centre is awaiting the outcome of this matter to assist him, including to obtain NDIS funding and stable accommodation. Having regard to general and specific deterrence and the denunciation of the offending, I sentence Mr Ferguson to a period of six months' imprisonment, fully suspended on the basis that he not commit an offence punishable by imprisonment in the next 24 months. I formally convict him as charged.