

STATE OF TASMANIA v SAM CULLEN
COMMENTS ON PASSING SENTENCE

21 SEPTEMBER 2021
GEASON J

Mr Cullen you have pleaded guilty to armed robbery contrary to s 240(3) of the *Criminal Code*. You were 20 years old at the time of your offending. On 9 March 2020 you sold a phone to an associate in return for some drugs. The following day you were told that the phone you had sold was locked and could not be accessed. You were told that you had until the end of that day to come up with \$300 to pay for the drugs you had been given.

In order to get that money a plan was hatched to rob the local Woolworths Supermarket. You approached that store at about 8pm. Your movements were captured on CCTV. You can be seen walking towards the entry of the store but not entering. You turned and walked away. When you returned to where you were staying you said that you had “freaked out” and did not go inside. Someone else suggested to you that you should rob the United Service Station instead. Once again you left the house this time with another person. Shortly before 9pm you walked towards that service station in Greenpoint Road in Bridgewater. Inside the service station there is service desk. Steel anti-jump barriers are in place there, intended to prevent customers from having access to the area behind the service desk. There are two tills.

Each till has a float of \$300 at the start of the shift. This shift began at 5pm. The attendant was working alone. A little after 9pm you entered the service station carrying a timber bat with a black mask over your face, wearing black and white Nike shoes, brown pants and a navy hooded jumper, the hood over your head. You entered alone. The complainant was working at one of the computers when he heard a loud smash behind him. You had struck the glass with the bat causing it to smash and items to fly off the counter and onto the floor. He held both hands up in front of his body. You struck the counter with your bat a second time and then a third time smashing the EFTPOS machine. You told the complainant to open the till which he did. You reached through the screen and took all the notes from the till. You put the notes into your hoodie before telling him to open the other one. You hit the counter again. You were told the other till was empty. You repeated your demand, threatening to smash everything. He moved to the second till pressing the emergency alarm as he did, before placing the second till on the counter. You reached through the screen and took the notes from within it. You then ran from the store carrying the money and the bat. You went back to the house in Cowle Road.

The time from the point where you entered the service station until you left was about 50 seconds, and it is estimated that you stole between \$700 and \$800.

Police investigation recovered pictures from CCTV footage. On 11 May 2020 at about 9.45am police observed you walking towards the Woolworths Shopping Centre wearing clothes matching those worn by the offender in the CCTV footage. When you saw police you started running away. You were chased about 50 metres until apprehended. You were arrested. You were cautioned before saying that you had given the money to another person to settle a debt. You participated in an interview. You told police that you had sold someone an iPhone, but that you had not been aware at that time that it was stolen. You said that you got \$300 for the phone which you spent on drugs. You said that you had been told to get \$300 by midnight or you were a dead man. You attempted to borrow money from family but those attempts were unsuccessful. You said that you wanted to get the money the legal way first but that did not work. You told the police that you had consumed 3 to 4 cans of Woodstock and some ice on the day of the armed robbery.

You said that you did not want to carry out the robbery but “either you did it or you would die”. You said that you were “petrified for your life”, that you were “crying and freaking out” before you went in, and that you smashed the counter to scare the guy. You said you did not want to hurt anyone admitting to yelling and taking the money. You said that you did not count the money, and that you handed it to the young person accompanying you as you were running away. You acknowledged that you were wearing the same clothing that day as you had the night before for the robbery. You were charged and detained.

A check of the iPhone confirmed that you had used it to send a number of messages in the lead up to the armed robbery asking people if you could borrow \$300, telling them that you would get hurt if you could not get that sum.

You have been in custody since your arrest on 11 May 2020. This represents the first period of time that you have ever spent in custody.

I was told something about your history by your counsel. It is an unfortunate one. As a child you were repeatedly subjected to physical violence by your father and other family members and you were placed in foster care intermittently, from as early as 2 years of age. For some reason you were always returned to the family, and because your father was an alcoholic with anger issues, the infliction of violence upon you continued. You suffered a ruptured eardrum at age 5, and this has left you with permanent deafness in your left ear. You have been treated for anxiety and depression, commencing that treatment at an early age and your schooling was disrupted as a result of your family environment.

At age 11 you attended Clare House for psychological help arising from significant sleep disturbance attributed to your experiencing vivid flashbacks of the violence to which you had been subjected. You completed years 11 and 12, and you commenced a Certificate 2 in automotive training, but you were unable to complete that course after you became homeless. Until then you had been living in supported accommodation provided by Anglicare. It provides housing until 20 years of age, and when you turned 20 in the December prior to the commission of this crime you were rendered homeless. The support provided by that service was no longer provided to you.

As to the facts around your offending, I accept that the circumstance that led to the robbery was the demand for money which had been made as a result of a problem with the phone you had traded for drugs. That problem rendered the phone unusable. You acted in circumstances where you were subjected to threats of harm which gave rise to significant fear. It is particularly important to acknowledge that you attempted to obtain the funds lawfully before you committed this offence. Your reluctance to commit the offence is evident from the fact that when you went to the Woolworths store with the intention of robbing it, you withdrew from that plan. Your associates apparently became angry with you for your failure to act upon that plan, and the reality of the threats to which you had been subjected was reiterated to you. This served to increase your fear and desperation. It was in that circumstance that the suggestion to rob the United Service Station was acted upon. You then made a last attempt to contact your cousin to try to obtain the money before you committed that crime. It is put to me by your counsel that you did not have any intention to harm the service station attendant, and you told police as much when you were interviewed. Your focus was solely upon obtaining the money that you needed to resolve the other issue. It must however be acknowledged that your actions caused the complainant significant fear and distress.

I have received a report prepared by Dr Jordan. I have regard generally to the contents of his report in framing penalty. He notes that you are affected by autism spectrum disorder. You are considered socially awkward and to have difficulty understanding other people and their behaviour. It is suggested that your inability to read other individuals will have placed you in a position of increased risk of manipulation, and that such influences will have contributed to your actions as a means of resolving the problem with which you were confronted. It is suggested that this engages *Verdins* and may be grounds for moderation in the domain of specific deterrence, a proposition with which the State quarrels. That is because, in its view, your susceptibility to manipulation makes it necessary that the sentence I impose serves to reinforce that point, a consideration squarely within the need to address specific deterrence in fixing penalty. As a young offender who has experienced prison for the first time and a relatively long time at that, I have no doubt that specific deterrence has been addressed substantially in consequence of the experience to which you have already been subjected. That is so whichever way I choose to apply Dr Jordan's assessment in the context of the dispute as to its application raised in submissions by the State. While I am conscious that the decision in *Verdins* catalogues considerations according to principles it is not always a neat fit. However one determines the diagnosis made by Dr Jordan should be factored into sentencing - whether as relevant to specific deterrence as he suggests, or general deterrence as was submitted to me by counsel, or on some other basis, ultimately it is unarguable that your condition is a relevant sentencing consideration. Because we do not have mandated sentences courts are able to consider the circumstances of the offender in framing penalty. As such the Court is permitted to tailor its sentencing response to your individual situation. That is not to reduce the objective seriousness of the offending. Rather it explains something about you and the blameworthiness of your actions. In my view the circumstances require an amelioration of the sentence.

I have regard to your prior history. I note that your offending including most of your prior offending is coincident with the deterioration in your living arrangements. I regard you as a youthful offender for whom rehabilitation is a relevant and important consideration. That is so, notwithstanding, the seriousness of this offending. I also have regard to the need to vindicate your victim. He was working alone and must have been terribly afraid in those circumstances. The Court has a duty to protect workers who are vulnerable to crimes like this. That is achieved through the imposition of penalties which deter others.

In my view a term of imprisonment is necessary for this offending.

Mr Cullen I convict you. I sentence you to 22 months' imprisonment. I backdate that sentence to the date that you were taken into custody in May 2020. You have served a little over 16 months. Having regard to your circumstances, the matters put in mitigation, and the additional matters contained in the report from Dr Jordan I have determined that it is appropriate to suspend the remainder of the sentence on condition that you are of good behaviour for a period of three years and commit no offence punishable by a term of imprisonment in that time. That means that today you will be released having served a little over 16 months in prison for your offending. There is 6 months hanging over you if you commit an offence in the next 3 years that is punishable by a term of imprisonment you may have to serve that 6 months imprisonment in addition to any other penalty that is imposed for that offending.

I make a compensation order in favour of United Petroleum in an amount to be assessed, adjourned sine die.