

STATE OF TASMANIA v ADAM JOHN MUNNINGS
COMMENTS ON PASSING SENTENCE

2 FEBRUARY 2022
JAGO J

Adam John Munnings, you have pleaded guilty to the crimes of aggravated burglary, stealing a firearm or firearm part and stealing. On 18 February 2021 you and your co-accused - Casey Booth – travelled by car to a rural property, broke into the house and stole a number of items of personal property including jewellery, commemorative coins, a china set, a Huntsman Light force light and a Samsung Galaxy tablet. The value of the property stolen (excluding the firearms) was over \$5000. You also stole three firearms and some ammunition. You stole one .22 Stirling long rifle with a scope and light mount, one 12 gauge double-barrel shotgun and one air rifle. The ammunition you stole was half a box of 12 gauge ammunition, five boxes of .22 ammunition and one box of .22 hollow-point ammunition. The ammunition was suitable for discharge from at least some of the stolen firearms. The firearms were lawfully stored in a gun safe within the home. You accessed the gun safe by forcing it open. CCTV footage recorded your entry to the house. It also recorded you leave the house with the stolen property, and with your co-accused, drive away. When police were called they identified you from the CCTV footage. They subsequently attended at your residence. You were present there, as were a number of items of property which had been stolen.

Of note, the firearms were not located and neither you, nor your co-accused provided police with any assistance in terms of locating them. It is a reasonable inference that those firearms are now unlawfully in the community, probably in the hands of those who might use them for dangerous criminal purposes.

You were 35 years of age at the time of the commission of these crimes. You are now 37. At the time the crimes were committed you had minimal prior convictions, and no prior convictions for matters of dishonesty. The only matter of note was a matter under the *Road Safety Alcohol and Drugs Act*. I am told that up until the end of 2018 you lived a stable lifestyle and were not in any trouble with the law. You had used cannabis regularly from the age of 16, predominantly to assist with sleep, but this had not led to criminal offending. You then developed a substantial addiction to methyl amphetamine. Your use of methyl amphetamine began when you were around 30, following the death of your grandfather. You were very close to your grandfather and struggled in dealing with your grief. Your addiction to methyl amphetamine escalated very quickly and saw your life spiral out of control. You were spending large amounts of money on the drug and you began to commit crime to fund your addiction. Your abuse of methyl amphetamine also had an adverse impact on your family life and your social connections. It seems you completely lost your way.

On 11 August 2021 you were sentenced in the Magistrates Court for a large number of offences including matters of dishonesty, offences under the *Firearms Act*, offences under the *Misuse of Drugs Act*, driving offences, bail offences and other miscellaneous matters. These offences occurred predominantly throughout 2019 and 2020 whilst I am told you were in the grips of your addiction. You were sentenced to a 9 month home detention order. A condition of the order required you to attend at rehabilitation facilities in respect to your drug addiction. I am told that with the assistance of community corrections you have addressed your drug addiction. You have been regularly attending drug counselling. You have been abstinent from drugs for a period of approximately 6 months. Your life has stabilised considerably and you now feel you are back to the sort of person you were prior to your addiction taking hold of you. At the request of your counsel, I had you assessed as to your suitability for a further home detention order. The report I have received confirms that since commencing the home detention order

you have regularly attended at drug counselling and have participated well in that process. You have seen your general practitioner to obtain mental health support. You have gained employment with your father cutting firewood. You have not re-offended and have engaged well with Community Corrections throughout the order. You are considered suitable for a further period of home detention. You are also suitable for community service hours. Given you are currently subject to a period of home detention, the question of totality needs to be considered. The additional sentence I impose should not result in an overall sentencing outcome that is crushing, but on the other hand, you are being sentenced for discreet and serious conduct and the sentence I impose must adequately reflect that.

Section 42AF(3) of the *Sentencing Act* provides the total consecutive operational period of all home detention orders imposed upon a defendant must not exceed 18 months. Therefore, the maximum period of time upon which I could place you on a home detention order, for these matters, is 9 months. In assessing sentence, I need to consider whether an order of that nature would adequately meet the relevant sentencing objectives. It is also necessary to consider the question of parity in respect to the sentence imposed on your co-accused, Mr Booth. He was sentenced by me on 9 December 2021 to a period of 10 months' imprisonment. He is not eligible for parole until he has served 6 months of that sentence.

There is, however, a significant distinction to be made between the two of you. Whilst there is nothing to separate the two of you in terms of the role you each played in the commission of the crimes, your co-accused has a significantly worse record than you, with over 50 prior convictions for stealing and various dishonesty offences, 5 prior convictions for burglary, 2 prior convictions for aggravated burglary and prior convictions for motor vehicle stealing, attempted motor vehicle stealing and attempted stealing. He has many other prior convictions for offences of violence. Your co-accused was in custody serving a sentence for other matters at the time I sentenced him. The markedly different nature of your respective prior convictions means, in my view, the principle of parity has a minimal role to play in the sentencing exercise, and a different sentencing outcome is justified.

There is no question that the crimes committed by you were serious. They involved a degree of planning and persistence. The property you broke into was a relatively isolated rural property. You and your co-accused drove out there. You walked some distance in order to gain access to the complainant's property. When your initial attempts to enter the home through a number of doors were unsuccessful you persevered, eventually gaining access via a window. It is not clear whether you had prior knowledge that the firearms would be present at the house or not. Nevertheless you used force to open the firearms safe in order to obtain the firearms. The firearms safe was damaged.

As I said to your co-accused, breaking into another person's home involves a terrible breach of privacy and intrusion into the sense of security the homeowner is entitled to enjoy. It causes distress to victims and is of concern to the wider community. That has been so here. I have had the benefit of reading the victim impact statement. The homeowners now feel very unsafe in their own home. Their fear that you would return caused them to lose sleep. They felt it necessary to add additional security elements to their home. That has not alleviated their concern. They feel hyper-vigilant and anxious, and the pleasure of living in their rural property has been taken from them.

Stealing firearms is a matter regarded with great concern by the community, as reflected by the fact they are indictable offences. Criminal behaviour of this nature frequently results in

dangerous weapons coming into the hands of criminals, introducing the potential for them to be used in the commission of serious crimes. Here the firearms remain unaccounted for. It is a reasonable inference that your unwillingness to provide any information as to their whereabouts, suggests it is unlikely the firearms are being used for any legitimate or innocent purpose. General deterrence, and denunciation, are significant sentencing considerations.

I take into account your pleas of guilty. They have utilitarian value, although I note you were not initially co-operative when interviewed by police, even though the evidence against you was strong given you were recorded on CCTV footage.

I have regard to the content of the home detention assessment report, and acknowledge that since being placed on the home detention order in August 2021, you have made a considerable effort to turn your life around. You have addressed your addiction to methyl amphetamine and have not used that drug for many months now. You admit to still using cannabis on occasion, but have reduced your use considerably and are committed to eventually achieving abstinence from all illicit substances. Your drug counsellor describes you as making "excellent progress". You have severed ties with previous associates and have repaired your relationship with family and prosocial friends, who are willing to offer their ongoing support to you. You are pursuing employment. The report from Community Corrections indicates you have been compliant, engaged well and are motivated to make constructive changes in your life. This is relevant to the weight I need give specific deterrence in the sentencing process. Your efforts towards rehabilitation are an important factor to take into account in the sentencing process. Not only is a return to a drug and crime free life in your best interests, it is also in the community's best interests. There is good reason to think that if you are able to maintain your abstinence from methyl amphetamine use, you will not re-offend, given your lack of criminal history prior to your addiction taking hold.

I have given careful consideration as to whether, given the serious nature of these offences, you can be properly sentenced to a sanction other than immediate imprisonment. Taking into account all of the circumstances and in particular the absence of prior criminal history, and the work you have done since the commission of these crimes to address your drug addiction, I am of the view that the encouragement of your rehabilitation ought to be emphasised in the sentence. I am satisfied that a home detention order, coupled with community service, can meet all sentencing requirements and is appropriate. Had you not been suitable for home detention, a term of imprisonment would have been appropriate, although I note given my view that your ongoing rehabilitation ought to be emphasised in the sentence, it is likely I would have suspended at least a considerable part of that period of imprisonment to aid in your rehabilitation. That is particularly so at present, given it is notoriously understood that the current regularity of lockdowns within the prison system, because of the Covid situation, is impacting on the delivery of rehabilitation programs for prisoners. A home detention order has both punitive and rehabilitative aspects (see *Director of Public Prosecutions v King* [2020] TASCCA 8 at [52]-[56]). It involves a substantial burden and a material deprivation of liberty. Home detention is far from a lenient punishment. It carries with it a considerable measure of deterrence and denunciation and is therefore effective as a general deterrent. This is particularly so here, as you will be subject to a second cumulative period of home detention. Being subject to a continuous period of home detention, with restrictions on liberty and freedom of movement, for 18 months is not a clement outcome. Additionally, you will be required to perform community service to ensure the sentence has a sufficiently strong punitive aspect, given I am limited in the length of home detention I can impose. In respect to all counts on the indictment there will be one sentence. You are convicted of the crimes to which you

have pleaded guilty and I impose a home detention order for an operational period of nine months to commence immediately upon the expiration of the period of home detention imposed on the 11 August 2021. The order will include the following conditions which will apply for the whole of the operational period:

- You must not commit an offence punishable by imprisonment.
- You must reside at [address specified].
- You must be there at all times except when you are not there for a "relevant reason" as specified in s 42AD(4) of the *Sentencing Act* 1997. That includes going somewhere with your probation officer's permission.
- You must permit a police officer, probation officer or other prescribed officer to enter those premises.
- You must permit a police officer to conduct a search of the premises, conduct a frisk search of you, and take a sample of any substance found on the premises or on your person.
- You must submit to electronic monitoring, including the wearing or carrying of an electronic monitoring device.
- You must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- You must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring device, including directions relating to the installation, attachment or operation of the device or system used for the purpose of electronic monitoring, if those directions are given to you by a police officer, a probation officer, a prescribed officer or any other person whose functions involve the installation or operation of a device or system used for the purpose of electronic monitoring.
- You must maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact through that device at all times.
- You must submit to the supervision of a Community Corrections officer as required by that officer.
- You must not take any illicit or prohibited substances.
- You must not take any medication containing an opiate, benzodiazepine, bupropion hydrochloride or pseudoephedrine, unless you provide written evidence from your medical practitioner that you have been prescribed that medication.
- You must not consume alcohol and you must submit to testing for the presence of alcohol by a police officer or Community Corrections officer.
- You must attend intervention as required at the Salvation Army Bridge Program or other suitably qualified alcohol and other drug service.

I order that you must attend the Community Corrections office at Glenorchy by 10am tomorrow, 3 February, for the fitting an electronic monitoring device (if required given the currently operating home detention order) and induction in respect to this order.

I also make a community correction order to operate for a period of 30 months with a condition requiring you, during that period, to satisfactorily perform and complete 175 hours of community service, as directed by your probation officer or community correction supervisor.

I make compensation orders in favour of Andrew DeVries and Sarah DeVries in amounts to be assessed.