

Mr Wright, you have pleaded guilty to attempted aggravated armed robbery. You have also pleaded guilty to a charge of injuring property, which I am dealing with pursuant to s 385A of the *Criminal Code*. There is also before me an application to activate a suspended sentence of three months' imprisonment.

I find in accordance with the facts published to the Court. Summarised, the facts are that on 22 August 2019 you were in Moonah. Shortly before 4.15am, you were observed on a CCTV camera to insert a knife into the driver's door of a Toyota Corolla vehicle in an apparent attempt to gain entry. You damaged the driver's side door lock in doing so. You also kicked the rear driver's side passenger window and door, causing damage to the door. This is the summary offence of damage to property.

You continued to walk along Main Road Moonah and, at about half past four, you approached a taxi driver. You woke him up and requested to be taken to Claremont. He agreed. You and your associate got into the vehicle, he sat in the rear middle seat, you in the front passenger seat. At the Claremont link road you asked the driver to turn towards the Claremont shopping centre, which he did. There was then a brief exchange between you and your associate, with the result that he moved directly behind the driver's seat. He reached out his right arm and placed it around the driver's neck and squeezed it. He demanded the driver's money. This was a joint criminal enterprise, and I sentence you on that basis. The driver asked you to tell your associate to stop. However you responded by saying, "give us your money". He told you that he could not give you any money because he could not breathe. You repeated the demand. You then pulled out a knife and held it towards him, pointing it at his stomach. It was a kitchen knife, seven to eight inches long, including the handle. He pulled the taxi over on a nearby bus stop, at which time your associate tightened his grip on the driver's throat and you both once again demanded money. You got out of the car and stood at the driver's door. Your associate still had his arm around the driver's throat. It was at this moment that the driver saw another vehicle's lights, and decided to drive to get help, attracting the attention of the occupants of that vehicle. They had observed you at the driver's door of the taxi and seen your associate in the rear seat of the vehicle with his arm around the throat of the driver. As the approaching vehicle stopped, you ran away. No money or other property was taken.

You were located shortly after by police, hiding in the yard of a property at Claremont. You were arrested. The knife was located nearby. You were interviewed and under caution you told police that you had used Ice that afternoon; that you had travelled to Moonah where you had consumed alcohol with a friend; that you met the other person who was with you in the taxi and consumed more alcohol with him, before you left that property to walk to Gagebrook. Your recollection is otherwise vague. You claim to recall people filming you, but you could not remember anything pertaining to the incident with the driver, and you denied having a knife.

You have been in custody since your arrest.

There is a victim impact statement, and I have regard to its contents. It discloses that the driver of the vehicle continues to feel insecure at night, and that he has suffered lost income due to his inability to work some shifts as a result of this episode.

I observe that taxi drivers provide an invaluable essential community service, and they do so at risk of finding themselves in situations such as this, while doing no more than trying to earn a living, and a modest living it is. In my view, it is critical that the courts send a very powerful message that unprovoked attacks on taxi drivers such as occurred in this case, will attract a strong sentencing response. The courts, through the sentences imposed upon people such as you, must make it clear that offending such as this will not be tolerated, and will result in a lengthy term of imprisonment in most instances.

In your case, you present with a long history of prior convictions, including for destroying property. You do not have a significant history of crimes of violence, though there is a conviction for aggravated burglary and stealing in 2017, and in 2009 you were convicted of armed robbery.

You are not to be punished twice for your prior convictions, but they are relevant to the Court's assessment of you and your character generally. They deprive you of the right to claim to this Court that you are a person who is otherwise of good character.

At your counsel's insistence I obtained a pre-sentence report. Whilst initially assessed as unsuitable for community based orders, that assessment was reviewed, according to the report, "in light of more recent information", which I take to be a reference to the psychological assessment prepared for the NDIS program. It is appropriate that pre-sentence reports identify the sources of information relied upon for the purposes of expressing an assessment. In circumstances where the recommendation has changed, the need to do so is emphasised. You counsel disavowed any contact with the probation office when I sought clarification of that matter from her.

I am assisted by the report. It discloses a disrupted upbringing, parental neglect and time in foster care.

The report suggests that you have six children of your own, although you no longer have contact with them. You have some contact with siblings, though not all of them, and they speak favourably of the relationship with you. There is also a reasonably healthy relationship with your aunt and uncle. They were involved in raising you. You report a largely transient life, moving between various houses, as well as sometimes your parents, and at other times, with your aunt and uncle, as I have noted. You have, however, been barred from their home in the past when under the influence of illicit substances, and, as to that, substance figures prominently in your past. You drank heavily in the past claiming that you used alcohol daily, and you have historically experimented with Ice, morphine, cannabis and cocaine, and possibly heroin. You claim to have used Ice on the night of this offending.

The psychological reports disclose, amongst other things, an extremely low range of intellectual functioning.

Nevertheless, it is not suggested by your counsel that in your case *Verdins* principles are engaged in any way. I will have regard to the evidence of your psychiatric condition for the purposes of understanding your circumstances generally, and for the purposes of framing appropriate sentencing order, but not, as I say, in the sense discussed in *Verdins*.

Another psychological report prepared in 2019 confirms your low intellect, the significant trauma you have endured, and your prospects for progress if you can access support, including

psychological support.

In that respect, the psychological assessment prepared for the NDIS program identifies a number of different needs. I do not set them out. However, I take the view that your engagement with the authors of that report is indicative of a willingness to address the psychological issues you face, and I accept that if you are able to work with these people, there is some prospect that you can make something useful of your life. However, no particular outcome can be guaranteed, and the prospect of any progress is entirely dependent upon your remaining engaged with that process. I have therefore decided that, in addition to the sentence I impose, there should be orders to apply on your release. However, if I make a community correction order, I am not able to specify a non-parole period. The question then becomes whether I ought make such order or delegate effectively to the Parole Board the task of framing appropriate orders.

That is what I have decided to do. I think it ensures more appropriately framed orders which can be applied upon your release.

I am satisfied that the Parole Board will better placed to make an assessment of the appropriate orders that should attach to your release after it has seen the progress that you have made during the period of incarceration I am about to impose.

The sentence the Court imposes on you must, as I have noted, operate as a general deterrent to others. It must punish you, and it must vindicate your victim who, as I have also noted, continues to suffer as a result of your offending. I take account of your plea of guilty and I reduce the sentence I would otherwise have imposed by 20% in consequence of that. In relation to the suspended sentence I consider it appropriate to activate that sentence and I so order. I direct that the sentence of three months' imprisonment imposed in December 2018 is activated, and I further direct that it commence on the date you were taken into custody, which was 22 August 2019.

In respect of the charge of damage to property, the minor matter, I record a conviction.

On the indictment I sentence you to two years and nine months' imprisonment. That sentence commences at the expiration of the three month suspended sentence, that is to say, it is cumulative to that sentence. I further direct that you shall not be eligible for parole until you have served 18 months of that sentence. In my view that is the shortest period the Court can impose in all the circumstances.

I make the forfeiture order in relation to the knife.

The result of all of that, Mr Wright, is you must actually serve 21 months in prison before you can apply for parole. The sentences that I have imposed today begin on the day you were taken into custody, which, as I have noted was 22 August 2019.